

Rules Pertaining to the Idaho Forest
Practices Act
IDAPA 20.02.01
Docket No. 20-0000-1900
August 15, 2019

Agenda

- Introduction
- Water Quality In Idaho
- History of Idaho Fish-bearing Stream (Class I) Shade and Tree Retention Rules
- What is required by IDL through state statute and rule
- Why this rulemaking is being conducted
- Testimony

Timber/Silviculture Management under the Idaho Nonpoint Source (NPS) Management Plan

Environmental Protection Agency (EPA) Federal Lead for Clean Water Act

Silviculture Exemption for Nonpoint Source Pollution Discharge Elimination System (NPDES) Permit

Idaho Department of Environmental Quality (DEQ) under Idaho Code § 39-36 Lead Agency for Water Quality

Statewide Quadrennial Forest Practices/Water Quality Audit

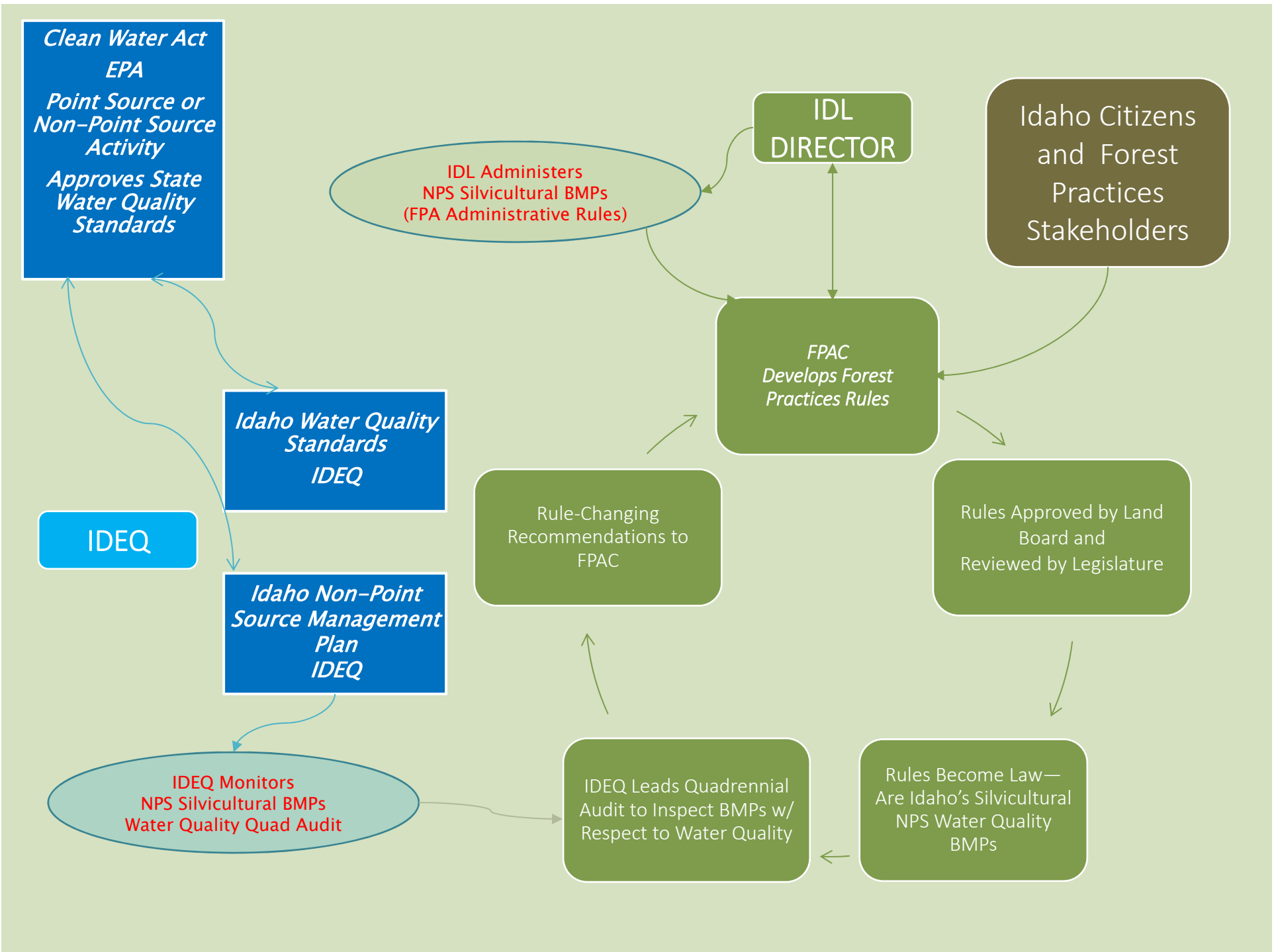
Submits Recommendations for Forest Practices Act Rule Changes

