



Idaho Department of Lands
Agency Guidance Document
Forestry Assistance Bureau
Coeur d'Alene Staff Office
(208) 769-1525
comments@idl.idaho.gov

Land Board Policies: Forestry Assistance

This agency guidance document is not a new law. This document is an interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Bureau Chief, Forestry Assistance

Contents

1. Forest Practices Act Assessment

Summary: Three percent (3%) assessment of the slash bond (from the private forest practice harvest) to be withheld for the purpose of supporting additional Forest Practices Act administration.

Attached:

July 10, 2001 approved memo

2. Forest Practices Act Administration Annual Assessment Rate for Forest Lands

Summary: The Board raised the Forest Practices Act annual assessment from \$0.10 to \$0.13 per acre, effective July 1, 2019.

Attached:

March 19, 2019 approved memo

3. Forest Practices Act Bond Required from Non-compliant Forest Practices Operators

Summary: The Board authorized the Department to require an operating bond from forest practices operators, as needed, who act in non-compliance with the Forest Practices Act rules as described in Idaho Code § 38-1306B.

Attached:

April 19, 2016 approved memo

STATE BOARD OF LAND COMMISSIONERS
July 10, 2001
Consent Agenda

SUBJECT

Forest Practices Act Rate Increase

AUTHORITY

Idaho Code 38-122; Idaho Code 38-134; State Board of Land Commissioner's May 10, 1994 direction

DISCUSSION

Administration of the Idaho Forest Practices Act (Idaho Code Title 38, Chapter 13) is funded 50% from General Fund, and 50% from the Forest Practices Act (FPA) dedicated fund.

The FPA dedicated fund is financed from a five-cent (\$0.05) per acre assessment (Idaho Code 38-134) on private forest lands and by an amount set by the State Board of Land Commissioners "...not to exceed three percent (3%) of the hazard reduction money or bond" (Idaho Code 38-122). The State Board of Land Commissioner's approved the collection of 2% on May 10, 1994.

Workloads and expenses have steadily increased since 1994. The Cumulative Watershed Effects (CWE) program was added. A new FPA Advisor position was approved for FY-2002 at Cataldo.

The FPA dedicated fund balance is currently approximately \$340,000. The five-cent (\$0.05) per acre assessment generates approximately \$200,000 each year, and the "hazard reduction money or bond" generates approximately \$100,000 each year. Yearly expenses to the FPA dedicated account exceed \$450,000. Assuming that revenues and expenditures remain constant, the FPA dedicated fund will be insolvent by FY-2004.

Increasing the hazard reduction money or bond withholding from 2% to 3% will generate an estimated additional \$50,000 per year.

RECOMMENDATION

Direct the Department to increase the hazard reduction money or bond withholding from 2% to 3.

BOARD ACTION

APPROVED JUL 10 2001



STATE BOARD OF LAND COMMISSIONERS

March 19, 2019
Consent Agenda

Subject

Forest Practices Act Annual Assessment Increase

Authority

Idaho Code § 38-134, Forest Practices Act Administration – Funding. The Idaho Forestry Act authorizes the State Board of Land Commissioners (Land Board) to set the amount of annual assessment private forest landowners pay for administration and enforcement of the Idaho Forest Practices Act (FPA).

Background

Consistent with Idaho Code § 38-1302, the Idaho Department of Lands (Department) administers the FPA and associated rules to ensure the continuous growing and harvesting of forest trees while protecting and maintaining Idaho's forest soil, water resources, wildlife and aquatic habitat. To administer the FPA, the Department relies on an annual assessment paid by private forest landowners and from ongoing general fund appropriations to cover personnel, operating, and equipment costs.

The last assessment increase was in 2003, when the FPA assessment was raised to the statutory cap of \$0.10 per acre per year. While funding has remained flat for over 15 years, expenses have increased substantially during this same period. The dedicated fund where landowner assessments are deposited will be depleted in the next fiscal year. The Department delayed increasing FPA assessment until the economy recovered by reducing staffing levels and spending down the FPA dedicated fund cash balance.

Since 2009, the economic recovery has led to a slow but steady upswing in market conditions and forest harvesting operations on all forestlands inspected under the FPA program. The number of FPA notifications and regulatory activities have doubled since 2009. An increase to the assessment rate is needed to sustain the Department's administration of the FPA program and to maintain services to all private forest landowners in Idaho.

