

(j) Surplus timber

The prohibitions on exports contained in orders of the Secretary of Commerce issued under subsection (a) of this section shall not apply to specific quantities of grades and species of unprocessed timber originating from public lands which the Secretary concerned determines by rule to be surplus to the needs of timber manufacturing facilities in the United States. Any such determination may, by rule, be withdrawn by the Secretary concerned if the Secretary determines that the affected timber is no longer surplus to the needs of timber manufacturing facilities in the United States.

(k) Suspension of prohibitions

Notwithstanding any other provision of this section, beginning on January 1, 1998, and annually thereafter, if the President finds, upon review of the purposes and implementation of sections 620 to 620j of this title, that the prohibitions on exports required by subsection (a) of this section no longer promote the purposes of sections 620 to 620j of this title, then the President may suspend such prohibitions, except that such suspension shall not take effect until 90 days after the President notifies the Congress of such finding.

(l) Existing authority not affected

Nothing in sections 620 to 620j of this title shall be construed to limit the authority of the President or the United States Trade Representative to take action authorized by law to respond appropriately to any measures taken by a foreign government in connection with sections 620 to 620j of this title.

(Pub. L. 101-382, title IV, §491, Aug. 20, 1990, 104 Stat. 719; Pub. L. 103-45, §2, July 1, 1993, 107 Stat. 223; Pub. L. 105-83, title VI, §602(b), Nov. 14, 1997, 111 Stat. 1620; Pub. L. 106-36, title I, §1002(a)(2), June 25, 1999, 113 Stat. 133.)

AMENDMENTS

1999—Subsec. (g). Pub. L. 106-36 substituted “Dispute Settlement Body of the World Trade Organization (as the term ‘World Trade Organization’ is defined in section 3501(8) of title 19)” for “Contracting Parties to the General Agreement on Tariffs and Trade”.

1997—Subsec. (b)(2). Pub. L. 105-83 struck out “the following shall apply:” in introductory provisions, substituted “the Secretary” for “(A) The Secretary” and “as of November 14, 1997” for “during the period beginning on June 1, 1993, and ending on December 31, 1995”, and struck out subpar. (B) which read as follows: “For all periods on or after January 1, 1996, the Secretary of Commerce shall issue an order referred to in subsection (a) of this section not later than September 30, 1995. Such order shall prohibit the export of the lesser of 400,000,000 board feet or the annual sales volume in that State of unprocessed timber originating from public lands.”

1993—Subsec. (a). Pub. L. 103-45, §2(1), substituted “(g)” for “(e)” and “as provided” for “in the amounts specified”.

Subsec. (b)(1). Pub. L. 103-45, §2(2)(A), inserted “, notwithstanding any other provision of law,” after “prohibit” and substituted “, effective June 1, 1993” for “not later than 21 days after August 20, 1990”.

Subsec. (b)(2). Pub. L. 103-45, §2(2)(B), added subpar. (A) and struck out former subpar. (A), redesignated subpar. (D) as (B) and substituted “annual sales volume in that State of unprocessed timber originating from public lands” for “total annual sales volume” at end,

and struck out former subpars. (B) and (C). Prior to amendment, former subpars. (A) to (C) read as follows:

“(A) The Secretary of Commerce shall issue an order referred to in subsection (a) of this section not later than 21 days after August 20, 1990. Such order shall cover a period beginning 120 days after the issuance of such an order, or January 1, 1991, whichever is earlier, and shall extend to December 31, 1991. Such order shall prohibit the export of 75 percent of the annual sales volume in such State of unprocessed timber from public lands.

“(B) For the period beginning on January 1, 1992, and ending on December 31, 1993, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) of this section not later than September 30, 1991. Such order shall prohibit the export of at least 75 percent of such State’s annual sales volume for this 2-year period.

“(C) For the period beginning on January 1, 1994, and ending on December 31, 1995, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) of this section not later than September 30, 1993. Such order shall prohibit the export of at least 75 percent of such State’s annual sales volume for this 2-year period.”

Subsec. (b)(3), (4). Pub. L. 103-45, §2(2)(C), (D), added par. (3), redesignated former par. (3) as (4), and substituted “the Secretary of Commerce pursuant to sections 620 to 620j of this title and the effectiveness of State programs authorized under subsection (d) of this section” for “States pursuant to sections 620 to 620j of this title”.

Subsecs. (c) to (l). Pub. L. 103-45, §2(3), (4), added subsecs. (c) to (f), struck out former subsecs. (c) and (d) which related to basis for increase in volume prohibited from export and administrative provisions, respectively, and redesignated former subsecs. (e) to (j) as (g) to (l), respectively.

