

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Regular Agenda

Subject

Adoption of Pending Rule, IDAPA 20.02.14 *Rules for Selling Forest Products on State-Owned Endowment Lands*

Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.02.14?

Background

Negotiated rulemaking for these rules was approved by the Land Board on January 18, 2022. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The Idaho Department of Lands (Department) sells forest products on endowment land to purchasers using various techniques. IDAPA 20.02.14 establishes a consistent process for selling forest products from state endowment lands by setting minimum requirements for timber sale auctions, initial deposits and bonding, stumpage and interest payment, and timber sale cancellation and termination.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Emailed 71 industry representatives.
- Posted on social media.

Two negotiated rulemaking meetings were held in April 2022. Six participants attended the April 5 meeting in Coeur d'Alene, and eight participants attended the April 6 meeting in Lewiston. The draft rule changes were open to written public comments until May 11, 2022. No written comments were received.

Some minor changes were made based on the meeting discussions and internal discussions. Comments and the Department's responses are summarized in Attachment 1.

No changes were made during this rulemaking that change the context of the rule. While the changes are minor, the proposed rule reduces the regulatory burden by reducing the total word count (-19%) and the number of restrictive words (-11%).

The proposed rule was published in the September 7, 2022 Administrative Bulletin. The Notice of Proposed Rulemaking and published rule text are in Attachment 2. No comments were received, and the Department recommends no changes for the pending rule.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2023 legislative session.

Recommendation

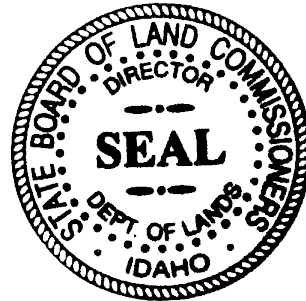
Adopt the pending rule for IDAPA 20.02.14 *Rules for Selling Forest Products on State-Owned Endowment Lands*.

Board Action

A motion was made by Attorney General Wasden that the Land Board adopt the pending rule for IDAPA 20.02.14 Rules for Selling Forest Products on State-Owned Endowment Lands. Secretary of State Denney seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking with Rule Text
3. Draft Notice of Adoption of Pending Rule



Negotiated Rulemaking Summary

IDAPA 20.02.14 – Rules for Selling Forest Products on State-Owned Endowment Lands

Docket No. 20-0214-2201

The Idaho Department of Lands (IDL) initiated this rulemaking in compliance with Executive Order 2020-01: Zero-Based Regulation with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

This administrative rule establishes a consistent process for selling forest products from state endowment lands by setting minimum requirements for timber sale auctions, initial deposits and bonding, stumpage and interest payment, and timber sale cancellation and termination.

Negotiated rulemaking was approved by the State Board of Land Commissioners (Land Board) on January 18, 2022. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 2, 2022.

Stakeholder Outreach

The department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage to post documents, scheduling information, and comments at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201>
- Issued a press release
- Emailed 71 industry representatives
- Posted on social media

Negotiated Rulemaking Public Meetings

Two public meetings were held in April 2022 to discuss the draft rule changes:

- **4/5/2022: Public meeting in Coeur d'Alene (and Zoom)**
 - Six participants
 - Affiliations: PotlatchDeltic, Stella-Jones Corporation, Sun Mountain Lumber
- **4/6/2022: Public meeting in Lewiston (and Zoom)**
 - Eight participants
 - Affiliations: Clearwater Paper, Idaho Forest Group, Stella-Jones Corporation, Woodgrain Inc.

Summarized comments from the meetings are explained in the table below.

Table 1. Response to Comments on Draft Negotiated Rule at Public Meetings

Oral Comment	Rule Section	Response
Is IDL going to increase the direct sale limit to 200 MBF? <i>Ryan Dickison 4/5/2022</i>	020	The department will maintain the 100 MBF set in Land Board policy.

Oral Comment	Rule Section	Response
Does IDL have any language in their timber sale contract that requests written cancellation? <i>Ryan Dickison 4/5/2022</i>	042	There is no specific language in our contracts about the cancellation process. The first sentence in Section 042 states written request is required to initiate cancellation. This matches IDL's procedure.
Definition 010.04 mentions road improvements but not "roads construction" – could this be misunderstood that construction might not be included in the rule? <i>Mike Reggear 4/6/2022</i>	010.04	IDL agrees. Changed draft rule to mention road construction and improvements.
Is the direct sale value set at 100 or 200 MBF? Is the \$15K limit going to be increased. <i>Mitch Reggear 4/6/2022</i>	020	The Idaho statute is 200 MBF with a 100 MBF Land Board policy. The department will maintain the \$15K value set in Land Board policy.
Recommend keeping "forthcoming fiscal year" in the rule text. <i>Mike Reggear 4/6/2022</i>	026	Added language, "Department's annual sales plan" to the rule text. The Land Board's Timber Sale Public Involvement Policy states the IDL presents this plan for approval at the April Land Board meeting.

No Written Comments

The department did not receive any written comments on the draft rules. The comment period was March 2 to May 11, 2022.

Concluding Negotiated Rulemaking

With no issues left unresolved, the department concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the September 7, 2022, edition of the Idaho Administrative Bulletin.

Key documents from the rulemaking record, including the proposed rule in legislative format to allow the reader to easily identify changes, are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201/>.

Summary of Rule Changes

Some minor changes to the initial draft were made from comments at the meetings, internal discussions, and as recommended by the Deputy Attorney General to improve clarity and ease of use.

