§ 223.145 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 223.140), except that the procedures in § 223.143 shall be used in imposing suspension.

Subpart D—Timber Export and Substitution Restrictions

§ 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded before August 20, 1990, the date of enactment of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.). The rules at § 223.162 shall remain in effect for all contracts awarded on or after August 20, 1990, until September 8, 1995. Contracts awarded on or after August 20, 1990 are subject to the rules of subpart F of this part, unless otherwise noted. Contracts awarded on or after September 8, 1995 are governed in full by subpart F.

§ 223.160 Definitions.

The following definitions apply to the provisions of this section:

(a) Export means either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An export yard or pond is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Unprocessed timber, whether from National Forest System or private lands, is exported directly when exported by the National Forest timber purchaser. Timber is exported indirectly when export occurs as a result of a sale to another person or as a consequence of any subsequent transaction.

(b) Historic level means the average annual volume of unprocessed timber purchased or exported in calendar years 1971, 1972, and 1973.

(c) Private lands mean lands held or owned by a private person. Nonprivate lands include, but are not limited to, lands held or owned by the United States, a State or political subdivision thereof, or any other public agency, or lands held in trust by the United States for Indians.

(d) Substitution means the purchase of unprocessed timber from National Forest System lands to be used as replacement for unprocessed timber from private lands which is exported by the purchaser. Substitution occurs when (1) a person increases purchases of National Forest timber in any Calendar year more than 10 percent above their historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or (2) a person increases exports of unprocessed timber from private land in any tributary area more than 10 percent above their historic level in any calendar year while they have National Forest timber under contract.

(e) Tributary area means the geographic area from which unprocessed timber is delivered to a specific processing facility or complex. A tributary area is expanded when timber outside an established tributary area is hauled to the processing facility or complex.

(f) Unprocessed timber, except western red cedar in the contiguous 48 States, means trees or portions of trees having a net scale content not less than $33\frac{1}{3}$ percent of the gross volume, or the minimum piece specification set forth in the timber sale contract, in material meeting the peeler and sawmill log grade requirements published in the January 1, 1980—Official Log Scaling and Grading Rules used by Log Scaling and Grading Bureaus on the West Coast; cants to be subsequently re-manufactured exceeding $8\frac{3}{4}$ inches in thickness; cants of any thickness reassembled into logs; and split or round bolts, except for aspen, or other roundwood not processed to standards and specifications suitable for end-product use. Unprocessed timber shall not mean pulp (utility) grade logs and Douglas-fir special cull logs or timber processed into the following:
(1) Lumber and construction timbers, regardless of size, sawn on four sides; 
(2) Chips, pulp, and pulp products; 
(3) Green veneer and plywood; 
(4) Poles, posts, or piling cut or treated for use as such; 
(5) Cants cut for remanufacture, 8\(\frac{3}{4}\) inches in thickness or less; 
(6) Aspen bolts, not exceeding 4 feet in length. 

(g) Unprocessed western red cedar timber in the contiguous 48 States means trees or portions of trees of that species which have not been processed into— 
(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better; 
(2) Chips, pulp, and pulp products; 
(3) Veneer and plywood; 
(4) Poles, posts, or piling cut or treated with preservatives for use as such and not intended to be further processed; or 
(5) Shakes and shingles; provided that lumber from private lands manufactured to the standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau and manufactured lumber authorized to be exported under license by the Department of Commerce shall be considered processed. 

(h) Person means an individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, or other affiliate. Business entities are considered affiliates for the entire calendar year when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person during any part of the calendar year. 

(i) Purchase occurs when a person is awarded a contract to cut National Forest timber or through the approval of a third party agreement by the Forest Service. 

(j) Purchaser means a person that has purchased a National Forest timber sale. 

(§ 223.161) [Reserved] 

§ 223.162 Limitations on timber harvested from all other states. 

Unprocessed timber from National Forest System lands west of the 100th Meridian in the contiguous 48 States may not: 
(a) Be exported from the United States; 
(b) Be used in substitution for unprocessed timber from private lands which is exported by the purchaser; or 
(c) Be sold, traded, exchanged, or otherwise given to any person who does not agree to manufacture it to meet the processing requirements of this section and/or require such a processing agreement in any subsequent resale or other transaction. This limitation on export or substitution does not apply to species of timber previously found to be surplus to domestic needs or to any additional species, grades, or quantities of timber which may be found by the Secretary to be surplus to domestic needs. 

(§ 223.163) [Reserved] 

§ 223.164 Penalty for falsification. 

For false certification of documents relating to export or substitution and/
§ 223.185 Scope and applicability.

This subpart implements provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.) that became effective upon enactment or as otherwise specified in the Act. As of September 8, 1995, this subpart applies to unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States that requires domestic processing. Except as provided later in this paragraph, this subpart applies to all unprocessed timber originating from National Forest System lands west of the 100th meridian in the contiguous 48 States regardless of timber sale contract award date.

§ 223.186 Definitions.

The following definitions apply to the provisions of this subpart:

Acquire means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term “acquisition” means the act of acquiring. The terms “acquire” and “purchase” are synonymous and are used interchangeably.


Area of operations refers to the geographic area within which logs from any origin have neither been exported nor transported to an area where export occurs. The area of operations will be determined for individual Forest Service Administrative Units or groups of Administrative Units by the Regional Foresters of Regions 1, 2, 3, and 4 on an as-needed basis, and used as part of the criteria for evaluating requests to waive the identifying and marking requirements for unprocessed Federal logs.

Cants or Flitches are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

Civil penalties: Willful disregard means a person knew or showed reckless disregard for the matter of whether the person’s conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620, et seq., with regard to the prohibition against exporting unprocessed Federal logs.

Willfully means a person knew or showed reckless disregard for the matter of whether the person’s conduct is prohibited by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. et seq., or regulations issued under the Act, even though such violation may not have caused the export of unprocessed Federal timber in violation of the Act.