

Dear Senators PEARCE, BAIR, Stennett, and  
Representatives DENNEY, Gibbs, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Outfitters and Guides Licensing Board:

IDAPA 25.01.01 - Rules of the Outfitters & Guide Licensing Board (Docket No. 25-0101-1201).

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 10/10/2013. 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 11/08/2013.

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 334-4845, or send a written request to the address on the  
memorandum attached below.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee  
**FROM:** Principal Legislative Research Analyst - Katharine Gerrity  
**DATE:** September 23, 2013  
**SUBJECT:** Outfitters and Guides Licensing Board

IDAPA 25.01.01 - Rules of the Outfitters & Guide Licensing Board (Docket No. 25-0101-1201)

The Outfitters and Guides Licensing Board submits notice of proposed rule at IDAPA 25.01.01 - Rules of the Outfitters & Guide Licensing Board. According to the board, the purpose of the rulemaking is to clarify and enhance the ability of private landowners to allow public access to their private lands and in doing so, they also are intended to clarify outfitted use and license requirements when outfitted facilities and services are provided by the landowner or by someone authorized by the landowner to do so. The board states that the rule also is intended to clarify existing rules to address a concern over the loss of access due to the proliferation of organizations and clubs operating commercially due to ambiguity in existing rules. The board also notes that in doing so, organizations and clubs offering outfitted facilities and services including acquiring access to private or public land for hunting, fishing or hazardous excursions and for commercial gain will be governed by the same limits and restrictions set forth in the rules governing licensed commercial outfitters.

The Board notes that negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 36-2107. Idaho Code.

cc: Outfitters and Guides Licensing Board  
Jake Howard

## IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

### 25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

#### DOCKET NO. 25-0101-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 36-2107(b) and (d), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2013.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Idaho law states that an outfitter is “any individual, firm, partnership, corporation or other organization or any combination thereof, who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions.” Section 36-2102, Idaho Code. This includes private landowners.

In 1992, the Idaho Supreme Court (*State v. Koller*, 112 Idaho 409) held that the outfitting and guides act regulates commercial outfitting whether it’s occurring on public or private lands and that the State of Idaho has jurisdiction. As the result, private land owners have been licensed as outfitters themselves, have designated agents (including existing outfitters) as employees to provide facilities and services and have leased lands to others for outfitting purposes.

These proposed rules recognize a land owner's right to control use of their lands. They are intended clarify and enhance a private land owners ability to allow public access to their private lands and in doing so, they also are intended to clarify outfitted use and license requirements when outfitted facilities and services are provided by the landowner or by someone authorized by the land owner to do so.

The proposed rule also is intended clarify existing rules to address a concern over the loss of access due to the proliferation of organizations/clubs operating commercially due to ambiguity in existing rules. In doing so, organizations/clubs offering outfitted facilities and services including acquiring access to private or public land for hunting, fishing or hazardous excursions and for commercial gain will be governed by the same limits/restrictions set forth in these rules and governing licensed commercial outfitters.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**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 resulting from this rulemaking:

No fiscal impact will occur as a result of changes that are being made.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 614 through 616](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this August 20, 2013.

Jake Howard  
Executive Director  
Outfitters and Guides Licensing Board  
1365 North Orchard, Suite 172  
Boise, ID 83706  
(208) 327-7380  
FAX (208) 327-7382

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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 25-0101-1201**

**011. ~~PRIVATE MEMBERSHIP~~ GROUPS, ORGANIZATIONS, AND OUTFITTING ON PRIVATE LAND.**

~~An outfitter license shall not be issued to any individual, group, corporation, or club which limits its services to a membership or does not offer services to the general public. A group, corporation, or club formed in a manner so as to solicit participation from the general public and to provide services on a guided and/or paid basis beyond a sharing of expenses shall be required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code).~~ (3-1-86)

**01. Groups, Organizations, Clubs, and Individual Persons Sharing Costs.** ( )

**a. Any individual person or any group, club, corporation, or entity who in any manner solicits participation from the general public and who provides or facilitates access to the public on private or public lands or waters for boating, hunting, fishing or other hazardous excursions and/or who provides outfitted facilities, or services to the public on a paid or compensated basis or for other consideration, except those who may be otherwise exempt under Section 36-2103, Idaho Code, or as otherwise provided in Subsection 011.02.a of this rule shall be required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code) and the Board's rules.** ( )

**b. Individual persons who share facilities, and expenses while participating in outdoor recreational activities, and who do not solicit participation from the public and who are not compensated or provided other consideration are not required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code).** ( )

**c. An outfitter license shall not be issued to an individual, club, group, corporation, or other entity who does not offer outfitted or guided services to the general public.** ( )

**02. Private Landowner Responsibilities -- Outfitting on Private Land.** ( )

**a. Private landowners, who advertise and only charge fees for access to their land or waters, shall not be required to be licensed as an outfitter.** ( )

b. Private landowners ("Landowner"), who advertise outfitted or guided services or solicit participation from the general public for such services, or who provide outfitted facilities or services for compensation or consideration, shall be required to comply with the provisions of the Outfitters and Guides Act (Title 36, Chapter 21, Idaho Code) and shall be licensed to provide outfitted facilities or services on their own land or waters and/or elsewhere. ( )

i. A landowner providing a Landowner Appreciation (LAP) Tag to any individual or individuals is not considered an outfitted service. ( )

ii. Private landowners licensed as outfitters may designate agents (including existing outfitters) who shall be employees to provide facilities and services. ( )

iii. Private landowners may lease lands or waters they own to licensed outfitters for outfitting purposes. ( )

c. Licensed outfitters shall maintain on file with the Board a properly completed OG-10 form for each private land on which they hope to operate prior to use of that private land and during the time the private parcel is licensed to them as an operating area. The OG-10 form must specify the area to be used by the outfitter, the activities to be provided, and the date of use allowed by the private land owner. Private lands and activities to be licensed to an outfitter will be added or modified to an existing outfitter license by the outfitter following the major amendment process and must be approved by the Board prior to advertising or use. ( )

i. Outfitter arraignments for use of any private land shall not exceed a period of five (5) years. Reauthorization shall be done by the outfitter providing the Board a properly completed OG-10 form submitted following the minor amendment process. ( )

ii. Outfitters licensed for the use of private land or water must notify the Board immediately upon the termination of use or changes to the terms of use of any private land licensed as an operating area prior to promotion or use. Changes to the terms of use other than adding areas or activities must be done by the outfitter following the minor amendment process. Termination of an outfitter use arraignment must be done in writing or by submitting an OG-10 form. Either the land owner or the outfitter may terminate an outfitter's use. ( )