Discussion

At the September 18, 2018 Land Board meeting, the Department received approval from the Land Board to proceed with legislation revising Idaho Code § 38-134, Forest Practices Act Administration – Funding, to increase the maximum Forest Practices assessment cap from \$0.10 an acre per year to \$0.20 an acre per year. While the statutory maximum for the assessment is set in Idaho Code, the effective rate is set by the Land Board. The 2019 Idaho

Legislature passed HB 44 which raised the cap to \$0.20 per acre per year and Governor Little signed the bill into law on February 26, 2019 (Attachment 1).

The Department is now requesting that the actual annual assessment rate be raised from \$0.10 per acre to \$0.13 per acre, effective July 1, 2019. The \$0.03 per acre assessment increase will generate an additional \$150,000 annually from private forest landowners and \$30,000 from state endowment forestlands (approximately 1 million acres of endowment forestland) for a total of \$180,000 to the FPA dedicated fund. As outlined in statute, and included in the Department's FY20 budget, a corresponding ongoing increase of \$177,000 will come from the state general fund. The combined dedicated fund and earnings reserve increases will slightly more than match the approved general fund increase, which the Department believes aligns with the direction provided in statute, and will sustain administration of the FPA regulatory program for the next 3-5 years.

The Department met with the Idaho Forest Owners Association, which represents family forest landowners, and with industrial forest landowner representatives to discuss the need for this rate increase. These forest landowner groups provided letters of support for both the assessment cap increase and the assessment rate increase (Attachment 2).

Recommendation

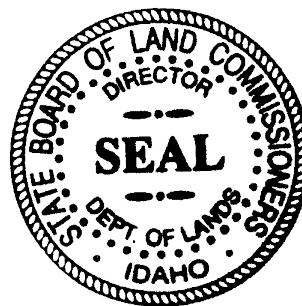
Approve increasing the Forest Practices annual assessment rate to \$0.13 per acre effective July 1, 2019.

Board Action

A motion was made by Attorney General Wasden that the Board approve the Department recommendation to increase the Forest Practices annual assessment rate to \$0.13 per acre effective July 1, 2019. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Statement of Purpose and House Bill 44
2. Letters of Support
 - Bennett Lumber Products, Inc.
 - Idaho Forest Owners' Association
 - Riley Stegner and Associates



STATEMENT OF PURPOSE

RS26436

This legislation revises Section 38-134, Idaho Code, Forest Practices Act Administration - Funding to increase the maximum Forest Practices assessment from \$0.10 an acre per year to \$0.20 an acre per year. This assessment is paid by private forest owners in Idaho to help fund Forest Practices Act (FPA) administration by the Idaho Department of Lands (IDL). While the statutory maximum for the assessment is set in Idaho Code, the effective rate is set by the State Board of Land Commissioners. Funding also comes to IDL from the state General Fund, and since 2014, from the state land endowments to administer and enforce the Idaho FPA on state, private, and federal lands and ensure forest practices in Idaho maintain site productivity and protect water quality.

The FPA assessment threshold and rate were last increased from \$0.05 an acre per year to \$0.10 an acre per year in 2003. During the interim years and in response to the economic downturn, IDL worked with private forest owners to avoid increasing FPA assessments until the economy recovered. IDL reduced staffing levels and spent down the FPA Dedicated Fund cash balance.

Since 2009, economic recovery has led to an upswing in market conditions and forest harvesting operations on all forestlands inspected under the FPA program. The number of FPA notifications and regulatory activities have increased each year. In addition, rule changes and expansion of the program to state forestlands increased the time and resources needed to conduct FPA inspections and assist landowners with implementation of the shade rule. Operating, personnel, and equipment costs have also risen significantly since the last assessment increase. An increase to the FPA assessment maximum, as well as an increase to the current assessment rate set by the State Board of Land Commissioners, are needed to sustain IDL administration of the FPA regulatory program.

FISCAL NOTE

Private forest owners are currently assessed the maximum allowed FPA assessment of \$0.10 an acre per year. If this legislation is approved and the per acre maximum assessment increases to \$0.20 an acre per year, IDL will recommend the State Board of Land Commissioners approve a \$0.13 an acre per year rate or \$0.03 an acre per year increase. This rate increase would generate an additional \$150,000 annually from private forest owners. An equivalent \$.03 an acre increase would be contributed for state forestlands providing an additional \$30,000 annually to the FPA Dedicated Fund. And as outlined in statute, IDL would submit a corresponding ongoing increase of \$177,000 from the state General Fund. Collectively, if approved, these funding level increases are anticipated to be sufficient for IDL to fulfill statutory obligations and administer the Idaho FPA for the next three to five years.

