

## Negotiated Rulemaking Summary

### IDAPA 20.04.01, Rules Pertaining to Forest Fire Protection

Docket No. 20-0401-2301

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2024 for review during the 2025 legislative session.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, Chapter 1, 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 draft rules to 197 interested members of the public.
- Posted two draft rules in strikethrough format with reasonable periods of time for public comment.
- Engaged in discussions with Associated Logging Contractors, 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 the Associated Logging Contractors, Inc. as well as the Department of Environmental Quality. Comments were primarily associated with verbiage suggestions for clarity and the practicality of posting No Smoking signs in Operating Areas during times of critical fire danger.

## **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. Rule sections are better organized by listing more critical forest fire protection requirements together and before standard seasonal operating requirements. This results in re-numbering of some section headings. 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; of course, this reorders the definition numbering.

**Subsection 010.07.** The definition for Forest Operation now has the complete title for the Certificate of Compliance – Fire Hazard Management Agreement – Notification of Forest Practice with associated statute references as the qualifier for the Subsection, paragraph activities. Thinning and mastication operations and some road construction activities that may lead to ignition of fuels do not require a Certificate of Compliance, but they do require a Forest Practice Notification.

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-20-0401-2301/>).

**Response to Comments on Negotiated Rule**  
IDAPA 20.04.01, Rules Pertaining to Forest Fire Protection

Comment	Rule Section	Response
<p>20.04.01.050 Refuse Wood Burning Near Forest Land</p> <p>DEQ suggests modifying this rule language to include a reference that other regulations may be applicable to this type burning. Propose edits: <i>Any saw mill, planing mill, shingle mill, or other woodworking or wood product manufacturing plant, operating in or within five hundred (500) feet of Forest Land and burning refuse wood material outside of and/or adjacent to the mill or plant, must meet the terms of Section 38-108, Idaho Code <b><u>and other applicable State or local regulations.</u></b></i></p> <p>Open burning of refuse wood by manufacturing facilities, regardless of proximity to forest land, must meet requirements in 58.01.01.600-624 and the material being burned is not identified as prohibited in 58.01.01.603.01 (i.e. 603.01.i. Trade Waste). Facilities with air pollution emission permits generally have conditions which would exclude open burning of this material. Refuse wood burned in a controlled combustion unit for co-generation, heat alone, or other process purposes does not appear to align with the statute language which seems to be addressing open burning (no stack or vent).</p>	050.	IDL incorporated this suggestion in the proposed rule.

Comment	Rule Section	Response
<p>We agree that smoking should be prohibited during periods of critical fire danger, but posting signs in a job site is problematic at best. The other signs we post now for safety reasons (felling ahead, trucks, etc.) get stolen or shot at on a regular basis. Posting 'No Smoking' signs makes sense in other places – buildings for example – but seems to stretch common sense on a logging job</p>	<p>080.</p>	<p>IDL appreciates the Associated Logging Contractors' comment and recognizes that during periods of critical fire danger logging contractors are well informed and take additional steps to prevent fire. IDL considered altering the rule to ensure logging contractors brief their crews on fire restrictions, including smoking prohibitions, but this likely is already done. Unfortunately, the general public, despite extensive outreach, can be very uninformed about fire restrictions and smoking requirements. Case in point is a fire started in a fire camp by portable toilet service personnel discarding a cigarette butt during stage two fire restrictions. For the protection of the forest and forest workers IDL will retain the No Smoking sign rule.</p>