

TEMPORARY RULES COMMITTEE RULES REVIEW BOOK

Submitted for Review Before
**Senate Resources &
Environment Committee**
65th Idaho Legislature
First Regular Session – 2019



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

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SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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25.01.01 – Rules of the Idaho Outfitters and Guides Licensing Board

Docket No. 25-0101-18023

IDAPA 25 – IDAHO OUTFITTERS AND GUIDES LICENSING BOARD
25.01.01 – RULES OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD
DOCKET NO. 25-0101-1802
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is March 28, 2018.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 36-2107(b) and (j), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

When the Idaho Fish and Game Commission limits the number of deer or elk tags available in any game management area, unit, or zone by “capping” a zone or establishing a “controlled hunt”, it allocates a number of those limited tags for use by hunters who use a licensed outfitter. The Idaho Outfitters and Guides Licensing Board then has the responsibility to designate those limited allocated tags among the licensed outfitters’ operating areas that are in the capped zones or controlled hunt areas. This temporary rule is being adopted to provide more clarity regarding the basis for how the Board conducts its designation of the allocated tags, formalize procedures for an outfitter who disagrees with the designation, allow outfitters within a capped zone or controlled hunt area to come to an agreement on the designation, and ensure that the designation is done in a manner to maximize the use of the allocated tags by the public. The adoption of a temporary rule is necessary to ensure the allocated tags for the current year will be designated to allow for these limited hunting opportunities to be used.

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

This temporary rule is necessary to ensure the use of hunting tags that are allocated for hunters using licensed outfitters in game management areas/units/zones where there are only a limited number of hunting tags available. The use of allocated hunting tags confers a benefit on the outfitted public, licensed outfitters, and the businesses that receive an associated positive economic impact from use of these limited hunting opportunities.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Lori Thomason at (208) 327-7380.

DATED this 19th day of April, 2018.

Lori Thomason
Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard Street #172
Boise, Idaho 83706
Phone: (208) 327-7380
Fax: (208) 327-7382

THE FOLLOWING NOTICE PUBLISHED WITH THE AMENDED TEMPORARY RULE

EFFECTIVE DATE: A temporary rule was adopted under this docket number in the June 6, 2018, Idaho Administrative Bulletin, [Vol. 18-6, pages 94 through 104](#). The effective date of the amendment to the temporary rule is December 10, 2018.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant to Sections 36-2107(b) and (j), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for amending the temporary rule and a statement of any change between the text of the temporary rule and text of the amended temporary rule with an explanation for any changes:

Since the adoption of the temporary rule, the Outfitters and Guides Licensing Board has continued to work with licensees and the Idaho Outfitters and Guides Association regarding the designation of limited deer and elk hunting tags that are allocated for use by hunters using a licensed outfitter. The Board anticipates that legislative changes will be proposed during the 2019 Legislative Session that will affected how those limited tags are allocated for outfitted hunting and designated to individual outfitter's operating areas. However in the event legislative changes are not made and the temporary rule needs to be applied, the Board has adopted amendments to the temporary rule based on comments from licensees and interested parties during the ongoing negotiated rulemaking process.

These changes include reorganizing, refining, and clarifying definitions of terms, changes in terminology based on anticipated technology changes, and changing the basis for how allocated tags are recalculated when the Board designates allocated tags among outfitter's operating areas after five years.

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

This temporary rule is necessary to ensure the use of hunting tags that are allocated for hunters using licensed outfitters in game management areas/units/zones where there are only a limited number of deer or elk hunting tags available. The use of allocated hunting tags confers a benefit on the outfitted public, licensed outfitters, and the businesses that receive an associated positive economic impact from use of these limited hunting opportunities.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the amendments to the temporary rule, contact Lori Thomason at (208) 327-7380.

Dated this 11th day of December, 2018.

Lori Thomason
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Outfitters and Guides Licensing Board
1365 North Orchard Street #172
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Italicized red text that is double underscored is new text that has been added to the temporary rule.
Italicized green text that is underscored and struck through is codified temporary text
that is being removed from the temporary rule.

FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 25-0101-1802

002. DEFINITIONS.

The Act defines certain terminology applicable to its interpretation and administration (Idaho Code 36-2102). Further definitions, for the purposes of these Rules are: (4-1-92)

01. Act. Shall mean Idaho Code, Title 36, Chapter 21, commonly known as the Outfitters and Guides Act, as amended. (4-1-92)

02. Administrative Noncompliance. (3-10-03)

a. Two (2) or more repeated failures to apply for license renewal in a timely manner; or (3-10-03)

b. Two (2) or more repeated failures to file a complete application pursuant to Section 36-2113(a)(1), Idaho Code. (3-10-03)

03. Allocated Tag. A deer or elk tag in a capped zone or controlled hunt area that has been allocated by the Idaho Fish and Game Commission for use by hunters that have entered into an agreement to utilize the services of a licensed outfitter. (3-28-18)T

04. Allocated Controlled Hunt. For purposes of Section 73 of these rules, an allocated controlled hunt is a hunt for a species that has a season structure and other conditions determined by the Idaho Fish and Game Commission and that has a limited number of tags, which are distributed by random drawing to hunters with a written agreement to utilize the services of a licensed outfitter. (12-10-18)T

0345. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

0456. Board. The Idaho Outfitters and Guides Licensing Board. (4-1-92)

0567. Board Meeting. The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)

0678. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (4-1-92)

089. Capped Zone. A game management area, unit, or zone for which the Idaho Fish and Game Commission has limited or "capped" the number of deer or elk tags available for use in a general season hunt. ~~(3-28-18)T~~ (12-10-18)T

107. Compensation. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or

other recompense. (4-1-92)

~~08101~~. **Completed Application.** An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)

~~09112~~. **Consideration.** The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)

13. **Controlled Hunt.** *A hunt for a species that has a season structure and other conditions determined by the Idaho Fish and Game Commission and that has a limited number of tags, which are distributed by random drawing to hunters.* (12-10-18)T

~~1024~~. **Desert.** A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)

~~1135~~. **Designated Agent.** An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). (4-11-06)

~~1216~~. **Drift Boats.** Shall be substituted for and have the same meaning as “float boats” defined below. (4-1-92)

~~1357~~. **Enforcement Agent.** An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)

~~1468~~. **Facilities and Services.** The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. (4-1-92)

~~1579~~. **First Aid Card.** A valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Board. (4-1-92)

~~16820~~. **Fishing.** Fishing activities on those waters and for those species described in the rules of the Idaho Department of Fish and Game, IDAPA 13.01.11, “Rules Governing Fish,” general fishing seasons and any anadromous fishing rules; for purposes of the “Act,” fishing is defined as follows: (4-1-92)

- a. Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)
- b. Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)
- c. Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)
- d. Incidental fishing means fishing conducted as a minor activity. (4-1-92)
- e. Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)

f. Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

~~217~~219. **Float Boats.** Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steerage only. Downstream steerage does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (4-1-92)

~~182~~193. **Guide.** An individual who meets the criteria as set forth in Idaho Code 36-2102(c), and has further met the required qualifications as prescribed in the Rules to provide professional guided services to clientele in the pursuit and conduct of licensed activities. (4-1-92)

~~192~~193. **Guide License.** A license issued by the Board to an individual who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities as defined in Idaho Code 36-2102(c). (4-1-92)

~~202~~204. **Hazardous Excursions.** Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, guiding courses, rescue courses, fishing courses, motored and non-motored cycling, wagon rides, sleigh rides, and dog sled rides. (3-29-10)

~~213~~215. **He/His/Him.** Shall mean either the male or female gender. (4-1-92)

26. **Historic Use.** *For purposes of the designation of allocated tags in capped zones and controlled hunts as set forth in Sections 057 and 073 of these rules, the following definitions of historic use apply: (12-10-18)T*

a. **Reported Historic Use.** *The number of tags that were used by clients of an outfitter within the preceding five (5) years in a capped zone for the same type of tag that is being designated or in a controlled hunt with the same area, season structure, and conditions for the same type of tag that is being designated based on an outfitter's use reports. (12-10-18)T*

b. **Verified Historic Use.** *The number of tags that were used by clients of an outfitter in a capped zone that is verified by documentation or other reliable information acceptable to the Board. (12-10-18)T*

c. **Verified Allocated Historic Use.** *The number of allocated tags that were used by clients of an outfitter in a capped zone that is verified by documentation or other reliable information acceptable to the Board. (12-10-18)T*

~~224~~227. **Hunting.** The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. (3-30-01)

~~235~~238. **Incidental Activity.** Shall be and is the same as a minor activity. (4-1-92)

~~246~~249. **Minor Amendment.** All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. (4-11-06)

