

# STATE BOARD OF LAND COMMISSIONERS

February 16, 2021

Regular Agenda

## Subject

Negotiated rulemaking for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*

## Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*?

## Background

The Idaho Department of Lands (Department) administers the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code), which sets standards for logging, road building, reforestation, streamside protection, and other forest activities.

The *Rules Pertaining to the Idaho Forest Practices Act* set minimum standards to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, water resources, wildlife, and aquatic habitat. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session.

The Idaho Forest Practices Advisory Committee (FPAC) provides technical assistance to the Land Board, in cooperation with the Department, in matters relating to the Idaho Forest Practices Act and the rules promulgated thereunder. FPAC is composed of nine voting members from across the state of Idaho that represent family forest owners, industrial forest owners, logging operators, general forest practitioners, and fisheries biology. There are also ex officio members from other state agencies and technical specialties that advise the Department.

In 2013, FPAC recommended that the Department begin the rule promulgation process to implement changes to stream protection rules, specifically the new Shade Rule. That rule was derived from years of work to develop science-based requirements for retention of shade (trees) adjacent to Class I streams. The rule was implemented in 2014 with arrangements to follow implementation with a study of the effectiveness of the rule.

The Department worked with the Idaho Department of Environmental Quality (DEQ) and the University of Idaho to implement a Shade Effectiveness study to compare the modeled and measured (actual) changes in shade when applying the two Shade Rule options across different forest types. In January 2020, *The Effectiveness of Idaho's Class I Stream Shade Rule: Analysis of Before – After, Control – Impact Effective Shade Data* was published. The study found that the rule, when applied properly, did in fact limit shade losses from timber

harvesting in most cases. However, the rule is considered by many to be too complicated and difficult to implement.

During 2020, DEQ conducted its quadrennial audit titled *Idaho 2020 Interagency Forest Practices Water Quality Audit*. During this audit and three years of monitoring, IDL and DEQ staff visited sites across the state to evaluate forest practices rule implementation and effectiveness. As part of the audit, the Shade Rule was given special emphasis. With the study results, operator input, and observations made during these audits, a simpler way to write the rule to achieve the same results was realized. When the idea of the simplified Shade Rule was presented to FPAC, the committee formed a task force to develop specific language. The task force developed new rule language that provides very similar protection but is much easier to understand and implement.

## Discussion

In December 2020, FPAC voted to approve preliminary language for a simplified Shade Rule. The language is an attempt to take lessons learned from the study and audit to update the rule. The objective is to provide management options to landowners while still affording appropriate protections to stream shade and large organic debris recruitment.

FPAC also identified a need to update rules specific to the use of ground-based equipment on steep slopes. The technology used in the industry has changed; machinery is now being used on steep slopes while tethered to another machine or anchor point with a winch to maintain tension. This traction-assistance allows the machine to operate safely with reduced soil disturbance. Existing rule language does not allow for the use of this new family of machines, and new rule language is needed to accommodate their use.

Given the opportunity to open rule promulgation to achieve the above objectives and in accordance with the Governor's Executive Order 2020-01, Zero-Based Regulation, FPAC has also recommended removing some unnecessary rule language and amending other rules to reduce verbiage and improve readability.

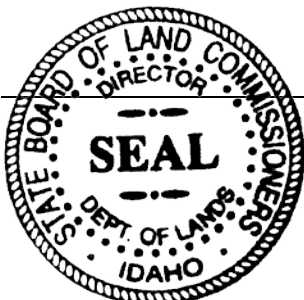
A proposed timeline for the rulemaking process is provided in Attachment 1.

## Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*.

## Board Action

A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.



## **Attachments**

1. Draft Rulemaking Timeline



## Draft Rulemaking Timeline

IDAPA 20.02.01

### Rules Pertaining to the Idaho Forest Practices Act

December 17, 2020	Forest Practices Advisory Committee (FPAC) recommends rulemaking
February 16, 2021	Approval from Land Board to start negotiated rulemaking (regular agenda)
March 5, 2021	Last day to submit <i>Notice of Intent to Promulgate Rules</i> to the Office of the Administrative Rules Coordinator (OARC) for publication in April
March 2021	Post information on IDL website about this rulemaking
April 7, 2021	<i>Notice of Intent to Promulgate Rules</i> publishes in the Idaho Administrative Bulletin; comment period opens
April – June	Hold at least 3 negotiated rulemaking public meetings (dates and locations TBD)
June 7, 2021	End of comment period for negotiated rulemaking
June or July - TBD	FPAC meets to approve any substantive changes being made to the rules
July 20, 2021	Present update on this rulemaking to the Land Board (information agenda)
August 16, 2021	Last day to submit proposed rule to DFM for the 2022 Legislature
August 30, 2021	Last day to submit <i>Notice of Proposed Rule</i> to OARC for the 2022 Legislature
October 6, 2021	Proposed rule publishes in the Idaho Administrative Bulletin and 21-day public comment period begins
October	Hold at least 2 public hearings (dates and locations TBD)
October 27, 2021	End of comment period on proposed rule
November - TBD	FPAC meets to approve any substantive changes made to proposed rule
November 16, 2021	Request approval from Land Board to adopt pending rule (regular agenda)
November 26, 2021	Last day to submit <i>Notice of Pending Rule</i> to OARC for publication in January 2022 Administrative Bulletin
	Pending rule to be reviewed during the 2022 legislative session

*Note:* All dates are subject to change.