Idaho Department of Lands (IDL) under Idaho Code § 38-13 Lead Agency for Forest Practices

Administers the Forest Practices Act

Coordinates with DEQ on Quadrennial Audit to Achieve State-Federal Consistency for NPS Activities on Forestlands

Works with the Idaho Forest Practices Advisory Committee (FPAC) on Silviculture Nonpoint Source Best Management Practices



History 1975 to 1990

1975*

*in*aw the 1974 Idaho Forest Practices Act, Idaho published rules nearly identical to the 1972 Oregon Forest Practices rules:

“Where insufficient non-merchantable tree species exist to provide up to 75% of the original shade over the stream, a harvest plan acceptable to the Department, of scattered cuttings or other means, shall be developed which will not result in a significant increase in stream temperatures or remove a substantial amount of wildlife cover.”

Non-merchantable typically considered to be <8” dbh.

If no non-merchantable tree species were present, significant and substantial became the metric.

History 1990 to 2000

Modified to:

“Leave seventy-five (75%) of the current shade over the Class I streams.”

Added “Standing Tree” table for area within 50’ of Ordinary High Watermark (OHWM)*

Minimum Standing Trees Per One Thousand (1000) Feet Required (each side)

	-- STREAM WIDTH --			
	Class I			Class II*
Tree Diameter (DBH)	Over 20'	10'- 20'	Under 10'	
3 - 7.9"	200	200	200	140
8 - 11.9"	42	42	42	--
12 - 19.9"	21	21	--	--
20"+	4	--	--	--

History 2000 to 2010

2000 DEQ Idaho Forest Practices (FP) Water Quality (WQ) Audit

“Develop a new leave tree table that ensures the rule intent and is easier to understand and enforce.”

“Develop a new shade rule that has a target shade or canopy cover that maintains or protects stream temperatures preferred by fishes that occur there.”

2004 DEQ FP WQ Audit

“Visual estimates not adequate to evaluate compliance”

All Class I SPZs were below recommended stocking pre-harvest.
Some sales exhibited harvesting in violation of requirements.

2006

Added “Limit re-entry until shade recovers.” Retained “Standing Tree” table in rule.

2007-2010

Cramer Fish Sciences adapts “shade” tools for use in Idaho using Idaho stand data and Idaho Forest Types.

History 2010 to 2015

2012 DEQ FP WQ Audit

Solar pathfinder/basal area measurements conducted.

Recommendation:

"Continue work to revise existing shade rule."

2012

Negotiated rulemaking starts

Proposed rulemaking starts

45% Relative Stocking (RS) in 75 foot SPZ proposed by IDL

Nonindustrial stakeholders oppose - stocking limits too restrictive

At same time ~ 10% error is found in some shade calculations

FPAC recommends IDL pull rule

2013

Rulemaking continues

2014

Relative Stocking based, Two Harvest Options Rule published

Option 1 60 RS Inner 25', 30 RS Outer 50'

Option 2 60 RS Inner 50', 10 RS Outer 25'

IDL and FPAC commit to adaptive process, based on empirical data, to inform stocking requirements.

History 2015 to Present

2014/2015

IDL conducts statewide outreach to inform landowners, contractors and operators and adds four new Private Forester positions to assist landowners with RS measurements.

2016 thru 2018

Class I Operational Monitoring Survey (IDL) and Shade Effectiveness (DEQ) Study field work conducted

2019

DEQ funds U of I data analyses of 3 years' Shade Effectiveness Study field work data – results expected late 2019

2020

IDL and FPAC will study report and propose changes where appropriate

Challenges 1975-2014

Idaho had a legacy, fish-bearing stream, tree-retention rule that audit findings determined did not adequately protect shade nor large woody debris recruitment.

Regulators struggled with “significant” and “substantial” and how to define “current shade,” post-harvest shade and “until shade recovers.”

Responsible operators did not have a definitive guide with which to manage the timber in the SPZ and, uncertain, left more than necessary.

Irresponsible operators practiced multiple re-entry until SPZs were laid nearly bare or they were cited.

Stand conditions in riparian areas ranged from severely understocked to heavily overstocked and unhealthy.

Today with the Current Rule

Nearly two decades of research and deliberation have gone into the current rule and research continues to ensure its validity.

Many operators are surprised at the degree of management flexibility within the SPZ, while still providing sufficient stream protection.

A majority are selecting the Option 2 harvest prescription which can provide easily accessible value, but also leaves more trees in the inner fifty feet where the shade contribution is greater.

In many cases, more trees are being left in the outer 25 feet than before, which results in a less abrupt change in the canopy than the previous 50' standing tree buffer.