~~257~~30. **Investigator.** An individual employed by the Board to monitor compliance with the provisions of the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and Rules promulgated thereunder and issue warning tickets for violations thereof. An investigator shall not have arrest powers nor any other power of a peace officer. (4-1-92)

~~268~~31. **Major Activity.** A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (4-1-92)

~~279~~32. **Major Amendment.** All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (4-1-92)

~~283~~33. **Minor Activity.** A licensed activity the nature of which must be carried out in conjunction with a major activity, but is not the primary purpose of the excursion. (3-15-02)

~~293~~34. **Mountainous.** A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steep-sided land masses of impressive size and height. (4-1-92)

~~302~~35. **New Opportunity.** A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (4-1-92)

~~313~~36. **Nonresident.** An individual, corporation, firm, or partnership who is not a resident of the state of Idaho. (See "Resident"). (4-1-92)

~~324~~37. **Operating Area.** The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)

~~335~~38. **Operating Plan.** A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)

~~346~~39. **Outfitter.** An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)

~~357~~40. **Outfitter License.** A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Section 36-2102(b), Idaho Code. The conduct of an outfitted operation on any land(s) is not authorized unless signed permission, a permit, or a lease is obtained from the land owner(s), or their agent(s), and filed with the Board. (3-15-02)

~~368~~41. **Out-of-Pocket Costs.** The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)

- a. Compensation for either sponsors or participants; (4-1-92)
- b. Amortization or depreciation of debt or equipment; or (4-1-92)
- c. Costs of non-expendable supplies. (4-1-92)

~~39.~~ **~~Parent Controlled Hunt.~~** ~~The controlled hunt without allocated tags that corresponds with the controlled hunt with allocated tags for the same hunt area, season dates, species, and other conditions.~~ (3-28-18)T

~~374~~2. **Power Boats.** All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01, 059.02 and 059.03 of these rules. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steering. (4-1-92)

~~384~~3. **Relinquishment of License Privileges.** The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See Subsection 030.03). (3-23-98)

~~39424~~. **Resident.** An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)

~~4035~~. **Rules.** The Rules of the Board. (4-1-92)

~~4146~~. **Stay of Board Action.** An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)

~~4257~~. **Third Party Agreement.** The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)

~~4368~~. **Trainee.** A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)

~~4479~~. **Boat Trainee Under Supervision.** A boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. (3-10-03)

~~4580~~. **Unethical/Unprofessional Conduct.** Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (3-30-01)

- a. An outfitter employing an unlicensed guide; (3-30-01)
- b. Providing false, fraudulent or misleading information to the Board; (3-30-01)
- c. Failure to obey an order of the Board; (3-30-01)
- d. Failure to provide services as advertised or contracted; (3-30-01)
- e. Harassment of the public in their use of Idaho's outdoor recreational opportunities; (3-30-01)
- f. Violation of state or federal fish and game laws; (3-30-01)
- g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (3-30-01)
- h. Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (3-30-01)
- i. Failure to pay a supplier of goods or services to the outfitter business; (3-15-02)
- j. Failure to pay state taxes; or (3-15-02)
- k. Operating in a manner which endangers the health, safety, or welfare of the public. (3-30-01)
- l. Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. (4-11-06)

~~46951~~. **Validated Training Form.** An approved form bearing the "Great Seal of the State of Idaho" and the official stamp of the Board affixed thereon. (4-1-92)

~~47502~~. **Watercraft.** A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

057. DESIGNATION AMONG OPERATING AREAS OF ALLOCATED ~~OR~~ DEER AND ELK TAGS IN A CAPPED ZONE.

~~When there are a limited number of deer or elk tags available for use in a game management area, unit, or zone pursuant to Section 36-408(4), Idaho Code, the Board will designate ~~the number of deer or elk~~ tags allocated for clients of outfitters among the authorized operating areas within each ~~game management area, unit or zone will be determined by the Board pursuant to Sections 36-408(3) and 36-408(4), Idaho Code, and Department of Fish and Games rules, IDAPA 13-01-04, "Rules Governing Licensing" Sections 500, 505, and 506,~~ capped zone based on historical use ~~and a tag allocation factor shall be noted on the license of each outfitter so affected and in an equitable manner designed to maximize the use of the allocated tags by the public in capped zones as authorized by Section 36-2107(j), Idaho Code.~~ (3-23-98)(3-28-18)T~~

