

From: [IFOA.FSP](#)
To: [Rule Making](#)
Subject: FW: Comment on Proposed Rule IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act
Date: Friday, August 16, 2019 5:39:27 PM
Attachments: [2019 - Shade rule comment.docx](#)
Importance: High

IDL: Please accept and record this testimony for the indicated Public Hearing (file copy attached). I am sending this email from seedlings@idahoforestowners.org because the State of Idaho will not accept emails from my regular address of: kirkdavid@hughes.net. Thank you, ~~~~Kirk David

**Public Hearing on Proposed Rule
IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act
(Class I Stream Protection “Shade” Rule)
Docket No. 20-0000-1900**

**Written copy of oral testimony given August 15, 2019
By G. Kirk David, private forest landowner
24010 N. McCoy Rd., Athol, ID 83801
(208) 683-3168 kirkdavid@hughes.net**

2012 - Meetings and work on this rule started.

In **2013** and **2014** – The reason most private family forest landowners agreed to go along with the negotiated rule was that a study of the *effectiveness* of the MODEL and the adaptive rule was promised to be reported back in 2 yrs.

Spring **2019** – As at all the FPAAC meetings since 2016, I again asked, “When will the study be finished?” The answer from IDL was “I don’t know”. *After* the announcement of a “temporary rule” comment period, I was told by the FPAAC Vice Chair – “It’ll be done this Fall”.

Forest owners are not here today in an attempt to delete the shade rule; rather, we are here to comment on it, find out more information about it, and work toward needed improvement of it.

SO: for the offered “opportunity to comment” on the rule – and to negotiate later, I have a few brief comments:

1. This rule’s compliance is based on a “model”, not on actual conditions. This may make it easy to administer, but makes it unfair to almost all.
2. One criterion is based on a stated water temperature needed for fish presence, which has definitely been proven invalid, but IDL/DEQ insist that this temperature metric cannot be changed. That is not true. Yes, it *can* be changed!
3. Actual in-stream temperature using a thermometer – both upstream and downstream, and before and after a harvest can *easily* and inexpensively be measured to determine actual conditions and results! Is this not simpler and less expensive than formulating and correctly interpreting a cumbersome, unreliable, one-size-fit-all “model”?
4. Width of each stream: The vast majority of family forest landowner Class I streams are much narrower than 10 feet wide! If the model can use 10’ width as a single metric, it could also be configured to use 5’, or 2’, thus much more accurately and fairly

determining the RS required for providing adequate shade on that size stream. A “tiered” rule (much like the proposed “smoke” rule) would much more fairly account for the impact of forest management activities and opportunity costs involved!

5. Another “tiered rule” consideration is for the percent of impact (to the total stream watershed area) contributed by the parcel size or harvest area. There are many other collateral in-stream temperature sources that affect the stream temperature than the immediate harvest area. Without trying to discover and quantify all of these, a consideration of the percentage of the upstream watershed vs. the subject parcel or harvest area would aid in equitably measuring the impact of a particular management activity on any changing condition of the stream.
6. In Class I or Class II streams, remove the Class I for domestic use only designations in regards to RS requirements! There are no temperature requirements for domestic use!
7. If **FISH** and their habitat are the reason for the shade rule and the shade rule *only* applies to Category 6 and 7 property categories conducting forest practices, the rule is another added **disincentive** of keeping the property in a natural resource base condition. Economic incentive to convert to agriculture, development, or any other current use category allows taking *all shade* away! There are NO shade rules for any other portions of a fish bearing streams! How does that help the fish?

Forest ownerships all have legitimate multiple objectives, including clean air, clean water, wildlife habitat, recreational opportunities, open (undeveloped) space, forest health vs. disease and insect outbreaks from overstocking, hazardous fuel build up, wildfire prevention, production of forest products, etc., etc., and not *just* fish habitat! Disastrous and unintended consequences are the sad result of short-sighted but conflicting rulings by the single-focus goals of well intended but “dueling” agencies! Perhaps there is more work to be done on that front?

Thank you to IDL and the Idaho Legislature for this opportunity to comment on a rule that needs more negotiated and adaptive work done to benefit all of Idaho’s citizens *and* it’s fish!~~~~G. Kirk David

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