

**Zero-Based Regulation
Prospective Analysis
[Outfitters and Guides Licensing Board]
[24-3501 2201]**

1. What is the specific legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Idaho Code § 36-2107 (b)	Mandatory

2. Define the specific problem that the proposed rule is attempting to solve? Can it be solved through non-regulatory means?

Regulation of outfitted and guided hunting, fishing, boating and other outdoor recreational activities is to ensure the safety of the outfitted public. Outfitting and guiding frequently involves wilderness outdoor experiences, firearms, and hazardous activities beyond the reach of traditional emergency aid resources. For these reasons, well trained, competent licensees are important to the safety of the public.

An ancillary result of the regulation of outfitters in Idaho is the establishment of an economic interest by the licensee in the geographic area attached to the outfitters license. This economic interest has resulted in regulation more appropriately governed by the open market.

In addition, as a result of recent legislation, the Board is involved in a complex allocation of Fish and Game big game tags among outfitters. This responsibility has already resulted in a legal liability to the Board and is the subject of a pending Notice of Tort Claim. This role would be better governed by the open market

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law?

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
	N/A There are federal permitting and concession laws and regulations relating to outfitters and guides, but no comparable licensing requirements	

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	<p>Whitewater river guides are work for the licensed outfitter and are required to have completed safety and lifesaving courses taught by a guide instructor, but the guide does not hold a license. RCW § 79A.60.010(11). Whitewater outfitter must certify all the guides meet the training standards and are covered by the outfitter’s insurance policy. RCW § 79A.60.430(2). Outfitter does not have to submit list of employees, but has to give a summary of number of employees and their activities (worker’s comp related).</p> <p>Fishing Guides “Food fish guides” and “game fish guides” are licensed, but there is no licensed outfitter. RCW § 77.65.560(1). Guide has to have a separate business license or be employed by a business with a license, and must carry commercial liability coverage. RCW 77.65.560. If the license was purchased on behalf of the licensed person by an employer, then when the employment relationship ends the licensee must return the license to the employer who paid for it. The license is transferrable. RCW 77.65.600</p>	<p>Less restrictive than in Idaho where an individual guide license is necessary for all types of guides.</p> <p>Idaho requires the outfitter to carry the insurance, not the guide.</p> <p>Idaho licenses are not transferable.</p>
Oregon	<p>Registration is for “Outfitter Guide.” ORS § 704.020.</p> <p>Employees of an Outfitter Guide do not need to be separately registered unless the employee “conducts, leads or assists in angling activities or operates or assists in the operation of watercraft used for angling.” ORS § 704.010(4)(b). ORS § 704.010(4)(b).</p> <p>An outfitter and guide business must provide a list of all current employees who physically provide or directly assist in physically providing outfitting and guiding services. ORS 704.020; OAR 250-016-0025(1). The</p>	<p>Idaho requires guides/employees to be licensed.</p> <p>Same as to the Board having information for each employed guide before services are provided.</p>

	list must be updated before services are provided with information about the employee and the Outfitter Guide maintains records of current employee First Aid/CPR. OAR 250-016-0025(2)	
Nevada	<p>Subguide “assists” a master guide (outfitter). NRS 504.390(3) Subguide’s license is not valid (is suspended) when the master guide terminates the subguide’s employment. NAC 504.676.</p> <p>A master guide can use a subguide of a different master guide only in an emergency and not to exceed 10 consecutive days. The master guide must notify the Division by phone before or within 24 hours AND in writing/email within 10 days after beginning. NAC 504.669.</p> <p>A subguide can be licensed under multiple master guides. See NAC 504.676</p>	<p>Substantially Same – the guide license valid is tied to the outfitter license and the employment by the outfitter.</p> <p>Same, but outfitters keep the written documentation and do not have to proactively notify the Board</p> <p>Same</p>
Utah	<p>Definition of hunting guide includes that the guide is retained for compensation by an outfitter. U.C. 58-79-102(3)(b).</p> <p>Application requires an association with a licensed outfitter. Each outfitter that the guide is associated with must sign the application.</p> <p>Same</p>	<p>Same</p> <p>Same, Idaho amends the license to add the outfitter.</p>
Wyoming	<p>Must be an employee or contractor of licensed outfitter.</p> <p>License is valid only while the licensee is employed by or operating under the contract. W.S. 23-2-412</p> <p>Outfitter is required to sign the back of the guide license with the dates of employment. 075.0001.2.02192019 Section 5(f)</p>	Same
Montana	Must be employee or contractor of a licensed outfitter. M.C.A. §§ 37-47-101(7); 37-47-	Same

