

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, January 24, 2017

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Anthon, Ward-Engelking, and Burgoyne

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Patrick** called the meeting of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

**PASSED THE GAVEL:** Chairman Patrick passed the gavel to Vice Chairman Guthrie to introduce the presenters for the rules review being heard.

**UNANIMOUS CONSENT REQUEST:** **Vice Chairman Guthrie** explained that there were 10 rules that had common corrections and asked for unanimous consent to hear those rules in a group. There were no objections.

**DOCKET NO. 07-0801-1601** **Idaho Minimum Safety Standards and Practices for Logging - General Provisions.** **Larry Jeffres**, Region 1 Manager, Division of Building Safety (DBS), said that during the 2015 legislative session the authority to perform safety inspections and issue safety orders as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained in the rules are outdated, no longer applicable, or confusing to the logging industry. **Mr. Jeffres** stated that accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations to applicable standards or regulations, or replace outdated or unclear illustrations related to common logging practices.

**Mr. Jeffres** explained that through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking. **Mr. Jeffres** said this rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters, as well as update key definitions related to logging safety practices. The rulemaking also identifies the DBS role in administering the logging rules, as well as clarifying the scope of the DBS authority in interpreting and applying the logging rules. **Mr. Jeffres** said finally, the rulemaking clarifies and updates the general requirements of both the employer's and employee's responsibility to ensure safe logging operations.

**Mr. Jeffres** emphasized that every employer must post and maintain in a conspicuous place or places in and about the place or places of business a written notice stating the fact that the employer has complied with the workers' compensation law as to securing the payment of compensation to employees and their dependents in accordance with the provisions of Idaho law. This notice should

contain the name and address of the surety, as applicable, with which the employer has secured payment of compensation. This notice should also be readily available on the site where logging operations are occurring, and available for inspection by DBS officials upon request.

**DISCUSSION:** **Senator Lakey** referred to the wording "under the influence or impaired by" and wanted to know if this was case law or a definition. **Mr. Jeffres** indicated the wording was changed to standardize the rule and upon the advice of legal counsel. **Mr. Jeffres** and **Senator Lakey** discussed the oversight of leaving "under the influence" in the rule on page 67, 010.04.f on the third line, which will be deleted in the future.

**Senator Martin** referred to the written notice stating that the employer has complied with the workers' compensation law and wanted to know if the signs were provided by the DBS. **Mr. Jeffres** said the standardized signs were provided by the DBS.

**MOTION:** **Senator Thayn** moved to adopt **Docket No. 07-0801-1601**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKETS:** **Mr. Jeffres** presented the 10 similar dockets. He cited **Docket Nos. 07-0802-1601, 07-0803-1601, 07-0804-1601, 07-0805-1601, 07-0806-1601, 07-0807-1601, 07-0810-1601, 07-0813-1601, 07-0814-1601, and 07-0815-1601**. **Mr. Jeffres** said the changes were to update, organize, and clarify the rules for logging. **Mr. Jeffres** said that during the 2015 legislative session the authority to perform safety inspections and issue safety orders as well as conduct safety training programs, was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained in the rules are outdated, no longer applicable, or confusing to the logging industry. **Mr. Jeffres** stated that accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations to applicable standards or regulations, or replace outdated or unclear provisions related to common logging practices.

**Mr. Jeffres** stated through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking. This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters.

**Senator Lakey** pointed out a typographical error on page 91, 010.b.ii where the word "the" was left out. **Mr. Jeffres** indicated this was overlooked and will be fixed in the near future.

**MOTION:** **Senator Thayn** asked for unanimous consent to approve **Docket Nos. 07-0802-1601, 07-0803-1601, 07-0804-1601, 07-0805-1601, 07-0806-1601, 07-0807-1601, 07-0810-1601, 07-0813-1601, 07-0814-1601, and 07-0815-1601**. **Senator Ward-Engelking** seconded the motion. There were no objections.

**DOCKET NO.  
07-0808-1601**

**Idaho Minimum Safety Standards and Practices for Logging - Falling and Bucking.** **Mr. Jeffres** said that during the 2015 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions contained in the rules are outdated, no longer applicable, or confusing to the logging industry.

**Mr. Jeffres** said that accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify and edit rule provisions, provide updated references and citations, or replace outdated or unclear provisions related to common logging practices.

