



Senate Resources and Environment Committee

IDAPA 20.04.01 – Rules Pertaining to Forest Fire Protection

February 6, 2019

Mr. Chairman and members of the Committee, my name is Craig Foss, Division Administrator – Forestry & Fire at the Idaho Department of Lands. Thank you for the opportunity to appear before you today to present testimony on the forest fire protection rules, referred to as docket number 20-0401-1701 found in your 2019 Pending Rules Review Book, starting on page 125. The Department is seeking your approval of this pending rule.

The Department is responsible for providing fire protection on 6.3 million acres of state and private forest lands in Idaho pursuant to Title 38, Chapters 1 and 4 and IDAPA 20.04.01 (“Forest Fire Protection Rules”). The Department is seeking to amend fire protection standards for specific forest operations.

During the 2015 fire season, the Department worked with forest landowners, logging contractors, forest industry representatives, and others to develop and implement additional voluntary fire protection practices to lessen the risk of fire starts from forest operations on forest lands. Post-fire season reviews were conducted to discuss the effectiveness of these additional fire protection best practices and the need to update specific standards in these rules.

After further discussion in 2016 and 2017 with interested stakeholders, the Department determined there was a need to enter negotiated rulemaking. The Land Board gave approval for IDL to proceed at its regular meeting on March 21, 2017. Nine negotiated rulemaking meetings were conducted in Coeur d’Alene, Orofino, and McCall during the periods of October/November of 2017 and June of 2018, and we had broad participation at all the meetings. We also had a toll free number for stakeholders to call into at each meeting for those who were unable to attend in person.

The Department received extensive comments during the rulemaking meetings, leading to rule language revisions. Following is a summary of the key concerns expressed by stakeholders and how the Department addressed these concerns:

Stakeholders expressed concern with the Department’s 14-day decision response period for authorizing a variance request. A variance may be requested if conditions or activities require practices that differ from those described in the rules. The Operator must obtain a variance



prior to employing those differing practices. The Department and stakeholders agreed to a decision response period of 5 business days.

Stakeholders expressed concern about the financial impact to small-scale operations on non-industrial forest lands if required to have a 200 gallon water supply with delivery system. The Department incorporated language into the rules exempting small forest operations that don't create a fire hazard. In addition, water handling requirements would only apply to cable logging systems and metal-tracked harvesters from July 1st through September 30th each year — the period of highest risk for this type of equipment to start a fire.

Stakeholders expressed concern with the ability of small-scale forest operations to incorporate an extended fire watch service during Stage 2 Restrictions to detect and successfully suppress fire ignitions. The Department incorporated language exempting forest operations that have a low risk of starting fires.

During negotiated rulemaking, questions were also asked about whether an operator would be liable or not for a fire start if they followed these rules. While an operator may follow the forest protection rules, liability for fire suppression costs remains should a fire investigation determine the start or existence of the fire is the result of a willful or negligent act. For example, this could include operating equipment beyond manufacturer maintenance or operating specifications. Therefore, the Department is unable to incorporate a provision absolving an operator of complete liability from fires resulting from their operation.

During proposed rulemaking, the Department conducted 3 public hearings in early August 2018. Testimony and comments received were supportive for advancing the proposed rule as written.

During the Orofino public hearing, Rich McMillan, Clearwater District Forester with Potlatch-Deltic, commented: "From a company perspective and from that of a large landowner in the state of Idaho, we're fully supportive moving forward with the rule package as it's shown in its final draft."

I'd also like to share with you that, in a written comment, Riley Stegner and Associates commended the Department: "for working with Idaho landowners, mills, and loggers to draft a rule that will reduce fires at logging operations without creating undue burdens for our forest workers."



The Land Board gave approval for IDL to adopt the proposed rule as pending on October 16, 2018. The rule changes provide needed clarification and improvement to fire protection requirements:

- Page 127-128. Incorporation by Reference: Spark arrester standards.
- Page 128-129. Incorporation of New Definitions.
- Page 129. New Rule Section: Granting of variances.
- Page 130-131. Revisions of Existing Rule Sections: Adjusting the amount and type of hand tools needed; eliminating fire extinguisher/ fire tool requirements for motorcycles and trailbikes; and updating language about fire crews.
- Page 132-133. New Rule Sections: Defining water handling requirements on a forest operation involving cable logging and the use of metal tracked harvesters; providing for a fire watch service after forest operations have been completed or suspended for a shift when Stage 2 Fire Restrictions are in place; and operating area fire prevention requirements for cable or cable assisted operations during the high risk period of July 1st to September 30th.

These rule revisions, developed over the last 3 years, involved extensive participation from affected interests including family forest landowners, industrial landowners, logging contractors, and forest industry representatives. IDL appreciates the active participation from these interests, and we believe the pending rules before you are much improved due to this extensive and inclusive process.

The Department requests approval of this pending rule. Thank you again for the opportunity to provide testimony and I will be happy to stand for any questions.