SEVERABILITY OF PROVISIONS

Pub. L. 103-45, §4, July 1, 1993, 107 Stat. 228, provided that: “If any provision of this Act [amending this section and section 620d of this title and enacting provisions set out as a note under section 620 of this title], or the amendments made by this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.”

EXTENSION AND ISSUANCE OF ORDER UNDER
SUBSECTION (b)(2)

Pub. L. 104-208, div. A, title I, §101(d) [title III], Sept. 30, 1996, 110 Stat. 3009-181, 3009-223, which in part directed Secretary of Commerce to extend until Sept. 30, 1997, the order issued under subsec. (b)(2)(A) of this section and to issue an order under subsec. (b)(2)(B) of this section effective Oct. 1, 1997, was from the Department of the Interior and Related Agencies Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-134, title I, §101(c) [title III, §333], Apr. 26, 1996, 110 Stat. 1321-156, 1321-210; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 104-99, title I, §130, Jan. 26, 1996, 110 Stat. 34.

§ 620d. Monitoring and enforcement**(a) Monitoring and reports**

In accordance with regulations issued under this section—

(1) each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the

Secretary concerned, in such form as such Secretary may by rule prescribe; except that nothing in this paragraph shall be construed to hold any person responsible for the reporting of the disposition of any such timber held by subsequent persons;

(2) each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall, before completing such transfer—

(A) provide to such other person a written notice, in such form as the Secretary concerned may prescribe, which shall identify the Federal origin of such timber;

(B) receive from such other person a written acknowledgment of such notice and a written agreement that such other person will comply with the requirements of sections 620 to 620j of this title, in such form as the Secretary concerned may prescribe; and

(C) provide to the Secretary concerned copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B);

(3) each person who acquires, either directly or indirectly, unprocessed timber originating from public lands in a State that is subject to an order issued by the Secretary of Commerce under section 620c(a) of this title, other than a State that is administering and enforcing a program under section 620c(d) of this title, shall report the receipt and disposition of the timber to the Secretary of Commerce, in such form as the Secretary may by rule prescribe, except that nothing in this paragraph shall be construed to hold any person responsible for reporting the disposition of any timber held by subsequent persons; and

(4) each person who transfers to another person unprocessed timber originating from public lands in a State that is subject to an order issued by the Secretary of Commerce under section 620c(a) of this title, other than a State that is administering and enforcing a program under section 620c(d) of this title, shall, before completing the transfer—

(A) provide to such other person a written notice, in such form as the Secretary of Commerce may prescribe, that shall identify the public lands from which the timber originated; and

(B) receive from such other person—

(i) a written acknowledgment of the notice, and

(ii) a written agreement that the recipient of the timber will comply with the requirements of sections 620 to 620j of this title,

in such form as the Secretary of Commerce may prescribe; and

(C) provide to the Secretary of Commerce copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B).

(b) Report to Congress

Using the information gathered under subsection (a) of this section, the Secretaries of Agriculture and Interior shall, not later than June

1, 1995, submit to the Congress a report on the disposition of unprocessed timber harvested from Federal lands west of the 100th meridian in the contiguous 48 States, and recommendations concerning the practice of indirect substitution of such timber for exported timber harvested from private lands. Specifically, such report shall—

(1) analyze the effects of indirect substitution on market efficiency;

(2) analyze the effects of indirect substitution on domestic log supply;

(3) offer any recommendations that the Secretaries consider necessary for specific statutory or regulatory changes regarding indirect substitution;

(4) provide summaries of the data collected;

(5) analyze the effects of the provisions of section 620b(b)(2)(C) of this title; and

(6) provide such other information as the Secretaries consider appropriate.

(c) Civil penalties for violation

(1) Exports

(A) If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the prohibition contained in sections 620 to 620j of this title against exporting Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of sections 620 to 620j of this title, such Secretary may assess against such person a civil penalty of not more than \$500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(B)(i) Subject to clause (ii), if the Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the restrictions contained in an order of the Secretary under section 620c(a) of this title on exports of unprocessed timber from public lands, exported or caused to be exported unprocessed timber originating from public lands in violation of such order, the Secretary may assess against such person a civil penalty of not more than \$500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(ii) Clause (i) shall not apply with respect to exports of unprocessed timber originating from public lands in a State that is administering and enforcing a program under section 620c(d) of this title.

