

3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

**§ 617. Exportation of unprocessed timber from Federal lands**

**(a) Limitation of quantity available for export**

For each of the calendar years 1969 through 1973, inclusive, not more than 350 million board feet, in the aggregate, of unprocessed timber may be sold for export from the United States from Federal lands located west of the 100th meridian.

**(b) Surplus quantities and species available for export; public hearing; administrative finding**

After public hearing and a finding by the appropriate Secretary of the department administering Federal lands referred to in subsection (a) that specific quantities and species of unprocessed timber are surplus to the needs of domestic users and processors, such quantities and species may be designated by the said Secretary as available for export from the United States in addition to that quantity stated in subsection (a).

**(c) Rules and regulations; prevention of substitution of Federal for non-Federal timber**

The Secretaries of the departments administering lands referred to in subsection (a) may issue rules and regulations to carry out the purposes of this section, including the prevention of substitution of timber restricted from export by this section for exported non-Federal timber.

**(d) Limitations inapplicable to sales of prescribed minimum value**

In issuing rules and regulations pursuant to subsection (c), the appropriate Secretaries may include therein provisions authorizing the said Secretaries, in their discretion, to exclude from the limitations imposed by this section sales having an appraised value of less than \$2,000.

(Apr. 12, 1926, ch. 117, §2, as added Pub. L. 90-554, pt. IV, §401, Oct. 8, 1968, 82 Stat. 966; amended Pub. L. 91-609, title IX, §921, Dec. 31, 1970, 84 Stat. 1817.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-609 extended date for application of limitation provision from 1971 to 1973 calendar year.

**§ 618. Timber contract payment modification**

**(a) Statement of purpose, authorization, scope, qualifications, financial requirements, etc., for buy-out**

(1) Notwithstanding any other provisions of law, in order to retain jobs, to preserve free competition, to utilize the potential productive capacity of plants, to preserve small communities dependent on a single economic sector to assure an open and competitive market for future sales of Government timber, and to lessen the impact of unemployment, the Secretary of Agriculture for national forest lands and the Secretary of the Interior for public lands under their respective jurisdictions are authorized and

directed to permit a requesting purchaser to return to the Government a volume of the purchaser's timber contracts as determined under paragraph (2) upon payment of a buy-out charge from such purchaser in an amount as determined under paragraph (3). The purchaser shall be released from further obligation to cut, remove, and pay for timber under such contract upon payment, or arrangement for payment as provided under paragraph (3)(E), of such buy-out charge and completion of any obligation required pursuant to paragraph (4)(B). The Government does not hereby surrender any other claim against a purchaser which arose under a contract prior to effectuation of this release and not in connection with this release from obligation to cut, harvest and pay for timber.

(2)(A) To qualify for buy-out under this section, a timber sales contract must have been bid prior to January 1, 1982, for an original contract period of 10 years or less, and be held as of June 1, 1984: *Provided*, That any such contract that was defaulted after January 1, 1981 may qualify for buy-out under this section so long as (i) settlement for damages has not been reached between the purchaser and the United States; and (ii) the purchaser's loss on all of its qualifying timber sales contracts, as determined in paragraph (3)(A), is in excess of 50 per centum of the net book worth of the purchaser. A contract is qualified for buy-out notwithstanding the fact that it was reformed after October 1, 1983, pursuant to Bureau of Land Management Instructional Memorandum 83-743 or is included in a Forest Service multisale plan pursuant to the President's program of July 28, 1983.

(B) A purchaser holding more than twenty-seven million three hundred thousand board feet of net merchantable sawtimber as of January 1, 1982, in qualifying contracts as provided in subparagraph (A) shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of two hundred million board feet.

(C) A purchaser holding twenty-seven million three hundred thousand or less board feet of net merchantable sawtimber as of January 1, 1982, in qualifying contracts as provided in subparagraph (A) shall be entitled to buy out up to fifteen million board feet of such timber volume or one contract, whichever is greater in volume.

(D) So long as the volume limitation of two hundred million board feet is not exceeded, the percentage limitation of subparagraph (B) or the volume limitation of subparagraph (C) may be exceeded by a volume amount not to exceed the volume of the smallest volume contract bought out by the purchaser if the purchaser could not otherwise attain his percentage or volume entitlement.

(E) Timber returned to the Government pursuant to this subsection shall be available for resale by the Government upon payment, or arrangement for payment, of the buy-out charge and completion of obligations, if any, under paragraph (4)(B).