Rulemaking Process

Governed by the Administrative Procedures Act, Idaho Code § 67-52.

All rules expire July 1 of every year unless extended by statute by the legislature.

The legislature did not do this in 2019.

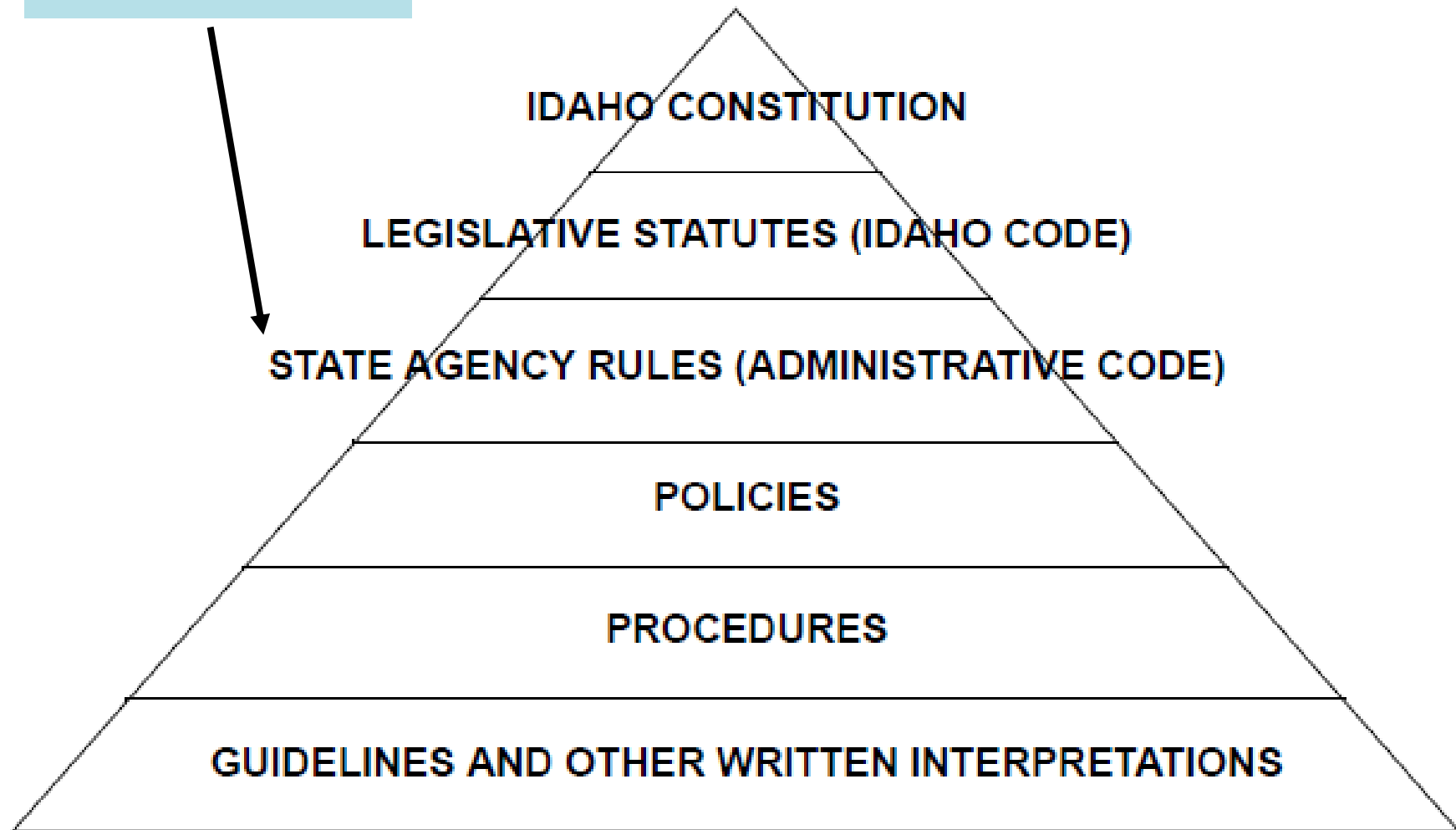
All state agencies initiated Temporary and Proposed Rulemaking to fill the regulatory gaps.

Temporary Rules were effective on June 30, 2019.

For IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act, no changes are proposed to the temporary, proposed rule.

HIERARCHY OF STATE DOCUMENTS

We are here



Proposed Rulemaking

No negotiations held because existing rules were proposed for adoption.

Changes usually require a Negotiated Rulemaking.

Public comment period required for Proposed Rulemaking.

Sufficient petitions received to schedule Public Hearing for IDAPA 20.02.01, as required by Idaho Code § 67-5222(2).

