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**IDAPA 20
TITLE 02
Chapter 10**

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

000. (RESERVED).

001. TITLE AND SCOPE.

These rules set forth the policy and procedures for selling forest products from state endowment lands and are adopted pursuant to and shall be construed in a manner consistent with the duties and responsibilities of the Idaho Board of Land Commissioners as set forth in Title 58, Chapters 1 and 4, Idaho Code and article 9, Sections 7 and 8 of the Idaho Constitution. (10-26-92)

002. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners. (10-26-92)
02. Contract. Timber sale contract in a form prescribed by the department. (10-26-92)
03. Cutting Unit. A defined portion of a timber sale that is identified on a map and on the ground. (10-26-92)
04. Department. The Idaho Department of Lands. (10-26-92)
05. Development Credits. A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. (10-26-92)
06. Director. The director of the Idaho Department of Lands or his authorized representative. (10-26-92)
07. Forest Products. Major forest resources including sawlogs, pulp, cedar poles, and cedar products suitable for split products or other marketable materials. (10-26-92)
08. Net Appraised Value. The minimum estimated sale value of the forest products after deducting the development credit. (10-26-92)
09. Net Sale Value. The estimated final sale value of the forest products after deducting the development credit. (10-26-92)
10. Person. An individual, partnership, or corporation. (10-26-92)
11. Purchaser. A successful bidder for forest products from a state sale who has executed a timber sale contract. (10-26-92)
12. Roads. Forest access roads used for the transportation of forest products. (10-26-92)
13. State. The state of Idaho. (10-26-92)

011. -- 014. (RESERVED).

015. FIREWOOD PERMITS.

01. Free Use Permits. Free use firewood areas may be designated by the department to encourage the removal of firewood as a benefit to the management of endowment lands. Examples would be clearcuts and logging debris adjacent to roads. Free use permits for not more than ten (10) cords will be issued and valid only in designated

free use firewood areas. (10-26-92)

02. Charge Permits. Permits issued outside of Free Use Firewood areas will be sold on a charge basis at a fee schedule determined by the Board. (10-26-92)

016. PERSONAL USE PRODUCT PERMITS.

Dead and down forest products and brush growing on state lands which are not required for water conservation and are not suitable for sawing, manufacturing, or processing may be sold by the department for the personal use of the individual without advertisement. Permits for the sale of dead and down forest products will not exceed five hundred dollars (\$500) in value per permit. (10-26-92)

017. -- 019. (RESERVED).

020. DIRECT SALES.

The direct 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 state board of land commissioners and the volume does not exceed one hundred thousand (100,000) board feet in volume. 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 sale (refer to Rule Section 021). The direct sale shall not be used where two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The duration of a direct sale shall not exceed an initial period of 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. (7-1-96)

021. SALVAGE SALES.

Salvage sales shall not exceed the net appraised value established by the state board of land commissioners and one million (1,000,000) board feet in estimated volume 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). Salvage sales shall be advertised one week in a newspaper located in the county in which the sale is located and sold at an oral auction. The contract requirements for salvage sales shall be the same as for timber sales. (7-1-96)

022. TIMBER SALES.

Sales exceeding the net appraised value for salvage sales established by the state board of land commissioners net appraised value and one million (1,000,000) board feet in estimated volume are designed to produce maximum stumpage returns to the endowment funds consistent with prudent long-term management practices. (7-1-96)

023. -- 024. (RESERVED).

025. 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 annual sales plan will be based on recommended annual harvest volumes utilizing inventory reports, local stand conditions, special management problems, and economic factors. The plan will be presented to the Board for approval annually. Upon approval the plan will be printed and distributed to all interested parties. The annual sales 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. (10-26-92)

026. -- 029. (RESERVED).

030. TIMBER SALE ADVERTISING AND PROSPECTUS.

01. Advertising. All timber sales shall be advertised in one (1) or more newspapers, one (1) of which shall be in the county where the sale is located, once a week for four (4) consecutive weeks. In cases of catastrophic damage caused by insect, weather, or fire, the Board may direct an advertisement of less than four (4) consecutive weeks. If such sale is located in more than one (1) county, it shall be advertised in each of the respective counties. The advertisement shall state the time, place, description of the land by legal subdivision on which sale is located, volume, and minimum appraised price below which no bid will be accepted. The cost of advertisement will be paid by the sale

purchaser within ten (10) days of the date of sale. (10-26-92)

02. Prospectus. In order to ensure that prospective bidders have sufficient notice and information on state timber sales, the department will prepare and mail a sale prospectus to any person who requests placement on the timber sale mailing list or who the director believes is interested in such sales. (10-26-92)

