

Dear Senators HEIDER, Brackett, Stennett, and
Representatives GIBBS, Gestrin, Rubel:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Fish and Game:

IDAPA 13.00.00 - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No.
13-0000-2000F).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/16/2020. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/13/2020.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: September 29, 2020

SUBJECT: Department of Fish and Game

IDAPA 13.00.00 - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No. 13-0000-2000F)

Summary and Stated Reasons for the Rule

The Department of Fish and Game submits notice of proposed fee rules. According to the department, the rulemaking republishes the following temporary rule chapters that were previously submitted: IDAPA 13.01.02.200 and 201 only, Rules Governing Mandatory Education and Mentored Hunting; 13.01.04.601 only, Rules Governing Licensing; 13.01.08.263 only, Rules Governing the Taking of Big Game Animals in the State of Idaho; 13.01.10.410 only, Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife; and 13.01.19.102 only, Rules for Selecting, Operating, Discontinuing, and Suspending Vendors.

The department states that the fee rules do not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Legislature in the prior rules.

Negotiated Rulemaking/Fiscal Impact

The department notes that negotiated rulemaking was not conducted because engaging in negotiated rulemaking for all previously existing rules would inhibit the agency from carrying out its ability to protect health, safety, and welfare. The department also confirms that the rulemaking is not anticipated to have any fiscal impact on the general fund.

Statutory Authority

The rulemaking appears to be 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.

cc: Department of Fish and Game
Paul Kline

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 13 – DEPARTMENT OF FISH AND GAME
DOCKET NO. 13-0000-2000F (FEE RULE)
NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. 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: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule sections previously submitted to and reviewed by the Idaho Legislature under IDAPA 13, rules of the Department of Fish and Game:

IDAPA 13

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

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

- IDAPA 13.01.02.200.02 and 13.01.02.201.02 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).” This rule carries out this statutory mandate by implementing an eight dollar (\$8) fee for hunter, archery, and trapper education. These fees have been in effect since March 24, 2017.
- IDAPA 13.01.04.601.01 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 13.01.08.263.01.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 fee 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 fee rule has been in effect since July 1, 1999.
- IDAPA 13.01.19.102.04 requires a \$10,000 minimum surety bond 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 FY2021 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(1), Idaho Code, negotiated rulemaking was not feasible 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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the 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 August, 2020.

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

13.01.02 – RULES GOVERNING MANDATORY EDUCATION AND MENTORED HUNTING

(BREAK IN CONTINUITY OF SECTIONS)

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. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.04 – RULES GOVERNING LICENSING

(BREAK IN CONTINUITY OF SECTIONS)

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. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

(BREAK IN CONTINUITY OF SECTIONS)

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. ()

(BREAK IN CONTINUITY OF SECTIONS)

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

(BREAK IN CONTINUITY OF SECTIONS)

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)

(BREAK IN CONTINUITY OF SECTIONS)

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. ()

(BREAK IN CONTINUITY OF SECTIONS)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Department of Fish and Game

Agency Contact: Paul Kline **Phone:** (208) 334-3771

Date: August 19, 2020

IDAPA, Chapter and Title Number and Chapter Name:

- 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
- 13.01.10.410, Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife
- 13.01.19.102, Rules for Selecting, Operating, Discontinuing, and Suspending Vendors

Fee Rule Status: **Proposed** **Temporary**

Rulemaking Docket Number: 13-0000-2000F

STATEMENT OF ECONOMIC IMPACT:

All fees in the following IDAPA sections are remaining the same as they were submitted for legislative review during the 2020 legislative session,

- IDAPA 13.01.02.200.02 and 13.01.02.201.02 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 13.01.04.601.02 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.

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- 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 fee rule has been in effect since July 1, 1999.
- IDAPA 13.01.19.102.04 requires a \$10,000 minimum surety bond 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.