01. Initial Calculation and Designation of Allocated Tags Among Operating Areas. ~~When the Idaho Fish and Game Commission initially limits the deer or elk tags available for a capped zone, the Board will conduct an initial calculation to determine the number of allocated deer or elk tags designated for each eligible outfitter. For purposes of these rules, an eligible outfitter is an outfitter whose operating area is within the capped zone and whose licensed activities include hunting the species for the type of tag that is being limited. The initial calculation will apply for a period of five (5) years.~~ (3-28-18)T

a. Number of Designated Allocated Tags. ~~The initial calculation to determine the number of designated allocated tags for each outfitter in the capped zone will be conducted by dividing an outfitter's reported historic use by the total reported historic use of all outfitters in the capped zone and then multiplying by the total number of allocated tags for the capped zone and rounding to the nearest whole number. The result is the number of allocated tags designated for the outfitter. Any allocated tags that are not designated for an outfitter because of rounding will be placed in a surplus pool for the capped zone.~~ (3-28-18)T

~~**b. Reported Historic Use.** Reported historic use is the number of clients that an outfitter has provided services to within the preceding five (5) years in the capped zone for the type of allocated tag that is being designated, as identified by an outfitter's use reports. (3-28-18)T~~

eb. Stipulation by Outfitters. ~~Outfitters in a capped zone may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitter within the capped zone. The stipulation must be signed by all eligible outfitters in the capped zone. If the Board accepts the stipulation, the stipulation will be effective for a five (5) year period unless otherwise specified in the stipulation. In no event will the stipulation be effective for more than a (5) year period. In the event that the Idaho Fish and Game Commission makes an adjustment in the number of allocated tags available for a capped zone, the stipulation is deemed rescinded and of no effect. A new written stipulation may be submitted to the Board in connection with the calculation conducted pursuant to Subsection 057.0~~4~~3 of these rules.~~ (3-28-18)T(12-10-18)T

i. ~~Any outfitter may petition the Board to withdraw from the stipulation for good cause at any time. If the Board grants the withdrawal, then the Board will conduct an initial calculation to designate the allocated tags among the outfitters in that capped zone for the remainder of the calculation period.~~ (3-28-18)T

ii. ~~A stipulation does not affect the ability of an outfitter within the capped zone to obtain allocated tag(s) from another outfitter or from the surplus pool, as provided in these rules.~~ (3-28-18)T

dc. ~~Objection to Initial Calculation.~~ An outfitter who believes the initial calculation is incorrect may object to the initial calculation by filing a petition in accordance with the Idaho administrative procedures act with the Board along with any supporting information or documentation. (3-28-18)T

i. The Board will give notice regarding the petition to all other eligible outfitters in the capped zone for which the initial calculation was conducted. (3-28-18)T

ii. The outfitter bears the burden of establishing that the initial calculation was incorrect. (3-28-18)T

02. Recalculation and Designation of Allocated Tags Among Operating Areas. The designation of allocated tags among the outfitters in a capped zone will be recalculated for each five (5) year period. (3-28-18)T

a. Number of Designated Allocated Tags. The recalculation to determine the number of designated allocated tags for each eligible outfitter will be conducted by ~~averaging~~ identifying the outfitter's best one (1) year of verified allocated historic use of allocated tags in each year during the preceding five (5) year period and rounding to the nearest whole number or as otherwise specified by the Idaho Fish and Game Commission. The result is the number of allocated tags designated for the outfitter. ~~Verified historic use is the number of allocated tags for the capped zone that were used by a client of the outfitter and for which the outfitter received a voucher from the Board.~~ (3-28-18)T(12-10-18)T

i. If the number of allocated tags for a capped zone is less than the total number of designated tags, then the recalculation to determine the number of designated allocated tags for each eligible outfitter will be conducted by an initial calculation as set forth in these rules to designate the allocated tags among the operating areas in the capped zone, except that the Board shall use verified allocated historic use rather than reported historic use for the recalculation. (12-10-18)T

ii. If the number of allocated tags for a capped zone exceeds the total number of designated tags, the remainder of the allocated tags will be placed in the surplus pool for the capped zone for use by all eligible outfitters in the capped zone, as provided in these rules. (12-10-18)T

b. Stipulation by Outfitters. Outfitters in a capped zone may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitter within the capped zone. The stipulation must be signed by all eligible outfitters in the capped zone. If the Board accepts the stipulation, the stipulation will be effective for a five (5) year period unless otherwise specified in the stipulation. In no event will the stipulation be effective for more than a five (5) year period. (3-28-18)T

i. Any outfitter may petition the Board to withdraw from the stipulation for good cause at any time. If the Board grants the withdrawal, then the Board will conduct a recalculation to designate the allocated tags among the operating areas in that capped zone for the remainder of the calculation period. (3-28-18)T

ii. A stipulation does not affect the ability of an eligible outfitter to obtain allocated tag(s) from another outfitter or from the surplus pool, as provided in these rules. (3-28-18)T

