



MOUNTAIN STATES LEGAL  
FOUNDATION  
FREE COUNTRY. FREE PEOPLE.

July 11, 2025

VIA E-MAIL

Director Dustin Miller  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
Boise, Idaho 83702  
dmiller@idl.idaho.gov

Governor Brad Little, President  
State Board of Land Commissioners  
c/o Office of the Governor  
PO Box 83720  
Boise, Idaho 83720  
governor@gov.idaho.gov

Re: *Petition to Initiate Rulemaking for I.C. § 38-1304(1)(f)*

Dear Director Miller and Governor Little:

I am an attorney with Mountain States Legal Foundation, which represents the Idaho Farm Bureau Federation (IFBF). On April 22, 2025, IFBF petitioned the Idaho Department of Lands to initiate rulemaking pursuant to I.C. § 38-1304(1)(f). That provision—enacted as part of the Idaho Forest Practices Act—requires the Idaho Board of Land Commissioners to adopt rules governing forest practices on forest land. The statute states unequivocally that the Board “*shall* adopt rules”—not *may*, and not when another, *advisory*, committee greenlights such rules.

We are writing now because Director Miller’s July 2 response to IFBF’s prior petition—which unfortunately deflected the need to adopt the required rules—is not a valid exercise of discretion. It is a brush-off. The Department and the Board have tried to punt a clear statutory obligation by citing an advisory body (the Forest Practices Advisory Committee) that has no legal authority to function as a gatekeeper to approve or deny rulemaking. To reinforce the point, the Forest Practices Act requires the Board to do the rulemaking. And Governor Little’s own Executive Order 2025-04—which instructs state regulators to make forests healthy again—commits Idaho to “enthusiastically support” President Trump’s national forest management priorities and directs the Department to work with the U.S. Forest Service “to expedite active forest management and mitigate the risk of catastrophic wildfires.” Refusing to implement I.C. § 38-1304(1)(f) undermines that commitment and leaves Idaho communities increasingly vulnerable. It is further necessary to move forward as expeditiously as possible to show a clear record of conformity to Idaho’s laws and the Governor’s Executive Order, so that as things change over the years there is a record of compliance and precedent has been set.

While our client understands that the FPAC may provide “technical advice” under I.C. § 38-1305, it is the Board—not FPAC—that bears the legal duty to adopt rules under I.C. § 38-1304. As you are of course aware, no rules have ever been adopted under subsection (f), despite the statute’s clear mandate, and despite decades of worsening wildfire conditions across Idaho’s forestlands. There is no valid defense to this failure to act in accordance with law.

This is not an academic concern. Thousands of acres of dead and dying timber, left unmanaged, are fueling ever-larger wildfires that threaten Idahoans’ homes, businesses, and livelihoods. Your delay increases the risk that each next fire season will bring not only destruction, but costly litigation as well. IFBF’s petition was not radical. It spoke to precisely what the statute demands. Nor is it inconsistent with Idaho’s constitutional balance of powers. It is well within Idaho’s sovereign police powers to set safety rules for forest lands and to enforce those standards where lives and property are at stake. If you are concerned about objections from the federal government regarding rules that have never even been proposed, those are objections that can be raised as part of the deliberative process of rulemaking. But they are not reasons to ignore your legal duty to embark on the rulemaking process.

Moreover, while the Idaho Administrative Procedure Act requires agencies to respond to rulemaking petitions within 28 days, *see* I.C. § 67-5230, the Department waited more than two months to respond to IFBF’s petition. That delay only compounds the legal deficiency and underscores the need for immediate corrective action. We expect you to address IFBF’s petition at your meeting on **Tuesday, July 15, 2025**. We further request and expect that the Idaho Board of Land Commissioners with the Department initiate rulemaking under I.C. § 38-1304(1)(f) no later than July 23, 2025. Should you continue to withhold action, IFBF is prepared to pursue all available remedies, including a petition for judicial review under the Idaho APA, to compel your performance of this critical and non-discretionary legal duty.

We remain open to resolving this matter without litigation, but the clock is ticking. Please respond to me in writing no later than Wednesday, July 23, 2025.

Thank you,



---

Ivan L. London  
Mountain States Legal Foundation  
2596 South Lewis Way  
Lakewood, CO 80227  
ilondon@mslegal.org

cc: Amber Mitchell, amitchell@idl.idaho.gov  
Jamie Neill, jamie.neill@gov.idaho.gov  
Bryan Searle  
Russ Hendricks