

Dear Senators BAIR, VICK, Stennett, and  
Representatives RAYBOULD, Gestrin, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Department of Lands:

IDAPA 20.02.14 - Rules for Selling Forest Products on State-Owned Endowment Lands - Proposed Rule (Docket No. 20-0214-1601);

IDAPA 20.07.01 - Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission - (Chapter Repeal) Proposed Rule (Docket No. 20-0701-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 09/01/2016. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/30/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** August 15, 2016

**SUBJECT:** Idaho Department of Lands

IDAPA 20.02.14 - Rules for Selling Forest Products on State-Owned Endowment Lands - Proposed Rule (Docket No. 20-0214-1601)

IDAPA 20.07.01 - Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission - (Chapter Repeal) Proposed Rule (Docket No. 20-0701-1601)

#### **1. IDAPA 20.02.14 - Rules for Selling Forest Products on State-Owned Endowment Lands**

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.02.14 - Rules for Selling Forest Products on State-Owned Endowment Lands. According to the department, the rule change is being proposed due to recent policy changes from the Land Board which have resulted in the department no longer presenting individual sales to the board for approval unless they fall outside established land board policies. The department notes that some of the rule provisions are now obsolete. The department notes that they have also initiated negotiated rulemaking to address rules relating to the sale of cedar poles due to a concern that some of the rules may be legally questionable and do not help the department meet its mandate to maximize long-term returns to the endowments.

The department indicates that negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to sections 58-104 and 58-105, Idaho Code.

#### **2. IDAPA 20.07.01 - Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission**

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.07.01 - Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission. According to the department, the purpose of the rulemaking is to repeal the rule. The department notes that the current rule was effective in 1992 and was then superseded by the Administrative Procedures Act. The department adds that several changes to

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administrative proceedings were enacted with Senate Bill 1339 during the 2016 legislative session and consequently, IDAPA 20.07.01 no longer governs actions by the commission. The department notes that it intends to bring forward a new set of rules that will govern proceedings before the commission.

The department states that because the purpose of the proposed rule is a repeal, negotiated rulemaking was not conducted. The rulemaking appears to be authorized pursuant to sections 47-317 and 47-319, Idaho Code.

cc: Idaho Department of Lands  
Sandra Allen

**IDAPA 20 - IDAHO DEPARTMENT OF LANDS**

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

**DOCKET NO. 20-0214-1601**

**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), 58-105, 67-5201, et seq, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

<b>Thursday, August 11, 2016 1:00 - 3:00 PM PDT</b>	<b>Thursday, August 18, 2016 1:00 - 3:00 PM PDT</b>
<b>Best Western Plus University Inn Centennial Room 1516 Pullman Rd. Moscow, ID 83843</b>	<b>Idaho Department of Lands Pend Orielle Area Office - Conf. Rm. 2550 Highway 2 West Sandpoint, ID 83864-7305</b>

The hearing sites 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:

Recent policy changes from the Land Board have resulted in the department no longer presenting individual sales to the board for approval unless they fall outside established land board policies. This has resulted in some of the rules becoming obsolete. Additionally, the department has initiated the negotiated rule making process to address rules related to the sale of cedar poles. The current policy and rules that govern the sale of cedar poles may be legally questionable and do not help the department meet its constitutional mandate to maximize long term returns to the Endowments.

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

There are no proposed fee increases.

**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 as a result of this rulemaking:

These rules apply to the sale of forest products on State-Owned Endowment Lands, there will be no direct costs to the General Fund or dedicated funds that may be linked to addressing the rules. The purpose for addressing some of the rules is to improve the efficiency, cost effectiveness and lessen environmental impacts of the current timber sale program resulting in greater returns to the Endowments.

**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 June 1, 2016 Idaho Administrative Bulletin, [Volume 16-6, page 48](#).

**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:

There is one item incorporated by reference: ANSI 05.1, 2002 Edition

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text (if available), contact Archie Gray CF, Sale Administration and Scaling Program Manager (208) 666-8618. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the IDL web site at the following web address: <http://www.idl.idaho.gov/rulemaking/index.html>.

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 August 24, 2016.

DATED this 7th Day of July, 2016.

Archie Gray, CF  
Sale Administration and Scaling Program Manager  
Idaho Department of Lands  
3284 W. Industrial Loop  
Coeur d'Alene, ID 838115  
Phone: (208) 666-8619

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0214-1601**  
**(Only Those Sections With Amendments Are Shown.)**

**010. DEFINITIONS.**

- 01. Board.** The Idaho State Board of Land Commissioners. (5-8-09)
- 02. Cable Yarding.** Transportation of forest products from stump to road by means of a suspended, powered cable system. (5-8-09)
- ~~03. Cedar.~~ ~~Western Red Cedar (*Thuja plicata*).~~ (5-8-09)
- 043. Cedar Pole.** A segment or portion of a ~~western red cedar~~ tree that can be manufactured into a utility pole meeting current ANSI Specifications. (5-8-09)( )
- ~~053. Contract.~~ Timber sale contract in a form prescribed by the Department. (5-8-09)
- ~~064. Department.~~ The Idaho Department of Lands. (5-8-09)
- ~~075. Development Credits.~~ A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. (5-8-09)
- ~~086. Director.~~ The director of the Idaho Department of Lands or his authorized representative. (5-8-09)
- ~~097. Extreme Circumstances.~~ Catastrophic circumstances including, but not limited to, fire, downed timber due to a wind event, flood, earthquake, destruction of a purchaser's milling facilities or equipment by fire, or milling operation shut down due to a court order related to compliance with state or federal environmental laws. (5-8-09)
- ~~108. Forest Products.~~ Marketable forest materials. (5-8-09)
- ~~109. Ground-Based Yarding.~~ Transportation of forest products from stump to road using tractors,

forwarders, or rubber-tired skidders. (5-8-09)

~~10.~~ **High-Value Forest Products.** Based on the prior twenty-four (24) months of the department's transactional evidence, species of trees or Forest Products (e.g. Cedar or Cedar Poles) whose value exceeds twice average mixed sawlog stumpage value per unit of measure, excluding the high value species. ( )

~~12.~~ **Length.** The length of a pole in five (5) foot increments. (5-8-09)

~~131.~~ **Measurement.** Weight, length, board foot volume, cubic volume, or any other means or procedure for determining quantity of forest products. (5-8-09)

~~142.~~ **Net Appraised Value.** The minimum estimated sale value of the forest products after deducting the development credit. (5-8-09)

~~153.~~ **Net Sale Value.** The final sale bid value of the forest products after deducting the development credit. (5-8-09)

~~14.~~ **Cedar Pole.** A segment or portion of a ~~western red cedar~~ tree that can be manufactured into a utility pole meeting current ANSI Specifications. (5-8-09)( )

~~165.~~ **Pulp.** Any portion of a tree that does not meet the sawlog merchantability specifications of thirty-three and one-third percent (33 1/3%) net scale. (5-8-09)

~~176.~~ **Purchaser.** A successful bidder for forest products from a state sale who has executed a timber sale contract. (5-8-09)

~~187.~~ **Roads.** Forest access roads used for the transportation of forest products. (5-8-09)

~~198.~~ **Scaling.** Quantitative measurement of logs or other forest products by a log rule. (5-8-09)

~~2019.~~ **Scribner Decimal "C" Board Foot Measure.** The measurement of forest products in accordance with the log rule described in Title 38, Chapter 12, Idaho Code, and the rules promulgated thereunder. (5-8-09)

~~240.~~ **State.** The State of Idaho. (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. This type of sale is to be used to harvest isolated or by-passed parcels of timber of insufficient value and volume to justify a ~~salvage Timber~~ sale (refer to Rule Section 021). The direct sale shall not be used when two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The initial duration of a direct sale shall be six (6) months with a provision for one six (6) month extension. The purchaser shall 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). Advance payment will be required and all sales will be on a lump sum basis. (3-4-11)( )

~~021. SALVAGE SALES.~~

~~Salvage sales shall not exceed the net appraised value and volume established by the Board and are intended to be used in the harvesting of timber which, in the opinion of the Director, is of insufficient quality and/or quantity to support a timber sale (refer to Rule Section 022). The contract requirements for salvage sales shall be the same as for timber sales. (5-8-09)~~

~~0221. TIMBER SALES.~~

~~Timber sales exceed the net appraised value or volume for ~~salvage Direct~~ sales established by the Board.~~

( ) (5-8-09)

**022. -- 023. (RESERVED)**

**024. SALE OF CEDAR POLES HIGH-VALUE FOREST PRODUCTS.**

**01. Requirements for Cedar Poles High-Value Forest Product Sales.** ~~If a proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas and at least ten (10) poles per acre on cable yarding areas, the pole quality cedar shall be reserved and sold separately as a pole sale or as a separate product sort in a delivered products sale. Pole quality cedar in areas with a lower density of poles may be offered as poles~~ **When High-Value Forest Products (such as Cedar or Cedar Poles) represents thirty percent (30%) or more of the sale volume, then the sale shall be sold using at least two (2) biddable items, one (1) biddable item for the High-Value species or product and at least one (1) for any other species or products on the sale.** (3-4-11)( )

**02. Maximum Amount of Sawlogs Identification of High-Value Forest Product Sales.** ~~Sawlogs and other forest products shall not exceed fifty percent (50%) of the total sale volume, excluding materials generated through the construction of roads and development sites~~ **As part of its Annual Sales Plan (refer to Rule Section 026), the Department shall identify those sales that are expected to contain High-Value Forest Products.** (5-8-09)( )