~~**c. Remaining Allocated Tags after Recalculation.** If the number of allocated tags for a capped zone exceeds the total number of designated tags, the remainder of the allocated tags will be placed in the surplus pool for the capped zone for use by all eligible outfitters in the capped zone, as provided in these rules. (3-28-18)T~~

~~**c.** **Hardship Request.** An outfitter may submit to the Board a written request to change the basis of its recalculation from average verified historic use when the outfitter can demonstrate hardship, including health, act of nature, state or federal restrictions on hunting or access or other good cause, that prohibited or limited the outfitter's ability to seek and accommodate clients and impacted the outfitter's use of designated allocated tags. The outfitter must provide any information requested by the Board to assist in substantiating hardship cases. (3-28-18)T(12-10-18)T~~

~~**d.** **Objection to Recalculation.** An outfitter who believes the recalculation is incorrect may object to the recalculation by filing a petition in accordance with the Idaho administrative procedures act with the Board along with any supporting information or documentation. The outfitter shall bear the burden of establishing that the recalculation was incorrect. (3-28-18)T~~

03. Adjustment of Allocated Tags. In the event that the Idaho Fish and Game Commission makes an

adjustment in the number of allocated tags available for a capped zone, the Board will conduct an initial calculation as set forth in these rules to designate the allocated tags among the operating areas in the affected capped zone, except that the Board shall use verified historic use rather than reported historic use for the calculation. (3-28-18)T

04. Use of Designated Allocated Tags. An outfitter's designation of allocated tags for a particular year will be held until the third Wednesday in May of that year. The Board will issue an ~~voucher~~ authorization for each allocated tag as proof of the Board's designation of the allocated tag. ~~(3-28-18)T~~(12-10-18)T

a. Request for ~~Voucher for~~ Authorization to Use a Designated Allocated Tag. Beginning December 1, an outfitter may request a ~~voucher~~ authorization for the use of an allocated tag by submitting a written request identifying the capped zone, type of tag requested, and the name of the client who will be using the allocated tag. All ~~vouchers~~ authorizations expire on July 31. ~~(3-28-18)T~~(12-10-18)T

i. An authorization is valid only for the client identified to the Board by the outfitter. When the identified client is unable to use the designated allocated tag, the outfitter must promptly notify the Board and ~~return the voucher or~~ may provide the name of another client who will be using the allocated tag. ~~(3-28-18)T~~(12-10-18)T

ii. The outfitter is responsible for retaining documentation of the use of the ~~voucher~~ authorization and the client who used the corresponding allocated tag. The documentation must be retained for a period of five (5) years and is subject to audit by the Board. ~~(3-28-18)T~~(12-10-18)T

b. Unused Designated Allocated Tags. Designated allocated tags that are not requested by the outfitter by the third Wednesday in May will be placed in the surplus pool. (3-28-18)T

c. Release and Surrender of Tags. An outfitter who does not wish to use some or all of its designated allocated tags may choose to release its tags to another outfitter or may surrender its tags. (3-28-18)T

i. An outfitter may not release tags until the surplus pool for the capped zone has been exhausted. When there are no allocated tags available in the surplus pool for a capped zone, an outfitter may release designated allocated tag(s) to another eligible outfitter by submitting a written statement to the Board identifying the number and type of allocated tag and the outfitter to which the allocated tag is being released. The releasing outfitter will receive credit toward historic~~at~~ use for the released tag as if the outfitter had used the tag for its own client. ~~(3-28-18)T~~(12-10-18)T

ii. An outfitter may surrender designated allocated tag(s) by submitting a verified statement on a form approved by the Board. The surrendered allocated tag(s) will be placed in the surplus pool. The outfitter will not receive credit toward historic~~at~~ use for the surrendered allocated tags. ~~(3-28-18)T~~(12-10-18)T

