

## § 223.144

## 36 CFR Ch. II (7–1–08 Edition)

conform with the following requirements:

(A) At least 10 days before the fact-finding conference, the suspending official shall send the respondent a copy of all documents in the administrative record as of the date of transmittal and not objected to by the Department of Justice.

(B) At the conference, the respondent shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the Forest Service presents.

(iii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent upon request, unless the respondent and the Forest Service, by mutual agreement, waive the requirement for a transcript.

(5) *Suspending official's decision.* The suspending official may modify or terminate the suspension or leave it in force for the same reasons as for terminating or reducing the period or extent of debarment (see § 223.139(c)). The decision shall be made in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions based on an indictment, in which the respondent's submission does not raise a genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submissions and argument made by the respondent. The decision shall be made within 30 working days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be promptly prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made only after the conclusion of any proceedings with respect to disputed facts.

(6) *Notice of suspending official's decision.* The purchaser and any affiliates involved shall be given prompt written notice of the suspending officer's decision to continue or not continue the suspension by certified mail, return receipt requested.

### § 223.144 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings unless sooner terminated by the suspending official or as provided in paragraph (b) of this section.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of any suspension, at least 30 days before the 12-month period expires, to give the Department an opportunity to request an extension.

### § 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.

[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;