



**Idaho Department of Lands
Negotiated Rulemaking
Unresolved Rule Changes Summary**

IDAPA 20.02.14

Rules for Selling Forest Products On State-Owned Endowment Lands

20.0214.1601

Members of the public participated in the Department’s negotiated rulemaking process by attending the meetings and submitting written comments.

Key Information considered by the Department included applicable statutes, timber sales data and information provided by the public during the negotiation process. In addition, the Department solicited information from the pole companies, other industry representatives and other states.

Key documents from the negotiated rulemaking record, which includes rule drafts, written public comments and documents distributed during the negotiated rulemaking process, are available at <https://www.idl.idaho.gov/rulemaking/20.02.14/index.html>. The entire rulemaking record is available for review upon request to the Department.

At the conclusion of the negotiated rulemaking process, the Department formatted the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin.

The following unresolved issues were raised during the negotiated rulemaking process:

Comments Received	IDL Response
Sealed Bids – One of the written comments encouraged the Department to explore the possibility of using Sealed Bids rather than Oral Auctions to sell timber.	This topic was discussed during the negotiated rulemaking meetings. The Department has explored that option in the past but we have been advised by the Attorney General's Office that the State Constitution limits us to public auctions for the purpose of selling timber and that sealed bids do not meet public auction requirements. The Department is looking into using online (web based) bidding which does meet public auction requirements.
Sort Sales/Delivered Product Sales - This type of timber sale was discussed both in the meetings and in written comments as an option available to the Department to continue to provide a source for poles.	During the meetings we received input both in favor and opposition to the use of this type of timber sale. The Department is considering a very limited use of this tool in the future but it would take time and would remain a small component of the timber sale program.
Small Business Set-Aside Sales – In the written comments the Department was encouraged to look into the possibility of developing a Small Business Set-Aside program as a means of slowing consolidation.	The idea of the department beginning to offer Small Business Set-Aside sales was also discussed at the meetings. The Department has analyzed this option in the past and concluded that it is inconsistent with our Constitutional mandate and not appropriate for the Department to provide such sales which could favor one sector of the forest products industry. The Department already



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	offers a variety of sale sizes that are accessible to purchasers of all sizes.
10% of the Annual Cut should be Allocated to High-Value Forest Product Sales	The Department cannot guarantee that a specific percentage of the volume being offered every year would meet the definition of a High-Value Forest Product due to market changes, preferred species, management needs, salvage efforts and other factors.
Using Value or Volume to determine the implementation of a High-Value Forest Product Sale	There was a significant amount of discussion and comments related to using value or volume to determine if a timber sale would meet the criteria to be sold as a High-Value Forest Product Sale. There were merits and limitations to using both methods. The Department has chosen to go forward with volume after weighing the issue.
Purchaser's Option to remove Forest Products	There was some discussion about how to phrase the rule related to a Purchasers option to manufacture products from a timber sale, and when a Purchaser would have to declare what they intend to make. Currently the purchaser must declare in advance what products it intends to manufacture on a timber sale. Following discussion the Department has decided to remove the language entirely, assuming that it will be understood that a Purchaser may manufacture any products that meet contractual merchantability specifications and that determination does not have to be made until a "Timber Sale Logging and Operation Plan/Cutting Permit" is filed.
Replacement for Linear foot Measurement	There was consensus that there needed to be a replacement chosen for linear foot measurement of poles since the current linear foot conversion table in the rules grossly underestimates the actual volume of poles for each lineal foot size class. The Department agrees that either Scribner Board Foot Measure or Cubic Measure needs to be used. We are working toward replacing linear measurement with either option.
"Cedar poles should be harvested before other species so that they are not damaged"	Currently, cedar poles are sold in separate sales that specifically target the removal of poles, Idaho is the only state or entity that uses this practice. Very often these sales do not accomplish the specific silvicultural objective resulting in the need to re-enter the stand to finish the silvicultural treatment. The resulting additional entry increases the possibility of damaging the environment, duplicates many sale preparation and administration costs, and delays establishment of the next stand of timber. As



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	<p>required under the current rules, the Department has concluded that conducting an additional entry to remove cedar poles separately does not meet our fiduciary or stewardship responsibilities. Poles may be harvested with minimal damage during normal harvesting operations as part of a sale whose design is intended to achieve silvicultural objectives and remove all designated products/species in a single entry as is common for both private industry and other states.</p>
<p>Each timber sale must have a single winning bidder responsible for removing all of the required timber from the sale forcing the purchaser to market material that they would not otherwise use in their operation and resulting in lower returns.</p>	<p>The pole companies consider this aspect of timber sale bidding to be a burden. The fact is that this is the burden placed on every timber sale bidder who is successful. There is no single company in Idaho that will use every product generated on every sale. Therefore it is customary that the Purchaser will market those products that they do not use themselves to other companies. It is unrealistic to allow multiple bidders to purchase different products on a sale and expect that those products will then be harvested in a timely and efficient manner.</p>
<p>“Making poles a separate biddable item will not work. Biddable forest products must be required to be removed and accurately estimated and measured. Too Speculative. Opens bidding to games.”</p>	<p>The Department has addressed this issue by not making poles a separate biddable item but by making the High-Value Forest Product a biddable item so that we can require removal without specifying in what product form it is removed in. To require the removal of the material as a specific product would not have worked. Purchasers would have resisted making the higher value product even if they had bid it up (playing games).</p>
<p>Concern was expressed over the detail and results of a Net Present Value analysis that was used by the Department to provide some of the supporting documentation for the need to address the pole rules.</p>	<p>The purpose of the NPV calculations was to provide a comparison for analysis between different stand rotations and number of entries. It was purposely kept simple to avoid confusion and demonstrate the NPV concept. The analysis does show that the Department will not be attempting to grow stands to very old ages where large poles would likely occur because the premium received for the large poles is not enough to offset the time value of money at a 4% discount rate. The analysis further indicates that additional entry requirement to remove cedar poles separately does not provide higher returns under any rotation length.</p>
<p>Comments questioned the Department’s assumption that the dual entry caused by the use of pole sales results in a “near doubling” of</p>	<p>The Department stands by its conclusion that conducting a separate pole sale followed by a second sale doubles or nearly doubles sale</p>



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costs and workload.	preparation and administration costs compared to removing all the products in a single timber sale.
Pole companies assert that because cedar poles are typically worth more than other sawlog products that it pays to remove cedar poles separately.	Poles do in fact generate a higher price than other products but using average prices over the last three years and compensating for scaling advantages built into the current rules, the Department has demonstrated that the premium received for pole quality cedar does not offset the additional sale prep and administrative costs and the delay in establishing regeneration. In other words, the financial returns for conducting two sales compared to removing all the products in one sale do not support the assumption that the beneficiaries make more money with the current requirements to conduct two separate timber sales.
“Selling cedar poles in one auction and selling remaining mixed timber species in a second auction can generate higher financial returns.”	A single sale cannot have multiple purchasers operating simultaneously within the same sale area without inevitable conflict, inefficiencies and legal/safety concerns. Additional entry sales (if poles and mixed species are sold separately) that result in poles receiving a small premium over sawlogs don’t generate enough additional revenue to offset the costs and risks associated with the additional sale. An NPV analysis provided in the comment letter used the best case price scenario from a single quarter to try to demonstrate this while the Department’s analysis used actual 3-year averages.