

STATE BOARD OF LAND COMMISSIONERS

December 16, 2025

Regular Agenda

Subject

Forest Practices Act Rulemaking under Idaho Code § 38-1304(1)(f)

Question Presented

Shall the Land Board direct the Department to enter into rulemaking for IDAPA 20.02.01 as authorized in Idaho Code § 38-1304(1)(f)?

Background

In a letter dated April 22, 2025 (Attachment 1), the Idaho Farm Bureau Federation (Farm Bureau) petitioned the Idaho Department of Lands (Department) to enter into rulemaking under Idaho Code § 38-1304(1)(f) which states in part that the State Board of Land Commissioners (Land Board), "Shall adopt rules...for the conduct of forest practices on forest land...based upon the following criteria: ...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."

Discussion

The Department advised the Farm Bureau by letter dated July 2, 2025 (Attachment 2), that the appropriate starting point for rulemaking was through the Forest Practices Advisory Committee (FPAC). FPAC was established under the Idaho Forest Practices Act, title 38, section 13, Idaho Code. Section 38-1305(2)(a) states the Department "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...." All previous rulemaking efforts related to the Idaho Forest Practices Act have been vetted through FPAC before being brought to the Land Board.

Legal counsel for the Farm Bureau submitted a letter on July 11, 2025, requesting that the Land Board take immediate action on the Farm Bureau's petition for rulemaking (Attachment 3.) The Department's general counsel responded to that letter on July 17, 2025 (Attachment 4).

A special FPAC meeting was held on August 27, 2025, at which the Farm Bureau presented their case for entering into rule promulgation related to § 38-1304(1)(f). At that special meeting, a subcommittee was formed to explore the issue and return options to the full committee at the November 12, 2025, regular FPAC meeting.

The FPAC subcommittee met twice, via virtual meetings, on October 6 and November 7, 2025, to discuss the request to enter rule promulgation. The subcommittee was in consensus that there is a significant forest health issue on federally managed lands in Idaho, but a consensus could not be reached on whether Forest Practices Act rules are an appropriate mechanism to encourage or require federal land management agencies to act.

The subcommittee reported back to FPAC on November 12, 2025, with a list of options for the committee to consider. Following lengthy discussion of the options, FPAC members voted unanimously (8-0, with one member absent) to make two recommendations to the Land Board.

While conducting additional research, the Department discovered a 1992 legal opinion (Attachment 5) written by Steve Schuster, Deputy Attorney General, regarding the State's ability to implement effective rules under § 38-1304(1)(f). This opinion reinforces the Department's assessment that rules under this section would be unenforceable and conveys that State participation in the Forest Service's planning process is more likely to provide results.

Recommendation

The first recommendation is that the Land Board should "encourage the state to continue to address forest health risks on federal and adjoining lands through the collaborative approach of Shared Stewardship and Good Neighbor Authority programs." (Attachment 6)

The second recommendation is "that IDL not enter into rule promulgation related to 38-1304(1)(f) because there are already sufficient rules in place to allow for the timely application of salvage harvests by willing and able landowners. Also, the statute directs federal forest land managers to undertake salvage where feasible, making a rule redundant and subservient." (Attachment 7)

Board Action

Attachments

1. Farm Bureau Petition for Rulemaking, 4/22/2025
2. Department Response to Farm Bureau Petition, 7/2/2025
3. Farm Bureau Request via Legal Counsel, 7/11/2025
4. Department Counsel Response to Farm Bureau Counsel, 7/17/2025
5. Legal Opinion, 4/1/1992
6. FPAC Letter of Support to Land Board, 12/1/2025
7. FPAC Letter of Recommendation to Land Board, 12/1/2025



Idaho Farm Bureau Federation

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Dustin Miller, Director
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83702

April 22, 2025

Director Miller:

On behalf of the more than 91,000 Idaho families who are members of the Idaho Farm Bureau Federation, I am writing to petition the Idaho Department of Lands (IDL) to enter into negotiated rulemaking on behalf of the Land Board. We request IDL promulgate rules required by 38-1304, Idaho Code.

38-1304 states in part: “The board: (Idaho Board of Land Commissioners) (1.) **shall** adopt rules . . . for the conduct of forest practices on forest land” (emphasis added). Although IDL has promulgated rules for subsections (a) through (e) of this section, it has not promulgated rules for subsection (f).

Further, the definitions of “forest land” and “landowner” in section 38-1303 specifically include federal lands. The legislature intends for all rules related to 38-1304 to apply to federally managed lands. Therefore, under the statute, IDL is not only authorized, but obligated, to undertake this rulemaking, including their application to federal lands.

