

Idaho Department of Lands

IDAPA 20.02.01. – Rules Pertaining to the Idaho Forest Practices Act
Docket No. 20-0201-1301

Negotiated Rulemaking Summary

Members of the public participated in the Department’s negotiated rulemaking process by attending the meetings and submitting written comments.

Key information considered by the Department included applicable state statute, related administrative rules, suggestions provided by the Department’s managing foresters, feedback received from Idaho Forest Practices Act Advisory Committee (FPAAC) members, and information provided by the public.

The following conclusions were reached as a result of the negotiated rulemaking process.

Point of Discussion	Conclusions
<p>1. Because the proposed subparagraph 030.07.e.ii. (the new Class I shade rule) introduces the concept of forest types, there needs to be an added rule subsection inserted into the Definitions section (rule section 010.) defining this concept.</p>	<p>1. A definition of Forest Type will be inserted as rule subsection 010.24. and the verbiage will read, “Forest Type. <i>Five forest types in Idaho are defined as follows:</i></p> <ul style="list-style-type: none">• <i>North Idaho grand fir/western redcedar (NIGF): moist to wet interior forests with western redcedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater and Lochsa Rivers.</i>• <i>Central Idaho grand fir/western redcedar (CIGF): productive conifer forests found in forests between the Lochsa River Basin and the Salmon River, characterized by stands having western redcedar and grand fir as climax species, with a mixed-conifer overstory increasingly comprised of ponderosa pine, Douglas-fir, and larch in the river breaks canyon-lands. Stocking levels are generally lower than that of the NIGF stands.</i>• <i>South Idaho grand fir (SIGF): mixed-conifer forests, dominated by ponderosa pine and Douglas-fir, found south of the Salmon River with grand fir and occasionally western redcedar being the stand climax species.</i>• <i>Western hemlock-subalpine fir (WH): higher-elevation, moist, cool interior forests dominated by western hemlock, mountain hemlock, and/or subalpine fir.</i>• <i>Douglas-fir-ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas-fir, generally found in lower-elevation, dry sites.”</i>

<p>2. Because the proposed subparagraph 030.07.e.ii. (the new Class I shade rule) introduces the concept of relative stocking, there needs to be an added rule subsection inserted into the Definitions section (rule section 010.) defining this concept.</p>	<p>2. A definition of Relative Stocking will be inserted as rule subsection 010.47. and the verbiage will read, <i>“Relative Stocking. A measure of site occupancy calculated as a ratio comparison of actual stand density to the biological maximum density for a given forest type. This ratio, expressed as a percentage, shows the extent to which trees utilize a plot of forestland.”</i></p>
<p>3. Because of the change to tree-retention requirements adjacent to Class II streams, FPAAC members approved the removal of the 5-ft. SPZ buffer requirement in the definition of a Class II Stream Protection Zone (currently, rule paragraph 010.59.d.). All Class II streams will require a 30-ft.-wide SPZ.</p>	<p>3. The definition of a Class II Stream Protection Zone, rule paragraph 010.59.d. (being moved down to 010.60.d. in the proposed rule), will be amended to read, <i>“Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks.”</i></p>
<p>4. Potential discrepancy between rule subparagraph 030.07.e.i. and proposed subparagraphs 030.07.e.ii. and 030.07.e.iii.(the new Class I and Class II shade rule) regarding the minimum density of hardwoods required next to a stream.</p>	<p>4. Rule verbiage in subparagraph 030.07.e.i. will be amended to read, <i>“Leave shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream.”</i> Adjacent to Class I streams, the minimum retained density of hardwoods and conifers, greater than 4 inches DBH, will be 60 Relative Stocking as defined in the proposed subparagraph 030.07.e.ii.</p>
<p>5. There is concern over the complexity of inspecting and regulating harvesting operations in which a landowner may choose to alternate the implementation of Option 1 and Option 2 within the Class I SPZ of the same harvesting unit.</p>	<p>5. One sentence will be added to the current proposed rule verbiage of subparagraph 030.07.e.ii. (the new Class I shade rule). This sentence, inserted immediately after the descriptions of Option 1 and Option 2 will read, <i>“Only one option may be implemented within the stream protection zones of a harvesting unit covered by a single notification.”</i></p>
<p>6. The verbiage in proposed subparagraph 030.07.e.iii. (the new Class II shade rule) does not allow for precommercial thinning in Class II Stream Protection Zones (SPZs), a silviculturally needed operation that has been allowed to a certain extent under the current Class II streamside-retention rule.</p>	<p>6. When FPAAC members voted to amend subparagraph 030.07.e.iii. to the current proposed verbiage, some of the members expressed concern later that they did not intend for this to prohibit all precommercial thinning in the Class II SPZs; they intended this to be the required retained minimum density following <i>harvesting</i> operations. To keep the intent of this FPAAC-modified rule, and to allow a specified level of precommercial thinning adjacent to Class II streams, the verbiage in proposed subparagraph 030.07.e.iii. will be amended to read, <i>“Adjacent to all Class II streams, standing trees will be retained within thirty (30) feet on each side of the stream’s ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04. Exceptions shall only be made for the felling of stems less than 8 inches DBH necessary to comply with logging-safety standards (Idaho Minimum Safety Standards and Practices for Logging—Falling and Bucking, IDAPA</i></p>

