

Zero-Based Regulation Prospective Analysis

Fill out entire form to the best of your ability, unless submitting a Notice to Negotiate only fill out 1, 2, and 5

Agency Name: Idaho Department of Lands

Rule Docket Number: 20-0201-2101

1. What is the specific legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Idaho Code Title 38, Chapter 13	Mandatory

2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?

The Zero-Based Regulatory framework offers the opportunity to eliminate redundancy, remove outdated requirements and improve readability of IDAPA 20.02.01. As part of this process, some updated improvements to the rules are recommended.

In 2014 the existing "Shade" rule was modified to be scientifically defensible based on more than a decade of monitoring and analysis. The modified rule's effectiveness was demonstrated by the Idaho Department of Environmental Quality (DEQ) in a three-year study which concluded in 2019. During this time, landowners have expressed frustration and dismay in on-the-ground compliance with the rule, because of its complexity.

Shade and large woody debris are important contributors to aquatic life habitat in Idaho streams. The Forest Practices rules are promulgated to support compliance with Idaho Water Quality Standards (IDAPA 58.01.02.100), maintained by DEQ, and the federal Clean Water Act. The Forest Practices Program, the Forest Practices Advisory Committee (FPAC) and DEQ have collaborated to develop a simpler way to meet "Shade" rule objectives through changes to the verbiage. This verbiage also includes changes that address situations where the present rule may not provide sufficient protection. This simplification will promote rule understanding and make compliance easier and less costly. The objective is to retain management options for landowners while still affording appropriate protections to stream shade and large organic debris recruitment.

Additionally, FPAC has proposed changes to a rule associated with steep-slope logging to accommodate new harvesting methods designed specifically for ground-based equipment on steep slopes. This change excludes the "tethered" logging equipment from certain restrictions near streams because of its reduced impact to soils, but retains the requirement for other ground-based systems. This traction-assistance allows the machine to operate safely on steep slopes while minimizing soil disturbance. Reduced incidence of injuries and improvements in harvest efficiency

have resulted from their use. Existing rule language does not allow for universal use of this new family of machines; modified rule language is needed to accommodate changing technology. This cannot be accomplished with non-regulatory measures.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law?

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
<p>33 U.S.C. §1251 et seq. (1972)</p>	<p>The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1972. Section 208 requires states to develop regulatory or non-regulatory programs to control nonpoint source (NPS) pollution. Section 319 of the CWA authorizes EPA to issue grants to states, tribes and territories to assist them in implementing management programs that have been approved by EPA. Section 319 basically requires each state to have an approved NPS assessment report in accordance with CWA Section 319(a) and have an approved NPS management program in accordance with CWA Section 319(b) to receive 319 federal funds.</p> <p>https://www.epa.gov/laws-regulations/summary-clean-water-act</p>	<p>It is not.</p> <p>Idaho's Nonpoint Source Management Plan is administered by Idaho DEQ and approved by EPA. The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Environmental Quality for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners.</p>

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	Title 222 & 173-201A WAC https://apps.leg.wa.gov/wac/default.aspx?cite=222 2	Washington is more stringent, has a larger, more complicated set of rules and operators must submit and use an approved operation plan.
Oregon	OR Forest Practices Act https://www.oregonlaws.org/ors/197.277	Oregon is more stringent, has a larger, more complicated set of rules and operators must submit and use an approved operation plan.
Nevada	NV Forest Practice Act of 1955 https://www.leg.state.nv.us/NRS/NRS-528.html	Idaho monitors compliance.
Utah	The Utah Forest Practices Act (FPA) is a state law which requires the registration of operators and notification by operators of intent to conduct forest practices. You can view the Forest Practices Act law on the Utah State Legislature page. Summary description of act: https://ffsl.utah.gov/forestry/utah-forest-practices-act/	BMP compliance is required in Idaho; Utah is voluntary. https://documents.deq.utah.gov/water-quality/watershed-protection/DWQ-2019-005049.pdf
Wyoming	The Wyoming State Forestry Division was officially formed in 1952 by the Legislature. Under State Statute the State Forester is mandated to “have direction of all forest interests and all matters pertaining to forestry within the jurisdiction of the State of Wyoming.” The Forestry Division fulfills this charge by providing three basic programs to the people of the state: State Trust Land Management, Fire Management, and Assistance Forestry. https://wsfd.wyo.gov/	BMP compliance is required in Idaho; Wyoming is voluntary. https://wsfd.wyo.gov/forest-management/bmp-s
Montana	Streamside Management Zone Law Montana Code 77-5-303 Standards for Forest Practices in Streamside Management Zones	All rules are mandatory in Idaho. BMP compliance in Montana is voluntary, but operators must follow the Streamside Management Zone Law.
Alaska	AK Forest Resources and Practices Act http://forestry.alaska.gov/forestpractices#act	Alaska is more stringent and performs compliance and effectiveness monitoring; also, an operations plan is required.
South Dakota	BMPs in EPA Approved NPS Management Plan	BMP compliance is voluntary in South Dakota but required in Idaho.

c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:

The Idaho Legislature enacted Title 38 Chapter 13 in response to the Federal Clean Water Act. Idaho Code § 38-1304 requires the State Board of Land Commissioners to adopt rules for forest regions establishing minimum standards for the conduct of forest practices on forest land. Utah, Wyoming and South Dakota do not have such a statutory requirement.

4. What evidence is there that the rule, as proposed, will solve the problem?

The Effectiveness of Idaho's Class I Stream Shade Rule: Analysis of Before-After, Control - Impact Effective Shade Data, Timothy E. Link, Timothy R. Johnson, Robert Keefe, and Ryer Becker, January 24, 2020

5. What is the anticipated impact of the proposed rule on various stakeholders? Include, how will you involve them in the negotiated rulemaking process?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	No impact. These rules are already in place and their administration is funded with current allocations of state General Fund and FPA Dedicated funds.
Impact to Idaho businesses, with special consideration for small businesses	The proposed change will make it easier for landowners to manage timber in riparian areas, realize value from that management and provide incentive to maintain forest health and resiliency.
Impact to any local government in Idaho	No impact anticipated. IDL will schedule a minimum of three public meetings for the negotiated rulemaking as well as meet with stakeholder groups that have expressed interest in the rule modification.

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	Reduced by 1,794 words (14.4%)
Net change in restrictive word count	Reduced by 83 words (45%)