031. TIMBER SALE AUCTIONS.

01. Qualifications for Bidding. Any person is qualified for bidding upon presentation to the department at the time of sale a bid deposit in a form acceptable to the state in the amount of ten percent (10%) of the net appraised value, provided such person is not delinquent on any payments to the state at the time of sale, that such person is not a minor as defined in Section 32-101, Idaho Code, and that such person meets the bidding qualifications described in IDAPA 20.02.11, the Rules for the Timber Supply Stabilization Act of 1989 on State Forests. Foreign corporations as defined in Section 30-1-106 shall procure a certificate of authority to do business in Idaho to be eligible to bid on and purchase state timber. (10-26-92)

02. Opening the Sale. The director's representative will open the sale, read the advertisement, and ask for questions. The director's representative will then accept bid deposits as described in Subsection 031.01, which will qualify any person to participate in the auction. Each qualified bidder will select a numbered card to determine who will be allowed the first bid. The person entitled to the first bid may bid the minimum appraised or any higher price. Any other person is then entitled to bid on any or all species of forest products with a bid not less than ten cents (\$.10) per thousand (1000) board feet or one cent (\$.01) per lineal foot for poles. Bidding progresses with each previous bid being accepted by the last bidder. All bidding is done orally and in the form of an auction. (10-26-92)

03. Closing the Sale. The director's representative will close the sale and award the sale to the successful bidder. Checks will be returned to the unsuccessful bidders. Sale values and charges will be calculated on the day of sale, and within ten days the successful bidder will be required to pay the cost of advertising plus the difference between the bid deposit value (refer to Rule Subsection 031.01) and ten percent (10%) of the net sale value. (10-26-92)

032. TIMBER SALE CONTRACT SIGNATURES.

A contract and supplemental documents including bond forms are prepared by the department and sent to the successful bidder with appropriate instructions following the day of sale. The purchaser then returns the executed signed contract, accompanied by the applicable bonds, for signature by the governor, secretary of state, and director. The sale is considered consummated when all signatures are affixed. The original contract is then returned to the purchaser. The document is a binding contract which cannot be altered except through mutual agreement of the Board and the purchaser. (10-26-92)

033. INITIAL DEPOSIT AND BONDS.

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) shall be retained by the state as a cash reserve for the duration of the contract; the purchaser shall not be entitled to any interest earned thereon. The state may at its discretion apply all or a portion of the initial deposit as final payment for forest products removed and/or to satisfy other contractual obligations. (10-26-92)

02. Performance Bond. A bond in the amount of fifteen percent (15%) of the net sale value of the forest products shall be executed within thirty (30) days from the date of sale but prior to execution of the contract. The bond shall be in a form acceptable to the department, conditioned upon the purchaser's compliance with all laws and rules of the state of Idaho applicable to the purchase, all provisions of the contract, and all other terms and conditions imposed by the state. The state shall have the right to cancel the contract if the purchaser allows the bond to lapse at any time during the term of the contract. (10-26-92)

03. Guarantee of Payment. Prior to cutting of any forest products, the purchaser shall guarantee the payment of the products to be cut and/or removed by providing a noninterest-earning cash bond or filing a payment bond in a form acceptable to the department. The amount of the cash bond or payment bond, exclusive of the initial deposit, shall be determined by the department and shall be at least equal to the estimated net value of the amount of forest products to be harvested during the next ninety (90) day period based on the purchaser's written estimate,

except a cash bond may be made in an amount equal to the entire net value of the timber to be harvested from a cutting unit as described and included in a cutting permit issued by the department. The director reserves the right to call for additional cash bonds or increase of the payment bond if the department's estimate of the forest products to be cut and/or removed exceeds the purchaser's written estimate. Should the purchaser elect not to log in the subsequent ninety (90) day period, the State shall refund or release the purchaser's guarantee of payment upon request of the purchaser, excluding the value of felled or decked forest products remaining on the sale area. (10-26-92)

04. Letters of Credit. Letters of credit are an acceptable form of performance and/or guarantee of payment bond. A letter of credit shall be irrevocable, prepared in a format prescribed by the director, issued by institutions or through a correspondent bank authorized to do business in Idaho, and the account party on the letter of credit must be identical to the purchaser. (10-26-92)

034. -- 039. (RESERVED).

