

TITLE 38
FORESTRY, FOREST PRODUCTS AND STUMPAGE DISTRICTS

CHAPTER 13
FOREST PRACTICES ACT

38-1301. SHORT TITLE. This act shall be known and may be cited as "The Idaho Forest Practices Act."

[38-1301, added 1974, ch. 197, sec. 1, p. 1506.]

38-1302. POLICY OF THE STATE -- PURPOSE OF ACT. (1) Recognizing that federal, state and private forest lands make a vital contribution to Idaho by providing jobs, products, tax base, and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources, and by providing a habitat for wildlife and aquatic life, it is the public policy of the state to encourage forest practices on these lands that maintain and enhance those benefits and resources for the people of the state of Idaho.

(2) To encourage uniform forest practices implementing the policy of this chapter, and to provide a mechanism for harmonizing and helping it implement and enforce laws and rules relating to federal, state and private forest land, it is the purpose of this chapter to vest in the board authority to adopt rules designed to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, air, water resources, wildlife and aquatic habitat.

(3) No unit of local government shall enact any ordinance, rule or resolution which purports to regulate forest practices on the forest land in this state and which conflicts with any provision of this chapter.

[38-1302, added 1974, ch. 197, sec. 2, p. 1506; am. 1991, ch. 244, sec. 1, p. 595; am. 1992, ch. 259, sec. 1, p. 752.]

38-1303. DEFINITIONS. Unless the context requires otherwise, in this chapter:

(1) "Forest practice" means (a) the harvesting of forest tree species; (b) road construction associated with harvesting of forest tree species; (c) reforestation; (d) use of chemicals or fertilizers for the purpose of growing or managing forest tree species; (e) the management of slashings resulting from harvest, management or improvement of forest tree species; or (f) the prompt salvage of dead or dying timber or timber that is threatened by insects, disease, windthrow, fire or extremes of weather.

(2) "Forest land" means 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, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

(3) "Operator" means a person who conducts or is required to conduct a forest practice.

(4) "Harvesting" means 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.

(5) "Rules" means rules adopted by the board pursuant to section [38-1304](#), Idaho Code.

(6) "Landowner" means a person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest land, including the state and federal government.

(7) "Timber owner" means 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.

(8) "Forest regions" means two (2) regions of forest land, one (1) region being north of the Salmon River and one (1) being south of the Salmon River.

(9) "Director" means the director of the Idaho department of lands.

(10) "Department" means the Idaho department of lands.

(11) "Board" means the Idaho board of land commissioners.

(12) "State" means the state of Idaho or any political subdivision thereof.

(13) "Forest practices advisory committee to the board" means that committee appointed by the director as provided in subsection (2) (a) of section [38-1305](#), Idaho Code.

(14) "Contract area" means the entire acreage which is subject to a single contract as specified in the notification of forest practices, pursuant to section [38-1306](#), Idaho Code.

(15) "Best management practice (BMP)" means 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.

(16) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease or such physical elements as fire, windthrow, or extremes of weather, and where the removal of such timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or, over the long term, help protect such resources and values as wildlife, water, soils or air quality.

(17) "Cumulative effects" means the impact on water quality and/or beneficial uses which result from the incremental impact of two (2) or more forest practices. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

[38-1303, added 1974, ch. 197, sec. 3, p. 1506; am. 1980, ch. 64, sec. 1, p. 129; am. 1989, ch. 154, sec. 2, p. 367; am. 1991, ch. 244, sec. 2, p. 596; am. 1991, ch. 245, sec. 1, p. 598; am. 1995, ch. 352, sec. 2, p. 1178.]

38-1304. DUTIES OF THE BOARD. The board:

(1) Shall adopt rules for forest regions establishing minimum standards for the conduct of forest practices on forest land. These rules shall be based upon the following criteria:

(a) Provide for the harvesting of forest tree species in a manner that will maintain the productivity of the forest land, minimize soil and debris entering streams and protect wildlife and fish habitat.

