



**Terri Kondeff**  
**Director**

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators VICK, Heider, Stennett and,  
Representatives GIBBS, Lickley, Rubel

**FROM:** Katharine Gerrity - Deputy Division Manager

**DATE:** August 04, 2022

**SUBJECT:** Temporary Rule

IDAPA 24.35.01 - Rules of the Outfitters and Guides Licensing Board - Amendment to Temporary Rule - Docket No. 24-3501-2200

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

# **IDAPA 24.35 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES**

## **24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD**

**DOCKET NO. 24-3501-2200**

### **NOTICE OF OMNIBUS RULEMAKING – AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** A temporary rule was adopted under this docket number and published in the July 6, 2022, Idaho Administrative Bulletin, Vol. 22-7, pages 180 through 212. The effective date of the amendments to the temporary rule is August 01, 2022.

**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 Section 36-2107, Idaho Code and Section 67-2604, 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:

Amendments are being made to the following temporary rule chapter:

#### **IDAPA 24.35**

- 24.35.01, *Rules of the Outfitters and Guides Licensing Board.*

The temporary rule regarding the designation of allocated tags addresses issues identified in the 2022 season designations resulting from unanticipated circumstances when allocated tag numbers changed after one year instead of two years and/or the total allocated tags decreased in certain hunts. In circumstances where there is only one year of allocated tag use, the temporary rule will prevent an artificial reduction in the outfitter's prior use of allocated tags. In addition, the tie-breaker section is updated to ensure that as many outfitters as possible receive their full past use of designated tags in the event of a decrease in the total number of allocated tags. The changes also deal with extra tags (or a deficit of tags) to better explain each step of the calculation. A temporary rule is necessary to ensure that the changes can be applied uniformly for all hunts for the 2023 season and confer the benefits intended by the statute and rule, as the Board anticipates being required this year to conduct some calculations for the 2023 season.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a), (b), and (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 protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule chapter implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of the rule 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 this rule.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the amended temporary rule, contact Tim Frost at (208) 577-2491.

DATED this 1st day of August, 2022.

Tim Frost  
Deputy Administrator  
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THE FOLLOWING IS THE AMENDED TEXT FOR TEMPORARY RULE CHAPTER 24.35.01  
(Only Those Sections With Amendments Are Shown.)

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

(BREAK IN CONTINUITY OF SECTIONS)

**057. DESIGNATION OF ALLOCATED DEER AND ELK TAGS.**

For the purposes of this section, an outfitting operation is an outfitter licensee whose licensed activities include hunting for the species in the area of the allocated tag being designated. When IFGC sets big game seasons all allocated tags will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. The designation applies until the next big game season setting by IFGC. (7-1-22)T

**01. Base Allocation.** The base allocation number is computed pursuant to Section 36-2120(b), Idaho Code. (7-1-22)T

**02. Outfitted Hunter Tag Use History.** ~~Until the IFGC is able to collect and verify outfitted tag use~~ Each outfitter's hunter tag use history will be determined from the use recorded by IFGC pursuant to Section 36-408(4), Idaho Code, ~~the use history will be based on each outfitter's use reports, or the best data available, and subject to verification by documentation or other reliable information acceptable to the Board showing that the outfitter provided outfitting services to the hunter using the tag~~ and as may be adjusted as a result of a tag transfer or hardship request that is approved by the board. (7-1-22)T(8-1-22)T

~~a. The use history for a capped hunt is the number of tags used by clients of each outfitter for the hunt with the most similar framework to the hunt for which the allocated tag is being designated.~~ (7-1-22)T

~~b. The use history for a controlled hunt is the number of tags used by clients of each outfitter in the hunt or hunts that have the most similar framework to the hunt for which the allocated tag is being designated. Both the hunt with allocated tags and the matching hunt with non-allocated tags will be used.~~ (7-1-22)T

**ea.** Transfers – The original outfitter may transfer a designated allocated tag(s) to another outfitting operation for use that year in the same hunt and still retain credit for the tag. (7-1-22)T

~~ab.~~ Surrenders - An outfitter may surrender a designated allocated tag(s) to the undesignated tag pool at any time after notification of its tag designation. The surrendering outfitter does not retain credit for the surrendered tag unless it later uses the tag from the pool. The surrendered tag will be available to any outfitter in the same hunt pursuant to IDAPA 24.35.01.057.09. (7-1-22)T

**03. New Hunt Allocated Tag Designation.** When the IFGC initially allocates tags for a new capped or controlled hunt, allocated tags will be designated for that hunt proportionately as follows: (7-1-22)T

**a.** Divide each outfitting operation's base allocation by the total of all base allocations in the hunt, resulting in a percentage of total use. Truncate the decimal at the hundredths place. (7-1-22)T

**b.** Multiply the percentage of total use from IDAPA 24.35.01.057.03.a. by the total number of allocated tags for the hunt, which determines the number of allocated tags designated to the outfitting operation. (7-1-22)T

**04. Use of Previously Designated Allocated Tags.** For established capped or controlled hunts, allocated tags will first be designated to each outfitting operation in an amount equal to the outfitting operation's use

of the allocated tags previously designated to it for the same hunt. (7-1-22)T

a. In a capped hunt, the use of previously designated allocated tags is the average use of allocated tags in the preceding two (2) years; in the event that IFGC adjusts the number of allocated tags in a hunt where there is only one (1) year of allocation, the board will not average the use. (7-1-22)F(8-1-22)T

b. In a controlled hunt, the use of previously designated allocated tags is the highest year of use of allocated tags in the preceding two (2) years. (7-1-22)T

**05. Remaining or Additional Allocated Tags.** Allocated tags ~~that were~~ not designated ~~pursuant to IDAPA 24.35.01.057.04~~ above will be designated proportionately as follows: (7-1-22)F(8-1-22)T

a. Subtract each outfitting operation's use of previously designated allocated tags from its base allocation number to determine the number of non-allocated tags it used for a capped hunt or the matching hunt with non-allocated tags for a controlled hunt, when necessary to determine non-allocated tag use; then (7-1-22)F(8-1-22)T

b. Divide the result by the total number of non-allocated tags used by all outfitting operations, resulting in a percentage of the total non-allocated tags used by all outfitting operations in that hunt. Truncate the decimal at the hundredths place; and finally (7-1-22)T

c. Multiply the percentage of total use from ~~IDAPA 24.35.01. Subsection~~ 057.05.b. by the number of allocated tags yet to be designated, which determines the number of allocated tags designated to the outfitting operation. (7-1-22)F(8-1-22)T

**06. Rounding.** If allocated tag designation results in a partial tag, the calculation will be rounded up when a decimal equals or exceeds six tenths (.6) and rounded down when a decimal is less than six tenths (.6). When calculating ~~the after a~~ reduction ~~to the designation~~ of allocated tags pursuant to Section 36-2120(4), Idaho Code, the calculation will be rounded up when a decimal equals or exceeds five tenths (.5) and rounded down when a decimal is less than five tenths (.5). (7-1-22)F(8-1-22)T

**07. Tie-breaker.** If after applying IDAPA 24.35.01.057.03-06 there is a surplus or deficit of allocated tags to be designated, the unrounded proportion from Subsection 057.05, with as many decimal places as necessary, will be used, and then as follows: (7-1-22)F(8-1-22)T

a. After a reduction in allocated tags, surplus tags will first be designated in amounts to restore outfitter operations to the number of tags that would have otherwise been designated pursuant to Subsection 057.04 or as close thereto as practicable. (8-1-22)T

~~a~~b. ~~A~~ If a surplus, ~~allocated tag will be designated to~~ the outfitting operation whose unrounded proportion is the greatest will be designated one (1) tag, and if there are additional surplus tags, the outfitter with the next greatest unrounded proportion will be designated one (1) allocated tag, and repeated in descending unrounded proportions until all surplus tags are designated. In the event there is more than one (1) outfitting operation with the same unrounded proportion and there are insufficient undesignated tags to designate to each outfitter, the undesignated tag will be designated based on a random drawing between those outfitting operations. (7-1-22)F(8-1-22)T

~~b~~c. A deficit will be resolved from the outfitting operation whose unrounded proportion is closest to six tenths (.6), and then next closest to six tenths (0.6) when there is a deficit of more than one (1) allocated tag. If there is more than one (1) outfitting operation with the same unrounded proportion, a random drawing will be held between those outfitters. (7-1-22)F(8-1-22)T

**08. Stipulation by Outfitters.** Outfitting operations in a hunt may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitting operation within that hunt. The stipulation must be signed by all eligible outfitting operations for the hunt. If the Board approves the stipulation, the stipulation will be effective until the IFGC sets the next big game season. On or before November 1 preceding the hunt, any outfitting operation may petition the Board to vacate the stipulation for good cause that would make it unconscionable or unjust to enforce the stipulation. If the Board vacates the stipulation, the allocated tags in that hunt

will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. (7-1-22)T

**09. Undesignated Tag Pool.** Any designated allocated tags that are surrendered or have not been utilized by an outfitting operation on or before the tenth (10) business day prior to July 31 for a capped hunt, or on or before September 10 or the next business day for a controlled hunt, will be available in an undesignated pool for any outfitting operation, as follows: (7-1-22)T

**a.** Beginning April 10 preceding the hunt, an outfitting operation without any designated allocated tags or who has utilized all of its designated allocated tags may submit a request for an allocated tag from the pool. The request must be in such a form as designated by the Board. (7-1-22)T

**b.** Beginning April 20 preceding the hunt or next business day, an allocated tag will be designated from the pool on a first-come, first-served basis, using a waiting list when as necessary, with a maximum of two (2) allocated tags designated to each requesting outfitting operation until all other requesting outfitting operations have been served, then a requesting outfitting operation is eligible to receive a maximum of two (2) additional allocated tags from the pool, repeated until all requesting outfitting operations are served or until no tags remain. (7-1-22)T

**10. Objection to Calculation.** If an outfitting operation believes the calculation is incorrect it may object by filing a petition with the Board within fourteen (14) days from the date the notification was sent and in accordance with the Idaho administrative procedures act. The petition will include any supporting information or documentation. (7-1-22)T

**a.** All outfitting operations in the hunt in question will be notified of the petition. (7-1-22)T

**b.** The outfitting operation bears the burden of establishing that the calculation was incorrect. (7-1-22)T

**11. Hardship Request.** A written hardship request to maintain all or a portion of previous outfitted hunter tag use history may be submitted to the Board on or before the November 1 preceding the biennial IFGC big game season setting. If a hardship occurs after October 21 but prior to the hunt being completed the request may be submitted within ten (10) days of the occurrence. A hardship may include health, act of nature, state or federal restrictions on hunting or access, or other good cause that prevented or limited the outfitting operation's ability to seek and accommodate clients and impacted its use of designated allocated tags. The outfitting operation must provide any information requested by the Board to substantiate the request. (7-1-22)T

**12. Change in Operating Area or Owner of Business.** When an outfitting operation is sold or when an operating area is adjusted and designated allocated tags are associated with the affected operating area, the associated designated allocated tags will transfer to the new owner. (7-1-22)T