

IDAPA 13 – DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0000-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-103, 36-104, 36-105, 36-111, 36-201, 36-301, 36-305, 36-307, 36-401, 36-405, 36-406A, 36-407, 36-408, 36-409, 36-412, 36-413, 36-415, 36-501, 36-504, 36-506, 36-601, 36-701, 36-703, 36-704, 36-706, 36-708, 36-804, 36-901, 36-902, 36-1001, 36-1101, 36-1102, 36-1201, 36-1402, 36-1508, 36-2201, 36-2202, 36-2204, and 36-2205, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code. In conjunction, the Idaho Fish and Game Commission will accept oral comment concerning this rulemaking at its meeting at the Idaho Department of Fish and Game Regional Office at 99 Highway 93 North, Salmon, Idaho 83467 on July 24, 2019, beginning at approximately 8 pm.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and publishes the following existing and previously approved and codified chapters of IDAPA 13, rules of the Department of Fish and Game. This temporary and proposed rulemaking includes edits and re-numbering that do not significantly change the effect of existing rules to comply with Uniform Format Requirements of "Rules of the Office Of Administrative Rules Coordinator," IDAPA 44.01.01, and to comply with the Red Tape Reduction Act (Executive Order No. 2019-02) directing agencies to streamline state government through the repeal of outdated or ineffective rules or the significant simplification of rules.

IDAPA 13

- 13.01.01, *Rules of Practice and Procedure of the Fish and Game Commission*
- 13.01.02, *Rules Governing Mandatory Education and Mentored Hunting*
(Except IDAPA 13.01.02.100 and 13.01.02.102, which are being reauthorized as fee rules)
- 13.01.03, *Public Use of Lands Owned or Controlled by the Department of Fish and Game*
- 13.01.04, *Rules Governing Licensing*
(Aside from IDAPA 13.01.04.600, which is being reauthorized as a fee rule)
- 13.01.06, *Rules Governing Classification and Protection of Wildlife*
- 13.01.07, *Rules Governing the Taking of Upland Game Animals*
- 13.01.08, *Rules Governing the Taking of Big Game Animals*
(Except IDAPA 13.01.08.263, which is being reauthorized as a fee rule)
- 13.01.09, *Rules Governing Taking of Game Birds*
 - Edits incorporate substantive requirements of 13.01.13, *Rules for Taking of American Crow*, which will expire as a separate chapter on June 30, 2019.
- 13.01.10, *Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife*
(Except IDAPA 13.01.10.410, which is being reauthorized as a fee rule)
- 13.01.11, *Rules Governing Fish*
 - Edits incorporate substantive requirements of 13.01.05, *Rules for Fishing Contests*, which will expire as a separate chapter on June 30, 2019
- 13.01.12, *Rules Governing Commercial Fishing*
- 13.01.14, *Rules Governing Falconry*
- 13.01.15, *Rules Governing Use of Dogs*

- 13.01.16, *Trapping of Predatory and Unprotected Wildlife and Taking of Furbearers*
- 13.01.17, *Rules Governing the Use of Bait and Trapping for Taking Big Game Animals*
- 13.01.18, *Rules Governing Emergency Feeding of Pronghorn, Elk, and Deer*
- 13.01.19, *Rules for Operating, Discontinuing, and Suspending Vendors*
(Except IDAPA 13.01.19.102, which is being reauthorized as a fee rule)
 - Edits incorporate substantive requirements of 13.01.20, *Rules Governing Selection of Fish and Game License Vendors*, which will expire as a separate chapter on June 30, 2019

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

In addition, the Idaho Constitution, Art. 1, Sec. 23, states the “rights to hunt, fish and trap, including by the use of traditional methods, are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people and managed through the laws, rules and proclamations that preserve the future of hunting, fishing and trapping.” Continuity of previously approved and codified Fish and Game rules governing the classification, protection, and taking of various types of fish and wildlife; the education and licensing of hunters, anglers, and trappers; emergency feeding of wildlife; and import, export, possession, release and sale of fish and wildlife implements this constitutional directive, as well as the directive of the State’s Wildlife Policy, as set forth in Section 36-103(a), Idaho Code, and other statutory directives. Continuity of existing rules for Commission procedure, use of state-owned or controlled lands, and authorization and accountability for licensing vendors implements good governance, public transparency, and responsible management of state monies and assets.

In addition, these rules incorporate simple modifications to existing IDAPA 13.01.04 as directed by 2019 legislation rather than re-authorizing outdated provisions; these changes were directed in Senate Bill 1088aa (changing the process for award of five special big game tags for disabled veterans with a Idaho Division of Veterans Services (IDVS) process to screen and prioritize applicants, with two of the tags allocated to hunts designated by IDVS) and House Bill 192 (as to a change in sale dates for outfitter allocated deer and elk tags and adding another option for allocating tags).

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Paul Kline, (208) 334-3771.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Paul Kline
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25
Boise, ID 83707
Phone: (208) 334-3771
Fax: (208) 334-4885
rules@idfg.idaho.gov

IDAPA 13 – DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104, 36-303, 36-404, 36-407, 36-409, 36-412, 36-701, 36-703, and 36-708, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code. In conjunction, the Idaho Fish and Game Commission (Commission) will accept oral comment concerning this rulemaking at its meeting at the Idaho Department of Fish and Game Regional Office at 99 Highway 93 North, Salmon, Idaho 83467 on July 24, 2019, beginning at approximately 8 pm.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and publishes the following existing and previously approved and codified chapters of IDAPA 13, Rules of the Department of Fish and Game. This temporary and proposed rulemaking includes edits and re-numbering that do not significantly change the effect of existing rules to comply with Uniform Format Requirements of “Rules of the Office Of Administrative Rules Coordinator,” IDAPA 44.01.01, and to comply with the Red Tape Reduction Act (Executive Order No. 2019-02) directing agencies to streamline state government through the repeal of outdated or ineffective rules or the significant simplification of rules.