**03. Poles within Sawlog Sale.** ~~If any area within a proposed timber sale contains two hundred fifty (250) cedar poles or more in a density of at least ten (10) poles per acre, the poles shall be reserved for a pole quality cedar sale or sold as a separate product sort in a delivered products sale.~~ (3-4-11)

**04. Length Appraisal.** ~~Cedar poles shall be appraised by length and bid on a lineal foot basis. The conversion table set out below shall be used to establish the corresponding board foot volume.~~ (5-8-09)

**05. Length to Volume Conversion Table for Western Red Cedar Poles:**

<b>Pole Length</b>	<b>Board Feet Each*</b>		<b>Pole Length</b>	<b>Board Feet Each*</b>
30'	50		80'	595
35'	70		85'	736
40'	101		90'	792
45'	161		95'	892
50'	239		100'	929
55'	261		105'	1113
60'	304		110'	1132
65'	418		115'	1420
70'	462		120'	1475
75'	512			

~~\* Based on Scribner Decimal "C" board foot measure~~

(5-8-09)

**06. Bidding Limited to Cedar.** ~~When cedar represents eighty percent (80%) or more of the total appraised value, bidding shall be limited to cedar poles and cedar sawlogs only.~~ (5-8-09)

**07. Purchaser's Option.** ~~The purchaser may opt to remove cedar as poles, sawlogs, and products or as sawlogs and products. Such choice shall be made at the completion of the auction. If the purchaser opts to manufacture the cedar as poles, the poles and sawlog material shall be removed at bid prices (lineal foot basis for~~

~~poles and MBF basis for sawlogs). Pole quality cedar trees containing thirty (30) foot cedar poles may be harvested as poles or sawlogs at the purchaser's discretion unless such trees are designated reserve. If the purchaser elects to manufacture cedar poles as sawlogs, the bid values of cedar poles and cedar sawlog material shall be weighted by volume to determine the selling value for all cedar sawlogs.~~ (5-8-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**026. ANNUAL SALES PLAN.**

The Department will prepare an annual sales plan which will describe the timber sales to be offered for sale during the forthcoming fiscal year. The plan will be based on recommended annual harvest volumes utilizing inventory data, local stand conditions, special management problems, and economic factors. The 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. ~~Each individual timber sale will be submitted to the Board for approval prior to advertisement.~~ (5-8-09)( )

**027. -- 030. (RESERVED)**

**031. TIMBER SALE AUCTIONS.**

**01. Requirements.** Timber, ~~Salvage~~, High-value Forest and Delivered Products sales shall be sold at public auction. (3-1-11)( )

**02. Requirements for Bidding.** (5-8-09)

**a.** Bidders shall present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. (5-8-09)

**b.** Bidders shall not be delinquent on any payments to the State at the time of sale. (5-8-09)

**c.** Bidders shall not be a minor as defined in Section 32-101, Idaho Code. (5-8-09)

**d.** Foreign corporations, as defined in Section 30-1-106, Idaho Code, shall procure a certificate of authority to do business in Idaho to be eligible to bid on and purchase State timber. (5-8-09)



**IDAPA 20 - IDAHO DEPARTMENT OF LANDS**  
**20.07.01 - RULES OF PRACTICE AND PROCEDURE BEFORE THE**  
**IDAHO OIL AND GAS CONSERVATION COMMISSION**  
**DOCKET NO. 20-0701-1601 (CHAPTER REPEAL)**  
**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 47-317(8), Idaho Code, 47-319(8), 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 August 17, 2016.

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:

This rulemaking will repeal the entire rule. The Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission have an effective date of 1992. They have been superseded by the Idaho Administrative Procedures Act, which was passed after 1992. In addition, several changes to administrative proceedings were signed into law with Senate Bill 1339 during the 2016 legislative session. As a result, IDAPA 20.07.01 no longer governs actions by the Idaho Oil and Gas Conservation Commission. IDL may bring forward a new set of rules in the future that would govern proceedings before the Idaho Oil and Gas Conservation Commission.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the rule is being proposed for repeal.

**INCORPORATION BY REFERENCE:** The rule is proposed to be repealed; therefore no incorporations by reference are present.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking contact Eric Wilson at (208) 334-0261. Materials pertaining to the proposed rulemaking can be found on the Idaho Department of Lands web site at the following web address: <http://www.idl.idaho.gov/rulemaking/index.html>. Please note that this rule is proposed to be repealed, therefore no draft changes are available.

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 August 24, 2016.

DATED this 8th Day of July, 2016

Eric Wilson  
Resource Protection and Assistance Bureau Chief  
PO Box 83720  
Boise, Idaho 83720  
(208) 334-0261

**IDAPA 20.07.01 IS BEING REPEALED IN ITS ENTIRETY**