(b) Provide for road construction that will insure protection and maintenance of forest productivity, water quality and fish and wildlife habitat during construction and maintenance.

(c) Provide for 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 trees per acre and the maximum period of time allowed after harvesting for establishment of forest tree species, and requiring stabilization of soils which have become exposed as a result of harvesting; however, an acreage exemption from reforestation may be established except that on such land exempted within one (1) year following harvesting, some form of vegetative cover shall be required sufficient to provide continuing soil productivity and stabilization.

(d) Provide for the use of chemicals or fertilizers in such a manner that the public health and aquatic and wildlife habitat will not be endangered from their handling, storage and application.

(e) Provide for management of slashings resulting from the harvesting, management or improvement of forest tree species in that manner necessary to protect reproduction and residual stands, to reduce risk from fire and insects and disease, to optimize the conditions for future regeneration of forest tree species, and to maintain air and water quality and fish and wildlife habitat.

(f) Provide for the timely salvage logging on all forest lands of dead or dying timber or timber that is threatened by various physical elements. Rules developed pursuant to this section shall consider both the economic value of the timber to be salvaged, the immediate costs of the salvage efforts, and the long-term costs to all forest resources and values associated with insect, disease or fire conditions which might otherwise be controlled by the salvage operations. The provisions of this subpart shall not apply to single contiguous forest ownerships less than two thousand (2,000) acres in size. Nothing in this paragraph shall be construed as requiring the removal of timber from private lands against the wishes of the private landowner.

[38-1304, added 1974, ch. 197, sec. 4, p. 1506; am. 1991, ch. 245, sec. 2, p. 600.]

38-1305. DUTIES, POWERS OF DEPARTMENT. The department:

- (1) Shall administer and enforce this act;
- (2) (a) Shall, through the director, appoint a forest practices advisory committee to the board for the purpose of providing technical advice to the board in carrying out the board's powers and duties as set forth in section [38-1304](#), Idaho Code. The forest practices advisory committee is composed of nine (9) members, three (3) residing in the north forest region and three (3) residing in the south forest region, and three (3) members shall be Idaho residents. All members of the committee shall be qualified by experience and/or training to provide technical advice related to forest practices. Of the three (3) members residing in each forest region, one (1) member shall be either a private landowner, a private timber owner, or authorized representative of the landowner or timber owner who regularly engages in forest practices; one (1) member shall be an operator; and one (1) member shall be a representative of the general public. Of the remaining three (3) members who are Idaho residents: one (1) member shall be qualified by training

and experience as a fisheries biologist; one (1) member shall be a nonindustrial forest landowner; and one (1) member shall be an at-large member. Members of the forest practices advisory committee shall be appointed by the director for three (3) year terms. Appointments under this subsection shall be made by the director within sixty (60) days after the effective date of this section. If there is a vacancy, for any cause, the director shall make an appointment to become immediately effective for the unexpired term. Said appointee shall possess the same qualifications under this section as the person being replaced. The committee shall select a chairman from among its members. A member of the department of lands shall be designated by the director to serve as secretary, without voting power, for the committee.

(b) Notwithstanding the terms of the committee members specified by subsection (2) (a) of this section, of the members first appointed to each such committee:

- (i) Two (2) shall serve for a term of one (1) year;
- (ii) Two (2) shall serve for a term of two (2) years;
- (iii) Three (3) shall serve for a term of three (3) years.

(3) Shall advise and assist the board in the discharge of its duties as set forth in this act;

(4) Shall achieve coordination among state agencies which are concerned with the forest environment;

(5) Shall cooperate with and provide advice to landowners and timber owners in the management of forest lands;

(6) May enter into cooperative agreement or contracts which may be necessary in the administration of this act;

(7) All site-specific BMPs approved at the time of the effective date of this act shall remain in force and be enforced by the designated agency;

(8) Shall develop methods for controlling watershed impacts resulting from cumulative effects. The department shall form a cumulative effects watershed cooperative including, but not limited to, state and federal land managing agencies and owners of industrial private forest land, to serve as a clearinghouse for comparing and evaluating shared watershed information. The director shall select an interdisciplinary task force including appropriate technical specialists and affected landowners and shall, in consultation with the task force, formulate methods for controlling cumulative effects.

