

Negotiated Rulemaking Summary

IDAPA 20.04.02 – Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

Docket No. 20-0402-2301

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2024 for review during the 2025 legislative session.

The Idaho Department of Lands (Department) administers these rules under the authority of Title 38, Chapters 1 and 4, Idaho Code.

Negotiated rulemaking for these rules was approved by the Land Board on August 15, 2023. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the Idaho Administrative Bulletin on October 4, 2023.

Stakeholder Outreach

The IDL's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments (<https://www.idl.idaho.gov/rulemaking/docket-20-0401-2301/>).
- Posted meeting information on social media.
- Posted rulemaking notices to Townhall Idaho.
- Emailed three draft rules to nearly 200 interested members of the public.
- Posted three draft rules in strikethrough format with reasonable periods of time for public comment.
- Engaged in discussions with Associated Logging Contractors Inc., Idaho Department of Environmental Quality, Idaho Forest Owners Association, Idaho Forest Industry group.

Negotiated Rulemaking Public Meetings

Two public meetings were held to discuss the draft rule:

- **October 10, 2023 Public meeting in Coeur d'Alene (and Zoom)**
 - 3 public participants
 - Affiliations: Associated Logging Contractors, Idaho Conservation League, Benn Brocksome and Associates
- **October 11, 2023 Public meeting in McCall (and Zoom)**
 - 0 public participants

There were no public comments provided during the meetings.

Written Comments

Written comments were received from meeting participants as well as the Department of Environmental Quality. Comments were received regarding gender references, prescribed burn plans, adding "burning operations" to the Title and Scope Section, editing of Table II in Section 120 (Hazard Characteristics and Offset Slash Load) related to Hazard Points assigned by the District Fire Wardens,

verbiage suggestions for the rule related to extensions of the Hazard Agreement, and broadening the section heading for Burning of Slash.

Conclusions of Negotiated Rulemaking

In general, many edits are made to current rule verbiage for clarity and brevity. Following the Idaho Rule Writers Manual guidance, section headings are more descriptive of section content. Remarkable changes to the current rule are listed by section number below.

Section 001. The title and scope are integrated into a single more descriptive sentence.

Section 010. Duplicative definitions from statute are identified and struck from the rule text, except the one for Slash. Definitions were added for Clearance, Contract, Fire Management Handbook, Hazard Points, Prescribed Fire (for consistency with IDAPA 20.02.01 and IDAPA 58.01.01), and Slashing Areas. Also, the definitions from IDAPA 20.04.01 are referenced for use of the terms Forest Operation, Operating Area, and Operator in IDAPA 20.04.02 (for consistency and to avoid additional duplication). This modified the definition numbering.

Section 110. The section heading is revised to encompass all types of burning in Forest Land associated with Forest Operations. Subsection 01 Permits is deleted as redundant, since burn permit requirements by law are given in IDAPA 20.04.01. Subsection 01 Burning is added to highlight the existing State rules for protecting forest resources, maintaining air quality, and controlling smoke. Subsection 02 Burn Plans is expanded with paragraphs to draw distinction between the origin of burn plans for burning of slash plies (District Fire Warden) and burn plans for other burning such as broadcast burning (Contractor) for Slash disposal or site preparation for planting. Subsection 03. Burn Crew is added to capture the requirements for all burning operations, including a permit when required, and sufficient people, tools and equipment to stop uncontrolled spread of fire.

Section 120. The section heading is revised to Standards for Hazard Reduction. Subsection 01 Purpose is expanded to highlight state policy and departmental authorities and procedures in relation to hazard reduction. The single Table II in section 120 is edited to remove non-essential information and the essential information is now in separate tables in two added subsections to clarify the separate roles of the Contractor and the District Fire Warden. One subsection is added to delineate hazard reduction methods Contractors can employ to reduce the slash hazard created in the operation. One subsection is added to delineate Fire Warden steps to audit the operation by balancing hazard points from untreated slash and site characteristics with hazard point reductions for other protective measures. The various hazard point value ranges for these elements remain the same.

IDL concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the July 3, 2024, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record and the proposed rule text in legislative format, to allow the reader to easily identify changes, are available at (<https://www.idl.idaho.gov/rulemaking/docket-20-0402-2301/>).

