Meeting Date: October 8, 2020

Agenda Item No. 1a & b

Agenda Item: Actions: Adoption of Pending Rules: 1a) Independent Rulemaking and 1b) Omnibus Fee rules

Bureau Chief Approval: ES

Prepared by: Paul Kline, Deputy Director - Policy and Programs
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Agenda Item 1a. Adoption of Pending Independent Rules.

Background: Each year, the Commission considers rulemaking ideas that may arise from state or federal legislative action, federal regulatory change, citizen petition, or Department or Commissioner initiative. Typically, the Commission discusses rulemaking ideas early in the calendar year and directs staff to begin rulemaking no later than the March quarterly meeting to meet schedules for public participation opportunities (initiated with rulemaking notices published in the Idaho Administrative Bulletin).

Statutory Authority / Policy Issues:
Idaho Code 36-104 grants authority to the Commission to set seasons and promulgate administrative rules. The Idaho Administrative Procedure Act (Title 67, Chapter 52 Idaho Code) governs the process for considering, adopting and implementing rules (IDAPA).

Prior Commission Actions and Public Involvement Process:
The history of **Independent Rulemaking** actions and public involvement is below.

January 23, 2020 Commission meeting (public comment opportunity on January 22, 2020):
The Commission provided thumbs up for the following rulemakings:

- Landowner Appreciation Program Controlled Hunt application period;
- Turkey tag simplification;
- Swan tag validation and harvest reporting;
- Pronghorn Controlled Hunt eligibility waiting period;
- Delayed nonresident pheasant season opener (citizen petition);
- Bait allowances for trapping (citizen petition); and
- Body grip trapping modifications (citizen petition).

March 20, 2020 Commission meeting (public comment opportunity on March 19, 2020):
The Commission provided thumbs up for the following rulemaking:

- Establishing tag limits (deer and elk) for nonresident Disabled American Veterans; and
- Establishing uniform requirements for tag validation for game birds.

April 16, 2020 Commission teleconference:
The Commission provided thumbs up for the following rulemaking

- Allowing veterans and active service members to participate with youth in special two-day waterfowl hunts.

June 3, 2020 Administrative Bulletin: Publication of Notices of Intent to Promulgate Rules – Negotiated Rulemaking, with 21-day public comment period (June 3 – 25). IDFG

concurrently provided background information on the rulemaking ideas, published structured questions for each idea, and provided open-ended comment opportunity via our Website.

July 23, 2020 Commission meeting (public comment opportunity on July 22, 2020):

- Staff reviewed public comments from the June 3-25 public comment period. There were no requests to conduct negotiated rulemaking.
- Commission adopted Proposed Rule language.
- Commission adopted Temporary Rule language for the following rules:
  - Swan tagging and reporting requirements (effective August 1, 2020);
  - Tag limits (deer and elk) for nonresident Disabled American Veterans (effective December 1, 2020); and
  - Veteran and active military participation added to youth participation in special two-day waterfowl hunt (effective August 1, 2020).

September 2, 2020 Administrative Bulletin: Publication of Notices of Rulemaking – Proposed Rules, with second 21-day public comment period (September 2-24). IDFG also concurrently posted rulemaking information on its website.

1. Docket 13-0104-2002 Rules Governing Licensing
2. Docket 13-0108-2001 Rules Governing the Taking of Big Game
3. Docket 13-0109-2002 Rules Governing the Taking of Game Birds
4. Docket 13-0116-2002 Rules Governing Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals

Justification:
The Idaho Administrative Procedure Act (Title 67, Chapter 52 Idaho Code) governs the process for considering, adopting and implementing administrative rules (IDAPA). 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.

Staff Recommendation:
Staff recommended language for pending rules is attached.

Next steps (if the Commission adopts Pending Rules):

- Notices of Rulemaking – Adoption of Pending Rules will be published in the December 2, 2020 Administrative Bulletin.
- Pending Rules come before the 2021 Legislature for review. Non-fee rules become Final Rules upon adjournment of the Legislature unless rejected by both houses.

Sample Motion:
I move to adopt the four independent Pending Rules presented by staff (Dockets 13-0104-2002, 13-0108-2001, 13-0109-2002 and 13-0116-2002).

Review of public comments:

- First 21-day comment period June 3-25, 2020 (reviewed previously at July 23, 2020 Commission meeting).
- Second 21-day comment period September 2-24, 2020 Bulletin publication of Proposed Rule language (focus of today's review).