d. Surplus Pool. When an allocated tag for a capped zone is not designated for an individual outfitter, the allocated tag is placed in a surplus pool and is available for use by any eligible outfitter, as follows: (3-28-18)T

i. Outfitters who have claimed allocated tags from the Idaho Fish and Game Department for all of the outfitter's designated allocated tags may request an allocated tag from the surplus pool beginning December 1. (3-28-18)T

ii. An outfitter who was not designated any allocated tags may request an allocated tag from the surplus pool beginning March 1. (3-28-18)T

iii. Subject to the conditions in Paragraphs 057.04.d.i. and 057.04.d.ii. of these rules, ~~A~~ allocated tags in the surplus pool will be designated on a first-come, first-served basis. ~~(3-28-18)T~~(12-10-18)T

iv. An outfitter may request a ~~voucher~~ designation and authorization for an allocated tag from the surplus pool by submitting a written request in the same manner and under the same conditions as set forth in Subsection 057.04.a of these rules. ~~(3-28-18)T~~(12-10-18)T

v. The outfitter will receive credit toward historic use for the allocated tag designated from the surplus pool, provided the outfitter's client uses the allocated tag. (3-28-18)T

e. Waiting List. When a capped zone does not have a surplus pool, the Board will maintain a waiting list in the event allocated tags are placed in the surplus pool. An outfitter must provide a client name to be placed on the waiting list and the waiting list will be in the order in which the requests were received. (3-28-18)T

05. Change in Operating Area or Owner of Business. When an outfitting business is sold or when an operating area is adjusted and designated allocated tags are associated with the affected operating area, the Board may re-designate the associated allocated tags as follows: (3-28-18)T

a. Sale of Business. In the event that an outfitting business is sold, the allocated tags designated for the operating area(s) and the historic use of allocated tags will transfer with the sale. (3-28-18)T

b. Vacated or Abandoned Area. In the event that an operating area is vacated or abandoned and is licensed to a new eligible outfitter, the new outfitter will be designated the number of allocated tags that were previously designated for the operating area. In the event that an operating area is vacated or abandoned and is not licensed to a new eligible outfitter, the tags previously designated for the operating area will be placed in the surplus pool. (3-28-18)T

c. Adjustment in Areas. When an operating area is adjusted as provided by these rules, all or some of the tags previously designated for the affected operating area may be placed in the surplus pool or designated to other eligible outfitters. Any such change in the designation of tags will be done by the Board based on the totality of the circumstances, which may include the size or proportion of the adjusted areas, biological considerations of the adjusted area, and demonstrated need of each outfitter affected by the adjustment. (3-28-18)T

(BREAK IN CONTINUITY OF SECTIONS)

073. DESIGNATION AMONG OPERATING AREAS OF ALLOCATED CONTROLLED HUNT DEER AND ELK TAGS.

When there are a limited number of deer or elk tags available for use in a game management area, unit, or zone pursuant to Section 36-408(4), Idaho Code, the Board will designate the tags allocated for clients of outfitters among the authorized operating areas within each controlled hunt area based on historical use and in an equitable manner designed to maximize the use of the allocated tags by the public in controlled hunt areas as authorized by Section 36-2107(j), Idaho Code. (3-28-18)T

01. Calculation and Designation of Allocated Tags Among Operating Areas. When the Idaho Fish and Game Commission limits the deer or elk tags available for a controlled hunt area, the Board will conduct a calculation to determine the number of allocated deer or elk tags designated for each eligible outfitter. For purposes of this rule, an eligible outfitter is an outfitter whose operating area is within the controlled hunt area and whose licensed activities include hunting the species for the type of tag that is being limited. (3-28-18)T

a. Number of Designated Allocated Tags. The calculation to determine the number of designated allocated tags for each outfitter for a controlled hunt will be conducted by dividing an outfitter's reported historic use of tags ~~for the parent controlled hunt~~ by the total reported historic use of all outfitters for the parent controlled hunt and then multiplying by the total number of allocated tags ~~for the controlled hunt~~ and rounding to the nearest whole number. The result is the number of allocated tags designated for the outfitter. Any allocated tags that are not designated for an outfitter because of rounding will be designated for the outfitter who has been licensed for the longest amount of time for hunting in the controlled hunt area for the species for the type of tag being limited. ~~(3-28-18)T~~(12-10-18)T