(2) Other violations

(A) If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person has violated any provision of sections 620 to 620j of this title or any regulation issued under sections 620 to 620j of this title relating to lands which they administer (notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of sections 620 to 620j of this title), such Secretary may—

(i) assess against such person a civil penalty of not more than \$75,000 for each violation if the Secretary determines that the

person committed such violation in disregard of such provision or regulation;

(ii) assess against such person a civil penalty of not more than \$50,000 for each violation if the Secretary determines that the person should have known that the action constituted a violation; or

(iii) assess against such person a civil penalty of not more than \$500,000 if the Secretary determines that the person committed such violation willfully.

(B)(i) Subject to clause (ii), if the Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person has violated, on or after June 1, 1993, any provision of sections 620 to 620j of this title or any regulation issued under sections 620 to 620j of this title relating to the export of unprocessed timber originating from public lands (whether or not the violation caused the export of unprocessed timber from public lands in violation of sections 620 to 620j of this title), the Secretary may assess against such person a civil penalty to the same extent as the Secretary concerned may impose a penalty under clause (i), (ii), or (iii) of subparagraph (A).

(ii) Clause (i) shall not apply with respect to unprocessed timber originating from public lands in a State that is administering and enforcing a program under section 620c(d) of this title.

(C) MITIGATION OF PENALTIES.—

(i) IN GENERAL.—The Secretary concerned—

(I) in determining the applicability of any penalty imposed under this paragraph, shall take into account all relevant mitigating factors, including mistake, inadvertence, and error; and

(II) based on any mitigating factor, may, with respect to any penalty imposed under this paragraph—

(aa) reduce the penalty;

(bb) not impose the penalty; or

(cc) on condition of there being no further violation under this paragraph for a prescribed period, suspend imposition of the penalty.

(ii) CONTRACTUAL¹ REMEDIES.—In the case of a minor violation of sections 620 to 620j of this title (including a regulation), the Secretary concerned shall, to the maximum extent practicable, permit a contracting officer to redress the violation in accordance with the applicable timber sale contract rather than assess a penalty under this paragraph.

(3) Penalties not exclusive; judicial review

A penalty assessed under this subsection shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

(d) Administrative remedies

(1) Debarment

(A) In general

Subject to subparagraph (B), the head of the appropriate Federal department or agen-

cy under sections 620 to 620j of this title may debar any person who violates sections 620 to 620j of this title, or any regulation or contract issued under sections 620 to 620j of this title, from entering into any contract for the purchase of unprocessed timber from Federal lands for a period of not more than 5 years. Such person shall also be precluded from taking delivery of Federal timber purchased by another party for the period of debarment.

(B) Prerequisites for debarment

(i) In general

No person may be debarred from bidding for or entering into a contract for the purchase of unprocessed timber from Federal lands under subparagraph (A) unless the head of the appropriate Federal department or agency first finds, on the record and after an opportunity for a hearing, that debarment is warranted.

(ii) Withholding of awards during debarment proceedings

The head of an appropriate Federal department or agency may withhold an award under sections 620 to 620j of this title of a contract for the purchase of unprocessed timber from Federal lands during a debarment proceeding.

(2) Cancellation of contracts

The head of the appropriate Federal department or agency under sections 620 to 620j of this title may cancel any contract entered into with a person found to have violated sections 620 to 620j of this title or regulations issued under sections 620 to 620j of this title.

(e) Exception

Subsections (c) and (d) of this section do not apply to violations of section 620i of this title.

(Pub. L. 101-382, title IV, § 492, Aug. 20, 1990, 104 Stat. 722; Pub. L. 103-45, § 3, July 1, 1993, 107 Stat. 226; Pub. L. 105-83, title VI, § 603, Nov. 14, 1997, 111 Stat. 1620.)

AMENDMENTS

1997—Subsec. (c)(2)(C). Pub. L. 105-83, § 603(1), added subpar. (C).

Subsec. (d)(1). Pub. L. 105-83, § 603(2), inserted subpar. (A) designation and heading, substituted “Subject to subparagraph (B), the head” for “The head”, and added subpar. (B).

1993—Subsec. (a)(3), (4). Pub. L. 103-45, § 3(a), added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 103-45, § 3(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2). Pub. L. 103-45, § 3(b)(2), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii) of subpar. (A), and added subpar. (B).

§ 620e. Definitions

For purposes of sections 620 to 620j of this title:

(1) The term “acquire” means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, and the term “acquisition” means the act of acquiring.

(2) The term “Federal lands” means lands that are owned by the United States, but does not include any lands the title to which is—

¹ So in original. Probably should be “Contractual”.