Docket 13-0104-2002 Rules Governing Licensing

1. Change Landowner Appreciation Program Controlled Hunt application period.

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	518		374	
Respondents claiming Idaho Residency	451	87.1%		
I support this rulemaking proposal	417	80.5%	22	95.6%
I do not support this rulemaking proposal	62	12.0%	1	4.4%
No opinion	35	6.8%		
I prefer not to answer	4	0.8%		

Supporting comment examples (2nd comment period): *General support for all rule changes (no specific reference to this rule idea).*

Opposing comment examples (2nd comment period): *Opposition to LAP as profit-driven.*

2. Set limits for nonresident DAV deer and elk tags.

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	1130		374	
Respondents claiming Idaho Residency	764	67.6%		
I support this rulemaking proposal	730	64.6%	26	50.0%
I do not support this rulemaking proposal	388	34.3%	26	50.0%
No opinion	10	0.9%		
I prefer not to answer	2	0.2%		

Supporting comment examples (2nd comment period): *General support.*

Opposing comment examples (2nd comment period): *"The reduced fee is the only way I can personally afford to hunt in Idaho." "Idaho is one state that is gracious enough to honor my sacrifice." "Increase the disability rating level from 40% to 60%" (also view of one comment in support). "Why would you want to limit the number of NR DAV tags and not support veterans?" "This is simply a push to make more money and not bound in science or fact."* Note: Of the 26 respondents not in favor, 18 were nonresidents and 8 were residents.

Docket 13-0108-2001 Rules Governing the Taking of Big Game

1. One-year wait for successful pronghorn controlled hunt applicants.

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	863		374	
Respondents claiming Idaho Residency	788	91.3%		
I support this rulemaking proposal	738	85.5%	37	94.8%
I do not support this rulemaking proposal	111	12.9%	2	5.2%
No opinion	12	1.4%		
I prefer not to answer	2	0.2%		

Supporting comment examples (2nd comment period): *"This will bring pronghorn in line with other species." "I hope this allows more opportunity for those who have not drawn."*

Opposing comment examples (2nd comment period): See below.

Concerns with impacts to unlimited controlled hunts: *Both supporting and opposing comments stated concern with impacts to unlimited controlled hunts. "This will make the unlimited hunts more crowded." "Should be amended to address unlimited controlled hunts for pronghorn"; "These hunts are experiencing too much crowding"; "If someone draws a pronghorn controlled hunt tag, they should be restricted to put in for any pronghorn tag for a year, unlimited or controlled."*

Docket 13-0109-2002 Rules Governing the Taking of Game Birds

1. Establish uniform requirements for game bird tag validation & swan reporting

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	365		374	
Respondents claiming Idaho Residency	326	89.3%		
I support this rulemaking proposal	296	81.1%	15	93.8%
I do not support this rulemaking proposal	43	11.8%	1	6.2%
No opinion	26	7.1%		
I prefer not to answer	0	0.0%		

Supporting comment examples (2nd comment period): *No reasons for support specified.*

Opposing comment examples (2nd comment period): *No reasons for opposition specified.*

2. Designate special 2-day waterfowl hunt for veterans and active military

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	485		374	
Respondents claiming Idaho Residency	433	89.3%		
I support this rulemaking proposal	381	78.6%	13	68.4%
I do not support this rulemaking proposal	90	18.6%	6	31.6%
No opinion	12	2.5%		
I prefer not to answer	2	0.4%		

Supporting comment examples (2nd comment period): *No reasons for support specified.*

Opposing comment examples (2nd comment period): *Most opposing comments cited concerns about impacts to youth hunts (increased crowding/competition). "I understand the attempt to create something special for veterans and active duty but this is not a good idea…" "The youth hunt is already very busy in many areas and adding this to those dates will create a terrible situation for our youth hunters."*

3. Delay nonresident pheasant season opening dates

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	480		374	
Respondents claiming Idaho Residency	404	84.2%		
I support this rulemaking proposal	363	75.6%	19	90.5%
I do not support this rulemaking proposal	98	20.4%	2	9.5%
No opinion	18	3.8%		
I prefer not to answer	1	0.2%		

Supporting comment examples (2nd comment period): *No reasons for support specified.*

Opposing comment examples (2nd comment period): *Two commenters opposed the rule because it would reduce their opportunity. "I have been out on the first day of the pheasant hunt forever and your rule change will now exclude me."*

4. Simplify turkey tag framework

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	440		374	
Respondents claiming Idaho Residency	403	91.6%		
I support this rulemaking proposal	408	92.7%	15	100.0%
I do not support this rulemaking proposal	19	4.3%	0	0.0%
No opinion	13	3.0%		
I prefer not to answer	0	0.0%		

Supporting comment examples (2nd comment period): *No reasons for support specified.*

Opposing comment examples (2nd comment period): *No comments in opposition.*

Docket 13-0116-2002 Rules Governing the Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals

1. Simplify bait rules for trapping furbearing, unprotected and predatory animals.

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	550		374	
Respondents claiming Idaho Residency	474	86.2%		
I support this rulemaking proposal	438	79.6%	56	21.1%
I do not support this rulemaking proposal	78	14.2%	210	78.9%
No opinion	31	5.6%		
I prefer not to answer	3	0.5%		