040. OPERATING PROCEDURES.

01. Logging and Operation Plan. Prior to the commencement of any logging or road construction activities, the purchaser shall submit to the department an acceptable written logging and operation plan for that season of operations. This plan shall include the following: description of the area by legal subdivision(s) or cutting unit(s) upon which the purchaser plans to operate; an estimate of the ninety (90) day production schedule; size and type of equipment; name(s) of purchaser representative(s) and of logging or company contractor(s); and road construction schedule (if applicable). Any change or deviation from this plan which increases production in the ninety (90) day production schedule shall be submitted in writing to the department prior to such increase. (10-26-92)

02. Cutting Permits. No forest products shall be cut until a cutting permit has been issued by the department. Written notice shall be given to the state describing by legal subdivision(s) or cutting unit(s) the area which the purchaser desires to harvest. The logging and operation plan must be approved by the department and a guarantee of payment provided before a cutting permit will be issued by the state. The department may require all forest products to be harvested and scaled before a subsequent cutting permit is issued. In the event the purchaser violates or breaches any term of the contract, the department may deny issuance of additional cutting permits until corrective action is completed. The purchaser shall give the department two weeks notice before cutting commences on any permitted area. (10-26-92)

041. CHARGES AND BILLING.

01. Stumpage and Interest Payments. A stumpage summary of volumes scaled during the prior month and a statement of account will be prepared by the department and forwarded to the purchaser monthly. The statement shall include interest computed from the date of sale to the date of the billing at the rate of six percent (6%) per annum. The purchaser shall make payments within thirty (30) days of the end of the billing period or the payment shall be considered delinquent. (10-26-92)

02. Development Credits. The recovery of development credits where applicable shall be allowed on all forest products that are billed at the rate of seventy-five percent (75%) of each load value until the entire development credit has been recovered by the purchaser. (10-26-92)

03. Fire Protection and Slash Disposal. The purchaser shall be billed annually for the annual cost of fire protection based on a per-acre rate calculated as the most recent average cost for the forest protective district for the lands described in the contract. Additionally, the purchaser shall enter into a separate contract with the department providing for the management of the slash hazard at a rate specified for each sale. The purchaser shall be billed monthly at the specified slash rate for all forest products removed. (10-26-92)

04. Scaling Charges. The purchaser shall be billed monthly at the rate in dollars per thousand (1000) board feet or equivalent measure determined by the Board for the cost of scaling or measuring forest products harvested. Should the contract be extended, the purchaser shall pay the prevailing rate for scaling in force at the time of extension, which may not be the amount specified in the contract. Scaling charges will not be collected for forest products which are paid for in advance on a lump-sum basis. (10-26-92)

05. Delinquent Payments. For each delinquent payment, the purchaser shall pay the department a ten dollars (\$10) late charge plus interest at a rate per annum as specified in the contract commencing from the end of the previous billing period. If the delinquent payment, late charge, and interest are not paid, the department may recover the monies due by claim against the payment and/or performance bond. (10-26-92)

042. GENERAL CONTRACT PROVISIONS.

01. Scaling Procedures and Load Tickets. All logs, poles, and other forest products harvested under the terms of the contract shall be presented at a location and in a manner as designated by the department for measurement or scaling. All forest products shall be scaled under the terms of the contract using the Scribner Decimal C Rule in accordance with rules of the State Board of Scaling Practices or specified in the contract by a qualified licensed scaler or scalers selected by the department. Load tickets will be furnished by the state for each sale. All loads of forest products shall have a load ticket attached to the load from the time it leaves the sale area until it is delivered to a location for scaling. Noncompliance will result in penalties specified in the contract. (10-26-92)

02. Cutting Limitations. The advertised volume of forest products to be removed from the sale area is an approximation of the sale volume determined using accepted timber cruising procedures. Prospective purchasers are responsible for establishing their own estimate of volume and bidding appropriately. The director shall not provide additional volume of forest products to the purchaser if harvested volumes are less than estimated volumes. The department retains the right to adjust the harvest prescription to provide adequate seed trees and/or tree stocking on site after notifying the purchaser, documenting the justification. If such adjustments are minor in nature, and agreed to by the purchaser, the adjustments may occur immediately upon documentation in the logging report. If such adjustments are major in scope, or if the purchaser does not agree, the purchaser may appeal the adjusted harvest prescription to the director and Board. (10-26-92)

03. Breach of Contract. In the event the purchaser breaches any terms of the contract, the department shall have the right to immediately suspend operations by verbal notification to the purchaser to be followed by written notice within five (5) working days. If such breach is not remedied within thirty (30) days after the written notice is mailed, the Board may terminate the contract, and the purchaser shall have no further rights under the contract. Upon such termination, the Board shall enter a forfeiture of the contract, all monies paid by the purchaser under the contract may be forfeited upon order of the Board, and action may be taken to recover damages from the purchaser and/or the surety or sureties. (10-26-92)

04. Security Agreement. Through the contract, the state shall maintain a security interest in the forest products covered by the contract. The security interest may be claimed upon any breach of the contract by the purchaser. Signature of the parties to the contract shall constitute express approval of the security agreement. (10-26-92)