Response to Comments on Negotiated Rule
IDAPA 20.04.02, Rules Pertaining to Forest Fire Protection

Comment	Rule Section	Response
<p>DEQ proposes IDL include “burning operations” in the list of provisions added to this version of the rule to bring the burn plan requirement included in these rules to the forefront. This might be helpful to highlighting the foundation of the interagency smoke management agreement without changing the content of the rule. Title 38, Chapters 1 and 4 both appear to address burning, so it seems to be directly applicable and helps clarify the rule.</p> <p>DEQ proposes the second sentence could read: They provide for Hazard Management Agreements and Contracts, set standards for reduction of the fire hazard resulting from commercial timber harvest, burning operations, and detail release of Contractor liability for fire suppression costs on completed operations.</p>	001.	<p>1. IDL appreciates this comment. The first draft attempted to broaden the scope of this section but for brevity did not include all topics the rule deals with. Burning operations are a key element however and this was incorporated in the third draft.</p>
<p>Delete the word “his” in the definition of Director before “authorized representative.”</p>	010.05	<p>2. IDL appreciates this comment and in the second draft of the rule modified all gender-specific verbiage. For the sake of completeness, the Idaho Rule Writer’s Manual states: “In all administrative rules, inclusive gender is inferred by reference in IDAPA 44.01.01.005. The terms and references used in the masculine include the feminine and vice verse [sic], as appropriate;” however, it also states: “To the extent possible, the rule writer should use gender-neutral terms...” For 010.05, since the Director is granted specific authorities by statute and appoints Fire Wardens and other key personnel, deleting the singular, masculine, possessive pronoun appears to weaken that delegation of authority.</p>

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		As early as the 16 th century the singular “their” was and continues to be an acceptable gender-neutral possessive pronoun. It is implemented here, and “authorized representative” is replaced with “designee” for simplification. This same word was useful in the singular and the plural possessive in Subsection 130.04 Failure to Treat, to help correct and clarify the intent of fire suppression cost liability.
<p>Is IDL communicating here if the extension application is submitted per the description, then the Fire Warden’s acknowledgement includes a determination? Does IDL expect to add extension criteria for Wardens in the FMH or our Interagency agreement to address stakeholders’ concerns? (Recall, prescribed fire smoke management stakeholders have repeatedly identified the ambiguity and disparity across Districts in handling the Clearance Extension approval as a potential impediment to implementing adequate smoke management measures while treating slash).</p> <p>DEQ suggests replacing the final sentence with: The Fire Warden will grant or deny the request per FMH guidance prior to the expiration of the Agreement, to provide added clarity.</p>	030.	3. IDL appreciates this comment and agrees that acknowledgment is insufficient. This was corrected in the third draft.
<p>Thank you for the opportunity to comment on the Idaho Department of Lands’ (IDL) zero-based regulation negotiated rulemaking Docket 20-0402-2301 – Rules pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws – Draft #3. Landowners and their forest operations rely</p>	060	4. IDL looks forward to discussions with Riley Stegner and Associates and their industry group members regarding contracts for Hazard Management. A Hazard Management Contract is listed as Option 4 on the Certificate of Compliance – Fire Hazard Agreement form and is authorized under Section 38-404, Idaho Code. This option is not often exercised by contractors but is available in circumstances that are mutually beneficial to the parties involved.