Hearing scheduled for August 15 in Coeur d'Alene by request, iaw Idaho Code § 74-204.

Public comments accepted through August 16.

Proposed Rulemaking, con't.

Changes to the Proposed Rule can only be made based on testimony received at hearing or written comments.

Comments on Proposed Rule will be presented at the September Land Board meeting.

Pending Rule will be presented at the October Land Board meeting.

Pending Rule and Notice must be submitted by October 16.

Rules then reviewed by Legislature in 2020 session.

Hearing Format

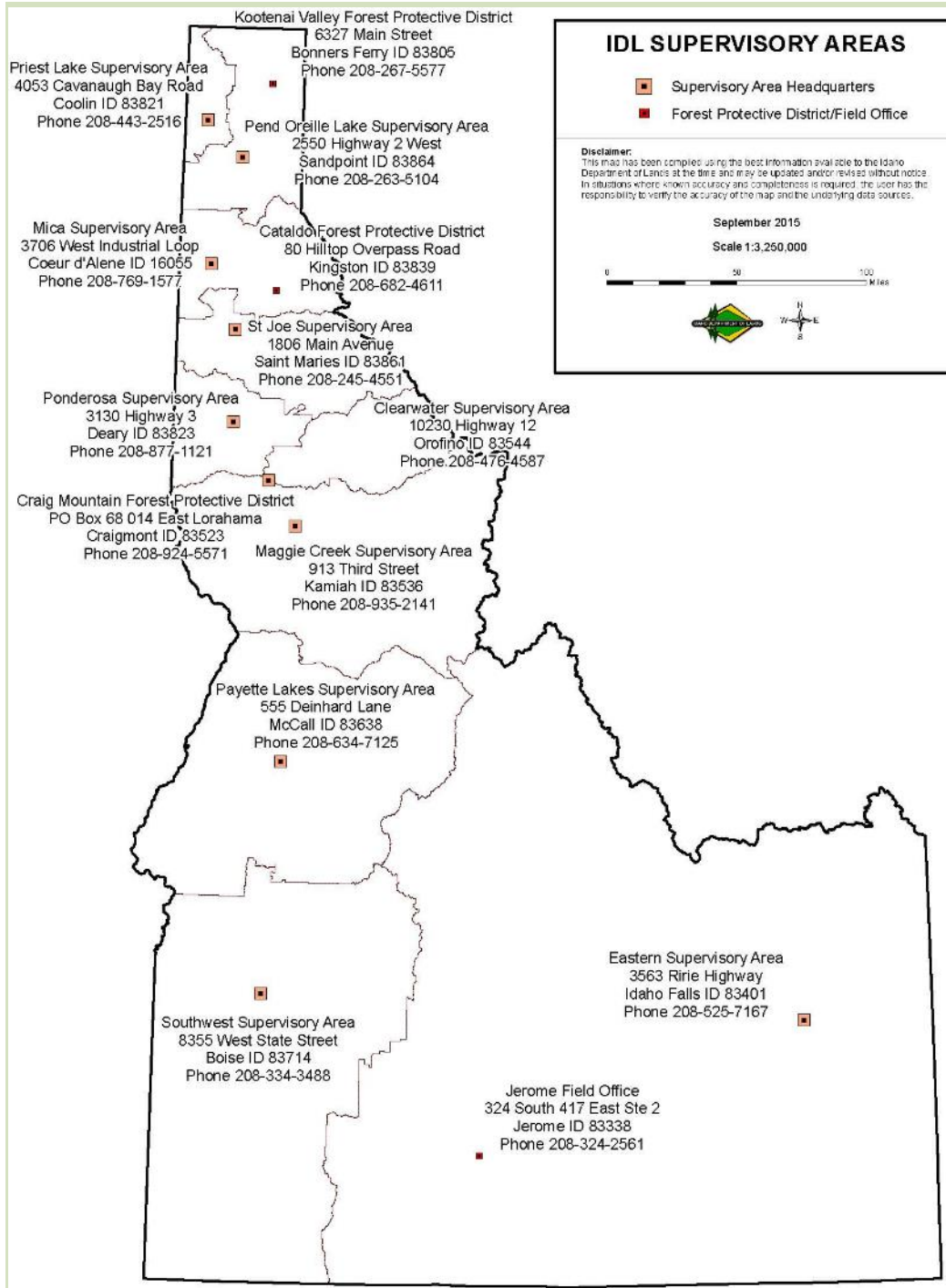
Opportunity to provide testimony.

Time limit may be imposed depending on number of people signed up.

Written comments also accepted.

This is an opportunity to comment on the current, proposed rule.

It is not a forum to negotiate the proposed rule language.



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Questions?