

Idaho Forest Practices Administrative Rules—Waiver and Variance Processes

IDL Draft Guidance

- A petitioner (Requestor), on behalf of themselves, a landowner or a forest-managing company/corporation, will request a waiver to a specific Forest Practices Act administrative rule that will apply to one ownership, possibly across multiple IDL Areas. The Requestor should be a landowner, have legal interest in the land ownership, or be a delegated representative by the landowner (e.g., a manager from a forest-industry company requests a waiver across all like sites on their company’s ownerships in Idaho). The Requestor should be responsible for implementing the proposed alternate practice and needs to commit to that as part of this waiver-request process.
- Once a waiver is requested, the PFS or Regulatory and Service Program Manager must determine if a **waiver** is most appropriate (applied to a broader scale, for specific situations on multiple operations on the same ownership) or a Forest Practices rule **variance** is the best process to follow. If the request is asking to vary a rule section in a specific operational area (e.g., using cable-assisted logging methods on specific stream-adjacent steep slopes on a single operational area, or re-using a road inside a specific stretch of SPZ), then a rule **variance** is the appropriate process for the Requestor to use.
- If a **variance** is the correct instrument to meet the Requestor’s needs, the variance request will be accepted, reviewed and processed by the IDL PFS and Area Manager as usual.
- **After** a waiver or variance is requested, the Requestor can ask for assistance from an IDL PFS and/or the Regulatory and Service Program Manager to acquire detailed procedures of how to accurately describe their request.
- The **waiver**-request process will start by the Requestor submitting a written request to waive a specific Forest Practices rule section—and the request should include why the waiver is being requested; which section, subsection, paragraph or subparagraph of rule will be waived; rationale to show “equal or better protection” of the alternative practice; and all IDL Areas in which the waiver will apply. By statute, waivers must meet specific criteria listed in §67-5230 Idaho Code (formerly referred to as Senate Bill 1283):
(<https://legislature.idaho.gov/statutesrules/idstat/Title67/T67CH52/SECT67-5230/>).
- This waiver request will be submitted to the IDL Regulatory and Service Program Manager. All **variance** requests will be accepted, reviewed and processed by the IDL PFS and Area Manager as usual.

- The PFS(s), in consultation with the IDL Regulatory and Service Program Manager, will review the request and ensure that the requested waiver, or alternative practice, is in compliance with the Forest Practices Act, the Forest Practices Act administrative rules, and §67-5230 Idaho Code.
 - *Cannot substitute for actual rulemaking (i.e., cannot be a broad-sweeping statewide waiver or “blanket” variance to a rule).*
 - *Cannot be a complete waiving of a rule that is in place to provide regulated protections.*
- If the Regulatory and Service Program Manager approves the request to waive part of a Forest Practices Act administrative rule, then final approval will be returned to the Requestor, in writing, within 14 days.
- If applicable, the IDL Regulatory and Service Program Manager will distribute the approved waiver to all IDL Supervisory Areas listed on the waiver request.
- Once the Requestor has received an approved waiver, when submitting future Notifications at other IDL Area Offices, the Requestor (or delegated representative) will show/send that IDL Area Office a copy of the approved waiver to apply to new Notifications.
- A specific scenario of a corporation requesting a waiver to implement the *Class I Streamside Tree Retention Revised Methodology* (https://www.idl.idaho.gov/wp-content/uploads/sites/116/2020/07/Class-I-Streamside-Tree-Retention-Revised-Methodology-Rationale-and-Explanation_2020-07-09.pdf) across all of its corporate-owned forestlands:
 - A forest-managing company manager or representative submits a Notification/Compliance and simultaneously asks to submit a waiver request to apply the *Class I Streamside Tree Retention Revised Methodology* in each IDL Supervisory Area in which the landowner owns or manages harvests (Pend Oreille Lake, Mica, St. Joe, Ponderosa).
 - The Requestor is informed to submit the waiver request, in writing, to the Regulatory and Service Program Manager via e-mail or USPS mail.
 - The Regulatory and Service Program Manager schedules a conversation between the affected PFSs to review the request.
 - Upon approval, the approved waiver request is sent from the IDL Regulatory and Service Program Manager to the Requestor and to the Area Managers, Administrative Assistants and PFSs at all four Supervisory Area Offices.
 - Upon receipt of written approval of the waiver request, the landowner/manager can perform this alternative practice on operations in any of the four Supervisory Areas.
- A waiver should not be used to request a wide-sweeping exemption to any Forest Practices Act administrative rule. Justification for any alternate process must be provided.