	<p>17.08.08). Reasonable and prudent efforts will be made to protect the filtering and shade effects of the streamside vegetation during hazard management activities following harvest.</p>
<p>7. Specific verbiage ensuring variances needs to be inserted into the proposed subparagraph 030.07.e.ii. (the new Class I shade rule).</p>	<p>7. The requirements and criteria for obtaining a variance are clearly defined in rule paragraph 020.01.a. These criteria apply to all Idaho Forest Practices Act rule sections. There is no need to re-write this rule paragraph a second time in any of the other rule sections. As long as the tree-retention minimum standards of the proposed shade rule are met, and ground-based equipment is kept out of the 75-ft.-wide equipment-exclusion zone adjacent to the stream, a variance most likely will not be required to actively manage within the Stream Protection Zone.</p>
<p>8. In both options defined in proposed subparagraph 030.07.e.ii. (the new Class I shade rule), some of the public comments expressed concern over the lack of connection between the “inner” and “outer” zones of the Stream Protection Zone (SPZ) in terms of the minimum tree-retention requirements. The concern is that a landowner who naturally, or as a result of previous harvesting, has an inner zone density of less than 60 relative stocking, while he/she would not be allowed to harvest in the inner zone, could then still harvest the outer zone down to the 30 (or 10) relative stocking minimum—and this could potentially reduce over-stream shade to less protective levels.</p>	<p>8. FPAAC members decided that each zone should be treated independently, that is, harvesting may be allowed in one SPZ zone, but not the other. This decision was informed by extensive shade-modeling outcomes disciplined by real field data, and feedback from regulators and landowners. The FPAAC committee decision was also based on the following scientific, practical, and socio-political rationale:</p> <ul style="list-style-type: none"> A. Field observations of landowner treatments in Class I SPZs strongly indicate that very little tree removal is presently occurring. The proposed shade rule requires more tree retention than the current rule, and requires minimum stocking levels to be met before harvesting, so there is no reason to believe the rule change will increase harvesting in SPZs. The committee sees no value in further limiting or discouraging sound forest management next to streams by requiring that both zones exceed stocking requirements before either can be treated. B. Linking the two zones and thereby eliminating potential harvest altogether is not acceptable to landowners from an economic (value recovery) or desired-future-forest condition perspective. C. Modeling strongly indicates that effective shade levels related to canopy removal in the SPZ remain relatively unaffected until relative stocking in the outer zones of the SPZ drops below 25. IDEQ quadrennial-audit, water-quality field data also show effective shade levels remain relatively flat and unaffected by streamside relative