Supporting comment examples (2nd comment period): *Supporting comments cited the value of rule consistency. "I think this rule change would greatly simplify keeping all the rules straight when trapping any predator or furbearer. Having one set of rules for trapping wolves and another set for trapping everything else is confusing. I think this rule change would greatly benefit all trappers in that it will be easier keeping track of what's legal and what's not when all the rules are the same across the board."*

Opposing comment examples (2nd comment period): *185 of the 210 opposing comments were form letters stating opinions that trapping near big game carcasses was unsportsmanlike and in violation of fair-chase ethics, and "trapping near big game carcasses also creates a safety concern, unnecessarily increasing the risk of human-wildlife conflicts…" "this proposal greatly increases the chances that nontarget animals will be caught... including bears, wolves, eagles, [wolverine], and even dogs and other pets." The 25 other commenters cited similar reasons. A fair number of opposing comments stated opposition to trapping in general.*

2. Establish additional limits on dry ground sets using body-gripping traps.

	First 21 day comment period		Second 21 day comment period	
	Number	Percent	Number	Percent
Total number of comments	461		374	
Respondents claiming Idaho Residency	412	89.4%		
I support this rulemaking proposal	230	49.9%	47	79.7%
I do not support this rulemaking proposal	181	39.3%	12	20.3%
No opinion	45	9.8%		
I prefer not to answer	5	1.1%		

Supporting comment examples (2nd comment period): *"I am in favor of this proposal. I think that it is a good idea to limit the maximum jaw opening size on body gripping traps." "This should reduce the number of hunting dogs as well as household pets that are on hikes getting caught in these traps." "As an avid upland game hunter, often hunting with multiple dogs in the same areas trappers frequent, body gripping traps are one of my biggest fears, and this would help to prevent pets from ending up in body gripping traps." "This proposed rule would drastically and immediately decrease the likelihood of eagles, other raptors, avian scavenger species, domestic pets and hunting dogs being inadvertently maimed, injured or killed by such traps when so deployed."*

Opposing comment examples (2nd comment period): *Most commenters opposing this rule cited concern that additional regulations would just make understanding rules more confusing with little to no benefit. "…no more restrictions should be placed on land trapping with large conibear traps." "Use other methods like moving the trigger, or placing the trap inside a box or bucket several inches." "Idaho already has numerous rules regarding trap placement for traps & snares, such as trails, campgrounds, etc."*

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13-01-04 – RULES GOVERNING LICENSING
DOCKET 13-0104-2002
ADOPTON OF PENDING RULES

(Only Those Sections With Amendments are Shown)

400. LANDOWNER APPRECIATION PROGRAM (LAP).

04. Controlled Hunt Applications. Applications for LAP controlled hunt tag(s) will be on a form prescribed by the Department. (3-20-20)

a. Applications from landowners with six hundred forty (640) acres or more will be accepted on or after ~~*June*~~ May 15 of each year. Applications submitted in person or mailed to the Department main office or any Regional Office, postmarked not later than ~~*July*~~ June 15 of each year, will be entered in the random drawing for LAP controlled hunt tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the LAP controlled hunt area. ~~*For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times.*~~ ~~*(3-20-20)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

550. NONRESIDENT DEER AND ELK TAG QUOTAS.

01. General Hunt Tag Quotas. The following number of general hunt ~~*deer tags and elk*~~ tags will be set aside annually and reserved for sale to nonresidents: ~~*(3-20-20)*~~(____)

a. Fourteen thousand (14,000) total deer tags (regular and white-tailed deer tags); (3-20-20)

b. Twelve thousand eight hundred fifteen (12,815) total elk tags (A and B tags); (3-20-20)

c. One thousand five hundred (1,500) white-tailed deer tags, available only upon sell out of deer tags referenced in Subsection 550.01.a. (3-20-20)

02. Disabled American Veteran Hunt Tag Quotas. The following number of disabled American veteran general hunt tags will be set aside annually and reserved for sale to eligible nonresidents. (____)

a. Five hundred (500) total disabled American veteran deer tags (regular and white-tailed deer tags); (____)

b. Three hundred (300) total disabled American veteran elk tags (A and B tags). (____)

0~~2~~3. Exceptions. ~~*Sales of nonresident general hunt deer and elk tags*~~ Tag sales to the following persons will not be counted in the quotas in Section 550 of these rules: ~~*(3-20-20)*~~(____)

a. Unqualified Residents: Persons who have moved into Idaho and by notarized affidavit show proof of their intent to become bona fide Idaho residents but are not yet qualified to purchase a resident license. (3-20-20)

b. Designated Buyers of unused nonresident tags to which the quota has already applied: an unused nonresident general hunt deer or elk tag, accompanied by a notarized affidavit stating that the tag buyer has not hunted, may be designated to another nonresident for purchase at the regular tag price, by the original buyer or an outfitter or guide retained by the original buyer, or absent such designation, may be sold by the Department on a first-come, first-serve basis. (3-20-20)

c. Holders of resident lifetime license certificates who are no longer Idaho residents. (3-20-20)

d. Holders of nonresident junior mentored ~~*and disabled American veteran*~~ tags. ~~*(3-20-20)*~~(____)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13-01-08 – RULES GOVERNING THE TAKING OF BIG GAME
DOCKET 13-0108-2001
ADOPTON OF PENDING RULES

