

Dear Senators PEARCE, Bair, Werk, and
Representatives STEVENSON, Shepherd, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Department of Lands:

IDAPA 20.02.01 - Rules Pertaining to the Idaho Forest Practices Act (Docket No. 20-0201-1201);

IDAPA 20.03.14 - Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases (Docket No. 20-0314-1201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10/23/2012. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/21/2012.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address on the memorandum attached below.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee
FROM: Principal Legislative Research Analyst - Katharine Gerrity
DATE: October 3, 2012
SUBJECT: Idaho Department of Lands

IDAPA 20.02.01 - Rules Pertaining to the Idaho Forest Practices Act (Docket No. 20-0201-1201)

IDAPA 20.03.14 - Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases (Docket No. 20-0314-1201)

1. IDAPA 20.02.01 - Rules Pertaining to the Idaho Forest Practices Act

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.02.01 - Rules Pertaining to the Idaho Forest Practices Act. According to the Department, the rule changes stem from recommendations made to the Board of Land Commissioners and the Department by the Idaho Forest Practices Act Advisory Committee, which is comprised of nine voting members across the state representing family forest owners, industrial forest owners, fisheries biologists, citizens at large and logging operators. The Department states that the advisory committee has been working over the last 10 years to develop a science-based shade/streamside retention rule that is based on Idaho forest riparian data following DEQ's quadrennial water-quality audits conducted in 2000 and 2004. The Department notes that the shade rule will allow forest landowners to select from two options which are meant to address both shade and large wood recruitment in stream. The Department adds that, in addition to the shade rule, other recommended proposed changes include recognition of all formal land-management agreements with US Fish & Wildlife and National Marine Fisheries Service, increased flexibility of landowners and operators to perform timber-salvage operations following wildfire, insect infestations and wind events, protection of soils and riparian areas from ground-based equipment usage in steep, unstable or stream-adjacent areas, assignment of reforestation responsibility to the landowner at the time of harvest, clearer definitions of wet areas and the associated equipment-exclusion areas and lower stocking minimums for drier, southern forest types.

Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Sections 58-104, 58-105 and 38-1304, Idaho Code.

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

2. IDAPA 20.03.14 - Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.14 - Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases. According to the Department, the rule adds requirements for management proposals pursuant to the provisions of Senate Bill 1271, enacted during the 2012 legislative session, which is codified as Section 58-302, Idaho Code, clarifies the appeals process procedures associated with conflicted lease applications, rewords Subsection 040.01 relating to rentals to broaden language applicable to multiple lease activities, removes a section relating to rights reserved to the Department which is addressed contractually through the Department's lease templates and removes a section relating to cropland lease hardship claims which will be addressed programmatically.

We contacted Department personnel regarding a number of issues. The first issue was in regard to the Department's Notice of Rulemaking, specifically the descriptive summary. In part, that summary provides "(t)he Department has drafted proposed changes to the current rule *to be used as a starting point for negotiation...*" The Department clarified during our conversation that the statement was intended to refer to the proposed changes that were made prior to negotiated rulemaking. The provisions of the proposed rule are set forth in their present format following negotiated rulemaking, reflecting any changes that were made during that process. The second issue reflects a simple clerical error found in Subsection 020.02. In that subsection, the current paragraph "e" should be changed to "f." Finally, and of most concern, are the provisions of proposed and/or current provisions of Subsection 020.02.c.e. and f. as they relate to statutory changes that were made during the 2012 legislative session. A new Section 58-302, Idaho Code, was enacted last session that provides:

58-302. GRAZING MANAGEMENT PLANS. (1) As used in this section, "grazing management plan" means a written agreement between the lessee and the department of lands, or between the lessee and another public agency and approved by the department, designed to meet the resource objectives identified by the department, including any criteria provided by the department in rule.

(2) All applicants for state grazing leases shall submit a grazing management proposal that addresses resource concerns, as identified by the department, no later than the deadline to apply for the lease.

(3) *Provided however, a current lessee with a grazing management plan in place is not required to submit a grazing management proposal pursuant to this section unless:*

(a) The department of lands makes a written request for a new grazing management proposal from the current lessee; or

(b) The current lessee desires to modify the existing grazing management plan, in which case a written request with the modified management proposal must be submitted no later than the deadline to apply for the lease. (Emphasis added)

The proposed rule change includes the following in Subsection 020.02.c:

c. Proposed Management Plan. All applicants for state grazing, farming and conservation leases shall submit a proposed management plan with their application. *Where current lessee is an applicant, the Department will recognize the existing management plan, as described by the existing lease provisions, as the proposed management plan required to complete the lease application. The Department may require amendments to the proposed management plan in accordance with Subsections 020.02.e. and 020.02.f. (Emphasis added)*

Subsections 020.02.e. and f., the majority of which is *existing* rule, provides:

de. Nonconflicted Applications.

- i. If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued.
- ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, or if the only applicant is not the current lessee, the applicant shall meet with the Department to develop the terms and conditions of a ~~proposed~~ lease specific to the applicant's proposed ~~use~~ management plan.

ef. Conflicted Applications.

- i. All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed ~~use~~ management plan.
- ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (a specific list of criteria follow in the rule, most of which is existing rule.)

The provisions of Section 58-302, Idaho Code, clearly control. However, we have concern that there may be confusion between the statutory provisions and the rule provisions in the procedures applied where a current lessee with a plan in place applies for a state grazing lease. The statute provides that such applicants are not required to submit a new plan unless the Department makes a *written request* for a new proposal or unless the *current lessee desires to modify the existing plan*. The rule, and again primarily as it is currently written, doesn't reference a written request by the Department and refers to those instances where the *Department* has concerns with a lessee's existing plan. These provisions appear to conflict with the statute in regard to state grazing leases and may very well require additional modification to Subsection 020.02.e. and f. The Department is reviewing these concerns at this time.