Contact:

Craig Foss
Department of Lands
(208) 666-8640

DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 44

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

1
2 RELATING TO THE FOREST PRACTICES ACT ADMINISTRATION; AMENDING SECTION
3 38-134, IDAHO CODE, TO REVISE ANNUAL ASSESSMENT PROVISIONS REGARDING
4 PRIVATE OWNERS OF CERTAIN FOREST LANDS.

5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Section 38-134, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 38-134. FOREST PRACTICES ACT ADMINISTRATION -- FUNDING. The director
9 of the department of lands is charged in section 38-1305, Idaho Code, to ad-
10 minister and enforce the forest practices act on all private forest lands
11 within the state. Funding for this activity shall come from an annual bud-
12 get request from the general fund and from an annual assessment to be paid by
13 every private owner of forest land in the state. The assessment for private
14 owners of forest lands whose total acres of forest lands are twenty-five (25)
15 acres or fewer shall be equal to the per acre cost multiplied by twenty-five
16 (25). For private owners of forest lands whose total acres of forest lands
17 are twenty-six (26) acres or more, the assessment shall be determined by the
18 state board of land commissioners not to exceed ~~ten~~ twenty cents (±20¢) an
19 acre per year. The assessment shall be collected in the same fashion and
20 at the same time as the forest protection assessment described in section
21 38-111, Idaho Code.



3759 Highway 6 P.O. Box 130 Princeton, ID 83857

Phone: (208) 875-1121

Fax: (208) 875-0191

May 2, 2018

David Groeschl
Director, Idaho Department of Lands
300 N 6th Street, Suite 103
Boise, ID 83702

David,

Please accept this letter in support of the Idaho Department of Lands proposal to increase the Idaho Forest Practices Assessment Rate. Bennett Lumber recognizes the importance of funding this program and the budgetary constraints it has and will be working under. With this understanding, Bennett Lumber Products Inc. supports a statute change to Section 38-134 to raise the Forest Practices Assessment Rate Cap to \$.20/acre. Bennett Lumber Products Inc. also supports a consequent \$.5/acre rate increase bringing the assessment rate to \$.15/acre. Your staff did a good job in describing this issue and why a fix is required. We greatly appreciate IDL's partnership and efforts.

Sincerely,

A handwritten signature in blue ink that reads "Tom Biltonen".

Tom Biltonen
Resource Manager
Bennett Lumber Products Inc.

DEPT. OF LANDS
2018 MAY 29 AM 10:58
BOISE, IDAHO



Idaho Forest Owners Association
P.O. Box 1257
Coeur d'Alene, ID 83816-1257
info@idahoforestowners.org
www.idahoforestowners.org

September 14, 2018

State Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, ID 83702

Dear Commissioners:

I am writing today as the president of the Idaho Forest Owners Association (IFOA) Board of Directors to express our support for the proposed Forest Practices Act assessment-rate cap increase and the corresponding rate increase requested by the Idaho Department of Lands. The members of the Idaho Forest Owners Association and all owners of private forest land in Idaho are beneficiaries of the numerous land owner assistance programs offered by the Department of Lands through the Forest Practices and Forest Stewardship programs.

If no increases in Forest Practices funding are approved by this Board and the Legislature, it will be IFOA members and other private forest landowners who will suffer due to decreased landowner assistance needed to complete active management funded by NRCS EQIP or Regional Conservation Partnership Program (RCPP) funds as well as a reduction in the amount of follow-up re-inspections and re-certifications of Forest Stewardship Plans and an increase in the time between re-inspections. As forest landowners, when we compare the quality of service we receive from the Idaho Department of Lands with the situation faced by landowners in neighboring states, we realize how fortunate we are.

If we want to continue to benefit from the services provided by the Idaho Department of Lands, we must be willing to pay for those services. We believe that the proposed assessment rate cap as well as the proposed rate increase is both reasonable and moderate and should be approved by the Board of Land Commissioners to go forward to the Legislature for final consideration. The future of Idaho's private forest lands and their contribution to the economic strength of Idaho are significantly impacted by the services provided by the Idaho Department of Lands. It is in the best interest of all the citizens of Idaho that we insure that IDL's Forest Practices activities continue to be funded at a healthy and sustainable level.

Sincerely,

David A. Easley
President
Idaho Forest Owners Association
PO Box 1257
Coeur d'Alene, ID 83816-1257

JEPL, OF LANDS
2018 SEP 18 AM 11:02
BOISE, IDAHO



RILEY STEGNER AND ASSOCIATES

September 17, 2018

State Board of Land Commissioners
300 N. 6th Street, Suite 103
Boise, ID 83702

RE: Comments on proposed Forest Practices Act statute change to increase assessment cap increase

Dear State Board of Land Commissioners:


We write in support of the Idaho Department of Lands' (IDL) plan to bring forward legislation to the 2019 Idaho Legislature seeking an increase of the statutory maximum Forest Practices Act (FPA) landowner assessment to \$0.20/acre from the current ceiling of \$0.10/acre. If approved by the legislature, we understand IDL will request that the State Board of Land Commissioners (Land Board) increase the FPA assessment to \$0.13/acre.

We commend IDL for working with Idaho's landowners to address increasing costs associated with implementing the FPA through the Forest Practices Act Dedicated Fund (Fund). The Fund is vital to the environmentally sustainable harvest of timber in Idaho, as it provides the resources for inspections and compliance enforcement of forest operations throughout the state.

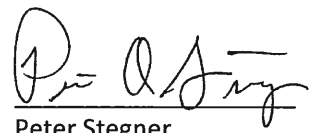
Our clients, Idaho Forest Group, Stimson Lumber Company, Molpus Timberland Group, Hancock Timber Resource Group, and Bennett Lumber Products Inc., collectively own and operate numerous sawmills in Idaho and over 400,000 acres of commercial forestland. IDL worked in a professional and productive manner with our clients and other Idaho landowners to develop their proposed statutory proposal, and we support the final product.

We appreciate the opportunity to comment and look forward to our continued involvement in the process.

Sincerely,



Jim Riley
Principal
Riley Stegner and Associates



Peter Stegner
Principal
Riley Stegner and Associates

DEPT. OF LANDS
2018 SEP 17 PM 2:21
BOISE, IDAHO

STATE BOARD OF LAND COMMISSIONERS

April 19, 2016
Consent Agenda

SUBJECT

Forest Practices Act Bond Required from Non-compliant Forest Practices Operators

AUTHORITY

- Idaho Code § 38-1306B
- Appendix B. Guidelines for Resolving Unsatisfactory Practices. *Advisory guidelines to the Idaho Forest Practices Act*

BACKGROUND

The Idaho Forest Practices Act authorizes the Idaho State Board of Land Commissioners (Land Board) to require an operating bond from any forest practices operator who has repeatedly or habitually operated in non-compliance with the Forest Practices Act administrative rules. The Forest Practices Act also authorizes the Land Board to direct the Idaho Department of Lands (Department) to require an operating bond before accepting a forest practices notification from any operator who has met the non-compliant criteria listed in Idaho Code § 38-1306B (Attachment 1). Criteria as listed in § 38-1306B(1) is below:

- a) Operated without a valid forest practices notification as required in section [38-1306](#), Idaho Code;
- b) Violated the terms of a stop work order issued pursuant to section [38-1307\(2\)\(b\)](#), Idaho Code;
- c) Failed to apply best management practices as required by law and the rules promulgated under this chapter;
- d) Willfully caused degradation to forest soils, air, or water resources; or
- e) Failed to comply with the rules promulgated under this chapter as determined by the board.

The Department has applied Forest Practices Act regulation and enforcement measures on several operators over the last two decades who have operated with gross neglect of the Forest Practices Act rules and have received Notice of Violation (NOV) issuances. Some of these operators have caused significant damage to the soils and water quality in their operational areas. While NOV issuances and Cease and Repair orders have been implemented/issued by the Department, repeated acts of non-compliance or extreme acts of resource degradation have not always been remediated as required in order to "clear" the violation. The Department has a history of keeping these continual violators on a perpetual do-not-accept list (pending NOV list). A more appropriate action, specifically spelled out in the Forest Practices Act, would be to require an operating bond from these repeat rule violators.

To address this issue in a timely and effective manner, the Department requests the ability to put particular operators in operating-bond-required status without seeking specific Land Board approval for every instance.

DISCUSSION

The ideal situation is to prevent resource degradation before it happens, but if an operator is not currently under an active Notice of Violation issuance, statute does not allow refusing a notification from anyone operating in Idaho. When operators habitually, or even intermittently, violate Forest Practices Act rules, it is difficult to keep them from operating again simply by repeatedly issuing Notices of Violation (NOVs). When dealing with operators that cannot improve their methods to meet Idaho FPA rules or who blatantly refuse to follow these rules, the operating bond can act as a better deterrent and provide a mechanism to ensure repairs can be accomplished in a timely manner.