(Only Those Sections With Amendments are Shown)

257. ELIGIBILITY FOR CONTROLLED HUNT APPLICATION.
A person must possess an Idaho hunting license valid for taking game animals to apply for any controlled hunt for big game species. (3-20-20)

04. Antlered-Only Deer, Antlered-Only Elk, and Pronghorn. Any person whose name was drawn on a controlled hunt for antlered-only deer ~~hunt~~, antlered-only elk, or any pronghorn (including either sex, and doe and fawn) is not eligible in the following one (1) year to apply for ~~any other controlled antlered-only deer hunt for one (1) year~~ any controlled hunt for the respective species drawn (antlered-only deer, antlered-only elk, or any pronghorn). (____)

i. Exceptions. ~~that a~~A person ~~may~~ drawn in the previous year remains eligible to apply for ~~an antlered only deer tag~~ controlled hunts in the second application period, controlled hunts with an unlimited number of tags, or Landowner Appreciation Program hunts. ~~or~~ Such person is also eligible to purchase a leftover ~~antlered only deer~~ tag ~~the following year~~ or Governor's Wildlife Partnership Tag. ~~(3-20-20)~~(____)

~~**05. Antlered Elk.** Any person whose name was drawn on a controlled antlered only elk hunt is not eligible to apply for any other controlled antlered only elk hunt for one (1) year. Except that a person may apply for an antlered only elk tag in the second application period or a leftover antlered only elk tag the following year. The one (1) year waiting period does not apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (3-20-20)~~

0~~6~~5. Grizzly Bear. No person who has killed a grizzly bear in Idaho may apply for a grizzly bear tag. (3-20-20)

0~~7~~6. Black Bear. Any nonresident applying for a controlled black bear hunt who wishes to use hounds must separately apply for a Hound Hunter Permit, subject to applicable limitations of IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (3-20-20)

0~~8~~7. Landowner Permission Hunts. Any person applying for a landowner permission hunt must have a permission slip including the name, address, and signature of a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. (3-20-20)

0~~9~~8. Youth Only Hunts. Youth-only controlled hunt application eligibility is limited to persons nine (9) to seventeen (17) years of age, provided they will be ten (10) to seventeen (17) years of age during the hunt for which they apply. A nine (9) year old cannot participate in the hunt until turning age ten (10). A person who turns eighteen (18) years of age during the hunt may continue to participate through the end of the youth-only controlled hunt. A person sixty-five (65) years of age or older with a senior or disabled combination or hunting license may apply during a second application period for youth-only controlled hunts or purchase leftover youth-only controlled hunt tags on a first come, first served basis. (3-20-20)

~~1~~09. Outfitter Allocated Hunts. Any person must have a written agreement with an outfitter to submit an application for an outfitter allocated controlled hunt. (3-20-20)

1~~1~~0. Multiple Applications. (3-20-20)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13-01-09 – RULES GOVERNING THE TAKING OF GAME BIRDS
DOCKET 13-0109-2002
ADOPTON OF PENDING RULES

(Only Those Sections With Amendments are Shown)

011. – 0~~9~~8~~9~~. (RESERVED)

090. GAME BIRD TAG VALIDATION AND ATTACHMENT.
Any hunter who kills a game bird for which a game tag is required under Section 36-409(c), Idaho Code, must immediately validate the appropriate tag and securely attach the validated tag to the carcass. Tag validation means completely removing the two (2) triangles on the tag corresponding to the day and month of the kill date. The tag must remain attached to the carcass in transit or storage. (____)

091. – 099. (RESERVED)

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. ~~(3-20-20)~~(____)

101. MIGRATORY GAME BIRD TAGS, PERMITS, AND VALIDATIONS.

01. License Validation. No person may hunt migratory game birds anywhere within the state, without having in possession the appropriate hunting license with validation for the Migratory Game Bird Harvest Information Program and tag. (3-20-20)

~~**02. Sandhill Crane Tag.** (3-20-20)~~

~~**a.** Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. Tag validation means cutting out and completely removing two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (3-20-20)~~

~~**b.** The tag must remain attached so long as the sandhill crane is in transit or storage. (3-20-20)~~

0~~3~~2. Youth and Veteran/Activity Duty Waterfowl Season. The youth waterfowl season is open only to licensed hunters with Migratory Bird validation who are eight (8) to seventeen (17) years of age, and who are accompanied in the field at all times by a licensed hunter eighteen (18) years of age or older. The Veteran/Active Duty waterfowl season is open only to licensed hunters with Migratory Bird validation who are veterans (as defined in Section 65-203, Idaho Code) or members of the Armed Forces on active duty (which does not include members of the National Guard and Reserves performing drills or training), and who carry proof of eligibility on their person, such as an official military or veteran identification card; DD214 form; or a state-issued driver's license or identification card with veteran's designation. ~~(3-20-20)~~(____)

