2021 Rulemaking

IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act



Agenda April 14, 22, 29 and May 4, 2021

- > Welcome and Introductions
 - Participation guidance
 - Rulemaking
- Draft Negotiated Rule
 - Substantive recommendations
 - Miscellaneous recommendations
- Discussion
- Please send written comments on this Draft Negotiated Rule by May 7, 2021



Participation guidelines

- > Be respectful of others (raise hands, take turns)
- Keep comments brief and relevant
- Make specific wording suggestions
- > Be willing to negotiate
- Stay in scope
- > Avoid political discourse or personal attacks





What is Rulemaking?

- > We are modifying rules
- Rules have the force and effect of law
- Rules are created by agencies with input from stakeholders and reviewed by the Governor's Office and Legislature
- Negotiation makes for better rules
- Governed by the Administrative Procedure Act (Title 67, Chapter 52, Idaho Code)



Rulemaking Limitations

- > Authority for rules is in statute
- Rules must stay within statutory authority and legislative intent
- > These rules are mandated by Title 38, Chapter 13, Idaho Code
- Governor's Zero-Based Regulation Executive Order



Rulemaking Timeline



Negotiated Rulemaking

- Initial Comment Period April 7 to May 7, 2021
 - Notice of Intent to Promulgate Rules
 - Published in Administrative Bulletin Volume 21-4, April 7, 2021
- Draft rule text for negotiation posted on IDL website <u>https://www.idl.idaho.gov/rulemaking/docket-20-0201-2101/</u>
- Public meetings on April 14, 22, 29 and May 4
- > Additional drafts/meetings possible through June 7



Summary of Rule Change Recommendations

- Deletion of unused and redundant definitions
- Addition of definitions for Traction-Assisted Harvesting (Tethered Logging)
- Narrow stream definitions to aquatic life
- > Alignment of stream crossing rules
- Simplification of "Shade" rule
- Removal of outdated Stream Segments of Concern verbiage
- > Addition of road measures
 - Rocking of Class I stream crossings for construction or reconstruction
 - Armoring of new stream crossing culverts > 30" diameter
 - Clarification of sediment reduction measures



Deletion/Addition of Definitions in 010

010. DEFINITIONS.

Unless otherwise required by context as used in these rules <u>The terms</u> "Best Management <u>Practices (BMP)," "Department," "Forest Land," "Forest Practice," "Forest Regions,"</u> "Harvesting," "Landowner," "Operator," "Rules," "State," and "Timber Owner," have their meanings provided in Section 38-1303, Idaho Code. In addition to the definitions set forth in the Act, the following definitions apply to these rules: (10 14 75)(____)

17 redundant or unused removed2 added



010. DEFINITIONS

Traction-Assisted Harvesting

- <u>07. Cable Yarding. Techniques that use winch systems, secured to</u> stationary base machines, to transport fully or partially suspended logs or trees to landings. (____)
- <u>48.</u> <u>Traction-Assisted Harvesting.</u> Techniques that use winch systems to tether ground-based equipment to a stationary base for stabilizing and assisting steep-slope operation. Cable tension from the winch will be synchronized or automatically held constant. Enhanced traction for the equipment must minimize soil disturbance and risk of sediment delivery to streams. (____)



010. DEFINITIONS

030.03 Soil Protection

a. An operation that uses ground-based equipment shall<u>must</u> not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based equipment, except for tractionassisted harvesting equipment, shallmust not be used withwithout an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shallmust notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05.(4-4-13)().



Soil Protection 030.03.a

Aquatic Life Beneficial Use

- 60.47. Stream. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply applies to lakes. (7-1-96)(___)
- **a.** Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet. (11-7-86)(____)
- **b.** Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle principal value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)(____)



Stream Definitions 010.60.a. & b.

Aquatic Life Beneficial Use

• **d.** Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams a variance to this requirement may be requested. In no case shallwill this width be less than five (5) feet slope distance on each side of the ordinary high water marks. Operators must provide for soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment.

(7-1-96)()



Class II Stream Protection Zone Definition 010.60.d.