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<p>on clear and concise rules for post-harvest hazard mitigation, and the public rulemaking process ensures that the regulated public is provided ample feedback throughout the process.</p> <p>Paragraph 060. Contracts.</p> <p>With the rulemaking process open, we would like to explore additional options to reduce slash hazard liabilities. This could come in the form of a payment for release of liability in lieu of the current piling and burning, as an example. Thank you for your consideration of this request. We stand ready to work with all parties to monitor and improve Idaho’s hazard mitigation rules to allow maximum flexibility for private landowners while mitigating the fire hazard associated with post-harvest slash.</p>		
<p>Our members are uneasy about the ‘prescribed burn plan’ called for plus the suggested ‘memorandum of understanding’ between IDL and DEQ being discussed in the DEQ efforts to manage smoke from slash burning and prescribed fire. We would like to have further discussion with IDL on this and with DEQ & IDL on this as well.</p>	110.	5. IDL regrets the re-organization of this Section in the second draft did not provide the added clarity needed to better define the burn plan requirements. IDL appreciated the opportunity to address these concerns with the Associated Logging Contractors, Inc., and believes the changes made in the third draft and the proposed rule provide the needed clarity.
<p>Adding the “Hazard Reduction” qualifier to this title appears to limit the applicability of the burn plan requirement of 110.02 which states that burn plans are required when burning occurs “for any purpose”. DEQ suggests IDL use a more inclusive heading</p>	110.	6. IDL appreciates this comment and agrees the attempt to make the heading more descriptive of the Section content did not go far enough. Further organization of this Section was accomplished to address concerns from other stakeholders and was incorporated in the third draft.

Comment	Rule Section	Response
that addresses the types of burning that occur. 20.04.02.110 is foundational to the interagency agreement for a smoke management solution.		
<p>PotlatchDeltic appreciates the opportunity to provide comments on the IDL’s proposed zero-based regulation negotiated rulemaking document regarding IDAPA 20.04.02 rules pertaining to the Idaho Forestry Act and Fire Hazard Reduction laws. Draft #3 was posted on April 3, 2024, reflecting changes relating to public feedback on Draft #2 (dated February 2, 2024.) Although Draft #3 has provided additional clarification to several issues identified in the earlier versions, PotlatchDeltic wishes to contribute additional commentary on this latest draft in effort to ensure the final document minimizes regulatory uncertainty, is efficient to implement by all parties involved, and results in the most favorable outcomes as it relates to the state’s hazard reduction and smoke management objectives.</p> <p>Rule Citation Section: 20.04.02.110 REQUIRMENTS FOR PRESCRIBED FIRE, PILED SLASH AND BROADCAST BURNING The title of this section could be BURNING OF FOREST LAND as it is defined in the definitions section (38-101) and would encompass the types of burning listed in Draft #3.</p>	110.	<p>7. IDL regrets the clarification provided in Section 110 in Draft #3 did not fully address the concerns of all stakeholders and appreciates PotlatchDeltic’s helpful suggestions.</p> <p>Nineties era efforts to address authorities relative to air quality during burning operations for Hazard Reduction culminated in IDAPA 20.02.01.071 PRESCRIBED FIRE. More recently a great deal of effort on the part of IDL, DEQ, Forest Industry members, the Idaho Forest Owners Association and the Associated Logging Contractors was devoted to addressing DEQ smoke management plan requirements through an interagency memorandum between IDL and DEQ. Implementation of a burn plan requirement in 20.04.02 for burning Slash piles supports DEQ efforts to address smoke management and will help Idaho demonstrate to the federal government that National Ambient Air Quality Standards are achieved. This strategy avoids the need for a new DEQ rule for smoke management and allows Forest Operation contractors to get their work done under a single Agreement with IDL.</p> <p>To avoid future uncertainty, to ensure existing Title 38 definitions and statutory language are used, to ensure consistency with Title 39 and to ensure the current smoke management planning of IDL and DEQ is addressed, the definition for Prescribed Fire from IDAPA 20.02.01 and IDAPA 58.01.01.614 is added to the IDAPA 20.04.02 proposed rule definitions. The heading for Section 110 is now simply REQUIREMENTS FOR PRESCRIBED FIRE IN FOREST LAND.</p> <p>The statutory requirement to protect forest resources and maintain air quality from Title 38 Chapter 13 Idaho Code (20.02.01.071) and the requirement to provide adequate smoke control for open burning</p>