102. WILD TURKEY TAGS~~, STAMPS, PERMITS, AND VALIDATIONS~~.
No person may hunt wild turkey without having in possession the appropriate hunting license~~,~~ and tag~~, and controlled hunt permit~~. ~~(3-20-20)~~(____)

01. Tags. ~~There are three (3) types of t~~Turkey tags ~~available: the~~ may be general or controlled hunt tags~~, extra tag, and special unit tag. A hunter may purchase one (1) general tag, two (2) extra tags, and three (3) special unit tags. The general tag and one (1) extra tag may be used during the spring general season; however, if one (1) or both go unused, the unused tag(s) may be used during the general fall season. A second extra tag may also be used during the general fall season. A general tag or an extra tag may be used with a controlled hunt permit in the spring and fall seasons. Special unit tags may be used in designated units during any season set by the Commission or in a depredation hunt when authorized by the Director~~. ~~(3-20-20)~~(____)

02. Youth General Hunts and Youth Passport Holder Hunt Eligibility. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. (3-20-20)

a. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. (3-20-20)

b. Hunting passport holders eight (8) to seventeen (17) years of age are eligible to participate in general season hunts, youth-only general hunts, landowner permission controlled hunts ~~*with the appropriate landowner permission tag,*~~ and depredation hunts. ~~*(3-20-20)*~~(____)

03. Controlled Hunts. A controlled hunt ~~*permit*~~ tag for wild turkey is valid ~~*only*~~ for the take of turkey in the controlled hunt area for which the ~~*permit*~~ tag was ~~*drawn*~~ issued, and in general hunts. ~~*(3-20-20)*~~(____)

a. Eligibility: The holders of hunting licenses valid for game birds are eligible to apply for spring and fall controlled hunts subject to the following restrictions: (3-20-20)

i. In the event a ~~*permit*~~ tag is issued based on erroneous information, the ~~*permit*~~ tag will be invalidated and the person will remain on the drawn list. ~~*(3-20-20)*~~(____)

ii. Landowner permission controlled hunt application eligibility is limited to persons who have a signed permission slip, which includes the landowner's name and address, from a landowner who owns more than seventy-nine (79) acres in the hunt area. ~~*(3-20-20)*~~(____)

iii. Youth-only controlled hunt application eligibility is limited to persons nine (9) to seventeen (17) years of age, provided they will be ten (10) to seventeen (17) years of age during the hunt for which they apply. A nine (9) year old cannot participate in the hunt until turning age ten (10). A person who turns eighteen (18) years of age during the hunt may continue to participate through the end of the youth-only controlled hunt. A person sixty-five (65) years of age or older with a senior or disabled combination or hunting license may apply on a first-come, first-served basis for leftover youth-only controlled hunt ~~*permits*~~ tags. ~~*(3-20-20)*~~(____)

b. Applications: Applications for spring and fall controlled hunts may be submitted electronically through the automated licensing system at any vendor location, including Department offices, through the Internet, or via telephone, not later than March 1 for spring hunts and June 5 for fall hunts, annually. (3-20-20)

i. Duplicate license numbers will not be accepted. Applications from Holders of a Duplicate License (Type 501) will be processed only if they include original license numbers. (3-20-20)

ii. Only one (1) application per person or group will be accepted. Additional applications will result in all applicants being declared ineligible. (3-20-20)

iii. A single payment ~~*(either cashier's check, money order, certified check, or personal check)*~~ may be submitted to cover fees for all applications. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. ~~*(3-20-20)*~~(____)

iv. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (3-20-20)

v. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (3-20-20)

c. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (3-20-20)

~~***04. Tag Validation.***~~ ~~*(3-20-20)*~~

~~***a.*** *Tag and permit validation and attachment: Immediately after any wild turkey is killed, the turkey tag and permit, if a controlled hunt, must be validated and securely attached to the wild turkey. Tag and permit validation means cutting out and completely removing two (2) triangles on the border of each tag and permit, one (1) for the month and one (1) for the day of the kill.* ~~*(3-20-20)*~~

~~***b.*** *The tag and permit must remain attached so long as the turkey is in transit or storage.* ~~*(3-20-20)*~~

~~06. Landowner Permission Tags. Landowner permission hunt tags will be sold on a first-come, first-served basis at Department offices after March 20 for spring hunts and after July 10 for fall hunts. (3-20-20)~~

103. PHEASANT TAGS, PERMITS, ~~AND~~ VALIDATIONS AND NONRESIDENT PARTICIPATION.
No person may hunt pheasant anywhere within the state, except licensed shooting preserves, without having in possession the appropriate hunting license and permit. ~~(3-20-20)~~( )