The purpose of our petition for these rules is to protect the health, safety, welfare and property of Idaho citizens. Wildfires of increasing size and intensity on federal lands over the past several years have demonstrated the significant risks posed by poorly managed federal forests and why these rules are necessary.

Some would argue that the state cannot require federal agencies to comply with state laws and rules. However, the state has sovereign police powers to protect our citizens. As evidence, H389 was signed into law this session authorizing the Governor to declare wildfires, **specifically on federal lands**, a public nuisance and to seek civil damages from the federal government to recoup the cost of putting out any fire upon their lands.

Once implemented, the rules authorized by 38-1304 will significantly reduce the need to use the powers codified in H389. By requiring federal land management agencies to mitigate hazardous fuels and engage in more robust management of their forest lands, the health, safety, welfare, and property of Idaho citizens will be better protected.

Further, the new administration is fully supportive of this effort as evidenced by:

President Trump's Executive Order 14225 which seeks to revitalize America's rural communities and minimize the catastrophic effects of wildfire by streamlining regulations and increasing active management of our nation's forests.

USDA Secretary Brooke Rollins' recent Secretarial Order 1078-006 which emphasizes the forest health crisis on federal lands directs the US Forest Service to reduce the red tape inhibiting active forest management, including:

- salvage of dead and dying trees,
- harvest of trees damaged by wind or other natural disasters,
- commercial and noncommercial harvest of trees to control insects or disease, and
- removal of hazardous fuels

Following these orders from the new Administration, Governor Little has issued his own Executive Order 2025-04 which states in part:

"Idaho will enthusiastically support President Trump's Executive Order 14225 and Secretary Brooke Rollins SO 1078-006 to help streamline permitting for necessary forest management projects, and IDL will work with the U.S. Forest Service (USFS) wherever possible to utilize all federal and state authorities to expedite active forest management and mitigate the risk of catastrophic wildfires."

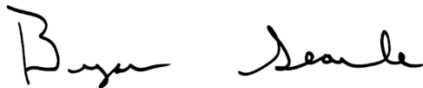
Taken together, these three executive orders make it clear that the President of the United States, the Secretary of the USDA, and Governor Little all strongly support the efforts authorized by the legislature in 38-1304, Idaho Code, to require federal agencies to aggressively mitigate wildfire hazards on their lands, and to engage in more robust, ongoing, proactive forest management, specifically through increased timber harvest.

Therefore, we must strike while the iron is hot and implement rules requiring federal agencies to mitigate their wildfire risk and manage their lands for sustained yield.

Our members look forward to implementing these three executive orders through the negotiated rulemaking process with IDL this summer. This will align state rules with the priorities of President Trump's Administration and will finally deliver on the mandated rulemaking the state legislature enacted so many years ago.

We appreciate your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Searle". The signature is fluid and cursive, with the first name "Bryan" and last name "Searle" clearly distinguishable.

Bryan Searle, President
Idaho Farm Bureau Federation

CC: Land Board Members
Senator Van Burtenshaw
Representative Ron Mendive

Idaho Department of Lands

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Dustin T. Miller, Director
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State Board of Land Commissioners

Brad Little, Governor
Phil McGrane, Secretary of State
Raúl R. Labrador, Attorney General
Brandon D Woolf, State Controller
Debbie Critchfield, Sup't Public Instruction

July 2, 2025

Idaho Farm Bureau Federation

ATTN: Bryan Searle, President

500 West Washington St.

Boise, Idaho 83702

via email: bsearle@idahofb.org

Re: Decision Regarding Petition for Negotiated Rulemaking for I.C. § 38-1304(1)(f)

Dear Mr. Searle:

This letter is in response to your petition dated April 22, 2025, requesting the Idaho Department of Lands to initiate negotiated rulemaking for rules related to Idaho Code § 38-1304(1)(f) of The Idaho Forest Practices Act ("Petition"). After receipt of the Petition, the Department reached out to request a meeting to gather additional information the proposal. On June 4th, 2025, I met with a representative of the Farm Bureau to further discuss the details of the Petition. The Department appreciates the Farm Bureau's attention to this matter. At this time, for the reasons set forth below, the Petition for negotiated rulemaking is denied.


The primary reason for denial of the Petition is that the proposed rulemaking concept has not been vetted by the Forest Practice Advisory Committee ("FPAC"), as is typical for our rulemaking process under the Idaho Forest Practices Act. Pursuant to Idaho Code § 38-1305 the FPAC exists "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." I.C. 38-1305(2)(a). The FPAC consists of members qualified to provide technical expertise related to forest practices and represents multiple forest stakeholders including private landowners, private timber owners, timber operators, the general public, nonindustrial forest landowners, and other demographics.