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<p><i>.01 Burning. Burning operations must be planned, prepared, and executed in a way that forest resources are not damaged and air quality standards are met.</i></p> <p><i>.02 Burn Plans. Burning within specifically designated blocks or areas of Forest Land at any time and for any purpose must be conducted with a prescribed burn plan approved by the District’s Fire Warden in which the burn occurs.</i></p> <p>It is recommended to utilize definitions already defined in statutes or chapters relating to Title 38 and describe Burning as the action it is and describe when Burn Plans are required and who needs to approve them. The phrase "are met" implies a rigid standard and requirement. Failure to meet these standards may prompt the agency to consider additional regulations for these events, which fall outside the scope of the zero-based rulemaking approach. The phrase “for any purpose” could be removed if the title of this section encompasses all purposes in which these rules apply to. Defining “For broadcast burning” under the Draft #3 title of REQUIREMENTS FOR PRESCRIBED FIRE, PILED SLASH, AND BROADCAST BURNING, leaves ambiguity for what is required for Prescribed Burning. If burn plans are required for all types of burning of forest lands, and the type of plan needed for Prescribed Burning (landscape</p>		<p>from IDAPA 58.01.01.614 are now referenced in the Subsection 110.01 Burning text. Additionally, the “for any purpose” text is replaced with “for Forest Operations” to specify what burn plans are required for and to avoid inadvertently requiring an IDL approved burn plan for other uses of prescribed fire for open burning or non-forest management, non-negligent, deliberate fires in Forest Land (i.e., campfires and warming fires).</p>

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<p>burning) and Broadcast Burning are the same, it seems that the plans are differentiated by Pile burning or Non-Pile burning.</p> <p>Suggested definitions:</p> <p><i>.01 Burning. Burning within specifically designated blocks or areas of Forest Land at any time will be planned, prepared, and executed in a way that forest resources are not damaged and air quality standards are not intentionally compromised.</i></p> <p><i>.02 Burn Plans. Must be approved by the District's Fire Warden before burning is executed and are required any time burning will occur</i></p> <p><i>a. Pile Burn Plans. Will be provided with the Agreement or Contract by the District Fire Warden</i></p> <p><i>b. Non-Pile Burn Plans. The contractor must submit to the District Fire Warden a detailed prescription for executing the burn.</i></p>		
<p>Replace “men” with “personnel.”</p>	<p>110.01</p>	<p>8. The word “men” was replaced with “people” consistent with its use in Table 1 in IDAPA 20.04.01 Rules Pertaining to the Idaho Forestry Act, Section 100. FIRE TOOL AND EXTINGUISHER REQUIREMENTS DURING CLOSED FIRE SEASON</p>
<p>PotlatchDeltic appreciates the opportunity to provide comments on the IDL’s proposed zerobased regulation negotiated rulemaking</p>	<p>120.</p>	<p>9. IDL would like to state for the record there was no intention to change the point values or the process currently in use, but rather provide an opportunity to clarify the essential roles of the Contractor and the</p>

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<p>document regarding IDAPA 20.04.02 rules pertaining to the Idaho Forestry Act and Fire Hazard Reduction laws.</p> <p>As stated in the October 4, 2023 notice of ZBR negotiated rulemaking, the intent of Zero-Based Regulation (Executive Order No. 2020- 01) is to “remove unnecessary language and amend other rules to reduce verbiage and improve readability.” While we concur that the proposed changes in rulemaking docket meet the aforementioned goal of simplifying the rules, we are concerned about changes made to Section 120.</p> <p>Specifically, there are multiple places in this section and the supporting tables that remove language regarding hazard points and credits given to landowners for items such as gated access and nearby water supply. It is our understanding that these details that are proposed for removal will be moved to a guidance document maintained by the department.</p> <p>OUR CURRENT CONCERNS & RECOMMENDATIONS By moving the hazard point information to a guidance document, any information contained in such document will be outside of the formal negotiated rulemaking process and as such creates the risk for subsequent administrative changes which may have the</p>		<p>District Fire Wardens in implementing the Hazard Point system with a more complete narrative to describe that interaction. The table in question included lengthy examples of harvest operations that might generate the listed Slash Loads; these narratives, although useful, added unnecessary verbiage and will remain outside rule. The remainder of the table will stay in rule but is structured in Subsections that delineate the Contractor’s role in Hazard Reduction and the District Fire Warden’s role in auditing that Hazard Reduction. This not only provides added clarity but offers the opportunity to individually address elements of the process in future negotiated rulemaking as the forest management community sees fit. Further, the clearer description will help achieve consistency of application statewide. IDL appreciates PotlatchDeltic’s support in making these changes.</p>

