

includes a person's timber manufacturing facility and the private and Federal lands from which the person acquires or intends to acquire unprocessed timber to supply such manufacturing facility; a sourcing area must be geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands.

Substitution occurs when:

(1) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(2) A person acquires, directly or indirectly, unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States and, during the preceding 24-month period, exported unprocessed timber originating from private lands; or

(3) A person exports or sells for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person's possession or under contract; or

(4) A person purchases, directly or indirectly, unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

Transaction means an arrangement involving the transfer of unprocessed timber.

Transaction statement is a signed copy of one of the transaction reporting forms in 36 CFR 223.193 and 223.194.

Transfer means to pass title, sell, trade, exchange, or otherwise convey unprocessed timber to another person.

Unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture. Unprocessed timber does not include products intended for remanufacture that meet the criteria listed in §223.187(a) (2) or (3). For the purposes of reporting and identifying under §§223.193, 223.194 and 223.195, unprocessed timber also means timber products listed in §223.187 of these regulations, and other timber products including house logs that are part of a structure kit, that are indistinguishable from other unprocessed timber.

§ 223.187 Determinations of unprocessed timber.

(a) *All species except western red cedar.* Unprocessed timber, as defined in §223.186 of this Subpart, does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment or order, and available for inspection upon the request of the Forest Service:

(i) A legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard; and,

(ii) A statement by the manufacturer certifying under the penalties provided in section 492 of the Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the products in the shipment or order are intended to be used as shipped, are manufactured into products, or processed into pulp, and are not to be manufactured into other products. The certification statements shall be made in accordance with paragraph (b) of this section. The certification statements in paragraph (b) of

this section are not required if the lumber or construction timbers described in paragraph (a)(1) of this section or the pulpwood bolts described in paragraph (a)(8) of this section otherwise may be exported without regard to an intent to remanufacture or process into pulp. For instance, because the timber originates from private land from which timber may be exported.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (30.5 cm) thick. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment or order and available for inspection, upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except western red cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides, with wane less than $\frac{1}{4}$ of any face, not exceeding $8\frac{3}{4}$ inches (22.2 cm) thick.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp. Shippers of record of such pulpwood bolts must have in their possession, and available for inspection upon request of the Forest Service, in accordance with paragraph (b) of this section, a manufacturer's certificate that such bolts are intended for processing into pulp.

(9) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of logs into chips.

(b) *Export product certifications.* (1) Manufacturers of lumber or construction timbers described in paragraph (a)(1) of this section and pulpwood

bolts described in paragraph (a)(8) of this section, shall certify to the following statements:

(2) *Lumber or construction timbers.* "I certify that the products in the shipment identified by my shipping order number _____ dated _____, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered _____ and dated _____, are intended to be used as shipped and are not to be remanufactured into other products. 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 fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, 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 violations."

(3) *Pulpwood bolts.* "I certify that the pulpwood bolts in the shipment identified by my shipping order number _____ dated _____, are manufactured in accordance with the attached order from (*buyer*) of (*address*), numbered _____ and dated _____, are intended to be processed into pulp and are not to be remanufactured into other products. 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 fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber from private lands which is required to be processed domestically is a violation of this Act, 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 violations."

(4) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing

the shipment. In the case of a corporation, the certificates must be signed by a person authorized, in writing, by the Chief Executive Officer pursuant to 36 CFR 223.187(b)(4), to sign the certificates in 36 CFR 223.187(b) on behalf of the corporation.

(5) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

“I authorize _____ to sign the certificates in 36 CFR 223.187(b) on behalf of (*name of corporation*). I make this authorization 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 fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, 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.”

(6) Exporters of other timber products originating from Federal lands not specifically listed in §223.187 which may develop export markets in the future may also require similar certification statements. Such statements will be provided by the Forest Service.

(c) *Western red cedar.* Unprocessed western red cedar timber does not include manufactured lumber authorized for export under license by the Department of Commerce, and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following products:

(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, with a maximum cross section of 2,000 square centimeters (310 square inches) for any individual piece of processed western red cedar, regardless of grade. To determine whether such lumber meets these established standards, grades and size restrictions, the shipper of record must have in its possession for each ship-

ment, and available for inspection upon the request of the Forest Service, a legible copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar timber harvested from Federal, State or other public lands are found in 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)), and implementing regulations at 15 CFR 777.7.

(2) Chips, pulp, and pulp products;

(3) Veneer and plywood;

(4) Poles, posts, pilings cut or treated with preservatives for use as such and not intended to be further processed; and

(5) Shakes and shingles.

(d) *Finished Products.* Shippers of record of products manufactured from unprocessed western red cedar originating from Federal lands, acquired by the manufacturer under the exemption from the prohibition against indirect substitution at §223.189(e)(1), must have in their possession for each shipment a certificate from the manufacturer that such products are *finished products* as defined in §223.186 of this subpart. The certification statement shall read as follows:

(1) “I certify that the products in the shipment identified by my shipping order number _____, dated _____, are manufactured in accordance with the attached order from _____ (buyer) _____ of _____ (address) _____, numbered _____ and dated _____, are intended for end product use. I understand that only western red cedar products that are *finished products* are exempt from the prohibition against indirect substitution in the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620b(b)(1)) and its implementing regulations. 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 fully acknowledge and understand that to acquire western red cedar under the indirect substitution exemption in 16 U.S.C. 620b(b)(1) for purposes other

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than domestic processing into finished products will be a violation of this Act, 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.”

(2) *Signatory procedures.* Certificates shall be on company letterhead, and signed by the person manufacturing the shipment. In the case of a corporation, the certificate must be signed by a person authorized, in writing, by the Chief Executive Officer, pursuant to 36 CFR 223.187(d)(3), to sign the certificate in 36 CFR 223.187(d)(1) on behalf of the corporation.

(3) *Chief Executive Officer Authorization.* The authorization by the Chief Executive Officer shall be on company letterhead, shall be notarized, and shall read as follows:

“I authorize _____ to sign the certificate in 36 CFR 223.187(d)(1) on behalf of (name of corporation). I make this authorization 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 fully understand that exporting unprocessed timber originating from Federal lands or unprocessed timber originating from private lands which is required to be processed domestically is a violation of this Act, 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.”

§ 223.188 Prohibitions against exporting unprocessed Federal timber.

No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber that the Secretary of Agriculture determines to be surplus to domestic manufacturing needs.

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§ 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if:

(i) Such person acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States and engages in exporting or selling for export, unprocessed timber originating from private lands within the same geographic and economic area; or

(ii) Such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) No person may export or sell for export, unprocessed timber originating from private lands within the same geographic and economic area in the same calendar year that the person has unprocessed timber originating from Federal lands in the person’s possession or under contract.

(3) No person may purchase unprocessed timber originating from Federal lands if such person sells or otherwise transfers unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing, to a third party if that third party or successive parties export that unprocessed private timber. A third party or successive parties who acquire such unprocessed timber that originates from private lands west of the 100th meridian in the contiguous 48 States and that requires domestic processing may not export such timber.

(4) The prohibitions in paragraphs (a) (1)–(3) of this section shall not apply to specific quantities of grades and species of unprocessed timber which the Secretary of Agriculture has determined to be surplus to domestic manufacturing needs.

(b) *Exemptions.* (1) Pursuant to section 490(c) of the Act (16 U.S.C. 620b), all persons who applied for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, were