b. Reported Historic Use. Reported historic use is the number of clients that an outfitter has provided services to within the preceding five (5) years in the parent controlled hunt. (3-28-18)T

eb. No Reported Historic Use. In the event there is no reported historic use by any outfitter for the

parent a controlled hunt with the same hunt area, season dates, species, and other conditions as the allocated controlled hunt, the basis of the calculation will be: ~~(3-28-18)T~~ (12-10-18)T

i. Reported historic use in the general hunt that matches the species, season structure, and conditions for the allocated tags; or if there is no reported historic use on that basis. (3-28-18)T

ii. Reported historic use in the controlled hunt area that matches the species and conditions for the allocated tags; or if there is no reported historic use on that basis. (3-28-18)T

iii. Equally between the eligible outfitters in the controlled hunt area. If there are remaining allocated tags after each outfitter has been designated an equal number of allocated tags, remaining tags will be designated in the order of seniority of licensure. Seniority is based on the longest length of time of licensure for hunting for the species for the type of tag being limited in the controlled hunt area. (3-28-18)T

dc. Stipulation by Outfitters. Eligible outfitters in a controlled hunt area may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitter within the controlled hunt area. The stipulation must be signed by all eligible outfitters licensed in the controlled hunt area. In the event that the Idaho Fish and Game Commission makes an adjustment in the number of allocated tags available for a controlled hunt area, the stipulation is deemed rescinded and of no effect. A new written stipulation may be submitted to the Board in connection with the calculation conducted pursuant to Subsection 073.014 of these rules. ~~(3-28-18)T~~ (12-10-18)T

i. Any outfitter may petition the Board to withdraw from the stipulation for good cause at any time. If the Board grants the withdrawal, then the Board will conduct a calculation to designate the allocated tags among the operating areas in that controlled hunt area. (3-28-18)T

ii. A stipulation does not affect the ability of an outfitter within the controlled hunt area to obtain allocated tag(s) from another outfitter, by notifying the Board of the controlled hunt number and the outfitter receiving the designated allocated tag. (3-28-18)T

02. Objection to Calculation. An outfitter who believes the calculation is incorrect may object to the calculation by filing a petition in accordance with the Idaho administrative procedures act with the Board along with any supporting information or documentation. (3-28-18)T

a. The Board will give notice regarding the petition to all other eligible outfitters in the controlled hunt area for which the calculation was conducted. (3-28-18)T

b. The outfitter bears the burden of establishing that the calculation was incorrect. (3-28-18)T

03. Hardship Request. An outfitter may submit to the Board a written request to change the basis of its calculation when the outfitter can demonstrate hardship, including health, act of nature, state or federal restrictions on hunting or access or other good cause, that prohibited or limited the outfitter's ability to seek and accommodate clients and impacted the outfitter's use of designated allocated tags. The outfitter must provide any information requested by the Board to assist in substantiating hardship cases. (3-28-18)T

04. Adjustment of Allocated Tags. In the event that the Idaho Fish and Game Commission makes an adjustment in the number of allocated tags available for an allocated controlled hunt, the Board will conduct a calculation as set forth in these rules to designate the allocated tags among the operating areas in the affected allocated controlled hunt, except that the Board shall include use in the calculation the verified historic use of tags from the parent controlled hunt in the calculation with the same hunt area, season dates, species, and other conditions as the allocated controlled hunt. ~~(3-28-18)T~~ (12-10-18)T

05. Use of Designated Allocated Tags. The Board will issue an certification form authorization for each designated allocated tag specifying the controlled hunt number for which it is valid. The certification form authorization may be submitted by the Board or the outfitter to the Idaho Fish and Game Commission as proof of the Board's designation of the allocated tag. Applications for allocated tags for an allocated controlled hunt must be

submitted to the Idaho Fish and Game Department in accordance with the rules and deadlines established by the Idaho Fish and Game Commission. ~~(3-28-18)T~~(12-10-18)T

06. Non-use of Designated Allocated Tags. The Board will evaluate the use of designated allocated tags under the standards of non-use in Section 024 of these rules. (3-28-18)T

07. Change in Operating Area or Owner of Business. When an outfitting business is sold or when an operating area is adjusted and designated allocated tags are associated with the affected operating area, the Board may re-designate the associated allocated tags in accordance with Subsection 057.05 of these rules. (3-28-18)T

~~0734.~~ -- 999. (RESERVED)