05. Contract Period and Extension. All forest products purchased under any contract shall be cut and removed from the described premises during the normal contract period unless an extension is granted from year to year by the director as provided by Section 58-413, Idaho Code, upon payment by purchaser of such additional interest and/or extension fees determined by the director. Additional interest shall be computed from the date of sale to the date of billing at the rate per annum as determined by the Board. At the end of the initial contract period or the last extension, all forest products remaining upon the sale area shall become the property of the state, and the purchaser's right to go upon state lands for the purpose of cutting and/or transporting any forest products shall terminate. (10-26-92)

06. Assignments. Sale contracts shall not be assigned without prior written approval of the director and payment by the purchaser of assignment fees determined by the Board. (10-26-92)

07. Cancellation. No cancellation, termination, breach, or forfeiture under any provision of the contract shall relieve the purchaser or its surety or sureties from liability to pay all costs and assessments due or payable under the contract at the time of such cancellation, termination, or breach. (10-26-92)

08. Responsibility. The purchaser is not an agent of the state. The purchaser shall hold harmless the state of Idaho, its officers, agents, and employees from any and all claims for damages or injuries to persons or property that may be sustained by anyone as a result of the performance of the purchaser, agents, or employees in

connection with the contract. (10-26-92)

09. Compliance with Rules of the Board and Idaho Code. The purchaser shall comply with all state laws and rules including, without limitation, the following: (10-26-92)

a. Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws, Title 38, Chapters 1 and 4, Idaho Code. (10-26-92)

b. The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (10-26-92)

c. The Idaho Stream Channel Alteration Act, Title 42, Chapter 38, Idaho Code. (10-26-92)

d. The Standard Log Scaling Law, Title 38, Chapter 12, Idaho Code. (10-26-92)

e. Transportation of Forest Products, Sections 18-4628, 18-4628A, 18-4629, and 18-4630, Idaho Code. (10-26-92)

f. The Environmental Protection and Health Act of 1972, Title 39, Chapter 1, Idaho Code. (10-26-92)

10. Catastrophic Damage. Should a catastrophic occurrence materially change the value of forest products removed or significantly increase logging cost for the sale, the purchaser may request the Board to consider a contract modification to make allowances for these conditions. Such requests shall be addressed to the director for review prior to consideration by the Board. (10-26-92)

11. Special Terms. Contract terms shall be drafted for each sale based on timber stand conditions, sale objectives, terrain conditions, and development requirements. The contract terms shall include the following: (10-26-92)

a. Harvest Specifications, Utilization and Merchantability Standards, Harvest Procedures. (10-26-92)

b. Hazard Management. (10-26-92)

c. Road Maintenance, Erosion Control Specifications, Right-of-Way Requirements. (10-26-92)

d. General Sale Administration. (10-26-92)

e. Development Requirements. (10-26-92)

043. TIMBER SALE ADMINISTRATION.

01. Inspections. The purpose of sale area inspections is to ensure compliance with all contract terms and Forest Practices Act requirements. Inspections will be conducted at regular intervals as determined by the state, and the operator/purchaser will be invited to accompany the inspector when possible. (10-26-92)

02. Reports. A Logging and/or Road Construction Report will be prepared during each sale inspection. The purpose of the report is to document current conditions, progress of the sale, contract compliance and deficiencies, and to inform the purchaser of contract status. (10-26-92)

044. TIMBER SALE CANCELLATION.

01. Sale Inspection. The department and purchaser should make a final joint inspection of the sale area to determine that all contractual requirements have been satisfactorily completed. The final inspection shall carefully note the status of the sale area regarding the requirements of the Forest Practices and Hazard Management Acts. (10-26-92)

02. Request for Cancellation. When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received

by the department, any credit balances will be returned and/or transferred to other timber sale accounts as requested by the purchaser within forty-five (45) days. (10-26-92)

03. Cancellation Report. A cancellation report will be prepared in a format prescribed by the department. Attachments to the report will include the following: (10-26-92)

a. A right-of-way release signed by the grantor, if applicable. (10-26-92)

b. A release form signed by the purchaser when the sale is cancelled prior to the original contract period. (10-26-92)

c. A certificate of clearance from the appropriate forest protection district. (10-26-92)

04. Contract Cancellation and Bond Release. The department will audit all sale records to ensure that all payments have been made and all accounts balance. The department will forward a cancellation package and recommendation to the director for consideration. Following approval by the director, the department will notify the purchaser that the sale is cancelled and the bonding agent that the bond may be released. (10-26-92)

045. 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. (10-26-92)

02. Premature Termination Policy. (7-1-93)

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Generally, the entire ten percent (10%) initial deposit will be retained as a penalty, which amount may not be used as payment for forest products cut and/or removed. Additionally, the Board will seek payment 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 have to pay five hundred dollars (\$500) upon termination. (10-26-92)

b. 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. (10-26-92)

c. The purchaser who has terminated a timber sale contract will not be eligible to rebid that particular sale unless specifically authorized to do so by the Board. (10-26-92)

046. -- 999. (RESERVED).