	<p>stocking levels above 30. As the rule is constructed, only option B, in the outer zone, allows relative stocking below 30. It is well documented technically that the trees in the outer zone (further than 50 feet away from the stream-channel edge) contribute very little shade during the warmest part of the day (with high sun angle). Therefore, incremental shade loss under any arrangement of trees is low.</p> <p>D. Limiting harvest by linking the two zones can only increase the hazards of disease, insect and fire by creating or perpetuating significantly over-stocked conditions. Allowing some management within the SPZ can help improve forest health and desired future forest conditions that benefit long-term shade and large wood recruitment.</p> <p>E. The extensive modeling that was done to develop this proposed rule is conservative and likely over-estimates shade loss. The modeling does not consider the role of topography (large-scale features such as hillsides or small-scale features such as streambanks), small trees, shrubs and grasses or stream orientation.</p> <p>F. Stand inventory data show that most of the stream-adjacent riparian stands where the relative stocking is less than 60 are not more lightly stocked due to past harvesting, but to naturally occurring conditions, and therefore represent baseline shade conditions that will not appreciably change with the possible independent management of the outer zone of the SPZ.</p> <p>G. If an “inner” zone of an SPZ next to a Class I stream is less than 60 relative stocking due to harvesting, then it will be left alone, and no management can occur in the inner zone until the riparian stand recovers and relative stocking exceeds 60.</p> <p>H. The effect of this new rule will be evaluated in the field by IDL and IDEQ as part of their monitoring obligations. These data will inform future improvements in the rule if needed.</p>
<p>9. There is a suggestion that an easier-to-implement, no-harvest buffer option should be added to proposed subparagraph 030.07.e.ii. (the new Class I shade rule).</p>	<p>9. Within either option of the proposed shade rule, if the inner zones don't have at least 60 relative stocking, these stream-adjacent zones will, in effect, be left alone. Leaving these inner zones un-harvested is always an option within the standards expressed in the</p>

	proposed shade rule.
10. Private, nonindustrial forest landowners want assurance that adequate IDL assistance (Private Forestry Specialist staffing) will be available to provide field assistance in helping landowners understand the new shade rule, and also conducting pre-operational field inspections to advise landowners about SPZ-harvesting options and rule compliance. Included in this assistance is a need for a guidance document that provides the layman a clear explanation of the work required for rule compliance.	10. IDL Private Forestry Specialists have all participated in an in-the-field training session to equip them to interact more effectively with landowners to assist them in understanding and implementing the new shade rule—including assistance to help landowners in calculating their existing streamside tree density levels. The IDL Forest Practices Program has also worked collaboratively with foresters to develop drafts of the rule guidance which will accompany this new shade rule, explaining clearly how to inventory riparian stands and calculate relative stocking. In addition, IDL has submitted a decision-unit (budget) request for state fiscal year 2015 to ask for three new Private Forestry Specialist positions to assist with the increased landowner-assistance requests which will come with the passage of this rule and rising markets for private timber.
11. Private, nonindustrial forest landowners have concerns that this may restrict their ability to manage all of their forestlands.	11. This proposed shade rule provides two options for potential active management within the Stream Protection Zone (see details of tree-retention standards and rationale in the response to <i>Point of Discussion #8</i> , above).
12. Private, nonindustrial forest landowners wish to advise the State Forester, as well as the State Board of Land Commissioners, of the need for all ownerships along fish-bearing streams to contribute to the attainment of water quality standards necessary to support healthy fish populations, so that the liability and responsibility for complying with these protective standards is not solely put on the shoulders of those conducting forest practices.	12. This issue will be added as a meeting agenda item and brought forward to the State Forester and FPAAC committee members at the next regular FPAAC meeting.

No unresolved issues were raised during the negotiated Rulemaking process.

The negotiated rulemaking record, which includes rule drafts, written public comments, and documents distributed during the negotiated rulemaking process, is available at http://www.idl.idaho.gov/adminrule/forest_practices_rulemaking.html .

At the conclusion of the negotiated rulemaking process, the Department is in the process of formatting the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin.