



Terri Kondeff
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators VICK, Johnson, Stennett and,
Representatives GIBBS, Lickley, Rubel

FROM: Katharine Gerrity - Deputy Division Manager

DATE: August 03, 2021

SUBJECT: Temporary Rule

IDAPA 13.00.00 - Notice of Omnibus Rulemaking (Fee Rule) - Adoption of Temporary Rule \ Rescission of Previous Temporary Rule - Docket No. 13-0000-2100F

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 13 – DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0000-2100F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE \ RESCISSION OF PREVIOUS TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021. The rescission of previous temporary rules under docket 13-0000-2000F is effective July 1, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules and rescinded previous temporary rules. 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.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting temporary rules and rescinding previous temporary rules:

This temporary rulemaking adopts and republishes the following sections in existing rule chapters 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*;
- 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*.

Rescission of temporary rules previously adopted under docket 13-0000-2000F is appropriate to avoid ambiguity as to which versions of temporary rules are in effect.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a-c) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rules 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 temporary 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 previously adopted 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. The agency needs these rules to: continue mandatory hunter, archery, and trapper education programs; protect the state and agency's fiscal interests in the efficient administration of refunds and overpayments; establish bonding requirements for large commercial wildlife facilities to avoid immediate danger by guaranteeing performance of license conditions and to reimburse the Department for any costs incurred for cleanup of, or removal of animals from, abandoned or closed facilities, or capture or termination of escaped animals, or disease control; and establish bonding requirements to protect the state and agency's fiscal interests by ensuring the ability to recoup public licensing dollars from vendors who do not fully reimburse the Department.

With the extended recess, without adjournment *sine die*, of the First Regular Session of the Sixty-Sixth Idaho Legislature, rescission of previously adopted temporary rules is appropriate to avoid ambiguity as to which versions of temporary rules are in effect.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fees or charges being imposed or increased are justified and necessary to avoid immediate danger and the fees are described herein:

The fees or charges, authorized in Sections 36-104, 36-303, 36-404, 36-407, 36-409, 36-412, 36-701, 36-703, and 36-708, Idaho Code, are part of the agency's 2022 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary 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 is a specific description of the fees or charges:

- 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 13.01.04.601.01 and 02 provide 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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the adoption of temporary rules and rescission of temporary rules, contact Jim Fredericks, Deputy Director at (208) 334-3771.

Dated this 1st day of July, 2021.

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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. (7-1-21)T

02. Fees. The Department will charge a fee of eight dollars (\$8) to each student enrolling in the Hunter or Archery Education Program. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

02. Fee. The Department will charge a fee of eight dollars (\$8) to each student enrolling in the Trapper Education Program. (7-1-21)T

03. Exemption. Persons who are acting pursuant to Section 36-1107, Idaho Code, are exempt from Subsection 201.01. (7-1-21)T

(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. (7-1-21)T

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. (7-1-21)T

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%

(7-1-21)T

03. Department Error. The Department will refund fees when it determines that a Department employee made an error in the issuance of the license. (7-1-21)T

(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. (7-1-21)T

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. (7-1-21)T

b. Fees for hunting licenses will not be refunded to unsuccessful or ineligible controlled applicants. (7-1-21)T

c. Fees for deer or elk tags purchased prior to the drawing will not be refunded to unsuccessful or ineligible applicants. (7-1-21)T

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. (7-1-21)T

e. Controlled hunt application fees are nonrefundable. (7-1-21)T

f. Fees for resident and nonresident adult controlled hunt tags subsequently designated to a minor child or grandchild are not refundable. (7-1-21)T

g. Fees for special controlled hunt application, tag and related hunting license are not refundable. (7-1-21)T

(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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

04. Specific Requirements. The Director has discretion to identify specific license conditions, and violation of any such condition is a violation of these rules. (7-1-21)T

(BREAK IN CONTINUITY OF SECTIONS)

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

(BREAK IN CONTINUITY OF SECTIONS)

102. SELECTION.

The following factors will be considered for selecting an applicant to become a license vendor: (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

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. (7-1-21)T

(BREAK IN CONTINUITY OF SECTIONS)