

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.

[60 FR 46922, Sept. 8, 1995]

§ 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 33⅓ 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 remanufactured exceeding 8¾ 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, 8¾ 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.

(Sec. 14, Pub. L. 95-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96-126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94-373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

[45 FR 80528, Dec. 5, 1980, as amended at 46 FR 2611, Jan. 12, 1981; 46 FR 22581, Apr. 20, 1981; 47 FR 746, Jan. 7, 1982. Redesignated at 49 FR 2761, Jan. 23, 1984]

§ 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.

(Sec. 14, Pub. L. 95-588, 90 Stat. 2958, as amended (16 U.S.C. 472a); sec. 301, Pub. L. 96-126, 93 Stat. 979; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 55.1); sec. 301, 90 Stat. 1063, Pub. L. 94-373; sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551))

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§ 223.163 [Reserved]

§ 223.164 Penalty for falsification.

For false certification of documents relating to export or substitution and/or other violations of export and substitution requirements by the purchaser of timber from National Forest System lands, the Forest Service may cancel the subject contract, debar the