In its advisory role, the FPAC acts as the conduit to IDL and the Land Board for Forest Protection Act-related rulemaking; reviewing, providing stakeholder input, and refining rulemaking concepts prior to the Department initiating the rulemaking process. Such review helps ensure that rulemaking proposals are practical, technically sound, and workable for various forest stakeholders. To that end, the proposal for rulemaking contained in the Petition must first be presented to and considered by the FPAC prior to initiating the rulemaking process. The Department intends to take this matter to the FPAC at their next regularly scheduled meeting, currently set for November 12th, 2025. The Farm Bureau is encouraged to attend this meeting and provide their input on the proposal.

Bryan Searle
July 2, 2025
Page 2

The Department appreciates the Farm Bureau's interest in this matter and looks forward to the Farm Bureau's continued participation in further discussion of the rulemaking concept.

Sincerely,

A handwritten signature in blue ink that reads "Dustin T. Miller". The signature is written in a cursive, flowing style.

Dustin Miller
Director
Idaho Department of Lands

cc: Russ Hendricks



**MOUNTAIN STATES LEGAL
FOUNDATION**
FREE COUNTRY. FREE PEOPLE.

July 11, 2025

VIA E-MAIL

Director Dustin Miller
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Governor Brad Little, President
State Board of Land Commissioners
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governor@gov.idaho.gov

Re: *Petition to Initiate Rulemaking for I.C. § 38-1304(1)(f)*

Dear Director Miller and Governor Little:

I am an attorney with Mountain States Legal Foundation, which represents the Idaho Farm Bureau Federation (IFBF). On April 22, 2025, IFBF petitioned the Idaho Department of Lands to initiate rulemaking pursuant to I.C. § 38-1304(1)(f). That provision—enacted as part of the Idaho Forest Practices Act—requires the Idaho Board of Land Commissioners to adopt rules governing forest practices on forest land. The statute states unequivocally that the Board “*shall* adopt rules”—not *may*, and not when another, *advisory*, committee greenlights such rules.

We are writing now because Director Miller’s July 2 response to IFBF’s prior petition—which unfortunately deflected the need to adopt the required rules—is not a valid exercise of discretion. It is a brush-off. The Department and the Board have tried to punt a clear statutory obligation by citing an advisory body (the Forest Practices Advisory Committee) that has no legal authority to function as a gatekeeper to approve or deny rulemaking. To reinforce the point, the Forest Practices Act requires the Board to do the rulemaking. And Governor Little’s own Executive Order 2025-04—which instructs state regulators to make forests healthy again—commits Idaho to “enthusiastically support” President Trump’s national forest management priorities and directs the Department to work with the U.S. Forest Service “to expedite active forest management and mitigate the risk of catastrophic wildfires.” Refusing to implement I.C. § 38-1304(1)(f) undermines that commitment and leaves Idaho communities increasingly vulnerable. It is further necessary to move forward as expeditiously as possible to show a clear record of conformity to Idaho’s laws and the Governor’s Executive Order, so that as things change over the years there is a record of compliance and precedent has been set.

While our client understands that the FPAC may provide “technical advice” under I.C. § 38-1305, it is the Board—not FPAC—that bears the legal duty to adopt rules under I.C. § 38-1304. As you are of course aware, no rules have ever been adopted under subsection (f), despite the statute’s clear mandate, and despite decades of worsening wildfire conditions across Idaho’s forestlands. There is no valid defense to this failure to act in accordance with law.

This is not an academic concern. Thousands of acres of dead and dying timber, left unmanaged, are fueling ever-larger wildfires that threaten Idahoans’ homes, businesses, and livelihoods. Your delay increases the risk that each next fire season will bring not only destruction, but costly litigation as well. IFBF’s petition was not radical. It spoke to precisely what the statute demands. Nor is it inconsistent with Idaho’s constitutional balance of powers. It is well within Idaho’s sovereign police powers to set safety rules for forest lands and to enforce those standards where lives and property are at stake. If you are concerned about objections from the federal government regarding rules that have never even been proposed, those are objections that can be raised as part of the deliberative process of rulemaking. But they are not reasons to ignore your legal duty to embark on the rulemaking process.