**Mr. Jeffres** cited that through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking. This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters. **Mr. Jeffres** stated the rule also provides several amendments to clarify and update provisions related to the safe cutting and falling of trees, and the use of mechanical delimiters and felling equipment. **Mr. Jeffres** stated several provisions which illustrate and identify the proper cutting techniques of some common cutting methods were updated.

**Mr. Jeffres** reported that cutters not in sight of another employee will have radio communications with crew members on that job site. The graphics in this docket have been updated and improved for clarity of presentation, but otherwise the rest of this chapter represents minor grammatical and organizational cleanup for clarity.

**DISCUSSION:**

**Chairman Patrick** asked for an explanation of why chainsaws were crossed out on page 100. **Mr. Jeffres** said the language was removed primarily because of today's use of saws. Saw blades already have a guard.

**TESTIMONY:**

**Galen Hamilton**, Program Manager, DBS, explained that the saw was related to a two-man saw, which is no longer used.

**MOTION:**

**Senator Martin** moved to adopt **Docket No. 07-0808-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
07-0809-1601**

**Idaho Minimum Safety Standards and Practices for Logging - Rigging, Lines, Blocks and Shackles****Mr. Jeffres** stated that during the 2015 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions contained in the rules are outdated, no longer applicable, or confusing to the logging industry. **Mr. Jeffres** said accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify and edit rule provisions, provide updated references and citations, or replace outdated or unclear provisions and illustrations related to common logging practices.

**Mr. Jeffres** reported that through the negotiated rulemaking process, the logging industry requested most of the proposed amendments set forth in the rulemaking. This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters. **Mr. Jeffres** stated the rule also provides several amendments to clarify and update provisions related to the use of guylines, and guyline anchors as well

as wire ropes and lines. Additionally, a table providing for wire rope specifications was updated and moved to a more appropriate location in a different chapter of the logging rules. **Mr. Jeffres** said finally, throughout the chapter existing illustrations (figures) were replaced with updated and/or clearer figures to assist loggers in more easily identifying common logging equipment or practices.

**Mr. Jeffres** stated that guylines will be fastened by means of shackles or hooks and slides. The use of loops or molles for attaching guylines is prohibited. The use of wedge buttons on guylines is prohibited. Properly installed deadman anchors are permitted. Guylines anchors will not be directly attached directly to deadman anchors. Suitable straps or equally effective means will be used. The entire table was eliminated due to inaccurate calculation (1/2 inch cable breaking strength) and replaced.

**DISCUSSION:** **Senator Martin** stated this docket addressed safety in the field and he was wondering how the loggers are doing overall now as compared to a few years ago. **Mr. Jeffres** replied that safety is getting better every year. Statistically, injury and death in the State have been reduced. **Mr. Jeffres** said the industry has made a commitment to workers to keep them as safe as possible.

**MOTION:** **Senator Anthon** moved to adopt **Docket No. 07-0809-1601**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 07-0811-1601** **Idaho Minimum Safety Standards and Practices for Logging - Skidding and Yarding.** **Mr. Jeffres** stated that during the 2015 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained in the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations, or replace outdated or unclear provisions and illustrations related to common logging practices.

**Mr. Jeffres** stated several sections related to cable yarding, yarding machinery, wire rope, and tree climbing were added. These areas can be critical components of logging operations; however, they were not adequately addressed by the rules.

**Mr. Jeffres** reported that through the negotiated rulemaking process, the logging industry requested the proposed amendments set forth in the rulemaking. This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters. The rule also provides several amendments to clarify and update provisions generally related to skidding and yarding. **Mr. Jeffres** stated the rulemaking adds several sections related to cable yarding, yarding machinery, wire rope, and tree climbing.

**Mr. Jeffres** stated the majority of injury and deaths occur on cable yarding sites. All of the provisions of this section are Occupational Safety and Health Administration (OSHA) enforced and the majority of language in this docket was borrowed from the State of Oregon, considered the preeminent logging state in the Northwest. The yarding section amendments contain measures to ensure safe practices and provisions to ensure safe yarding equipment. Wire rope provisions include descriptions of different types of wire rope characteristics, specifications related to tensile strength, and other safety and precautionary issues related to wire life, wire connections, and inspection and care of lines. Tree climbing provisions were also

added related to plans and procedures for climbing trees, safe climbing operational practices, and proper climbing equipment. Additionally, a table providing for wire rope specifications was updated and moved from a different chapter of the logging rules and included herein as a more appropriate location.

**Mr. Jeffres** stated throughout the chapter updated and/or clearer illustrations (figures) were added to assist loggers to more easily identify common logging equipment or practices.

**Mr. Jeffres** said the Yarding Machinery (including Systems) section is intended to assist the contractor in better deciding which system is best-suited for a specific job site with the goal of creating a safer work environment for employees.

**DISCUSSION:** **Senator Burgoyne** asked Mr. Jeffres to assure the Committee that there have not been any problems or questions in the State of Oregon. **Mr. Jeffres** said lots of consideration was given to the logging rules in Oregon before Idaho adopted the rules. He remarked the material is effective and working with a good track record.

**Senator Lakey** asked why the advantages and disadvantages were listed in the rule, which was a different approach. **Mr. Jeffres** said including advantages and disadvantages was discussed and it is a variation of what is considered a normal and typical rule. The goal of this docket was equipment-guided. The industry desired to assure logging contractors and employees how a piece of equipment should safely operate.

**MOTION:** **Senator Souza** moved to adopt **Docket No. 07-0811-1601**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 07-0812-1601** **Idaho Minimum Safety Standards and Practices for Logging - Road Transportation.** **Mr. Jeffres** stated that during the 2015 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Several of the provisions required updates to references, as well as minor editorial revisions to ensure clarity.

**Mr. Jeffres** stated that through the negotiated rulemaking process, the logging industry expressed support for the proposed amendments set forth in the rulemaking. This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters. Documented reach inspections will be performed annually. Bunk logs will extend not less than 12 inches beyond the bunk, with the exception of non-oscillating bunks. The rulemaking also makes minor editorial revisions to several references and other rule provisions related to safe logging truck transportation.

**DISCUSSION:** **Senator Anthon** wanted to know if the language was added to another section or replicated in this docket. **Mr. Jeffres** said the information was being restated in the same language.

**Senator Lakey** pointed out a typographical error on page 147, 010.01, last sentence should say "or" instead of "of." **Mr. Jeffres** agreed.

**MOTION:** **Senator Burgoyne** moved to adopt **Docket No. 07-0812-1601**. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

**Idaho Safety Standards and Practices for Logging - Recommended Safety Program.** **Mr. Jeffres** reported that during the 2015 legislative session the authority to perform safety inspections and issue safety orders, as well as conduct safety training programs was statutorily transferred from the Idaho Industrial Commission to the DBS. The minimum standards and practices for conducting logging operations in Idaho have not been substantively updated since their initial promulgation as administrative rules in 1997. Many of the provisions contained in the rules are outdated, no longer applicable, or confusing to the logging industry. Accordingly, many of the amendments contained in the rulemaking are either administrative in nature to clarify rule provisions, provide updated references and citations, or replace outdated or unclear provisions related to common logging practices.

**Mr. Jeffres** stated as authorized in statute, rules are established related to the process for the administrator to issue and enforce safety orders when inspection of logging operations reveals an unsafe condition or threat of serious bodily harm or loss of life.

**Mr. Jeffres** said that through the negotiated rulemaking process, the logging industry indicated support for the proposed amendments set forth in the rulemaking. This rulemaking would clarify the proper reference to statutory and rule provisions which govern any appeals process of decisions by the DBS related to logging safety matters. **Mr. Jeffres** said the rule also provides various amendments to clarify and update provisions related to the scope of the rules, fire and safety policies, and the proper reporting of logging injuries and fatalities to appropriate authorities.

**Mr. Jeffres** stated the rulemaking establishes the administrative procedures related to the issuance of safety orders by the administrator, as well as the procedural rights afforded to responsible logging parties who may object to a safety order and seek to contest the matter.

**Mr. Jeffres** stated the employer is responsible for reporting all in-patient hospitalization, amputation, or the loss of an eye for any employee to the Occupational Safety and Health Administration (OSHA) and the DBS Logging Safety Program within 24 hours.

**Senator Burgoyne** said he was curious about the terminology used with regards to the loss of an eye and wanted to know where the loss or injury list came from and why other body parts were not listed. **Mr. Jeffres** said the description came from the rules of the State of Oregon. He remarked the list could be more inclusive, but the key to the language is to prompt logging contractors to be quick and efficient in contacting the DBS when an injury occurs. **Senator Burgoyne** commented there are serious injuries that can occur to loggers that are not covered in this part of the rule. He wanted to know what the policy was for getting information about these particular injuries as opposed to others. **Mr. Jeffries** said that part of the language where it says that the employer is responsible for reporting all in-patient hospitalization is meant to be encompassing phraseology without complicating the new rule too much and would allow the logging contractor to still be responsible.

**Mr. Jeffres** referred to page 184, 20.e through f, Safety Order by the Administrator, was introduced by the DBS to stop a work site or "red tag" an operation due to severe safety issues that have the potential to imperil life and/or create significant injury opportunities. This has always been the authority of the administrator of the DBS and is in the rules and described in statute. The intent was to create a rule that was very encompassing that allows the logging contractors to completely and thoroughly understand what is in statute and in rule and allows employees to clearly instruct and to be able to explain this rule.

**Mr. Jeffres** said also contained in this language and clearly identifies and outlines the opportunity for the logging contractor to quickly and efficiently appeal the decision that has been made by the administrator. Since 1987, the careful introduction of guidance by safety advisors has been enough so there has not ever been a stoppage of work order.

**Senator Burgoyne** referred to 20.d of the rule, "the hearing may be held at such location or by such means as the administrator determines most convenient for the parties," and wanted to know who the parties were and the hearing would be held in a place convenient to the contractor and near where the work is being performed, and how would that all work out? **Mr. Jeffres** responded that one of the parties is the DBS and the other party is the logging contractor. To provide the very best and most expedient opportunity for the appeal to occur, the DBS has video-conferencing capabilities in the offices of Meridian, Coeur d'Alene and Pocatello. The vast majority of logging operations occur within the 10 northern counties of the State. **Senator Burgoyne** asked if there was a right of a judicial review as a contested case under the Administrative Procedures Act.

**Patrick Grace**, Deputy Attorney General, Attorney General's Office, assigned to the DBS, noted that anyone aggrieved has the right to appeal. **Senator Burgoyne** wanted to know if the appeal was on an expedited basis. **Mr. Grace** said the process was envisioned as being very expedited. He said there is a requirement that the DBS would give someone a hearing if the safety order is contested within five days. The logger needs to know immediately. A stop order causes loss of time and revenue.

**Senator Burgoyne** asked what happens if the contractor loses the appeal and how does the contractor go back to work? **Mr. Grace** said that DBS would assign a hearing officer who would determine if the stop order is valid. If the decision is not in favor of the loggers, they may not have to stop work entirely, but rather abate the condition or stop the practice. **Senator Burgoyne** remarked if the stop work order is entered or at the hearing stage, the employer could say they would comply. Does the employer have to show something more in order to get the operation going again. **Mr. Grace** said that was addressed in the statute and reiterated in the rules, which says the stop work order shall not be rescinded until the condition is abated. **Senator Burgoyne** stated that if an employer cannot start the operation, how do they abate? **Mr. Grace** the DBS would allow the employer to abate.

**Vice Chairman Guthrie** said he hoped there was some latitude and agreed with Senator Burgoyne. **Mr. Grace** said the DBS was only concerned with unsafe practices.

**Senator Lakey** said that if the hearing officer conducts the hearing, the officer can issue either a preliminary order or a recommended order, but the administrator is not necessarily bound by that order. **Mr. Grace** said that was correct. **Senator Lakey** stated if there is a judicial review, the court is going to issue an order and the order must be complied with. He pointed out the language in the rule that says the order shall remain in effect and shall not be rescinded until the administrator

has determined that the safety or correction has essentially been abated. Judicial review is not taken into account. The administrator may still think it is a problem, but if the court ultimately says it is not, then the administrator is not the one making the final decision. **Mr. Grace** said the DBS tried to follow the statute which says the decision should be rescinded until it has been corrected or removed. He said he hoped that the administrator has to make that determination through the process. There is a reconsideration process built-in. He said the DBS will be back again next year for cleanup of these rules.

**TESTIMONY:** **Jerry Deckard**, representing the Associated Logging Contractors of Idaho, testified in support of all of the rules. He thanked the Committee.

**MOTION:** **Senator Lakey** moved to adopt **Docket No. 07-0816-1601**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Guthrie passed the gavel back to Chairman Patrick.

**ADJOURNED:** There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:34 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary