

STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Information Agenda

Subject

Summary of Comments Received on Proposed Rule, IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*

Background

The Idaho Department of Lands (Department) administers the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code), which sets standards for logging, road building, reforestation, streamside protection, and other forest activities. Under Idaho Code § 38-1304, the Board "shall adopt rules for forest regions establishing minimum standards for the conduct of forest practices on forest land." Further, the Forest Practices Advisory Committee (FPAC), as established by Idaho Code § 38-1305, provides technical assistance to the Board, in cooperation with the Department, in matters relating to the Idaho Forest Practices Act, including the rules promulgated thereunder. IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act* ensure the continuous growing and harvesting of forest trees while protecting and sustaining Idaho's forest soil, clean water, and wildlife and aquatic habitat.

In accordance with the federal Clean Water Act, the Idaho Department of Environmental Quality (DEQ) administers Idaho's Water Quality Standards. This includes administration of the Idaho Non-Point Source Management Plan and corresponding silvicultural (forestry) Memorandum of Understanding (MOU). Idaho's Non-Point Source Management Plan¹ specifically identifies the Department's role in NPS management as it relates to forest management activities.

The forestry Best Management Practices (BMPs) for protecting water quality during timber harvesting operations are defined in the Idaho Forest Practices Act rules, and the Department is the designated management agency, per MOU with DEQ, for these BMPs. DEQ leads an audit every four years on Idaho forestlands to check compliance with the Idaho Forest Practices Act rules. When DEQ provides post-audit, rule-changing recommendations, FPAC works with the Department to develop rule changes to address DEQ recommendations.

Following quadrennial audits in 2000 and 2004, DEQ recommended that FPAC and the Department address shortcomings in the streamside tree retention rule ("Shade Rule"). In response, FPAC and the Department worked for nearly a decade to modify the Shade Rule to reflect DEQ recommendations, and to incorporate input from many statewide stakeholder groups. This effort included contracting with a forest hydrologist and modeling scientist to

¹ Idaho's Non-Point Source Management Plan (<http://www.deq.idaho.gov/media/60153107/idaho-nonpoint-source-management-plan.pdf>)

simulate (model) over-stream shade and large woody debris contributions for multiple forest types and harvest prescriptions. The work was done to develop a science-based rule that addressed shade and large-wood recruitment, and that forest landowners could implement on the ground.

The rules were amended in 2013 through the negotiated rulemaking process, with broad public participation, and all major forest landowner groups in Idaho supported the rule amendments. The current version of the rules became effective in 2014 with the approval of the Idaho Legislature. Attachment 1 is a June 2014 news release explaining the new timber harvesting rules and the resources available to landowners, which included the Department's three additional Private Forestry Specialists. Attachment 2 is a June 2014 fact sheet with information about the rulemaking process and the Shade Rule.

In 2015, the Department commissioned an in-depth study on the revised rule to be conducted by DEQ and the University of Idaho in collaboration with multiple landowners. This multi-year study, conducted on forested sites across the state, is designed to test the effectiveness of the Shade Rule in protecting needed over-stream shade, and to validate the modeled shade-loss calculations which were used in the development of this rule. The Shade Effectiveness Study is expected to be completed by December 2019. The results of the analysis will be presented at a future FPAC meeting and made publicly available.

Discussion

After the legislature adjourned the 2019 legislative session without reauthorizing Idaho's administrative rules, the governor and his staff directed state agencies to republish all necessary rules as temporary and proposed rules. On May 21, 2019, the Board approved the reauthorization of IDAPA 20.02.01.

On June 19, 2019, the rules were published concurrently as temporary and proposed in a special edition of the Idaho Administrative Bulletin, Volume 19-6SE. Attachment 3 is the *Notice of Omnibus Rulemaking* for docket number 20-000-1900, which includes the publication of the previously approved and codified chapter of IDAPA 20.02.01 as temporary and proposed rules, with a 21-day comment period and a 14-day period for requesting a public hearing.

The Department received 31 individual requests for a public hearing on the proposed rules. Most hearing requests specifically asked for an opportunity to present oral comment on the Shade Rule portion of the rules and requested that the public hearing be held in northern Idaho, preferably in Coeur d'Alene. The hearing requests are on the Department's website at www.idl.idaho.gov/rulemaking/omnibus.

The Department held two public hearings on the proposed rules for IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*. Both public hearings were held in Coeur d'Alene on August 15, 2019: one hearing at 9:30 a.m., and a second hearing at 4:30 p.m. The Department also extended the written comment deadline to August 16, 2019. All written

comments and transcribed oral comments received are on the Department's website on the omnibus rulemaking page.

Eleven people testified at the public hearings, and ten written comments were received. The majority of comments supported reauthorizing the proposed rules without amendments and supported reviewing the results of the forthcoming Shade Effectiveness Study to inform possible amendments to the rules.

A summary of all comments is included in Attachment 4. Two comments made specific reference to the Shade Rule being a regulatory taking. Attachment 5 is a Regulatory Taking Analysis of the Shade Rule prepared by the Office of the Attorney General on behalf of the Department.

The Department did not identify any needed rule changes based on these comments. After the Shade Effectiveness Study results have been presented to FPAC, the Department may receive guidance from FPAC on entering negotiated rulemaking in 2020.

Attachments

1. News Release: New Timber Harvesting Rules
2. Shade Rule Fact Sheet
3. Notice of Omnibus Rulemaking – Temporary and Proposed Rulemaking, pages 4099 to 4100, and pages 4125 to 4151
4. Summary of Public Comments Received on Proposed Rule
5. Regulatory Taking Analysis – IDAPA 20.02.01.03.07 (Shade Rule)