Problems ensue when operators change their business names, cease operations in Idaho for months at a time, or have businesses out of state, but purchase property in-state, to avoid posting an out-of-state operator bond. Operators who repeatedly violate rules may also seek to submit a Notification of Forest Practice to a different Department operating area than the geographic area where the operation is to occur, in order to avoid scrutiny. These tactics can result in difficulties for the Department to recognize and properly deal with a habitually violating operator at the time a Notification submission occurs.

In May of 2013, an operator was removed from operating-bond-required (OBR) status after at least six years of being on the list. Within months of being removed from the list, the operator was issued two Notices of Violation (NOVs) and multiple Unsatisfactory findings on that same operation. In this case, non-compliance consisted of repeated operation of ground equipment within the Stream Protection Zone of a fish-bearing stream that directly feeds the Potlatch River (a salmon and steelhead fishery near Kendrick Idaho) to construct trails and landings and to skid timber. Also trails and roads were constructed that exceeded 30% grade (50%) on slopes that exceeded 45% grade (70%), immediately adjacent to the stream; trees were harvested below minimum acceptable residual stocking. Additionally, no drainage control was provided for roads and trails that access the harvest areas. All of the above actions resulted in unacceptable sediment delivery to streams and rivers. Some of these actions, once done, cannot be completely mitigated despite implementation of remediation required to clear the NOV.

Another example includes a group of operators recently conducting forest operations throughout North Idaho that have been filing Notifications under one name and then sub-contracting among themselves to make it difficult to cite the appropriate operator with violations. At least two of these operators have previous multiple NOV histories.

Given the need to act quickly to prevent resource damage, the Department seeks the Land Board's approval per Idaho Code § 38-1306B to require an operating bond from habitual offenders as needed and to post these operating-bond-required operators on a centralized list in a timely manner to prevent ongoing negligent operations.

RECOMMENDATION

Authorize the Department to require an operating bond from forest practices operators, as needed, who act in non-compliance with the Forest Practices Act rules as described in Idaho Code § 38-1306B.

BOARD ACTION

APPROVED 04/19/16

ATTACHMENTS

1. Idaho Code § 38-1306B
2. Appendix B. Guidelines for Resolving Unsatisfactory Practices





Idaho Statutes

TITLE 38
FORESTRY, FOREST PRODUCTS AND STUMPAGE DISTRICTS

CHAPTER 13
FOREST PRACTICES ACT

38-1306B. REQUIREMENT FOR OPERATING BONDS. (1) At the direction of the board, the department shall require submission of an operating bond, before accepting a forest practices notification, from any operator who has repeatedly or habitually:

- (a) Operated without a valid forest practices notification as required in section [38-1306](#), Idaho Code;
- (b) Violated the terms of a stop work order issued pursuant to section [38-1307](#)(2)(b), Idaho Code;
- (c) Failed to apply best management practices as required by law and the rules promulgated under this chapter;
- (d) Willfully caused degradation to forest soils, air, or water resources; or
- (e) Failed to comply with the rules promulgated under this chapter as determined by the board.

(2) The bond shall be in a form, acceptable to the board, to insure the performance of the duties of the operator under this chapter and any rules promulgated thereunder, in the amount of two hundred dollars (\$200) per acre for each acre in the contract area included in a forest practices notification, with a minimum bond of five thousand dollars (\$5,000) and a maximum bond of fifteen thousand dollars (\$15,000).

(3) If the operator is a nonresident operator this bond shall be in addition to the nonresident bond required pursuant to section [38-1306A](#), Idaho Code.

History:

[38-1306B, added 1995, ch. 281, sec. 2, p. 943.]

APPENDIX B. GUIDELINES FOR RESOLVING UNSATISFACTORY PRACTICES

OPERATING BONDS FOR REPEAT VIOLATIONS

The Idaho State Board of Land Commissioners (Board) can require an operating bond from any operator who has repeatedly:

1. Operated without a valid notification;
2. Failed to comply with Forest Practices Act rules;
3. Violated the terms of a "Stop Work Order."

The bond amount is \$200/acre, with a minimum bond of \$5,000 and a maximum bond of \$15,000 for each separate Notification of Forest Practice.