IDAPA 13

- IDAPA 13.01.02.100
- IDAPA 13.01.02.102
- IDAPA 13.01.04.600
- IDAPA 13.01.08.263 (*expiring rule numbered as 13.01.08.260.06*)
- IDAPA 13.01.10.410 (*expiring rule numbered as 13.01.10.400.09*)
- IDAPA 13.01.19.102 (*consolidation of expiring rules numbered as 13.01.19.112 and 13.01.20.102.04*)

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

In addition, the Idaho Constitution, Art. 1, Sec. 23, states the “rights to hunt, fish and trap, including by the use of traditional methods, are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people and managed through the laws, rules and proclamations that preserve the future of hunting, fishing and trapping.” Continuity of existing fee rules support hunter, archery, and trapper education, and implement good governance, public transparency, accountability for license vendors and large commercial wildlife facilities, and responsible management of state monies and assets.

The fee or charge imposed by these rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget, or are bond requirements for security of public

money or guarantee of performance and reimbursement of state costs. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

The following are agency specific findings on a chapter-by-chapter basis. The fee rules in Chapter 2, Sections 100 and 102 (IDAPA 13.01.02.100.02, 13.01.02.102.02) implement an eight dollar (\$8.00) fee for hunter, archery, and trapper education. Section 36-412(c), Idaho Code, specifically directs the Commission to establish education program fees not to exceed eight dollars (\$8.00). These fees are part of the dedicated fund portion of the State of Idaho's budget. The Department's obligation to provide hunter, archery, and trapper education is a crucial safety measure and integral in fulfilling the Department's constitutional and statutory obligation to provide hunting and trapping opportunities to the public. The fee rule in Chapter 4, Section 600 (IDAPA 13.01.04.600.03) establishes a \$50 processing fee and sliding scale for refund of nonresident licenses, permits, and tag in special circumstances. These fees are part of the dedicated fund portion of the State of Idaho's budget and are integral the Department's license system. The fee rule in Chapter 8, Section 263 (IDAPA 13.01.08.263.d) provides that overpayment of fees of more than five dollars (\$5) will be refunded and overpayment of five dollars (\$5) or less will not be refunded and will be retained by the Department. This rule is critical for the Department because refunds of these amounts cost more to process than the amount of the actual refund. The fee rule in Chapter 10, Section 410 (IDAPA 13.01.10.410.03) provides bond requirements for large commercial wildlife facilities. These bonding requirements should be reauthorized to avoid immediate danger because they are integral to guarantee performance of license conditions and to reimburse the Department for any costs incurred for cleanup of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. The fee rule in Chapter 19, Section 102 (IDAPA 13.01.19.102.04) implements a \$10,000 minimum surety bond requirement for vendors that present a risk level appropriate for surety. License vendors receive and hold public monies from the sale of licenses, and Section 36-303 recognizes bonding requirements for license vendors. This fee rule needs to be reauthorized to avoid immediate danger because it is critical to ensuring the Department has the ability to recoup public licensing dollars from vendors who do not fully reimburse the Department.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The following is a description of each fee category:

- IDAPA 13.01.02.100.02 and 13.01.02.102.02 implement a statutory mandate to charge for hunter, archery, and trapping education. Section 36-412, Idaho Code, mandates that the Commission implement education programs in hunting, trapping, and archery and provides the "commission shall establish fees for each program not to exceed eight dollars (\$8.00)." This rule carries out this statutory mandate by implementing an eight dollar (\$8.00) fee for hunter, archery, and trapper education. These fees have been in effect since March 24, 2017.
- IDAPA 13.01.04.600.03 provides that non-resident general season and controlled hunt deer or elk tag fees may be refunded in certain circumstances. This rule establishes a \$50 processing fee for tag refunds or a sliding scale for tag refunds in these special circumstances. This rule has been in effect since April 6, 2005.
- IDAPA 13.01.08.263.d provides that overpayment of fees of more than five dollars (\$5) will be refunded and overpayment of five dollars (\$5) or less will not be refunded and will be retained by the Department. This rule has been in effect since July 1, 1993.
- IDAPA 13.01.10.410.03 provides bond requirements for large commercial wildlife facilities of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal. This bond is meant to guarantee performance of license conditions and to reimburse the Department for any costs incurred for cleanup of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. This rule has been in effect since July 1, 1999.
- IDAPA 13.01.19.102.04 implements a \$10,000 minimum surety bond requirement for vendors that present an undue risk. This bonding requirement ensures license vendors have sufficient coverage to ensure the Department is fully reimbursed for license sales and mitigating undue risk that may otherwise be placed upon the Department in the absence of such bonding. Section 36-303, Idaho Code, authorizes the Department to require a surety bond for license vendors. These vendor bonding rules have been in place since March 20, 1997.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

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Dated this 19th day of June, 2019.

Paul Kline
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25
Boise, ID 83707
Phone: (208) 334-3771
Fax: (208) 334-4885
rules@idfg.idaho.gov