Aquatic Life Beneficial Use

> 040.02 Road Specifications and Plans

> g. Plan and install sS tream crossings, including fords, shall be minimum in number and planned and installed in compliance with the Stream Channel Protection Act, (Title 42, Chapter 38, Idaho Code), Subsection 030.07.b. and with the culvert sizing requirements of <u>Subsection</u> 040.02.e. Fords are an-acceptable stream crossing structures on small, shallow streams, with gradientsflat, less than four percent (4%) gradients. For fords: should cross the stream at right angles. Approaches shall be adequately cross-drained and rocked the road surface on each side of the stream for at least seventy-five (75) feet for Class I and at least thirty (30) feet for Class II streams; minimize sediment delivery to streams by. During times of salmonid spawning and egg incubation or to protect active domestic water diversions, use shall be limited limiting use to low water, dry, or frozen conditions; minimize and hauling or equipment crossing trips limited to minimize sediment delivery to streamsduring times of salmonid spawning and egg incubation, or to protect active domestic water diversions. (4-11-06)(

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040.02.g. Stream Crossings

030.07. Stream Protection

Operations that utilize ground-based equipment that result in logs being > b. skidded or forwarded in or through streams shall not be permitted. When streams must be crossed, Prior to conducting forest practice operations that cross streams using ground-based equipment, install adequate-temporary or permanent structures adequate to carry stream flow; skidding or forwarding directly in or through streams or fords is not permitted shall be installed. Minimize the number of stream crossings and make direct approaches to minimize ground disturbance in the SPZ. Cross the stream at right angles to its channel if at all possible. Remove all temporary crossings immediately after use and, where applicable, cross-drain the approaches. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code and Subsections 040.02.e and 040.02.g.). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. (4-4- $\frac{13}{()}$



030.07.b. Stream Crossings

Redesigned "Shade" Rule

- > Average RS 43 over entire SPZ segment
- > Retains the simplicity of optional 60' no-cut buffer
- > Provides more flexibility for selective harvest
- > Eliminates complicated two-option structure
- > Eliminates often conflicting forest types
- Confirmed to be protective by Shade Study



Redesigned "Shade" Rule Recommendation

e. Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

i. Leave shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. <u>Landowners are strongly encouraged</u> to leave all trees immediately adjacent to streams. (3-20-14)(____)

ii. <u>During commercial harvest within</u><u>Adjacent to all</u><u>Class I s</u><u>S</u>treams<u>Protection Zones</u>, to maintain and enhance shade and large woody debris recruitment, landowners must-comply-retain with theone of the two-following options defining-weighted tree retention count per one-hundred (100) linear feet of stream:. The Relative Stocking per acre (RS) referenced in the options is calculated according to the relative stocking contribution table in Subparagraph 030.07.e.ii._

1. fifty-seven (57) north of the Clearwater/Lochsa Rivers

2.forty-nine (49) between the Clearwater/Lochsa and Salmon Rivers

3. forty-one (41) south of the Salmon river

4.thirty-seven (37) in drier forests with Stream Protection Zones dominated by Douglas-fir and ponderosa pine.

At least four (4) of the above weighted tree count must be retained in the outer twenty-five feet (25') of the SPZ.

Calculate weighted tree count by multiplying the number of live conifers and hardwoods present in each diameter range by the weight below and then sum the results.

<u>DIAMETER RANGE</u> (INCHES)	<u>4-11.9"</u>	<u>12-19.9"</u>	<u>20-27.9"</u>	<u>28-35.9"</u>	<u>≥36"</u>
Weight	<u>1</u>	<u>3</u>	<u>5</u>	<u>8</u>	<u>11</u>



Class I Stream Protection 030.07.e.i, ii

Redesigned "Shade" Rule Recommendation

iii. Prior to and during harvest, cutting in any part of a given one hundred foot (100') SPZ segment is only allowed if the weighted tree count in the inner fifty feet (50') of that segment is above: thirty-three (33) north of the Clearwater/Lochsa Rivers, twenty-eight (28) between the Clearwater/Lochsa and Salmon Rivers, twenty-three (23) South of the Salmon River, and twenty-one (21) in drier forests with Stream Protection Zones dominated by Douglas-fir and ponderosa pine. Note that the combination of minimum values for the inner fifty feet (50') and outer twenty-five feet (25') do not meet the minimum for the SPZ segment; additional trees must be left in one or both areas to meet the rule. (____)



Class I Stream Protection 030.07.e.iii

Redesigned "Shade" Rule

- Removes independence of SPZ "zones"
- Averages minimum retention over the SPZ
- Solves the stream adjacent meadow issue
- Identifies the "trees" which must be left
- Is implemented by visual observation each 100' length of stream
- IDL intends to provide consideration for conditions adjacent to well-shaded, narrow streams



031. CUMULATIVE WATERSHED EFFECTS

- 03. Site-Specific BMP Implementation. <u>A Watershed Advisory</u> <u>Group is a formal group of citizens that provides the Idaho</u> <u>Department of Environmental Quality (DEQ) with local public</u> <u>input and guidance regarding specific watersheds during watershed</u> <u>analysis and BMP development. Approved CWE sS</u>ite-specific BMPs <u>developed by a Watershed Advisory Group</u> are encouraged and applied on a voluntary basis. <u>(7-1-98)(___)</u>
- O4. Site Specific BMPs on Former Stream Segments of Concern. Practices approved by the department from 1989 through 1995 under former stream segments of concern rules remain in effect until revised by a CWE analysis, at which point the CWE site-specific BMPs would be mandatory. (7-1-98)



Site-Specific BMPs 031.03. & 04.