Negotiated rulemaking was conducted. The rulemaking appears to be authorized by Sections 58-104 and 58-105, Idaho Code. However, as noted above, additional changes may need to be made to avoid any confusion with the existing statutory provisions of Section 58-302, Idaho Code, in regard to state grazing leases.

cc: Idaho Department of Lands

Ara Andrea

Neil Crescenti

IDAPA 20 - DEPARTMENT OF LANDS

20.02.01 - RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT

DOCKET NO. 20-0201-1201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 58-104(6), 58-105 and 38-1304, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

| Thursday, October 11, 2012, 1:00 p.m. (MDT) | Monday, October 15, 2012, 1:00 p.m. (PDT) |
|---|--|
| Idaho Department of Lands Garnet Conference Room 300 N. 6th Street, Suite 103 Boise, Idaho | Idaho Department of Lands Sundance Conference Room 3284 West Industrial Loop Coeur d'Alene, Idaho |

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Forest Practices Act Advisory Committee (FPAAC) is comprised of nine voting members across the state of Idaho representing family forest owners, industrial forest owners, fisheries biologists, citizens at large, and logging operators. This committee is statutorily charged with advising the Idaho State Board of Land Commissioners, in cooperation with the Idaho Department of Lands (IDL), in rulemaking matters associated with the Idaho Forest Practices Act. As a result of quadrennial water-quality audits conducted by the Idaho Department of Environmental Quality (IDEQ) in 2000 and 2004, FPAAC has been working over the last 10 years to develop a science-based shade/streamside retention rule that is based on Idaho forest riparian data. The proposed shade rule will allow forest landowners to select from two options which are meant to address both shade and large wood recruitment in streams. In addition to the shade rule, the FPAAC committee has identified and approved other minor FPA rule changes since 2006. Altogether, the proposed changes include:

- Recognition of all formal land-management agreements with US Fish & Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)
- Increased flexibility of landowners and operators to perform timber-salvage operations following wildfire, insect infestations and wind events
- Protection of soils and riparian areas from any ground-based equipment usage in steep, unstable or stream-adjacent areas
- Assignment of reforestation responsibility to the landowner at the time of harvest
- Clearer definitions of wet areas and the associated equipment-exclusion areas
- Lower stocking minimums for drier, southern forest types
- New science-based streamside-tree-retention minima for Class I streams (shade rule) that allow forest landowners to select between two options

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: not applicable.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state

general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: not applicable.

NEGOTIATED RULEMAKING: Pursuant to Sections 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 8, 2012 Idaho Administrative Bulletin, [Volume 12-6, pages 25 and 26](#); and the July 4, 2012, Idaho Administrative Bulletin, [Volume 12-7, pages 104 and 105](#). Members of the public participated in the negotiated rulemaking process by attending the advertised meetings and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule draft, written public comments received, and the negotiated rulemaking summary, is available at http://www.idl.idaho.gov/adminrule/forest_practices_rulemaking.html.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: not applicable.

INCORPORATION BY REFERENCE: For assistance on technical questions concerning the proposed rule, contact Ara Andrea at (208) 769-1525 or aandrea@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24th, 2012.

DATED this 31st day of August, 2012.

Ara Andrea
Service & Regulatory Program Manager
Idaho Department of Lands
PO Box 83720
Boise, Idaho 83720-0050
(208) 769-1525/Fax (208) 769-1524
aandrea@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0201-1201

010. DEFINITIONS.

Unless otherwise required by context as used in these rules: (10-14-75)

01. Act. The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)

02. Acceptable Tree Species. Any of the tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)

03. Additional Hazard. The debris, slashings, and forest fuel resulting from a forest practice. (10-14-75)

04. Average DBH. Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. All trees to be cut that do not have a measurable DBH will fall in the one inch (1") class. (7-1-96)

05. Best Management Practice (BMP). A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs

- shall include, but not be limited to, those management practices included in these rules. (9-11-90)
- 06. Board.** The Idaho State Board of Land Commissioners or its designee. (10-14-75)
- 07. Buffer Strip.** A protective area adjacent to an area requiring special attention or protection. (10-14-75)
- 08. Chemicals.** Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, as defined in the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code, fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (7-1-98)
- ~~**09. Clear Cut.** A harvest method where trees are removed and the residual stocking is below the minimum stocking levels of Subsection 050.04. (4-11-06)~~
- 109. Constructed Skid Trail.** A skid trail created by the deliberate cut and fill action of a dozer or skidder blade resulting in a road-type configuration. (7-1-96)
- 110. Commercial Products.** Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)
- 121. Condition of Adjoining Area.** Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of the adjoining area. (1-24-78)
- 132. Contaminate.** To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural or recreational uses or to livestock, wildlife, fish or other aquatic life. (4-11-06)
- 143. Cross-Ditch.** A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion. (3-13-90)
- 154. Cull.** Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)
- 165. Department.** The Idaho Department of Lands. (10-14-75)
- 176. Deterioration Rate.** Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)
- 187. Director.** The Director of the Idaho Department of Lands or his designee. (10-14-75)
- 198. Emergency Forest Practice.** A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)
- 2019. Fertilizers.** Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)
- 210. Fire Trail.** Access routes that are located and constructed in a manner to be either useful in fire control efforts or deterring the fire spread in the hazard area. (10-14-75)
- 221. Forest Land.** Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species. (7-1-96)
- 232. Forest Practice.** (10-14-75)

a. The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non-forest use when harvest occurs; (7-1-98)

b. Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (7-1-98)

c. Reforestation; (10-14-75)

d. Use of chemicals for the purpose of managing forest tree species or forest land; (7-1-98)

e. The management of slash resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-98)

f. "Forest Practice" shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)

243. Forest Regions. Two (2) regions of forest land: one (1) being north of the Salmon River and one (1) being south of the Salmon River. (7-1-96)

24. Forest Type. Five (5) forest types in Idaho are identified as follows: ()

a. North Idaho grand fir/western redcedar (NIGF): moist to wet forests with western redcedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater/Lochsa River. ()

b. Central Idaho grand fir/western redcedar (CIGF): productive conifer forests found in forests between the Clearwater/Lochsa River and the Salmon River, characterized by stands having western redcedar and grand fir as climax species, with a mixed-conifer overstory increasingly comprised of ponderosa pine, Douglas-fir, and larch in the river-breaks canyonlands. ()

c. South Idaho grand fir (SIGF): mixed-conifer forests, dominated by ponderosa pine and Douglas-fir, found south of the Salmon River with grand fir and occasionally western redcedar being the stand climax species. ()

d. Western hemlock-subalpine fir (WH): moist, cool forests dominated by western hemlock, mountain hemlock, and/or subalpine fir, generally found in higher elevation sites. ()

e. Douglas-fir-ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas-fir, generally found in lower-elevation, dry sites. ()

25. Fuel Quantity. The diameter, the number of stems and the predominate species to be cut or already cut, and the size of the continuous thinning block all of which determine quantity of fuel per unit of area. (1-24-78)

26. Ground Based Equipment. Mobile equipment such as tractors, dozers, skidders, and excavators, loaders, mechanized harvesters and forwarders used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (7-1-96)()

27. Habitat Types. Forest land capable of producing similar plant communities at climax. (7-1-96)

28. Harvesting. A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a

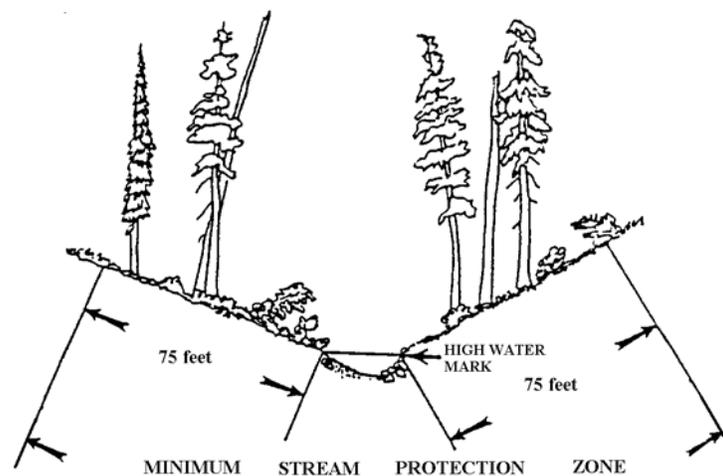
- person for his own personal use. (10-14-75)
- 29. Hazard.** Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)
- 30. Hazard Offset.** Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)
- 31. Hazard Points.** The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify conditions on the same area or to actions by the operator, timber owner or landowner to offset the hazardous conditions on the same area. (1-24-78)
- 32. Hazard Reduction.** The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire after treatment. (10-14-75)
- 33. Lake.** A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)
- 34. Landowner.** A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)
- 35. Large Organic Debris (LOD).** Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90)
- 36. Merchantable Material.** That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)
- 37. Merchantable Stand of Timber.** A stand of trees that will yield logs or fiber: (7-1-96)
- a.** Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)
- b.** Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)
- 38. Noncommercial Forest Land.** Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)
- 39. Operator.** A person who conducts or is required to conduct a forest practice. (10-14-75)
- 40. Operating Area.** That area where a forest practice is taking place or will take place. (1-24-78)
- 41. Ordinary High Water Mark.** That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. (10-14-75)
- 42. Outstanding Resource Water.** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, that may lower water quality. (7-1-96)

- 43. Partial Cutting.** The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)
- 44. Prescribed Fire.** The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives. (7-1-96)
- 45. Present Condition of Area.** The amount or degree of hazard present before a thinning operation commences. (1-24-78)
- 46. Public Resource.** Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)
- 47. Reforestation.** The establishment of an adequately stocked stand of trees of species acceptable to the department to replace the ones removed by a harvesting or a catastrophic event on commercial forest land. (10-14-75)
- 48. Relief Culvert.** A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)
- 49. Rules.** Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)
- 50. Slash.** Any vegetative residue three inches (3") and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)
- 51. Site.** An area considered as to its ecological factors with reference to capacity to produce forest vegetation; the combination of biotic, climatic, and soil conditions of an area. (10-14-75)
- 52. Site Factor.** A combination of percent of average ground slope and predominate aspect of the forest practice area which relate to rate of fire spread. (1-24-78)
- 53. Site Specific Best Management Practice.** A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, and which has been approved by the Department, or by the Board in consultation with the Department and the Forest Practices Advisory Committee. (7-1-96)
- 54. Size of Thinning Block.** Acres of continuous fuel creating an additional hazard within a forest practice area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)
- 55. Snags.** Dead, standing trees twenty (20) feet and greater in height. (1-24-78)
- 56. Soil Erosion.** Movement of soils resulting from forest practices. (10-14-75)
- 57. Soil Stabilization.** The minimizing of soil movement. (10-14-75)
- 58. State.** The state of Idaho or other political subdivision thereof. (10-14-75)
- 59. Stream.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)
- a.** Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet. (11-7-86)

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)

c. Class I Stream Protection Zone means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.)

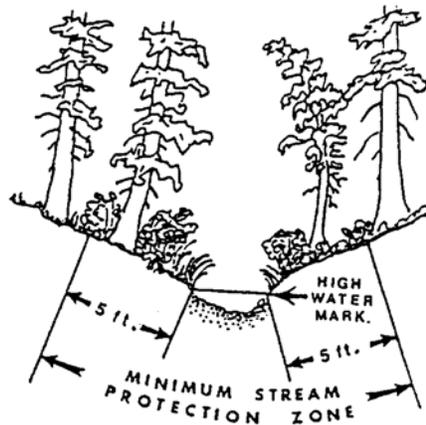
FIGURE 1
CLASS 1 STREAM PROTECTION ZONE



(7-1-96)

d. Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, provide soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks.

FIGURE 2
CLASS II STREAM PROTECTION ZONE



(7-1-96)

60. Timber Owner. A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

61. Time of Year of Forest Practice. Those combinations of months during which time the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. (1-24-78)

011. -- 019. (RESERVED)

020. GENERAL RULES.

01. Compliance. Practices contained within a rule shall be complied with to accomplish the purpose to which the rule is related. (8-13-85)

a. If conditions of sites or activities require the application of practices which differ from those prescribed by the rules, the operator shall obtain a variance according to the following procedure: (8-13-85)

i. The operator shall submit a request for variance to the department in writing. The request shall include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85)

ii. Within fourteen (14) calendar days the department shall evaluate the request and notify the operator in writing of the determination to allow or disallow the variance request. (7-1-96)

iii. All practices authorized under this procedure shall provide for equivalent or better results over the long term than the rules which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance can be applied only at approved sites. (8-13-85)

b. Practices shall also be in compliance with the Stream Channel Alteration Act (Title 42, Chapter 38, Idaho Code), Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code), the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules and regulations pursuant thereto. (8-13-85)

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion for these purposes. (5-8-09)

i. No person shall, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal company. (5-8-09)

ii. If water is to be diverted from a stream within a water district, or from a stream from which an irrigation delivery entity diverts water, a person diverting water shall give notice to the watermaster of the intent to divert water for the purposes as authorized herein. (5-8-09)

iii. Water diversion intakes used for diversions under Subsection 020.01 shall be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. (5-8-09)

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. ()

02. Conversion of Forest Lands. Conversions require a notification be filed, and compliance with all rules except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion. Cover shall be established within one (1) year of completion of the forest practice except that the director may grant an extension of time if weather or other conditions interfere. Within three (3) years of completion of the forest practice, the director shall determine if the conversion has been accomplished by: (7-1-96)

a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)

b. Evidence of actual use of the land for the intended purpose. (10-14-75)

c. If the conversion has not been accomplished within three (3) years of the completion of harvest, supplemental reforestation Subsection 050.06 applies. (7-1-96)

03. Annual Review and Consultation. The director shall, at least once each year, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to rules, new rules, or repeal of rules. He shall then report to the board a summary of such meeting or meetings, together with recommendations for amendments to rules, new rules, or repeal of rules. (10-14-75)

04. Consultation. The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary. (10-14-75)

a. The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Environmental Quality for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners. (9-20-88)

05. Notification of Forest Practice. (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the department shall be notified as required in Subsection 020.05.b. The notice shall be given by the operator. However, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one forest practice is to

be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department. (5-8-09)

b. The notification required by Subsection 020.05.a. shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner; the legal description of the area in which the forest practice is to be conducted; whether the forest practice borders an outstanding resource water and other information the department considers necessary for the administration of the rules adopted by the board under Section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. Promptly upon formal acceptance of the notice but not more than fourteen (14) calendar days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules. (7-1-96)

c. An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notice within thirty (30) calendar days of the change. Promptly upon receipt of notice of change, but not to exceed fourteen (14) calendar days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change. (7-1-96)

d. The notification is valid for the same period as set forth in the certificate of compliance under Section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section. (4-21-92)

e. If the notification required by Subsection 020.05.a. of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) calendar days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fourteen (14) calendar days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal. (7-1-96)

06. Notification Exception. A notification of Forest Practice is required except for: (7-1-98)

a. Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

b. Non-commercial cutting and removal of forest tree species by a person for his own personal use. (10-14-75)

c. Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

07. Emergency Forest Practices. No prior notification shall be required for emergency forest practices necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner shall notify the director with an explanation of why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. (7-1-96)

08. Duty of Purchaser. The initial purchaser of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, receive and keep on file a copy of the notice required by Section 38-1306, Idaho Code relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times. (7-1-96)

09. State Divided into Regions. For the purpose of administering this Act, the State is divided into two

(2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. (7-1-96)

10. Regions Divided into Forest Habitat Types. For the purpose of further refining the on-the-ground administration of the Act, the forest regions can be divided into Habitat Types. (7-1-96)

021. -- 029. (RESERVED)

030. TIMBER HARVESTING.

01. Purpose. Harvesting of forest tree species is a part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land and minimize soil and debris entering streams and protect wildlife and fish habitat. (10-14-75)

02. Quality of Residual Stocking. Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

03. Soil Protection. Select for each harvesting operation the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85)

a. An operation that uses Ground-based skidding equipment shall not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based skidding equipment shall not be conducted used except with an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shall notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05. (7-1-96)()

b. Limit the grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils to a maximum of thirty percent (30%). (7-1-96)

c. In accordance with appropriate silvicultural prescriptions, skid trails shall be kept to the minimum feasible width and number. Tractors used for skidding shall be limited to the size appropriate for the job. (8-13-85)

d. Uphill cable yarding is preferred. Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85)

04. Location of Landings, Skid Trails, and Fire Trails. Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

a. All new or reconstructed landings, skid trails, and fire trails shall be located on stable areas outside the appropriate stream protection zones. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90)

b. Minimize the size of a landing to that necessary for safe economical operation. (8-13-85)

c. To prevent landslides, fill material used in landing construction shall be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, landings shall be stabilized by use of seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85)

05. Drainage Systems. For each landing, skid trail or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface water to minimize erosion. (4-21-92)

a. Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, outsloping, scarifying, seeding or other suitable means. This work shall be kept current to prevent erosion prior to fall and spring runoff. (8-13-85)

b. Reshape landings as needed to facilitate drainage prior to fall and spring runoff. Stabilize all

landings by establishing ground cover or by some other means within one (1) year after harvesting is completed. (8-13-85)

06. Treatment of Waste Materials. All debris, overburden, and other waste material associated with harvesting shall be left or placed in such a manner as to prevent their entry by erosion, high water, or other means into streams. (10-14-75)

a. Wherever possible trees shall be felled, bucked, and limbed in such a manner that the tree or any part thereof will fall away from any Class I streams. Continuously remove slash that enters Class I streams as a result of harvesting operations. Continuously remove other debris that enters Class I streams as a result of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. (3-13-90)

b. Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the department. No formal variance is required. (11-7-86)

c. Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate Stream Protection Zone. (8-13-85)

07. Stream Protection. During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

a. Lakes require an approved site specific riparian management prescription prior to conducting forest practices within the stream protection zone. (7-1-96)

b. Operations that utilize ground-based skidding equipment that result in logs being skidded or forwarded in or through streams shall not be permitted. When streams must be crossed, adequate temporary structures to carry stream flow shall be installed. Cross the stream at right angles to its channel if at all possible. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. (7-1-96)()

c. Operation of ground based equipment shall not be allowed within the Stream Protection Zone except at approaches to stream crossings. (7-1-96)

d. When cable yarding is necessary, across or inside the Stream Protection Zones it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. (8-13-85)

e. Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

i. Leave hardwood trees, shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (10-14-75)

ii. Leave seventy-five percent (75%) of the current shade over the Class I streams. Limit re-entry until shade recovers. To maintain and enhance shade and large woody debris recruitment, landowners have two options for tree retention. (4-11-06)()

(1) Option A: Adjacent to all Class I streams, all standing trees, including conifers, hardwoods and snags, will be left within twenty-five (25) feet of the ordinary high water mark on each side, with the exception that small corridors may be opened to facilitate line skidding. Corridors will be kept to a minimum, and the only trees that may be felled within this area are trees needing to be felled to be in compliance with IDAPA 17.08, "Idaho Minimum Safety Standards and Practices for Logging." In the zone twenty-five (25) to fifty (50) feet from the ordinary high water mark on each side of all Class I streams, live conifers and hardwoods will be left to maintain a minimum

relative stocking per acre of forty (40) according to the relative-stocking contribution table below (e.g., in the NGIF forest type, retaining thirty 10-in. trees per acre would contribute six point twenty-seven (6.27) relative stocking; additionally retaining twenty-five (25) 12-in. trees (8.675 relative stocking), twenty (20) 22-in. trees (13.66 relative stocking), and fifteen (15) 26-in. trees (thirteen point seventeen (13.17) relative stocking) would result in a total retention of forty-one point eight (41.8) relative stocking per acre). ()

(2) Option B: Adjacent to all Class I streams, within seventy-five (75) feet from the ordinary high water mark on each side of all Class I streams, live conifers and hardwoods will be left to maintain a minimum relative stocking per acre of forty-five (45) according to the relative-stocking contribution table below. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream. ()

(3)

| Per Tree Contribution to Relative Stocking by Diameter Class | | | | | | |
|---|---------------------|----------------------|----------------------|----------------------|----------------------|----------------|
| <u>Forest Type</u> | <u>8 – 11.9 in.</u> | <u>12 – 15.9 in.</u> | <u>16 – 19.9 in.</u> | <u>20 – 23.9 in.</u> | <u>24 – 27.9 in.</u> | <u>28+ in.</u> |
| <u>NGIF</u> | <u>0.209</u> | <u>0.347</u> | <u>0.506</u> | <u>0.683</u> | <u>0.878</u> | <u>1.088</u> |
| <u>CIGF</u> | <u>0.244</u> | <u>0.405</u> | <u>0.590</u> | <u>0.797</u> | <u>1.024</u> | <u>1.270</u> |
| <u>SIGF</u> | <u>0.293</u> | <u>0.486</u> | <u>0.708</u> | <u>0.957</u> | <u>1.229</u> | <u>1.524</u> |
| <u>WH</u> | <u>0.267</u> | <u>0.442</u> | <u>0.644</u> | <u>0.870</u> | <u>1.117</u> | <u>1.385</u> |
| <u>DF</u> | <u>0.326</u> | <u>0.540</u> | <u>0.787</u> | <u>1.063</u> | <u>1.366</u> | <u>1.693</u> |

()

(4) Adjacent to all Class II streams, standing trees less than 8” DBH (including conifers and hardwoods) and shrubs will be left within thirty (30) feet on each side to the extent practicable given safety considerations and the site-specific plans for fire hazard compliance and regeneration. These areas are required to meet the minimum stocking requirements of Subsection 050.04 or are subject to the supplemental reforestation requirements of Subsection 050.06. For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. ()

iii. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35. (4-11-06)

iv. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. (4-11-06)

v. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06. (4-11-06)

~~vi. Standing trees, including conifers, hardwoods and snags will be left within fifty (50) feet of the ordinary high water mark on each side of all Class I streams, and within thirty (30) feet on each side of those Class II streams that require thirty (30) feet stream protection zones, in the following minimum numbers per one thousand (1000) feet of stream:~~

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

| Tree Diameter (DBH) | —STREAM WIDTH— | | | |
|---------------------|----------------|---------|-----------|-----------|
| | Class I | | | Class II* |
| | Over 20' | 10'–20' | Under 10' | |
| 3–7.9" | 200 | 200 | 200 | 140 |
| 8–11.9" | 42 | 42 | 42 | -- |
| 12–19.9" | 24 | 24 | -- | -- |
| 20"+ | 4 | -- | -- | -- |

*For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. (4-11-06)(____)

vii. Snags will be counted as standing trees in each diameter class if snag height exceeds one and one-half (1½) times the distance between the snag and the stream's ordinary high water mark. Not more than fifty percent (50%) of any class may consist of snags. (7-1-96)

vi#. To obtain a variance from the standing tree and shade requirements, the operator must develop a site specific riparian management prescription and submit it to the department for approval. The prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will achieve the objective of these rules. (4-11-06)

†vii. Where the opposite side of the stream does not currently meet the minimum standing tree requirements of the table, the department and the operator should consider a site specific riparian prescription that meets the large organic debris needs of the stream. (3-13-90)

†viii. Stream width shall be measured as average between ordinary high water marks. (3-13-90)

f. Direct ignition of prescribed burns will be limited to hand piles within stream protection zones (SPZ), all other direct ignitions shall occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. (4-11-06)

i. Hand piles shall be at least five (5) feet from the ordinary high water-mark of streams. (4-11-06)

ii. No mechanical piling of slash or natural forest fuels is allowed in a SPZ (an exception is filter windrows for erosion control which shall not be ignited. (4-11-06)

08. Maintenance of Productivity and Related Values. Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)

a. Where major scenic attractions, highways, recreation areas or other high-use areas are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)

b. Give special consideration to preserving any critical ~~wildlife~~ or aquatic or wildlife habitat, including snags, especially within stream protection zones. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (10-14-75)(____)

c. Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other ~~sources~~ locations where the presence of water is indicated; by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. ~~Protect~~ Protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (7-1-96)(____)

d. Clear-cutting Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, shall be planned so that adequate wildlife escape cover (e.g. topography, vegetation, stream protection zones, etc.) is available within one-quarter (1/4) mile. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

050. RESIDUAL STOCKING AND REFORESTATION.

01. Purpose. The purpose of these rules is to provide for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species by describing the conditions under which reforestation will be required, specifying the minimum number of acceptable trees per acre, the maximum period of time allowed after harvesting for establishment of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. (7-1-96)

02. Quality of Residual Stocking. On any operation, trees left for future harvest shall be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. This may be accomplished by locating roads and landings and by conducting felling, bucking, skidding, yarding, and decking operations so as to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. (7-1-96)

03. Sites Unpractical to Reforest. Sites unpractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, shall not be harvested below minimum stocking, unless the site is converted to some other land use, or in instances of wildfire, insects, disease or other natural causes where salvage of the damaged timber is planned. (7-1-96)()

a. When harvesting timber on these sites, one (1) of the following actions must be taken: ()

i. Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of completing the harvest, if needed to meet minimum stocking. ()

ii. Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting, if needed to meet minimum stocking. ()

b. If the efforts listed in Subparagraphs 050.03.a.i. and 050.03.a.ii. fall short of meeting the minimum stocking level, the landowner will be encouraged, but not required, to meet the minimum stocking level through additional reforestation efforts. ()

04. Stocking. Stocking will be deemed satisfactory adequate immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) size class, are reasonably well-spaced distributed over the area affected by forest harvesting. (NOTE: (1) DBH = Average Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

MINIMUM STOCKING - ACCEPTABLE TREES

| <u>Average Size Class DBH (1) — Inches</u> | <u>Average Number Trees Per Acre</u> | <u>Average Spacing In Feet</u> |
|--|--|------------------------------------|
| <i>2.9 and smaller</i> | <i>170</i> | <i>16 x 16</i> |
| <i>3.0 and greater</i> | <i>110</i> | <i>20 x 20</i> |
| <i>5.0 and greater</i> | <i>60</i> | <i>27 x 27</i> |
| <i>8.0 and greater</i> | <i>35</i> | <i>35 x 35</i> |
| <i>11.0 and greater</i> | <i>20</i> | <i>47 x 47</i> |

| <u>Idaho Region</u> | <u>Size Class DBH (inches)</u> | <u>Average Number of Retained Trees Per Acre</u> | <u>Average Spacing (feet)</u> |
|---------------------|------------------------------------|--|-----------------------------------|
| <u>North</u> | <u>0" – 2.9"</u> | <u>170</u> | <u>16 x 16</u> |
| <u>South</u> | <u>0" – 2.9"</u> | <u>125</u> | <u>18 x 18</u> |
| <u>North</u> | <u>3.0" – 10.9"</u> | <u>110</u> | <u>19 x 19</u> |
| <u>South</u> | <u>3.0" – 10.9"</u> | <u>75</u> | <u>24 x 24</u> |
| <u>North</u> | <u>11.0" and greater</u> | <u>20</u> | <u>46 x 46</u> |
| <u>South</u> | <u>11.0" and greater</u> | <u>15</u> | <u>53 x 53</u> |

If immediately following harvest, the stand consists of retained trees of mixed size classes that are reasonably well distributed over the harvested area, and none of the size classes individually equal or exceed the minimum trees per acre shown above, stocking will also be deemed adequate if the weighted total of all of the size classes of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. The weighted total is calculated by multiplying the number of retained trees per acre in each size class by the weighting factors below, and adding all of these size class totals together.

| <u>Size Class</u> | <u>Weight</u> |
|--------------------------|---------------|
| <u>0" – 2.9"</u> | <u>1</u> |
| <u>3.0" – 10.9"</u> | <u>1.6</u> |
| <u>11.0" and greater</u> | <u>8.4</u> |

Harvested stands which are not adequately stocked, as defined above, will be subject to supplemental reforestation requirements specified in Subsection 050.06. Minimum stocking requirements for Class I stream protection zones are specified in Subparagraph 030.07.e.ii. (7-1-96)()

- 05. Reforestation Exemptions.** (7-1-96)
- a.** Reforestation is not required for: (7-1-96)
 - i.** Noncommercial forest land; (7-1-96)
 - ii.** Land converted to another use. This may include land converted to roads used in a forest practice; (7-1-96)

iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. (7-1-96)

b. On lands exempted under Subsection 050.03, where reforestation is not being planned, some form of grass or planted cover shall be established within one (1) year in order to maintain soil productivity and minimize erosion. (7-1-96)

06. Supplemental Reforestation. Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. Required seeding and/or planting shall be completed before the end of the fifth growing season following the time of harvest, except that the director shall grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. (7-1-96)

a. Reforestation practices must insure seedlings become established. This can be accomplished by adequate site preparation, utilizing acceptable seed or seedlings, following accepted planting or sowing practices, or by other suitable means. (7-1-96)

b. The party responsible for reforestation is the ~~person, partnership, corporation, or association of whatever nature that directed the area be harvested below minimum~~ landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. (7-1-96)()

IDAPA 20 - DEPARTMENT OF LANDS

20.03.14 - RULES GOVERNING GRAZING, FARMING, CONSERVATION, NONCOMMERCIAL RECREATION, AND COMMUNICATION SITE LEASES

DOCKET NO. 20-0314-1201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

| |
|---|
| Wednesday, October 10, 2012, 6:00 p.m. |
|---|

| |
|---|
| Idaho Department of Lands 300 N 6th Street, Suite 103, Boise |
|---|

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department has drafted proposed changes to the current rule to be used as a starting point for negotiation. Key changes include:

- Addition of requirements for management proposals per Senate Bill 1271 to Subsection 020.02.
- Clarification of the appeals process procedures associated with conflicted lease applications in Subsection 020.02.
- Rewording of Subsection 040.01 – Rental, to broaden language applicable to multiple lease activities.
- Removal of Section 021 - Rights Reserved to the Department, which is addressed contractually through the Department's lease templates.
- Removal of Section 054 - Cropland Lease Hardship Claims, which will be addressed programmatically.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Not applicable

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the in the June 6, 2012, Idaho Administrative Bulletin, [Volume 12-6, page 27](#); and the July 4, 2012, Idaho Administrative Bulletin, [Volume 12-7, page 106](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Neil Crescenti at (208) 334-0278 or ncrescenti@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 31st day of August, 2012.

Neil Crescenti
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Idaho Department of Lands
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 20-0314-1201

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.14, "Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases." (3-12-10)

02. Scope. These rules constitute the Idaho Department of Lands' administrative procedures for leasing of state endowment trust land for grazing, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a ~~ten~~ twenty (~~20~~) year lease term restriction, and under the provisions of Section 58-310, Idaho Code regarding lease auctions. These rules shall be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill. (~~3-12-10~~)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Amortization. The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee's annual lease payments. (3-13-02)

02. Animal Unit Month (AUM). The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one-half (1 1/2) AUM. (3-12-10)

03. Assignment. The Department approved transfer of all, or a portion of, a lessee's right to another person wherein the second person assumes the lease contract with the Department. (3-13-02)

04. Board. The Idaho State Board of Land Commissioners or such representatives as may be designated. (3-13-02)

05. Conflict Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. (3-12-10)

06. **Department.** The Idaho Department of Lands. (6-14-88)
07. **Director.** The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)
08. **Extension.** An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. (3-12-10)
09. **Improvement Valuation.** The ~~Land Board approved~~ process or processes of estimating the value of Department authorized improvements associated with a lease, as defined in Section 102. ~~(3-12-10)~~()
10. **Lease.** A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-12-10)
11. **Herd Stock.** Livestock leased or managed, but not owned, by the lessee. (3-13-02)
12. **Lease Application.** An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. (3-12-10)
13. **Manageable Unit.** A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. (3-12-10)
14. **Management Plan.** The signed state endowment trust land lease for grazing, farming and conservation, and any referenced attachments such as annual operating plans or federal allotment management plans, shall be considered the management plan. ()
- ~~145.~~ **Mortgage Agreement.** Department authorization for the lessee to obtain a mortgage on a state endowment trust land lease. ~~(3-12-10)~~()
- ~~156.~~ **Person.** An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-13-02)
17. **Proposed Management Plan.** A document written and submitted by the lease applicant detailing the management objectives and strategies associated with their proposed activity. ()
- ~~168.~~ **Sublease.** An agreement in which the state endowment trust land lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. ~~(3-13-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATIONS AND PROCESSING.

01. **Eligible Applicant.** Any person legally competent to contract may submit an application to lease state ~~owned~~ endowment trust land provided ~~he has reached his eighteenth birthday, or if not eighteen (18) is married, is a citizen of the United States or has declared his intentions to become such, and is not indebted to the state of Idaho or delinquent on any payments to~~ such person is not then in default of any contract with the Department of Lands; provided further, that the Department may, in its discretion, exclude any person in breach of any contract with the state of Idaho or any department or agency thereof. To be eligible for a grazing or cropland lease, an applicant must intend to use the land for domestic livestock grazing or for cropping purposes, and must certify such. ~~(3-13-02)~~()
02. **Application Process.** All lease applications must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as

determined by the Department, and must meet the following criteria: (3-12-10)

a. Non-refundable Fee. Each application for a lease shall be accompanied by a non-refundable application fee in the amount specified by the Board. (3-13-02)

b. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already covered by a lease shall be as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. (3-12-10)

c. Proposed Management Plan. All applicants for state grazing, farming and conservation leases shall submit a proposed management plan with their application. Where current lessee is an applicant, the Department will recognize the existing management plan, as described by the existing lease provisions, as the proposed management plan required to complete the lease application. The Department may require amendments to the proposed management plan in accordance with Subsections 020.02.e. and 020.02.f. ()

d. Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application shall be considered invalid. (3-12-10)

d.e. Nonconflicted Applications. (3-12-10)

i. If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. (3-12-10)

ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, or if the only applicant is not the current lessee, the applicant shall meet with the Department to develop the terms and conditions of a proposed lease specific to the applicant's proposed use management plan. (3-12-10)()

e. Conflicted Applications. (3-12-10)

i. All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed use management plan. (3-12-10)()

ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (3-12-10)

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust parcel land with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. (3-12-10)()

(2) The applicant's legal access to and/or control of state endowment trust land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (3-12-10)()

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. (3-12-10)

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (3-12-10)

(5) Mitigation measures designed to address trust management concerns such as: (3-12-10)

- (a) Construction of improvements at lessee's expense. (3-12-10)
- (b) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. (3-12-10)
- (c) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. (3-12-10)
- (d) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (3-12-10)
- (6) Any other factors the Department deems relevant to the management of the state endowment trust ~~pareet~~ land for the proposed use. (3-12-10)()

fg. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. If the appeal is denied, the applicant may continue with the auction process by accepting the lease terms and conditions initially offered by the Department. No auction shall be held until the Land Board resolves any such appeal. (3-12-10)()

03. Expiring Leases. Lease applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It shall be the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. (3-12-10)

04. Rental Deposit. (3-13-02)

a. Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease and the existing lessee is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. (3-12-10)

b. New Applicants. (3-12-10)

i. Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. (3-12-10)

ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. ~~When more than one (1) application is received for unleased state endowment trust land, all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction.~~ (3-12-10)()

~~021. RIGHTS RESERVED TO THE DEPARTMENT.~~

~~The Department expressly reserves the right:~~ (3-13-02)

~~**01. Reservations.** To all mining rights, timber rights, water rights, easements and rights of way, and the fee title to the leased land.~~ (3-13-02)

~~**02. Other Leases.** To maintain present, and to issue future mineral, oil and gas, geothermal and other subsurface leases as provided by Title 47, Idaho Code. Annual rental may be adjusted to reflect any utility loss to the~~

~~lessee from such activities.~~

~~(3-13-02)~~

~~**03. Grazing Restrictions.** To restrict or prohibit grazing on all, or portions of, the leased land to accommodate other resource management objectives. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on the lands leased, of any such restrictions or termination of grazing use together with a map of the restricted area. The Department will work with lessee to find alternate forage sources on endowment lands to minimize the financial impact to the endowment. Annual rental will be adjusted to reflect any utility loss to the lessee from such activities should alternate sources of forage not be found.~~

~~(3-13-02)~~

~~**04. Seed Harvest.** To harvest seed from plants on land not under a cropland lease. The Department will coordinate harvesting activities with lessee to minimize impacts on livestock operations. If loss of use occurs from harvesting activities the rental will be adjusted in the amount of lost use.~~

~~(3-13-02)~~

~~**05. Entry.** To enter upon and inspect the lands leased at any reasonable time to insure protection of the Department's interest.~~

~~(3-13-02)~~

~~**06. Easements.** To grant easements and rights of way across or upon the lands leased. The Department shall coordinate with the lessee before processing any easement applications on the leased land. Annual rental will be adjusted to reflect any utility loss to the lessee from any such easements or rights of way. Acreage of the lands described within the lease may be adjusted to reflect any such easements or rights of way that permanently remove such lands from grazing use.~~

~~(3-13-02)~~

~~**07. Public Access.** To exclusively regulate public access on state lands. Grazing or cropland leases will not be considered exclusive use leases as described under Title 36, Chapter 16, Idaho Code. These rules do not authorize or purport to authorize trespass on private lands to reach state-owned lands. Use of state lands shall not be restricted without prior written approval of the Department.~~

~~(3-13-02)~~

~~**08. Water Rights.** To all water rights appurtenant to state lands. Lessees may not appropriate any water rights that are appurtenant to state lands, including instream livestock use or stock watering rights. Any water right appropriated on state land shall be appropriated in the name of the state of Idaho.~~

~~(3-13-02)~~

~~**09. Road Closures.** To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with the lessee prior to action. The lessee will have the right of due process when decisions affect the lessee's use of the lease.~~

~~(3-13-02)~~

~~**10. Special Leases.** To grant special leases upon the lands described in the grazing lease. If the special lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use.~~

~~(6-14-88)~~

~~**11. Permanent Improvements.** To claim all permanent improvements placed upon the land remaining after six (6) months in cases of abandonment by the lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the lease. No improvements will be disposed of by the Department until all appeals have been exhausted.~~

~~(3-13-02)~~

0221. LENGTH OF LEASE.

The Department may issue a lease for any period of time up to the maximum term provided by law. (3-12-10)

0232. -- 029. (RESERVED)

030. CHANGE IN LAND USE.

The Director may change the use of any state endowment trust land, in whole or in part, for other uses that will better achieve the objectives of the Board. (3-12-10)

~~**01. Termination of Existing Lease.** In case of a change in land use to a use other than provided for under these rules, the existing lease may be terminated, in whole or in part, upon one hundred eighty (180) days written notice to the lessee. If a lease is terminated due to a change in land use, improvement credit will be addressed in accordance with these rules.~~

~~(3-12-10)~~

031. -- 039. (RESERVED)

040. RENTAL.

01. **Rental Rates.** ~~Rental rates shall be~~ **The methodology used to calculate rental rates shall be** determined by the Board. ~~The rental rate for livestock grazing leases shall be based on the number of allowable AUMs. The rental rate for cropland leases shall be based on the number of acres used for crop production.~~ (3-13-02)()

02. **Special Uses.** Fees for special uses requested by the lessee and approved by the Department, ~~including, but not limited to, concentrated feeding areas or structures/buildings enhancing management of the land,~~ shall be determined by the Department. (3-13-02)()

03. **Rental Due Date.** Lease rentals are due in accordance with the terms of the lease. (3-12-10)

(BREAK IN CONTINUITY OF SECTIONS)

050. LEASE CANCELLATION.

Leases may be cancelled by the Director for the following reasons: (3-13-02)

01. **Non-Compliance.** If the lessee is not complying with the lease provisions or ~~management plan provisions or~~ if resource damage attributable to the lessee's management is occurring to state **endowment trust** land within a lease, the lessee shall be provided written notification of the violation by regular and certified mail. The letter shall set forth the reasons for the Department's cancellation of the lease and shall provide the lessee thirty (30) days notice of the cancellation. (3-13-02)

02. **Change in Land Use.** A lease may be cancelled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

03. **Land Sale.** The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

04. **Mutual Agreement.** Leases may be cancelled by mutual agreement between the Department and the lessee. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

053. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.

01. **Farming Lease Extensions.** An extension of the annual lease payment may be approved for farming leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. (3-12-10)

02. Liens. When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. ~~If the subject state endowment trust land is covered under a Conservation Reserve Program contract with the federal government, the lessee must sign a transfer of payment, or a similar form provided by the federal government, transferring the federal payment to the Department if the rental payment is not received by the newly established deadline.~~ (3-12-10)()

03. Due Date. Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. (3-13-02)

~~054. CROPLAND LEASE HARDSHIP CLAIMS.~~

~~01. Crop Loss.~~ Adjustments in rental may be made because of unusual crop loss that occurs through no fault of the lessee. Such loss must be thoroughly substantiated by the lessee. (3-13-02)

~~02. Conditions to Meet.~~ To qualify for a hardship claim the following conditions must be met: (3-13-02)

~~a. All requests for hardship claims must be submitted to the Department in writing immediately after the damage has occurred.~~ (3-13-02)

~~b. Claims will be considered for the current growing season only.~~ (6-14-88)

~~c. Any adjustments will be credited to next year's rental.~~ (3-13-02)

~~d. Claims will only be approved for losses beyond the control of the lessee.~~ (3-13-02)

~~e. The lessee will only receive a reduction in rental for yield losses that occur beyond the normal variation expected for similar land in the situated county. Normal variation will be calculated from the Idaho Statistical Reporting Service records.~~ (3-13-02)

~~f. Average yields used to calculate the rental on the subject lands will be used to determine any lease rental adjustments for this purpose. The lease rental will only be adjusted for losses that exceed thirty five percent (35%) of the average crop yield.~~ (3-13-02)

~~g. Adjustments will not be made for losses if lessee is compensated through another government program or crop insurance.~~ (6-14-88)

~~054.~~ -- 059. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

080. GRAZING MANAGEMENT PLANS.

~~Prior to issuance of a lease, the lessee and the Department must agree to a written grazing management plan.~~ (3-13-02)

01. Federal Plan. When state endowment trust land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, ~~to satisfy the requirements of a~~ the management plan. (3-13-02)()

02. Modification of Plan. The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department shall give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time and may be initiated by lessee's request. (3-13-02)()

081. -- 089. (RESERVED)

090. TRESPASS.

01. Loss or Waste. The lessee shall use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state endowment trust land shall be considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. (3-13-02)()

02. Civil Action by Lessee. The lessee is encouraged to take civil action against owners of trespass livestock on state endowment trust lands to recover damages to the lessee for lost forage or other values incurred by the lessee. (3-13-02)()

03. Continuing Trespass. When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. (3-13-02)

04. Trespass Claims. Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

105. CONFLICT AUCTIONS.

01. Two or More Applicants. When two (2) or more eligible applicants apply to lease the same state endowment trust land for grazing, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department shall hold an auction. (3-12-10)

02. Applicant Notification. At least fourteen (14) days prior to the date of such auction, the Department shall give notice by letter, which notice shall be sent in the course of certified mail to each of the applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address as it is given in the application. (3-13-02)

03. Minimum Bid. Bidding shall begin at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. (3-12-10)

04. Auction Bidding. Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease shall be deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. (3-13-02)

05. Withdrawal Prior to or Failure to Participate in an Auction. Applicants who either withdraw their applications after accepting the Department offered lease per Subsection 020.02 of this rule and prior to the auction which results in no need to schedule an auction or cancellation of a scheduled auction; or applicants who fail to participate at the auction by not submitting a bid which results in only one (1) participant at the scheduled auction, shall forfeit an amount equal to the lesser of the following: (3-12-10)()

a. The Department's cost of making any required improvement credit valuation; (3-12-10)

b. For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (3-12-10)

c. For conflict applicants, the rental deposit made. (3-12-10)

06. High Bid Deposit. The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. (3-12-10)

- 07. Auction Procedures.** The Department shall prescribe the procedures for conducting conflicted lease auctions. (3-12-10)
- 08. Withdrawal After Auction.** (3-12-10)
- a.** If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. (3-12-10)
- i.** If the auction involved only two (2) participants, the second high bidder shall be awarded the lease. (3-12-10)
- ii.** If the auction involved more than two (2) participants, the lease will be reaucted. (3-12-10)
- b.** If an auction bidder other than the high bidder withdraws a bid before Land Board review and action on the auction results, no adjustment will be made in the payment deposited by the high bidder. (3-12-10)

(BREAK IN CONTINUITY OF SECTIONS)

111. NOXIOUS WEED CONTROL.

- 01. Weed Control.** The lessee shall cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee shall take measures to control noxious weeds on the leased state endowment trust land in accordance with Title 22, Chapter 24, Idaho Code. (~~3-12-10~~)()
- 02. Responsibility.** The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Control of noxious weeds on state grazing lands shall be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

114. LIABILITY (INDEMNITY).

The lessee shall indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased ~~parcel~~ state endowment trust land, or the occupation of the leased parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. (~~3-12-10~~)()