[38-1305, added 1974, ch. 197, sec. 5, p. 1506; am. 1989, ch. 154, sec. 3, p. 368; am. 1991, ch. 244, sec. 3, p. 597; am. 1995, ch. 352, sec. 3, p. 1179; am. 2004, ch. 264, sec. 1, p. 743.]

38-1306. NOTIFICATION OF FOREST PRACTICE. (1) Before commencing a forest practice, the department shall be notified as required in subsection (2) of this section. 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 (1) forest practice is to be conducted in relation to harvesting of forest tree species, one (1) notice including each forest practice to be conducted shall be filed with the department. A woodland management plan prepared by the woodland foresters of the department or approved by the board of supervisors of a soil conservation district shall constitute suitable notification of a forest practice when filed with the department, provided the woodland management plan contains the information required in subsection (2) of this section.

(2) The notification required in subsection (1) of this section 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, and other information the department considers necessary for the administration of the rules adopted by the board under section [38-1304](#), Idaho Code.

(3) All notifications must be formally accepted by the department before any forest practice may begin.

(4) The initial purchaser of ties, logs, posts, cordwood, pulpwood and other similar forest products which have been cut from lands within the state of Idaho shall make no such purchase from anyone not having a proper acceptance of forest practice notice.

(5) Promptly upon formal acceptance of the notice, but not more than fifteen (15) 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, the timber owner, and landowner a copy of the rules.

(6) 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 notification within thirty (30) days of the change. Promptly upon receipt of notice of change, but not to exceed fifteen (15) 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) 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.

(8) If the notification required by subsection (1) 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) 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 fifteen (15) 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.

(9) The department shall not accept a new forest practices notification from any operator having an outstanding notice of violation until the repairs specified pursuant to section [38-1307](#)(2)(a), Idaho Code, have been completed to the satisfaction of the department.

[38-1306, added 1974, ch. 197, sec. 6, p. 1506; am. 1986, ch. 241, sec. 1, p. 654; am. 1989, ch. 154, sec. 4, p. 369; am. 1990, ch. 125, sec. 1, p. 295; am. 1993, ch. 216, sec. 22, p. 604; am. 1995, ch. 281, sec. 1, p. 941; am. 1995, ch. 352, sec. 4, p. 1180; am. 2007, ch. 90, sec. 18, p. 255.]

38-1306A. NONRESIDENT OPERATORS -- BOND. Prior to commencing any forest practices, nonresident operators who do not own real property in Idaho shall submit to the department a bond in a form acceptable to the board to insure the performance of the duties of the operator under this chapter and any

rules and regulations promulgated hereunder, in the amount of two hundred dollars (\$200) per acre for each acre in the contract area, with a minimum bond of five thousand dollars (\$5,000) and a maximum bond of fifteen thousand dollars (\$15,000).

[38-1306A, added 1980, ch. 64, sec. 2, p. 130.]

38-1306B. REQUIREMENT FOR OPERATING BONDS. (1) At the direction of the board, the department shall require submission of an operating bond, before accepting a forest practices notification, from any operator who has repeatedly or habitually:

- (a) Operated without a valid forest practices notification as required in section [38-1306](#), Idaho Code;
- (b) Violated the terms of a stop work order issued pursuant to section [38-1307](#) (2) (b), Idaho Code;
- (c) Failed to apply best management practices as required by law and the rules promulgated under this chapter;
- (d) Willfully caused degradation to forest soils, air, or water resources; or
- (e) Failed to comply with the rules promulgated under this chapter as determined by the board.

(2) The bond shall be in a form, acceptable to the board, to insure the performance of the duties of the operator under this chapter and any rules promulgated thereunder, in the amount of two hundred dollars (\$200) per acre for each acre in the contract area included in a forest practices notification, with a minimum bond of five thousand dollars (\$5,000) and a maximum bond of fifteen thousand dollars (\$15,000).

(3) If the operator is a nonresident operator this bond shall be in addition to the nonresident bond required pursuant to section [38-1306A](#), Idaho Code.

[38-1306B, added 1995, ch. 281, sec. 2, p. 943.]

38-1307. NOTICE OF VIOLATION -- CEASE AND REPAIR ORDER -- STOP WORK ORDER -- ENFORCEMENT PROCEDURES -- REMEDIES OF THE OPERATOR. (1) When the department determines that an operator violated any provision of this chapter or rule, it shall issue a notice of violation. The notice shall specify the nature of the violation charged and any damage or unsatisfactory condition resulting from the violation.

(2) When a notice of violation is issued under this section, the department:

- (a) May issue an order directing the operator immediately to cease further violation and to commence and continue repairing the damage or correcting the unsatisfactory condition, hereinafter referred to as a "cease and repair order".
- (b) If after two (2) working days from the delivery of a cease and repair order, the operator fails to cease further violation and to commence and continue repairing the damage or to enter into an agreement to repair pursuant to subsection (2) (d) of this section, in compliance with the order, the department may issue and serve an order directing the operator to cease all forest practices within the contract area, hereinafter referred to as a "stop work order".
- (c) The department may initiate the remedies set forth in subsection (2) (e) of this section:

1. At any time after delivery of the stop work order, if the operator fails to immediately stop work in the contract area;
2. After five (5) days from the delivery of the stop work order, if the operator fails to comply fully with the cease and repair order; or
3. At any time after delivery of a notice of violation, if serious or irreparable damage will occur to land as a result of said violation, notwithstanding any other provisions of this chapter.

(d) An operator who has been served with a cease and repair order and who has completed his work in and removed all of his equipment from the contract area, or who cannot enter upon the land to repair the damage because of heavy snow, flooding, or similar serious condition upon the land, may comply with the order by entering into an agreement with the department to commence and thereafter continue to repair the damage within sixty (60) days after repair is practicable following heavy snow, flooding or similar serious condition upon the land.

(e) The department shall initiate the following remedies in accordance with subsection (2) (c) of this section:

1. The department shall estimate the costs of repair of the damage and reasonable administrative and legal fees to be expended in obtaining a judgment against the operator, and shall notify the operator, timber owner and landowner in writing of the amount of the estimate.

2. The county attorney for the county where the contract area is situated or the attorney general shall file an action to enjoin the operator's violations and to recover the costs of repair and administrative and legal fees and/or to foreclose a lien against the operator as set forth in subsection (2) (e) 3 of this section. Legal fees recovered in such an action shall accrue to the county attorney and the attorney general according to the proportionate time which each has expended in obtaining the judgment.

3. A priority lien shall attach to the real and personal property of the operator upon delivery to the operator of a stop work order for the amount not to exceed the estimated costs of repair and reasonable administrative and legal fees to be expended in foreclosing the lien. A written notice of the lien, containing a statement of the estimated costs of repair and reasonable administrative and legal fees, and the names of the parties against whom the lien attached, shall be certified under oath by the department and filed in the office of the county clerk and recorder of the county or counties where the real and personal property of the operator is located and where considered necessary to recover the estimated expenditures. This lien shall be perfected upon filing. This lien shall cease unless legal action is instituted within one (1) year from the date of filing of the notice of the lien.

4. If the operator is a nonresident who does not own real property in Idaho, the department after hearing, may declare the operator's bond forfeited or commence legal action against the bond to recover the costs of repair and reasonable administrative and legal fees.

(3) An operator dissatisfied with a stop work order shall have thirty (30) days after service thereof to challenge the order, without administrative review thereof, in a court of proper jurisdiction in the county where

the alleged damaged land is situated. In such an action the operator shall bear the burden of proving that the cease and repair order and the stop work order are without merit or basis; or shall have ten (10) days after service thereof to request a hearing before the board, to challenge the merit or basis of either or both orders. In such an action, the operator shall bear the burden of proving that the cease and repair order and the stop work order are without merit or basis. If the board affirms the order(s), the operator may within thirty (30) days after the board's decision, appeal the decision to the district court for the county where the alleged damaged land is situated. The action in the district court shall be limited to appellate review.

(4) If a nonresident operator who does not own real property in the state of Idaho performs forest practices without first submitting a bond in compliance with section [38-1306A](#), Idaho Code, or if an operator performs forest practices without first submitting notice to the department in compliance with section [38-1306](#), Idaho Code, the department may immediately commence legal action to enjoin the operator by temporary restraining order or preliminary injunction, and evoke through the county attorney the misdemeanor penalties of section [38-1310](#), Idaho Code. The testimony under oath of a department employee or forester that a nonresident operator who does not own property in Idaho is performing forest practices without a bond or that an operator is performing forest practices without having first given notice to the department shall constitute prima facie evidence upon which, if unrebutted, a district court shall issue a temporary restraining order or a preliminary injunction against the operator, to cease all forest practices in the contract area until this act has been fully complied with.

(5) Service of a notice or order under this section shall be made upon the operator or his agent, representative or contractor, by personal delivery or certified mail.

[38-1307, added 1980, ch. 64, sec. 4, p. 130; am. 1986, ch. 241, sec. 2, p. 655.]

38-1309. 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, must 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.

[38-1309, added 1974, ch. 197, sec. 9, p. 1506.]

38-1310. MISDEMEANOR VIOLATIONS -- FINES -- EXEMPTION. (1) A violation of: subsections (1) through (4) of section [38-1306](#) or section [38-1312](#), Idaho Code, an order issued under subsection (2) of section [38-1307](#), Idaho Code, a rule adopted under section [38-1304](#), Idaho Code, or a material misrepresentation or false statements in the notice or notice of change required by section [38-1306](#) or section [38-1312](#), Idaho Code, is a misdemeanor. Each day's violation of an order issued under subsection (2) of section [38-1307](#), Idaho Code, is a separate offense. Each violation of section [38-1309](#), Idaho Code, is a separate offense.

(2) Fines collected under this act shall be deposited in the general account.

(3) Sections [38-1306](#) and [38-1307](#), Idaho Code, do not apply to forest practices performed by the department on forest land owned by the state of Idaho, but do apply to political subdivisions thereof.

[38-1310, added 1974, ch. 197, sec. 10, p. 1506; am. 1988, ch. 211, sec. 1, p. 401.]

38-1311. ENFORCEMENT OF ACT. The director may delegate to any person within the department the powers and duties of peace officers to enforce this act.

[38-1311, added 1974, ch. 197, sec. 11, p. 1506.]

38-1312. CONVERSION OF FOREST LAND. (1) This act does not prevent the conversion of forest land to any other use. However, conversions shall require the filing of a notification as required in section [38-1306](#), Idaho Code, as well as compliance with the provisions of this chapter and rules and regulations promulgated pursuant thereto, except for provisions relating to reforestation. When forest land is converted to another use, vegetative cover sufficient to provide continuing soil productivity and stabilization shall be established within one (1) year of completion of the forest practice on disturbed areas larger than one (1) acre, except that the director may grant an extension of time if weather or other conditions interfere.

(2) The provisions of this section shall not apply to activities regulated under chapters 13 and 15, [title 47](#), Idaho Code.

[38-1312, added 1974, ch. 197, sec. 12, p. 1506; am. 1988, ch. 211, sec. 2, p. 401.]

38-1313. FOREST PRACTICES REHABILITATION ACCOUNT. There is hereby created in the dedicated fund in the state treasury a forest practices rehabilitation account, which shall be used by the department to rehabilitate forest lands damaged by a forest practice that is not repaired following the serving of a notice of violation. The department shall recover the costs of repairs and reasonable administrative and legal fees in accordance with subsection (2) (e) of section [38-1307](#), Idaho Code. Costs of repairs shall be deposited in the forest practices rehabilitation account.

[38-1313, added 1987, ch. 281, sec. 1, p. 592.]