040.02 Road Specifications and Plans

- e. <u>This The following</u> rule applies to <u>new culvert</u> installations, <u>of new culverts and re-or</u> reinstallations during road reconstructions or reinstallations caused by flood or other<u>or</u> because of catastrophic events. <u>Culverts used for tTemporary culvert</u> crossings are exempt from the fifty (50) year <u>peak flow</u> design requirement but must be removed immediately after they are no longer needed and before the springseasonal run-off-period. (4 5 00)(____)
- i. Culverts in installations on fish-bearing streams must provide for fish passage. (4 5-00)(___)
- ii. Design culverts for stream crossings to carry the fifty (50) year peak flow using department accepted engineering methods acceptable to the department or determine culvert size by using the culvert sizing tables below. Armor the inlet or use a flared inlet structure on thirty (30) inch or greater diameter culverts.
 The minimum diameter size culvert required for stream crossings shall not be less than allowed is eighteen (18) inches in diameter, with the exception of that area of the Snake River drainage upstream from the mouth of the Malad River, including the

Bear River basin, where the minimum size shall be fifteen (15) inches.



Road Specifications and Plans 040.02.e

040.03 Road Construction

- 03. Road Construction. Construct or reconstruct roads in a manner to prevent debris, overburden, and other material from entering streams. (4-5-00)
- a. <u>Construct r</u>Roads<u>shall be constructed</u> in compliance with the planning guidelines of Subsection 040.02. (7-1-96)(____)
- c. Where <u>sediments would enter streams</u>, <u>stabilize</u> exposed material (road surface, cut slopes, or-fill slopes, borrow pits, waste piles, etc.) is <u>potentially erodible</u>, and <u>where sediments would enter streams</u>, <u>stabilize</u> prior to <u>fall or springeasonal</u> runoff. <u>Install supplemental stabilization measures such as seed and mulch</u>, <u>slash mats</u>, or <u>rock. Rock the road surface through the entire SPZ over Class I stream crossings.by</u> <u>seeding</u>, <u>compacting</u>, <u>rocking</u>, <u>riprapping</u>, <u>benching</u>, <u>mulching or other suitable</u> <u>means</u>. (4-5-00)(___)

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Road Construction 040.03.a and c

040.03 Road Construction

 g. Construct cross drains and relief culverts to minimize erosion—of embankments. Installation of erosion control devices should be concurrent with road construction. Use riprap, vegetative matter, downspouts, and similar devices to minimize erosion of the fill. Install drainage structures or crossdrain incompleted roads which are subject to erosion prior to fall or springseasonal runoff. Install relief culverts with a minimum grade of one percent (1%). If effective forest floor filtration is not available within SPZs, install supplemental filtration at drainage structure outlets or additional drainage structures outside SPZs to prevent road surface erosion from entering streams. (4-5-00)()



Road Construction 040.03.g

040.04 Road Maintenance

- c. Active <u>forest</u> roads. <u>An active road is a forest road beingare</u> used for hauling forest products, rock and other road building materials. <u>Conduct t</u>The following maintenance <u>on activeshall be conducted on such</u> roads. (8-13-85)(____)
- iii. <u>Maintain t</u>The road surface <u>shall and postpone hauling during wet periods</u> be maintained as necessary to minimize erosion of the subgrade and to provide proper drainage. (8-13-85)(___)
- iv. <u>Apply road-surface stabilizing materials in a way that prevents their entry</u> <u>into streams.</u><u>Hauling shall be postponed during wet periods if necessary to</u> <u>minimize sediment delivery to streams.</u> (4-5-00)(___)
- v. During active maintenance, ensure road surfaces within SPZs are sufficiently stabilized. Install supplemental filtration at drainage structure outlets within SPZs if effective forest floor filtration is not available. If road surface stabilizing materials are used, apply them in such a manner as to prevent their entry into streams. (4-5-00)(___)

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Road Construction 040.04.c.iii, iv and v.

Miscellaneous Recommendations

- Clarification of verbiage
- Correction of grammar
 - Improper word choice
 - Passive to active voice
 - Basic sentence structure
 - OAR recommendation (must or will in place of shall)
- Correction of spelling
- Removal of redundant words or phrases



Questions & Discussion



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