The draft rule text, posted to the rulemaking website on May 17, 2022, had some internal discussion about removing the incorporation by reference section. Section 002 Incorporation by Reference is removed in the proposed rule as the current rule text does not reference any external document. (The rule text that referenced the external document was removed in the 2016/2017 rulemaking for IDAPA 20.02.14.)

The regulatory burden has been reduced by decreasing both the total word count (-19%) and the number of restrictive words (-11%) in the proposed rule. No changes were made that change the context of the previous rule.

Revised Proof Revised Proof Revised Proof Revised Proof

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.02.14 – RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The regulatory burden has been reduced by decreasing both the total word count (-19%) and the number of restrictive words (-11%) in the proposed rule. No changes were made that change the context of the previous rule.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 2, 2022, Idaho Administrative Bulletin, [Vol. 22-3, pages 22-23](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeremy Shawver at (208) 666-8672 or jshawver@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this 7th day of September 2022.

David Greenwood, Timber Management Bureau Chief
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
Phone: (208) 769-1525
Fax: (208) 769-1524
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0214-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

20.02.14 – RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 38-1201, et seq.; 58-104(6); 58-105; 67-5201, et seq.; Idaho Code. ()

001. SCOPE.

These rules govern the selling of forest products from state endowment lands. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners. ()

02. Contract. Timber sale contract in a form prescribed by the Department. ()

03. Department. The Idaho Department of Lands. ()

04. Development Credits. A stumpage credit received by the purchaser for road construction and improvements. ()

05. Director. The director of the Idaho Department of Lands or his designee. ()

06. Forest Products. Marketable forest materials. ()

07. Net Appraised Value. The minimum estimated sale value of the forest products after deducting the development credit. ()

08. Net Sale Value. The final sale bid value of the forest products after deducting the development credit. ()

09. Purchaser. A successful bidder for forest products from a state sale who has executed a timber sale contract. ()

011. -- 018. (RESERVED)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

Forest product permits for personal use will be sold on a charge basis. The Director will determine permit rates and maximum permit values. ()

020. DIRECT SALES.

The sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. The duration of a direct sale is six (6) months. The purchaser must furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). ()

021. TIMBER SALES.

Timber sales exceed the net appraised value or volume for direct sales established by the Board. ()

022. -- 025. (RESERVED)

026. ANNUAL SALES PLAN.

The Department's annual sales plan will be presented to the Board for approval annually and upon approval made available to all interested parties. The plan may be altered to respond to changing market conditions or to expedite the sale of damaged or insect-infested forest products. ()

027. -- 030. (RESERVED)

031. TIMBER SALE AUCTIONS.

01. Requirements. Timber and Delivered Products sales must be sold at public auction. ()

02. Requirements for Bidding. Bidders must: ()

a. Present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. ()

b. Not be delinquent on any payments to the State at the time of sale. ()

c. Not be a minor as defined in Section 32-101, Idaho Code. ()

d. If a foreign corporation, have a completed and accepted foreign registration statement with the secretary of state and comply with Title 30, Chapter 21, Part 5, Idaho Code in order to do business in Idaho and be eligible to bid on and purchase State timber. ()

032. INITIAL DEPOSIT AND BONDS.

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) is paid in cash and retained by the state as a cash reserve for the duration of the contract; the purchaser is not entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit will be forfeited in the event the contract is terminated without being completed. ()

02. Performance Bond. A bond of sufficient amount to ensure compliance with the terms and conditions of the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) must be executed within thirty (30) days from the date of sale and prior to contract execution. Failure to fully perform the contract may result in forfeiture of all or part of the performance bond. ()

03. Payment Bond. Prior to cutting any forest products, the purchaser must provide a bond acceptable to the Department as assurance of payment for products to be cut or removed, or both, within the succeeding ninety (90) days. The Department will determine the payment bond amount on delivered product sales. Failure to make full and timely payment per contract terms may result in forfeiture of all or a portion of the payment bond. ()

033. -- 040. (RESERVED)

041. STUMPAGE AND INTEREST PAYMENT.

The Department will prepare and forward to the purchaser a monthly stumpage summary of forest products measured during the prior month and a statement of account. The statement will include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser must make payments within thirty (30) days of the end of the billing period or the payment is considered delinquent. Interest will not be charged on delivered product sales. ()

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting a written request to the applicable supervisory area office. Once the cancellation process has finished, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser. ()

043. PREMATURE TIMBER SALE TERMINATION.

01. Request. A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated. ()

02. Termination Policy. ()

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond. ()

b. The following damages will be assessed by the Board for premature sale terminations. The Board will seek payment: ()

i. Of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. Of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. For any credits given for developments that remain incomplete at the time of termination. ()

iv. For estimated Department costs associated with reoffering the timber sale. ()

v. For other expenses including, but not limited to, legal costs and Department staff time. ()

c. If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. ()

d. The purchaser who has terminated a timber sale contract is not eligible to rebid that particular sale unless specifically authorized to do so by the Board. ()

044. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE-OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-2201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, Vol. 22-9, pages 205-208. An unofficial strikethrough version of the proposed rule, which shows the changes made through the rulemaking process, is available on the agency website at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201/>.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jeremy Shawver at (208) 666-8672 or jshawver@idl.idaho.gov.

DATED this 18th day October, 2022.

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