§223.190 Sourcing area application procedures.

(a) Subject to the restrictions described in §223.189 of this subpart and, except as provided in paragraph (b) of this section, a person who owns or operates a manufacturing facility and who exports unprocessed timber originating from private lands may apply for a sourcing area in accordance with the procedures of this section. However, an owner/operator of a manufacturing facility who exports unprocessed timber originating from Federal lands may not possess or acquire unprocessed timber originating from Federal lands unless the acquisition is within an approved sourcing area. A person who intends to acquire or become affiliated with a manufacturing facility that processes Federal timber and who is an exporter may apply for a sourcing area. Written proof of the intent to acquire or affiliate must be included in the sourcing area application, signed by the applicant and the person or, in the case of a corporation, the Chief Executive Officer, whose company the applicant intends to acquire or affiliate with. This certification must be on letterhead and must be notarized. A sourcing area application that the Secretary determines would be approved will be granted tentative approval pending final notification by the applicant of acquisition of or affiliation with the manufacturing facility. The tentative approval of the sourcing area will lapse unless the acquisition or affiliation occurs within 30 days of the tentative approval of the sourcing area. A sourcing area is not valid until final approval of the sourcing area. The direct substitution prohibition did not apply to a person who applied for a sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in §223.191(e).

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to §223.189 of this subpart, must have applied for the desired sourcing area on or before December 20, 1990. A request for modification of an existing sourcing area shall trigger a review pursuant to the procedures and restrictions in §223.191(e).

(c) Applications. Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:
   (i) The applicant’s desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities;
   (ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;
   (iii) The location of private lands within and outside the desired sourcing area.
area where the person has, within the 24 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant’s facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in Section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), that the information provided in support of the application is true, complete, and accurate to the best of the applicant’s knowledge. The statement shall read as follows:

“I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application, is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the information provided concerning my timber purchasing and export patterns fully and accurately reflects, to the best of my knowledge, the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.) (Act) and its implementing regulations. I certify that I have not exported unprocessed timber originating from private lands within the boundaries of the sourcing area that is the subject of this application in the previous 24 months. I fully understand that, if this application is approved, exporting unprocessed private timber originating from within the approved sourcing area will be a violation of this Act (16 U.S.C. 620, et seq.) its implementing regulations, and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.”

(d) Confidential information. Applications are not considered confidential. However, if a person does submit confidential information as part of an application, the information should be marked confidential. Information so marked will be afforded the rights and protection provided under the Freedom of Information Act.

(e) Where to submit the application. A sourcing area applicant shall send the application to the Office of Administrative Law Judges and shall, simultaneously, send a copy of the sourcing area application to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of its Federal timber. The sourcing area applicant must also send a complete copy of the application to each agency concerned. The lead agency shall make the decision in consultation with, and upon co-signature of, the other agencies concerned.

(f) Signatory procedures. Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its Chief Executive Officer, and must be notarized. The application shall be on company letterhead.

(g) The sourcing area application and review process will be conducted pursuant to the Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, et seq.), found at 7 C.F.R. part 1, subpart M.

(h) A final decision on a sourcing area application or a formal sourcing area review will be issued within four months of the receipt of the application or initiation of the review.

(i) The following criteria must be met for sourcing area approval:

(1) The Administrative Law Judge, or, on appeal, the Judicial Officer must find that the proposed sourcing area is geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such a finding, the Administrative Law Judge, or, on appeal, the Judicial Officer shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with
§ 223.191 Sourcing area disapproval and review procedures

(a) Notwithstanding any other provision of law, an applicant whose sourcing area application was submitted by December 20, 1990, and was disapproved could either phase out of

(b) The holder of the sourcing area may disapprove it at any time provided the person certifies to the following:

"I am relinquishing the approved sourcing area, described in the Secretary's determination in FSAA on , 19. I understand that I may not export unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States during the fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibition against substitution in the Act and its implementing regulations. I also understand that I may not purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States, pursuant to the prohibitions against substitution in the Act and its implementing regulations. I make this certification with full knowledge and understanding of the Act and its implementing regulations and do fully understand that exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States during a fiscal year in which I have unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States within 24 months of having exported unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States is a violation of the substitution provisions of the Act and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation."

The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

(m) A sourcing area is in effect until it is relinquished by the sourcing area holder, or is disapproved upon review of the sourcing area.

§ 223.191 Sourcing area disapproval and review procedures.

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The certificate must be signed by the person making such certification or, in the case of a corporation, by its Chief Executive Officer; must be on company letterhead; and must be notarized.

(m) A sourcing area is in effect until it is relinquished by the sourcing area holder, or is disapproved upon review of the sourcing area.