

Summary of Comments Received on IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act

	Rule Section	Comment	Response
1	Shade Rule	The rule was supported by all major forest landowner groups.	IDL agrees and committed to an adaptive rulemaking process that will meet Idaho Department of Environmental Quality (DEQ) water quality requirements while also providing riparian area forest management flexibility.
2	Shade Rule	The rule is effective at protecting and maintaining the water quality of Class I fish-bearing streams.	The DEQ Shade Effectiveness Study results will inform the validity of this statement.
3	Shade Rule	Idaho Conservation League (ICL), the Nez Perce Tribe, and the Environmental Protection Agency (EPA) have expressed concerns the current rule may not sufficiently protect water quality.	The goal of the 2014 shade requirement modification was to ensure that on average throughout Idaho no more than 10% reduction of shade would result from harvesting under the Class I Stream Protection Zone Relative Stocking harvest-options.
4	Shade Rule	Landowners can more efficiently and effectively manage forestlands under the current shade rule vs the past shade rule.	IDL agrees.
5	Shade Rule	The new shade rule is scientifically defensible and more enforceable.	IDL agrees.
6	Shade Rule	Premature to modify the Shade Rule prior to the results of the Shade Effectiveness Study.	IDL agrees.
7	Shade Rule	Support reauthorization of the current Shade Rule with no changes.	IDL agrees.
8	Shade Rule	ICL is concerned revisions to the shade rule will impede collaborative efforts to reduce hazardous fuels and improve forest health under Shared Stewardship.	Revision of any rule should not impede forest practices that meet or exceed the minimum standards required under IDAPA 20.02.01.

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9	Shade Rule	Shade retention improvement is critical to meeting water quality standards for temperature.	EPA and Idaho DEQ have indicated that retaining shade over fish-bearing streams minimizes temperature increases that would degrade water quality for aquatic habitat.
10	Shade Rule	The rule premise is flawed because temperature is not directly considered.	Shade is a well-established proxy for temperature.
11	Shade Rule	Domestic use should be removed from the Class I Stream definition, because there is not a water quality temperature requirement for domestic use.	IDL is investigating water quality requirements for domestic use and other states' regulations regarding domestic use and forest practices.
12	Shade Rule	The rule is difficult and costly to implement.	The metrics for the rule are less difficult to determine and IDL offers implementation assistance to landowners. IDL added three Private Forestry Specialist positions at the time of rule passage to assist forest landowners.
13	Shade Rule	Landowners must hire specialized knowledge to implement the rule.	IDL offers implementation assistance to landowners free of charge and has provided hundreds of such assists since the rule was codified.
14	Shade Rule	The IDL added three additional Private Forestry Specialists to assist landowners.	This is correct.
15	Shade Rule	The rule is a disincentive to forest management and will result in conversion of land-use to use that is not subject to the shade rule.	The rule has resulted in more responsible management than in the past.
16	Shade Rule	Agricultural producers and developers are not required to provide shade for Class I streams.	IDL does not have regulatory authority for non-forest related practices in Idaho.
17	Shade Rule	The rule is based on a model and not actual conditions.	The rule is based on Idaho timber stand data and forestry community accepted tools for estimating shade from forest canopy.

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18	Shade Rule	The rule should take into account the stream width.	Geo-morphology and hydrology for forest streams is very complex and adding additional metrics to the rule would make compliance for landowners extremely challenging.
19	Shade Rule	The rule prevents managing for forest health.	IDL can assist landowners to develop a site-specific, riparian, management plan to address unique situations arising from insect, disease or other tree damage issues.
20	Shade Rule	The rule should take into account hardwoods that provide shade.	The rule counts all trees with diameter at breast height equal to or greater than 4 inches regardless of species.
21	Shade Rule	The shade rule is unconstitutional.	The State of Idaho Attorney General's Office has prepared an analysis confirming constitutionality of the rule.
22	Shade Rule	There is no clear authorization in the Forest Practices Act for the shade rule	Idaho Code § 38-1304(1)(a) provides authorization for the protection of fish habitat.
23	Shade Rule	Changes in the shade rule are barred by the act itself.	Idaho Code § 38-1305(2)(a) provides for a Forest Practices Advisory Committee to assist IDL and the Land Board in rule promulgation.
24	Shade Rule	The rule is a taking of private property/landowner compensation is required.	The State of Idaho Attorney General's Office has prepared an analysis to address comment. Their overall conclusion is the Shade Rule does not constitute a taking under the Idaho Constitution.
25	Shade Rule	Enforcing the shade rule on private landowners provides only an incremental benefit.	Idaho Code § 38-1304(1)(a) provides for the protection of fish habitat, regardless of ownership.
26	Shade Rule	Small landowners are proportionally affected more than large landowners.	Large landowners often have more acreage in the SPZ, higher harvest operating costs and costs for infrastructure development.
27	Shade Rule	None of us think there should be no riparian management rules at all.	This supports the proposed rule. If the Shade Effectiveness Study shows need for further shade rule amendment, IDL will work with FPAC to develop appropriate rule changes.

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28	General	Landowners can do a site-specific plan, and utilize the variance process within the rules, for unique situations.	This is correct.
29	General	Other portions of the Forest Practices Act indicate the act is purely voluntary and cooperative.	Idaho Code § 38-1304(1) provides for the adoption of rules that are minimum standards.
30	General	The legislature clearly indicated flexibility in reforestation.	Idaho Code § 38-1312(1) indicates the act does not prevent the conversion in use of forest land, but does require compliance with the rules promulgated pursuant thereto.
31	General	The legislature intended to defer to private owner management decisions.	Idaho Code § 38-1304(1) provides for the adoption of rules that are minimum standards.