

Land Board Presentation 6/16/25

Shall the Land Board direct the Department to enter into rule promulgation related to Idaho Code 38-1304(1)(f).

Governor Little and Land Board Members –

For the record my name is Archie Gray, I am the Chief of the Forestry Assistance Bureau for the Idaho Department of Lands. Thank you for the opportunity to present on the regular agenda item that is the Idaho Farm Bureau Federation petition to have the Department enter rule promulgation under Idaho Code §38-1304(1)(f).

Subparagraph (f) was added in 1991 and appears to direct the State Board of Land Commissioners to adopt rules to provide for the timely salvage logging on all forest lands then specifically exempts private lands. The text from the subparagraph is found in the background section of the regular agenda item memo.

On April 22, 2025, the Farm Bureau Federation sent a letter petitioning the Department to enter rule promulgation specific to this section. The letter is included in your materials as attachment 1.

On July 2, 2025, the Department advised Farm Bureau that the appropriate starting point for Forest Practices related rules is through the Forest Practices Advisory Committee or FPAC which was established as an advisory committee to the board and the Department within the Forest Practices Act. FPAC is composed of stakeholders and experts in the fields of forest management and water quality. The Department's response letter is attachment 2.

On July 11, 2025, legal counsel for the Farm Bureau submitted a letter requesting the Land Board to take immediate action on the Farm Bureau's petition for rulemaking. This letter is attachment 3.

A special FPAC meeting was held on August 27 at which Farm Bureau presented their case for entering rule promulgation. Farm Bureau focused on the risk that federal lands that are in poor forest health pose to adjacent private lands and specifically their members. A subcommittee was formed at this meeting and tasked with exploring the issue.

The subcommittee was made up of two voting members, ex officio members, representatives of Farm Bureau and concerned audience members who were considered experts in the broad field of forestry. Two IDL employees also participated as subject matter experts and organizers.

Two subcommittee meetings were held virtually on October 6th and November 7th to discuss the matter. While the subcommittee was in consensus that there are indeed substantial forest health issues on federal lands within Idaho, a consensus could not be reached on whether Forest Practices rules were an appropriate vehicle to encourage or require federal land management agencies to act. Many other potential options were discussed in addition to the proposed rulemaking option.

The subcommittee reported back to FPAC at their regularly scheduled meeting on November 12, with a short list of options for the committee to consider. Following discussion of the options, FPAC members voted unanimously (8-0) with one member being absent to make two recommendations to the Land Board.

Ultimately, the FPAC members felt that the rules do not preclude a willing and able landowner from conducting a salvage harvest essentially meeting the statute's requirement to develop rules to Provide for the timely salvage of at-risk timber. The members also felt that the Shared Stewardship and Good Neighbor Authority programs are already in place and are having an impact through their collaborative approach.

While conducting follow-up research, the Department found a legal opinion from 1992 in which Steve Schuster with the Attorney General's office provided an opinion regarding the state's ability to implement effective rules under 38-1304(1)(f). This opinion is included in your materials as Attachment 4. Based upon this opinion we believe that rules under this section would be unenforceable and even within the opinion it is noted that participation in the planning process is more likely to provide results.

The first recommendation approved by FPAC which is attachment 5, is that the Land Board should encourage the state to continue to address forest health risks on federal and adjoining lands through the collaborative approach of Shared Stewardship and Good Neighbor Authority.

The second recommendation found in attachment 6, is "that IDL not enter rule promulgation related to 38-1304(1)(f) because there are already sufficient rules in place to allow for the timely application of salvage harvests by willing and able landowners. Also, the statute already directs large forest land managers to undertake salvage where feasible, making a rule redundant and subservient."

In closing it should be noted that the Forest Practices rules promulgated under the Forest Practices Act are not meant to compel a forest landowner to undertake a forest practice but rather set the rules by which that practice should be conducted.

I will stand for any questions.