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<p>potential to increase regulatory burdens on the landowner. The Governor’s Executive Order 2020-01, section 4(c) states that “The new rule chapter that the agency finalizes must reduce the overall regulatory burden, or remain neutral, as compared to the previous rule chapter.”</p> <p>Landowners like us have relied on the hazard points system currently in place to guide past investment decisions for items such as gates and water supplies, for example. In the event this point system is modified in the future in a guidance document, outside of the negotiated rule making process and opportunity for public comment, creates the potential for changes to the point system that may reduce the benefits of these past infrastructure investments and/or require additional new investments to meet hazard reduction goals and requirements. Therefore, we recommend that the agency either retain the current hazard points system language in the rules document or move these elements to another document structure that requires public comment and negotiated rulemaking for any substantive proposed future changes to the system. Thank you for allowing us to provide these comments and your consideration of our concerns and recommendations.</p>		
<p>Draft #3 was posted on April 3, 2024, reflecting changes relating to public</p>	<p>120</p>	<p>10. This suggestion is consistent with a similar suggestion from District Fire Wardens and IDL appreciates PotlatchDeltic’s support for adding</p>

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<p>feedback on Draft #2 (dated February 2, 2024.) PotlatchDeltic wishes to contribute additional commentary on this latest draft in effort to ensure the final document minimizes regulatory uncertainty, is efficient to implement by all parties involved, and results in the most favorable outcomes as it relates to the state’s hazard reduction and smoke management objectives.</p> <p>Rule Citation Section: 20.04.02.120.02 <i>If the Operating Area has more than one Slashing Area and the Slashing Areas are topographically unique or separated by uncut timber, each Slashing Area will be audited independently. Detailed example Slash Loads and computations are provided in FMH 760.</i></p> <p>This proposed change to current procedures could increase workload for both IDL Fire Wardens and PotlatchDeltic Foresters. To maintain efficiency and address operating areas that may consist of multiple slashing areas that are topographically unique or separated by uncut timber, we suggest an approach that will allow for collaboration and flexibility in decision-making regarding the treatment of these unique slashing units within one operating area.</p> <p>For instance,<i>If an Operating Area contains multiple Slashing Areas that are topographically unique or separated by</i></p>		<p>this flexibility. The word “may” is substituted for the word “will” in the proposed rule to ensure the current, successful, collaboration between forest managers and Fire Wardens is maintained.</p>

Comment	Rule Section	Response
<i>uncut timber, each Slashing Area may be subject to independent auditing.</i>		
<p>Thank you for the opportunity to comment on the Idaho Department of Lands’ (IDL) zero-based regulation negotiated rulemaking Docket 20-0402-2301 – Rules pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws – Draft #3. Landowners and their forest operations rely on clear and concise rules for post-harvest hazard mitigation, and the public rulemaking process ensures that the regulated public is provided ample feedback throughout the process. Draft #3 makes significant improvements to previous versions of the rulemaking, particularly with respect to the re-inclusion of the hazard points table in the rulemaking itself as opposed to in a guidance document. In addition to this important change, we ask that IDL consider the below suggestions for a final rulemaking.</p> <p>Machine-excavated fire lines defined width. We recommend IDL staff work with industry on a definition of the appropriate width of a machine-excavated fire line for consistency across forest operations. The rule might differentiate between fire lines created by different pieces of equipment, using the industry standard for the commonly used equipment in the woods.</p>	120	<p>11. Riley Stegner and Associates’ supportive comments on Draft #3 are very much appreciated, especially the suggestion that IDL work with industry to establish a minimum width for machine constructed Fire Lines. Consultation with industry representatives and District Fire Wardens occurred as the public comment period for Draft #3 closed. A minimum width of ten (10) feet and a suggested maximum width of twelve (12) feet were added to the text of Section 120 in the proposed rule as a result of these discussions and a review of IDAPA 20.02.01 metrics regarding Fire Lines. IDL looks forward to continued discussions with stakeholders regarding this important parameter.</p>
Replace the word “his” with “the.”	130.05	12. The word “his” was replaced with the word “the.”
Delete the word “his” in reference to the Director’s “designee.”	140.	13. Both the words “his” and “designee” were deleted because the definition of Director includes their designee (See response #2 above).