	<p>303. Guide must have an outfitter endorse application. ARM 24.171.602(1).</p> <p>Outfitter must sign and date the guide’s license before allowing the guide to accompany a client. ARM 24.171.602(3).</p> <p>Exemption from licensing for “outfitter’s assistant” who is employed or retained by an outfitter in an emergency for a max of 15 days unless actively obtaining a guide’s license. M.C.A. § 37-47-325; ARM 24.171.410.</p>	<p>Allow in rule a loan of a licensed guide or the practice is to allow a 20-day temporary for an online application.</p>
Alaska	<p>“Class-A assistant guide” and an Assistant Guide for big game outfitting must be employed by a registered guide-outfitter. AS § 08.54.620(b)(2); AS § 08.54.630(b)(2). May conduct guide services if supervised by registered guide-outfitter. AS § 08.54.620(b)(3). May be licensed in multiple game management units under different guide-outfitters. See 12 AAC 75.120(c).</p> <p>Sport Fishing guides and businesses are registered. 5 AAC 75.085. Same.</p>	<p>Same.</p> <p>It does not appear that the guide has to be employed by a business</p>
South Dakota	<p>A registration or license is not required to be an outfitter or guide in South Dakota. https://gfp.sd.gov/faq/.</p> <p>Pheasant and White-tail – family farms.</p>	<p>N/A Same</p> <p>Allow in rule a loan of a licensed guide or the practice is to allow a 20-day temporary for an online application.</p>

- c. **If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:**

The Idaho regulatory program is more stringent than all of the comparison jurisdictions based on the grant to an outfitting licensee of an exclusive interest to outfitting in a specific geographic area. This creates an economic interest that is not needed to serve the regulatory purpose of the rules.

The big game hunting tag allocation to outfitters is an outgrowth of that nonregulatory aspect of the Board's rules.

These aspects of the Board's regulatory authority do not relate to the core responsibility of regulatory Boards, to protect the health safety and welfare of the public. It may have had origins in the goal of protecting the state's fish and game resources. However, that responsibility is more appropriately vested in a resource management agency.

Those regulatory aspects of the Board's rules that relate to the protection of the health safety and welfare of the public are generally within the range of the regulatory parameters of the comparison jurisdictions.

In addition, Idaho licenses a far broader breadth of activities than any of the comparator jurisdictions, with the exception of Oregon.

4. What evidence is there that the rule, as proposed, will solve the problem?

The licensing of outfitters and guides does appear to serve the purpose of protecting the health safety and welfare of the citizens of the state from dangers arising from wilderness outdoor experiences, firearms, and hazardous activities beyond the reach of traditional emergency aid resources.

In addition, the licensing and disciplinary powers of the Board appear to be effective in identifying and limiting the activities of applicants and licensees that have been involved in criminal activity that has a reasonable relationship with the profession and violations of state fish and game laws.

5. What is the anticipated impact of the proposed rule on various stakeholders?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	No impact on the state general fund.
Impact to Idaho businesses, with special consideration for small businesses	Minimal impact of licensure costs passed on to those that choose to practice in the profession.
Impact to any local government in Idaho	No impact to local government.

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
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Net change in word count	5800 less words.
Net change in restrictive word count	No restrictive word in original rules.