Moreover, while the Idaho Administrative Procedure Act requires agencies to respond to rulemaking petitions within 28 days, *see* I.C. § 67-5230, the Department waited more than two months to respond to IFBF’s petition. That delay only compounds the legal deficiency and underscores the need for immediate corrective action. We expect you to address IFBF’s petition at your meeting on **Tuesday, July 15, 2025**. We further request and expect that the Idaho Board of Land Commissioners with the Department initiate rulemaking under I.C. § 38-1304(1)(f) no later than July 23, 2025. Should you continue to withhold action, IFBF is prepared to pursue all available remedies, including a petition for judicial review under the Idaho APA, to compel your performance of this critical and non-discretionary legal duty.

We remain open to resolving this matter without litigation, but the clock is ticking. Please respond to me in writing no later than Wednesday, July 23, 2025.

Thank you,



Ivan L. London
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cc: Amber Mitchell, amitchell@idl.idaho.gov
Jamie Neill, jamie.neill@gov.idaho.gov
Bryan Searle
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Dustin T. Miller, Director
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State Board of Land Commissioners

Brad Little, Governor
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Brandon D Woolf, State Controller
Debbie Critchfield, Sup't Public Instruction

July 17, 2025

Ivan L. London
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Via email: ilondon@mslegal.org

Re: Response to July 11, 2025, Letter Regarding IFBF Petition to Initiate Rulemaking for I.C. § 38-1304(1)(f)

Dear Mr. London,

The Idaho Department of Lands (Department) is in receipt of your letter dated July 11, 2025, regarding the Idaho Farm Bureau Federation's (IFBF)'s petition dated April 22nd, 2025 (Petition) to the Department to initiate rulemaking pursuant to I.C. § 38-1304(1)(f). For the reasons set forth herein your requests that the Petition be addressed at the July 15th, 2025, meeting of the State Board of Land Commissioners (Land Board) and that the Department and Land Board initiate rulemaking by July 23rd, 2025, are denied. The Department's response to the Petition was timely and a proper exercise of the Department's discretion pursuant to I.C. § 67-5230. Additionally, for reasons explained in more detail below, bringing the proposal before the Forest Practice Advisory Committee (FPAC) is a necessary next step prior to initiating any formal rulemaking procedures.

First, the Department rejects the assertion that it was not timely in responding to the Petition. I.C. § 67-5230 expressly states in relevant part that "[i]f an agency requests additional information from the petitioner, *the time period specified in this subsection shall begin anew.*" (emphasis added) I.C. § 67-5230(4). As outlined in the Department's July 2nd, 2025, response letter, subsequent to the receipt of the Petition the Department reached out to IFBF to request additional information. Such additional information was provided to the Department on June 4th, 2025, when the Department met with a representative of the IFBF to further discuss the details of the Petition. Thus, the time period to respond to the Petition began anew on June 4th, 2025, and the Department's response was delivered within the required 28 days of the applicable deadline in compliance with I.C. § 67-5230(4).

Secondly, the Department's denial of the Petition was a proper exercise of discretion pursuant to I.C. § 67-5230. Pursuant to I.C. § 67-5230 an agency has only two options to respond to a petition to initiate rulemaking; "a) [d]eny the petition in writing stating its reasons for the denial; or b) [i]nitiate rulemaking proceedings in accordance with this chapter." I.C. § 67-5230(1)(a-b). The Department exercised the statutorily authorized option of denying the Petition and provided its reasoning as to why initiating formal rulemaking was not appropriate at the time. It is standard practice for the Department to have its subject matter experts on the FPAC review rulemaking proposals prior to initiating formal rulemaking. Importantly, the July 2nd decision letter does not foreclose formal rulemaking in the future. Rather, it simply states that rulemaking is not appropriate at this time because the proposal requires full consideration to

determine the necessity and scope of any proposed rulemaking. Pursuant to the Department's regular rulemaking practices under the Forest Practices Act (FPA), this requires assessment by the FPAC.

Moreover, all rulemaking must be conducted within the full context of the APA and regulatory landscape of the State of Idaho. As you may be aware, Idaho has undergone a monumental effort in reducing the footprint of the administrative state through comprehensive review and paring back of all administrative rules. *See* Idaho Exec Orders Nos 2019-02, 2020-01. This state-led directive has continued with the 2024 amendments to the Idaho Administrative Procedures Act (APA) requiring ongoing review and justification of administrative rules the recent passage of HB 14 during the 2025 legislative session directing agencies to take the next step in the administrative reduction process by reviewing their titles and chapters of Idaho Code to identify unnecessary, obsolete, and outdated provisions of Idaho Code with recommendations for removal. *See* I.C. §§ 67-5292, 67-3701 et seq. All of this is to simply illustrate that the State of Idaho does not condone rulemaking for rulemaking's sake and additions to Idaho's regulatory scheme are heavily scrutinized. Given this clear directive it is imperative that proposed rulemakings receive adequate consideration as to their necessity and appropriate scope prior to initiating the formal rulemaking process. As the Department has explained, pursuant to I.C. 38-1305 FPAC serves this purpose in the Department's regular rulemaking process under the FPA.

Contrary to your assertion neither the Land Board nor the Department are refusing to implement I.C. § 1304(1)(f). The substance of I.C. § 1304(1)(f) is already being implemented under the existing regulatory framework as is evident from the fact that the Department regularly receives notice of and approves salvage projects on timber lands in Idaho. However, in response to your client's petition the Department is willing to bring this matter before the FPAC to receive their advice to help determine the necessity of providing more express rules for implementation I.C. § 38-1304(1)(f) and, if found necessary, the appropriate scope and justification of a proposed rule given Idaho's express directive to minimize unnecessary regulation.

The Department understands IFBF's desire for this process to move forward expeditiously. In an effort to expedite this process, the Department has contacted the FPAC to schedule a special meeting to consider this matter prior to its regularly scheduled meeting in November. The FPAC shall meet on **August 26th, 2025, at 12:30 PDT** to review this matter and provide its input on proposed rulemaking. The FPAC will meet in the Department office in Coeur d'Alene and there shall be an option for remote attendance at the Department's Director's Office in Boise. The Department would like to formally invite the IFBF to attend the FPAC meeting and present its perspective on the necessity and appropriate scope of a proposed rule. IFBF's participation could be extremely valuable to the FPAC's consideration.

In sum, nothing in the APA or the FPA mandates that the Department grant a petition to initiate formal rulemaking. The Department has the discretion to determine whether proceeding with formal rulemaking is appropriate at the time of the petition. In this circumstance, while the Department determined that formal rulemaking is not appropriate, it has taken concrete steps to initiate its regular rulemaking process under the FPA in relation to the Petition by setting a meeting to bring this proposal before the FPAC.

In light of the foregoing, your requests that IFBF's Petition be addressed at the July 15, 2025, meeting of the State Board of Land Commissioners and that the Land Board and Department initiate rulemaking no later than July 23, 2025, are denied. The Department will proceed to bring this matter before the FPAC at its August 26th, 2025, meeting to assess the Petition, the necessity for rulemaking, and the appropriate scope of any proposed rule. IFBF is highly encouraged to attend this meeting and provide their input on the proposal for the FPAC's

consideration. The Department will proceed accordingly after receiving the FPAC's assessment of the proposal.

As you may already be aware, the Department's denial of the Petition constitutes a final agency action under I.C. § 67-5230 and is therefore subject to judicial review in accordance with I.C. § 67-5270. Pursuant to I.C. § 67-5273, any such petition for judicial review must be filed within twenty-eight (28) days of the service of the denial of the petition to initiate rulemaking.

If your client needs any additional information regarding the upcoming FPAC meeting or if you would like to discuss this matter further, please feel free to contact me at the information below.

Very Truly Yours,

/s/ John Richards

John Richards

General Counsel

Idaho Department of Lands

Jrichards@idl.idaho.gov

208-334-0210

100/13²

IDAHO DEPARTMENT OF LANDS
DIRECTOR'S OFFICE
1215 W. State St., Boise, Idaho 83720

MEMORANDUM

DATE: April 1, 1992

TO: Stan Hamilton
Director

FROM: Steve Schuster S.S.
Legal Counsel

SUBJECT: Application of Idaho Code §38-1304(f) to federal land

You have requested my opinion concerning the applicability of Idaho Code §38-1304(f) to federal lands.

Idaho Code §38-1304(f) was added to the Forest Practices Act by the 1991 legislature. Idaho session laws, ch. 245, §2, p. 598. This new section adds an additional criterion for the Land Board to consider when establishing rules for minimum standards for the conduct of forest practices on forest land:

[The Board shall] [p]rovide 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.

Also in 1991, the Idaho Legislature changed the Idaho Code §38-1303(2) definition of "forest land" to include "federal" as well as state and private lands. Idaho session laws ch. 245, §1, p. 598. Thus, new Idaho Code §38-1304(f) can be interpreted to require the Land Board to develop rules to "provide for" the

Stan Hamilton
April 1, 1992
Page 2

timely salvage of threatened timber from federal land. This raises a question regarding the extent to which the state of Idaho can control the salvage of timber from federal land.

In summary, the National Forest Management Act and other federal laws would preempt direct control of federal timber salvage by the Land Board, although the Board could exercise influence through the forest planning process. A more detailed explanation follows.

Congress has plenary authority over federal land under the Property Clause of the United States Constitution, art. IV, sec. 3, cl. 2. In Kleppe v. New Mexico, 425 U.S. 529 (1976), the United States Supreme Court acknowledged congressional authority to preempt, or override state law under the Property Clause; when Congress so acts, federal legislation necessarily overrides state law under the Supremacy Clause of the United States Constitution, art. VI, cl. 2.

Even though there is extensive federal power to preempt state law, state law still governs on federal lands and the national forests until Congress and the Forest Service decide to exercise their power. For example, 16 U.S.C. §480 provides that the states retain both civil and criminal jurisdiction over national forests except as to punishment of offenses against the United States. See also United States v. County of Fresno, 429 U.S. 452 (1977) (taxation tax on possessory interest of federal employees valid); Baldwin v. Montana Fish & Game Comm'n, 436 U.S. 371 (1978) (state regulation of hunting and fishing on federal lands).

The question posed thus becomes whether Congress has enacted legislation that would preempt any requirement by the Land Board concerning the timely salvage of timber from federal land. The appropriate test to answer this question is set forth in the United States Supreme Court case of California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987):

[S]tate law can be pre-empted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law within that field is pre-empted. If Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it

is impossible to comply with both state and federal law, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.

Granite Rock, 480 U.S. at 581 (citations omitted), citing Silkwood v. Kerr-McGee Corp., 464 U.S. 238 at 248 (1984).

In the case at hand, there is extensive federal legislation concerning the management of the National Forests.¹ The principal source of authority for the Forest Service is the Organic Act, 16 U.S.C. §551. Under this act, Forest Service administrative actions have been held to override state law in the context of fencing laws, hunting laws, and rules of contract construction. See Light v. United States, 220 U.S. 523 (1911); Hunt v. United States, 278 U.S. 96 (1928); Hi-Ridge Lumber Co. v. United States, 443 F.2d 452 (9th Cir. 1971).

Additional authority over management of federal timber lands comes from the National Forest Management Act, 16 U.S.C. §§1600-1614 and other scattered sections of 16 U.S.C. ("NFMA"). The NFMA represents the "most adventurous congressional incursion into the on-the-ground activities of the United States Forest Service." Wilkinson, C.F. and H. Michael Anderson, Land and Resource Planning in the National Forests, 64 Or. L. Rev. 1, 7 (1985). The main focus of the NFMA and the implementing regulations is where, when, and how much timber may be harvested. Coggins, Public Natural Resources Law, §13.05[3][b][i] (1990 and 1992 suppl.).

The heart of the NFMA planning process is found in 16 U.S.C. §1604, which sets forth relatively specific details regarding planning for timber harvest. Additionally, the NFMA specifically addresses timber salvage and how salvage harvests relate to overall timber harvest schedules developed in individual forest plans. 16 U.S.C. §§1604(k), (m) and 1611(b). There is no

¹I will not analyze preemption with respect to Bureau of Land Management land because BLM "forest land" holdings in Idaho are relatively insignificant as compared to Forest Service lands. BLM lands would be subject to the land use planning requirements found in the Federal Land Policy and Management Act, 43 U.S.C. §1712, which provides for federal land use planning analogous to the NFMA. BLM land use planning requirements do not contain nearly the detail regarding timber management as does the NFMA, however.

question then that Congress and the Forest Service, through the NFMA and implementing regulations², exercise extensive control over how timber is harvested from federal land.

Other federal statutes also relate to timber harvest from Forest Service lands. The NFMA, in 16 U.S.C. §1604(e), incorporates the provisions of the Multiple-Use Sustained Yield Act of 1960 into the forest planning process. In 16 U.S.C. §1604(g), Congress also directs the Forest Service to comply with the National Environmental Policy Act of 1969, 42 U.S.C. §§4321 et seq. in developing forest plans. See also Texas Committee on Natural Resources v. Bergland, 573 F.2d 201, reh den 576 F.2d 931 (5th Cir.), cert. den 439 U.S. 966 (1978) (Forest Service subject to requirements of NEPA under the NFMA).

With this extensive federal management scheme in mind, it does not appear that there is much room for Land Board action with respect to directing or requiring salvage of federal timber. Any timber harvest from federal lands must be in conformity with the NFMA, i.e. pre-NFMA management plans³ or forest management plans established pursuant to the NFMA. Although salvage sales are to some extent exempt from the NFMA planning provisions, unplanned salvage sales must be approved by the Secretary of Agriculture. 16 U.S.C. §§1604(m), 1611(b).

Idaho Code §38-1304(f) is somewhat vague because it directs the Board to "provide for" salvage of timber; what "provide for" means seems to be fairly open-ended. Presumably, the legislature intended the Board to flesh out this term during rulemaking. In any event, to the extent that Idaho Code §38-1304(f) attempts to mandate or require the salvage of timber from federal lands, it most likely would conflict with the NFMA and thus be preempted by the NFMA.

Even though there is an extensive federal legislative scheme for the harvest of federal timber, Congress has left a role for the states in regulating water quality aspects of timber harvest on federal lands. Under the limited waiver of federal sovereign

²36 CFR Parts 219, 221, and 223.

³Pursuant to 16 U.S.C. §1604(c), Forest Service management units are allowed to continue under existing (pre-1976) management plans until plans developed in accordance with the NFMA are implemented.

Stan Hamilton
April 1, 1992
Page 5

immunity in the Clean Water Act, 33 U.S.C. §1323, Congress has established that federal agencies are subject to state water quality laws the same as a nongovernmental entity. Federal courts have interpreted §1323 to mean that the Forest Service must comply with state water quality standards during timber harvest from federal lands. Northwest Indian Cemetery Protective Association v. Peterson, 795 F.2d 688, rev'd on other grounds 485 U.S. 439 (1988).

Despite the inability of the Land Board to mandate or require timber salvage on federal land, the state of Idaho can be an important factor in the Forest Service planning process. The NFMA requires coordination with state and local governments in the planning process. See 16 U.S.C. §§1604(a), 1612; 36 CFR Parts 216 and 217; see also 31 U.S.C. §6506 (requiring federal cooperation with state and local governments in developing federal programs or projects). To the extent that the "provide for" language of Idaho Code §38-1304(f) involves participation in the forest planning process through the NFMA's state coordination provisions or requests to the Secretary of Agriculture, salvage rules can possibly have some impact.

SJS/pks

cc: Winston Wiggins

Idaho Department of Lands

Forestry and Fire Division
Forest Practices Advisory
Committee
3284 W. Industrial Loop
Coeur d'Alene, ID 83815
Phone (208) 769-1525



Dustin T. Miller, Director
Working Lands, Trusted Stewards
Equal Opportunity Employer

State Board of Land Commissioners

Brad Little, Governor
Phil McGrane, Secretary of State
Raúl R. Labrador, Attorney General
Brandon D Woolf, State Controller
Debbie Critchfield, Sup't Public Instruction

December 1, 2025

State Board of Land Commissioners
Governor Brad Little
Secretary of State Phil McGrane
Attorney General Raúl R. Labrador
State Controller Brandon D Woolf
Superintendent of Public Instruction Debbie Critchfield
Director of Idaho Department of Lands Dustin T. Miller

via email:

Re: Forest Practices Advisory Committee Letter of Support

Director Miller and State Land Board Commissioners:

The Forest Practices Advisory Committee (FPAC) was recently asked by the Idaho Department of Lands to evaluate the possibility of entering into rulemaking for the purpose of requiring federal land managers within Idaho to treat lands threatened by forest health related issues that could cause a greater risk to surrounding lands and property from catastrophic wildfire. FPAC created a subcommittee to examine the potential benefits of rule development pursuant to the ID Forest Practices Act at 38-1304(1)(f) that address salvage logging of dead or dying timber or timber that is threatened by various physical elements. FPAC does not recommend addressing the issue through rulemaking, we agree that there is a need to increase management on federal lands to reduce forest health risks to Idaho's forests.

Previously FPAC was briefed on the successful implementation of Idaho's Shared Stewardship and Good Neighbor Authority programs. While discussing the forest health issues in the state and ways to address those issues the committee found that these collaborative approaches have delivered effective results with on the ground treatments and show the most promise for addressing forest health and wildfire concerns on federal lands. They are also taking a more localized approach as counties with assistance from the state programs are beginning to enter into Good Neighbor Authority agreements of their own. This localized collaborative approach has the best prospects for producing large scale improvements in forest health and catastrophic fire hazard risk reduction.

At the November 12, 2025, FPAC meeting, the committee voted unanimously to encourage the state to continue to address forest health risks on federal and adjoining lands through the collaborative approach of Shared Stewardship and Good Neighbor Authority programs. It is critical that federal government provides dedicated and sustained funding to alleviate forest health risks stemming from federal lands.

Sincerely,

Christopher P. Hart

Kit Hart, Chairman Forest Practices Advisory Committee



Dr. Timothy E. Link, Vice Chair Forest Practices Advisory Committee

cc: Julia Lauch – State Forester, IDL
Archie Gray – Chief, Forestry Assistance Bureau, IDL
Jeanne Bradley – Regulatory/Stewardship Program Manager, IDL

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via email:

Re: Forest Practices Advisory Committee Recommendation – 38-1304(1)(f)

Director Miller and State Land Board Commissioners:

This letter is to notify the board of the recommendation of the Forest Practices Advisory Committee (FPAC) related to the question of entering into rule promulgation related specifically to 38-1304(1)(f).

On April 22, 2025, the Idaho Farm Bureau Federation sent a letter to the Director of the Idaho Department of Lands, Dustin Miller asking the Department to enter into rulemaking related to 38-1304(1)(f). "38-1304 states in part: "The board: (Idaho Board of Land Commissioners) (1.) **shall** adopt rules . . . for the conduct of forest practices on forest land" (emphasis added). Although IDL promulgated rules for subsections (a) through (e) of this section, it has not promulgated rules for subsection (f)." Section 1. Subsection (f) states: *(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.*

The Department then responded that the appropriate starting point for requesting rule promulgation was to bring the matter before FPAC. FPAC was established under the Idaho Forest Practices Act under 38-1305 Duties, Powers of the Department (2)(a) *The Department 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.* Traditionally, rulemaking related to Forest Practices undertaken by the Department has originated from FPAC. A special FPAC meeting was held on August 27, 2025, where The Idaho Farm Bureau Federation presented their case for entering

into rule promulgation related to 38-1304(1)(f). The full committee at that time formed a sub-committee to explore the issue and return to the full committee at the November 12, 2025, meeting with a recommendation. The sub-committee was made up of two voting members, an ex-officio member, two representatives of the Farm Bureau, two volunteers with forest practices experience, and two IDL employees as subject matter experts.

The sub-committee subsequently met on October 6 and November 7, 2025, to discuss the request to enter rule promulgation. There was consensus on the sub-committee that many federal lands within Idaho are in desperate need of treatment, but a consensus could not be reached on whether Forest Practices rules are an appropriate mechanism to encourage or force federal land management agencies to take action. Several other alternatives were discussed including encouragement to use successful programs, specifically Shared Stewardship and Good Neighbor Authority, or the possibility of resolutions or other statutes to address the issue. The sub-committee prepared a handful of alternatives for FPAC to consider:

- Recommend to the Land Board that the Department enter into rule promulgation related to 38-1304(1)(f).
 - This option was not selected because FPAC concluded that any rule promulgated under this section would be redundant to 38-1304(1)(f) and would be unenforceable.
- Recommend to the Land Board that the Department not enter into rule promulgation.
 - This was the chosen alternative because FPAC concluded that current rules do not inhibit any landowner from choosing to treat lands at risk of catastrophic wildfire.
- Recommending that the Land Board or the State find alternative options through policy, resolution, or statute to address the issue.
 - The full committee and subcommittee discussed a variety of other options for the state to address forest health and fire risk issues. Those options included additional policy or statutes to encourage treatment or using statute to assign liability for failure to treat a recognized threat.
 - Ultimately FPAC elected to develop a letter to the Land Board expressing support for the state's Good Neighbor Authority and Shared Stewardship efforts based on the demonstrated efficacy of these programs.

At the November 12, 2025, FPAC meeting there was a lengthy discussion of the issue and the options available. Ultimately, FPAC elected to recommend to the Land Board that IDL not enter into rule promulgation related to 38-1304(1)(f) because there are already sufficient rules in place to allow for the timely application of salvage harvests by willing and able landowners. Also, the statute directs federal forest land managers to undertake salvage where feasible, making a rule redundant and subservient. With eight of nine voting members present a roll call vote was taken with all eight members present voting in favor.

It is the recommendation of the Forest Practices Advisory Committee that the Idaho Department of Lands not enter into rulemaking related to Idaho Code Section 38-1304(1)(f) at this time.

Sincerely,

Christopher P. Hart

Kit Hart, Chairman Forest Practices Advisory Committee

A handwritten signature in blue ink, appearing to read "Timothy E. Link", with a stylized flourish at the end.

Dr. Timothy E. Link, Vice Chair Forest Practices Advisory Committee

cc: Julia Lauch – State Forester, IDL
Archie Gray – Chief, Forestry Assistance Bureau, IDL
Jeanne Bradley – Regulatory/Stewardship Program Manager, IDL