01. Upland Game Bird Permit. (3-20-20)

a. Any person eighteen (18) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas, or at other locations where the Department stocks pheasants, as identified by Commission proclamation, must have a valid Upland Game Bird Permit in possession. (3-20-20)

b. Permit Limit. Each Upland Game Bird Permit has a limit of six (6) cocks. Multiple permits may be purchased. (3-20-20)

c. Permit Validation. Any person harvesting a pheasant where a Upland Game Bird Permit is required must immediately validate their Permit upon reducing a pheasant to possession by entering the harvest date and location in Non-Erasable ink, and removing a notch from the permit for each pheasant taken. (3-20-20)

02. Youth Pheasant Season. The youth pheasant season is open only to licensed hunters ten (10) to seventeen (17) years of age and hunting passport holders eight (8) to seventeen (17) years of age, provided such youth hunters/passport holders are accompanied in the field at all times by a licensed hunter eighteen (18) years of age or older. (3-20-20)

03. Nonresident Participation. The Commission may set by proclamation a later season start date, of no more than five (5) days, for nonresident participation. ( )

(BREAK IN CONTINUITY OF SECTIONS)

201. – 2~~9~~49. (RESERVED)

250. MANDATORY CHECK AND REPORT – SWANS.
Any hunter killing a swan must, within three (3) days of the date of kill, present the swan carcass (for measurement and identification) to a conservation officer, regional office or check station, and complete a harvest report. A person may authorize another person to comply with the check and report if that person possesses sufficient information to complete the report. ( )

251. – 299. (RESERVED)

13-01-16 – THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS
DOCKET 13-0116-2002: ADOPTON OF PENDING RULES
(Only those Sections with Amendments are shown)

400. METHODS OF TAKE.

01. Furbearing Animals. No person may take beaver, muskrat, mink, marten, or otter by any method other than trapping. No person may hunt any furbearing animal with or by the aid of artificial light. (3-20-20)

02. Hunting. No person hunting furbearing animals or predatory or unprotected wildlife may hunt with dogs, except in accordance with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (3-20-20)

03. Trapping. No person trapping furbearing animals or predatory or unprotected wildlife may: (3-20-20)

a. Use for bait or scent, any part of a ~~*domestic or wild origin*~~ game bird, big game animal, upland game animal, game fish, or protected nongame wildlife~~.~~; EXCEPT: ~~(3-20-20)~~( )

i. Furbearing animals or predatory or unprotected wildlife may be trapped with bait, lures, or other attractants when not prohibited by Section 36-1103(a), Idaho Code. ( )

ii. Furbearing animals or predatory or unprotected wildlife may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes do not include any man-caused mortality. ( )

b. Use any set within thirty (30) feet of any visible bait. (3-20-20)

c. Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (3-20-20)

d. Use live animals as a bait or attractant. (3-20-20)

e. Place any ground sets on, across, or within ten (10) feet of the edge of any maintained unpaved public trail. (3-20-20)

f. Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (3-20-20)

g. Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, paved trail, or picnic area; except cage or box live traps may be placed within these areas as allowed by city, county, state, and federal law. (3-20-20)

h. Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-20-20)

i. Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-20-20)

j. Place or operate, except as a waterset, any body-gripping trap that has a maximum jaw opening, when set, of greater than seven and one-half (7 1/2) inches measured from the inside edges of the body-gripping portions of the jaws, within thirty (30) feet of any bait, lure, or other attractant. ( )

k. Place or operate, except as a waterset, any body-gripping trap that has a maximum jaw opening, when set, greater than six and one half (6 1/2) inches and less than seven and one-half (7 1/2) inches measured from the inside edges of the body-gripping portions of the jaws, unless: ( )

i. The trap is in an enclosure and the trap trigger is recessed seven (7) inches or more from the top and front most portion of the open end of the enclosure; ( )

ii. No bait, lure, or other attractant is placed within thirty (30) feet of the trap; or ( )

iii. The trap is elevated at least three (3) feet above the surface of the ground or snowpack. ( )

Agenda Item 1.b: Adoption of Pending Omnibus Fee Rules –

Background: The 2020 Legislative Session adjourned without passing a concurrent resolution approving the 2019 omnibus pending fee rules, as required by 67-5224, Idaho Code, for pending fee rules to take effect as final rules.

Statutory Authority / Policy Issues:
Idaho Code 36-104 grants authority to the Commission to set seasons and promulgate administrative rules. The Idaho Administrative Procedure Act (Title 67, Chapter 52 Idaho Code) governs the process for considering, adopting and implementing rules (IDAPA). This action is to continue the effect of fee rules that have been in effect for years; the rulemaking does not seek to increase fees.

Prior Commission Actions and Public Involvement Process:
The history of **Omnibus Fee Rulemaking** actions and public involvement is below.

Guidance from the Governor's Office:

- The Governor directed State Agencies to adopt Omnibus Temporary Fee Rules so they stayed in effect after 2020 Legislature adjournment *sine die*.
- The Governor directed State Agencies to proceed with "Proposed" and "Pending" rulemaking for Omnibus fee rules for 2021 Legislature review (concurrent resolution required for fee rules to become final rules).

February 29, 2020 Commission teleconference:

- Commission adopted Omnibus Temporary Fee Rules (rules taking effect upon Legislative adjournment *sine die* on March 20, 2020.

April 15, 2020 Special Administrative Bulletin: Publication of Notice of Omnibus Rulemaking – Adoption of Temporary Fee Rules (no public input process required).

July 23, 2020 Commission meeting (public comment opportunity on July 22, 2020):

- Commission adopted Omnibus Proposed Fee Rule language.

September 16, 2020 Special Administrative Bulletin: Publication of Notice of Omnibus Fee Rulemaking – Proposed Rules, with 21-day public comment period (September 16-October 7). IDFG also concurrently posted rulemaking information on its website.

Docket 13-0000-2000F (Fee Rule).

- 13.01.02.200 and 201, Rules Governing Mandatory Education and Mentored Hunting;
- 13.01.04.601, Rules Governing Licensing;
- 13.01.08.263, Rules Governing the Taking of Big Game Animals
- 13.01.10.410, Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife; and
- 13.01.19.102, Rules for Selecting, Operating, Discontinuing, and Suspending Vendors.

Justification:
The Idaho Administrative Procedure Act (Title 67, Chapter 52 Idaho Code) governs the process for considering, adopting and implementing administrative rules (IDAPA).

Staff Recommendation:
Staff recommended language for pending rules is attached.

Next steps (if the Commission adopts Pending Rules):

- Notices of Rulemaking – Adoption of Pending Rules will be published in the December 2, 2020 Administrative Bulletin.
- Pending Rules come before the 2021 Legislature for review. Non-fee rules become Final Rules upon adjournment of the Legislature unless rejected by both houses.

Sample Motion:
I move to adopt the Pending Omnibus Fee Rules as presented by staff (Docket 13-0000-2000F).

Review of public comments:

The public comment period for Proposed Fee Rules runs from September 16, 2020 through October 7, 2020. To date (October 2, 2020), two e-mail comments have been received.

One commenter opposed the mandatory $8 fee for hunter/archery education and the sliding scale structure for nonresident tag refunds.

One commenter supported continuing all fee rules.

Any additional comments received will be reviewed during the Commission call on October 8, 2020.

DOCKET NO. 13-0000-2000F
ADOPTION OF PENDING FEE RULES

13.01.02 – RULES GOVERNING MANDATORY EDUCATION AND MENTORED HUNTING

200. HUNTER AND ARCHERY EDUCATION.

01. Mandatory Hunter and Archery Education Programs. A person may obtain certification of completion of hunter/archery education to comply with Section 36-411, Idaho Code, through classroom or on-line study, or other approved methods. The Department manages the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. "Equivalent certification" for hunter/archery education means completed instruction by an authorized agency or association including firearms/archery safety, wildlife management, wildlife law, hunter ethics, first aid/survival, and practical experience in handling and shooting firearms/archery equipment. ( )

02. Fees. The Department will charge a fee of eight dollars ($8) to each student enrolling in the Hunter or Archery Education Program. ( )

03. Parent to Attend Shooting Clinic with Student. Students under the age of twelve (12) may only attend a Hunter Education Shooting Clinic if accompanied by a parent, legal guardian or other adult designated by the parent or legal guardian. ( )

201. TRAPPER EDUCATION.

01. Mandatory Trapper Education Program. No person who first purchased an Idaho trapping license on or after July 1, 2011 may be issued a trapping license unless that person presents a certificate of completion in trapper education issued by the Department or proof of equivalent certification from an authorized agency or association in Idaho or elsewhere. "Equivalent certification" for trapper education means completed instruction including safe trapping methods and rules, non-target species avoidance techniques, wildlife identification, and good conduct and respect for the rights and property of others. Trapping education specific only to wolves in Idaho or elsewhere is not equivalent certification. ( )

02. Fee. The Department will charge a fee of eight dollars ($8) to each student enrolling in the Trapper Education Program. ( )

03. Exemption. Persons who are acting pursuant to Section 36-1107, Idaho Code, are exempt from Subsection 201.01. ( )

601. REFUNDS TO NONRESIDENTS.

The Department will not refund any fee for any nonresident license (as defined in Section 36-202(aa), Idaho Code), except as follows, and provided the refund request is in writing, is accompanied by the original license and tag, and is received or postmarked on or before December 31 of the calendar year in which the license was valid. ( )

01. Refund. Nonresident general or controlled hunt deer or elk tag fees and hunting license fees may be refunded due to the death of licensee; illness or injury of licensee that totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict; as substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or similar documentation. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount of the applicable deer or elk tag and hunting license fees, less all issuance fees and a fifty dollar ($50) processing fee. ( )

02. Partial Refund. Nonresident general and controlled hunt deer or elk tag fees may be partially refunded for a reason other than those in the preceding subsection based on the postmark date in the below table. The hunting license fee will not be refunded.

Postmarked	Percent of Tag Fee Refunded
Before April 1	75%
In April through June	50%
In July and August	25%
September through December	0%

( )

03. Department Error. The Department will refund fees when it determines that a Department employee made an error in the issuance of the license. ( )

263. REFUNDS OF CONTROLLED HUNT FEES.

01. Refunds. ( )

a. Controlled hunt tag fees will be refunded to unsuccessful or ineligible applicants for moose, sheep, mountain goat, and grizzly bear. Unsuccessful applicants may donate all or a portion of refunded tag fees to Citizens Against Poaching by checking the appropriate box on the application. One dollar ($1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. ( )

b. Fees for hunting licenses will not be refunded to unsuccessful or ineligible controlled applicants.

c. Fees for deer or elk tags purchased prior to the drawing will not be refunded to unsuccessful or ineligible applicants. ( )

d. Overpayment of fees of more than five dollars ($5) will be refunded. Overpayment of five dollars ($5) or less will NOT be refunded and will be retained by the Department. ( )

e. Controlled hunt application fees are nonrefundable. ( )

f. Fees for resident and nonresident adult controlled hunt tags subsequently designated to a minor child or grandchild are not refundable. ( )

g. Fees for special controlled hunt application, tag and related hunting license are not refundable. ( )

13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

410. LARGE COMMERCIAL WILDLIFE FACILITIES.
Commercial wildlife facilities that are of a size large enough or with a large number of animals incompatible with the cage or enclosure requirements of Section 400 may, in the Director's discretion, be addressed with facility-specific license terms. Only facilities housing at least three (3) or more species or encompassing display or exhibit areas larger than one (1) acre will qualify for this consideration. ( )

01. Animal Display and Security. Any cage or enclosure shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. In identifying facility-specific license terms, the Department may refer to standards such as those set by the American Zoological Association for cage, open space, shelter, enclosure, and display in a natural-appearing environment and in such a way as to preserve animal dignity. Terms may include, but are not limited to, fence specifications, electric fence specifications, pits or moats, buried fencing, and display features to enhance appreciation for the species and its natural history. ( )

02 Application. Application for a large commercial wildlife facility license will generally meet the requirements of Subsection 400.04, and will identify the veterinarian of record for the facility. ( )

03. Bond. The Department will require, as a license condition, any large commercial wildlife facility to provide a bond to the Department in the amount 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, whichever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may instead submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. ( )

04. Specific Requirements. The Director has discretion to identify specific license conditions, and violation of any such condition is a violation of these rules. ( )

(BREAK IN CONTINUITY OF SECTIONS)

13.01.19 - RULES FOR SELECTING, OPERATING, DISCONTINUING, AND SUSPENDING VENDORS

102. SELECTION.
The following factors will be considered for selecting an applicant to become a license vendor: ( )

01. Low Numbered Vendors. Applicants classified in lower-numbered vendor classifications will be given priority over applicants in higher-numbered classifications from the same general location. ( )

02. Class Six Applicants. Class six (6) applicants will be approved only when they demonstrate a significant public benefit to have a license vendorship at their location. ( )

03. Unsettled Debts. Applicants who have unsettled debts listed with a credit bureau will not be approved. Unsettled debts that are in dispute will not be considered against the applicant. ( )

04. Surety Bond. The Department may require an applicant to provide for each location, a ten thousand dollar ($10,000) surety bond from a corporate surety authorized to do business in the state of Idaho, which guarantees the payment of all state funds collected as a result of licenses issued by the vendor if it appears from the application or other information that an undue risk might otherwise be placed upon the Department in the absence of such bonding. Applicants who otherwise qualify for a vendorship and have been in business less than three (3) years will be required to furnish the Department a ten thousand dollar ($10,000) surety bond in the form and length as determined by the Director. Upon request, at the completion of two (2) years of service, the Department may release the vendor from the bonding requirement based on a review of financial risk. ( )

05. Permanence and Accessibility. Applicants who do not have a permanent place of business open and accessible to all segments of the public will not be approved. ( )

06. Number of Existing Vendors in Area. The three (3) closest existing vendors, their hours and days of operation, classification, accessibility to the public, and other pertinent information, including their distance to the applicant, will be compared to the applicant. ( )

07. Minimum Sales Volume. If the applicant is seeking to replace an existing vendor at the prior vendor's location, the prior vendor's sales volume will be used to estimate the applicant's sales volume. ( )

08. Performance Record. An applicant who was a license vendor or the manager for a vendor within the past five (5) years will not be approved unless the applicant's performance record was satisfactory. ( )

09. Fish and Game Violations. No owner or store manager (if the applicant is a corporation) may have had a fish and game violation other than an infraction within the past five (5) years. ( )