(3)(A) Sums collected by the appropriate Secretary in connection with the buy-out of contracts pursuant to this subsection shall be deposited in and paid from the Treasury in the same manner as moneys received from timber sales from such lands and shall be determined as

follows: The purchaser's loss on any qualifying timber sales contracts shall be determined by the Forest Service or the Bureau of Land Management by subtracting the current delivered log value (as determined by such agency) from the delivered log cost based on the current contract return (as determined by such agency) of any such contracts. If such loss is—

(i) in excess of 100 per centum of the net book worth of the purchaser, the buy-out cost shall be \$10 per one thousand board feet of currently held volume bought out;

(ii) in excess of 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at least \$10 per one thousand board feet of currently held volume bought out; or

(iii) up to 50 per centum or less of the net book worth of the purchaser, the buy-out cost shall be 15 per centum for the purchaser's first one hundred twenty-five million board feet, 20 per centum for additional board feet above one hundred twenty-five million up to one hundred fifty million, 25 per centum for additional board feet above one hundred fifty million up to one hundred seventy-five million, and 30 per centum for additional board feet above one hundred seventy-five million up to two hundred million, of the contract overbid but at least \$10 per one thousand board feet of currently held volume bought out.

(B) For purposes of this paragraph, the term "net book worth" does not include the value of any outstanding uncut Federal timber sales contracts.

(C) Net book worth shall be, subject to agency verification, as determined by an independent certified public accountant in accordance with generally accepted accounting standards for the timber industry.

(D) A purchaser may elect to pay the buy-out cost imposed by subparagraph (A)(iii) in lieu of utilizing loss and net book worth determinations.

(E) Where a purchaser is not able to obtain sufficient credit elsewhere to finance the buy-out charge at reasonable rates and terms, purchaser may, upon payment of 5 per centum of the buy-out charge, pay the remainder of the buy-out charge in equal quarterly payments over a period not to exceed 5 years at an interest rate adjusted with each payment equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of five years payment must be secured by bond, deposited securities or other forms of security acceptable to the appropriate Secretary in an amount sufficient to cover the entire buy-out payment.

(F) For purposes of this paragraph, the term "contract overbid" is the difference between the advertised contract rate and the rate the purchaser bid.

(4)(A) Contracts returned pursuant to this subsection under which no harvest has begun shall be returned in full.

(B) Contracts returned to the appropriate Secretary pursuant to this subsection under which harvest has begun, shall be returned conditionally and shall not be considered as part of

the outstanding volume of timber under contract for the purposes of this Act. The return shall become final after the purchaser has completed stages of contractual obligations for the units on which the harvest has begun, including work on roads, to logical stopping points as determined by the Secretary after consultation with the purchaser. All remaining unharvested units must be returned.

(C) The appropriate Secretary may reject return of a contract on which harvest has begun if he determines, in his discretion, that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would seriously disadvantage the Government.

(5)(A) Timber from returned or defaulted contracts shall be offered for resale in an orderly fashion as part of, and not in addition to, the normal congressionally authorized timber sales program, and in a manner which does not disrupt regional markets or artificially depress domestic timber prices. Timber from returned or defaulted contracts shall be given preference for resale in the Forest Service timber sales programs.

(B) Timber sales in Forest Service region 6 shall not exceed four billion three hundred million board feet of net merchantable sawtimber in fiscal year 1984.

(C) Beginning in fiscal year 1985 and continuing through fiscal year 1991 or the fiscal year in which timber contract extensions in region 6 granted under the President's program of July 28, 1983 (as constituted on October 16, 1984), are completed, whichever is later, the Secretary of Agriculture shall set, and periodically adjust as necessary, the maximum annual timber sale volume in region 6. Such maximum sale volume shall be set so as to achieve a volume of region 6 net merchantable sawtimber under contract at the end of each fiscal year which does not exceed twelve billion three hundred million board feet: *Provided, however,* That such maximum annual sale volume shall not exceed five billion two hundred million board feet of net merchantable sawtimber. The sale of timber within region 6 shall be made in such a manner as not to result in discriminatory treatment as between different forests in the region.

(6)(A) The Secretary of the Interior and the Secretary of Agriculture shall publish final rules for the implementation of this subsection in the Federal Register within ninety days after October 16, 1984.

(B) Such final rules shall require purchasers to submit buy-out requests to the appropriate Secretary within ninety days after the publication of such rules.

(7)(A) For purposes only of determining a purchaser's buy-out limitation under paragraph (2) and net worth in connection with buy-out cost under paragraph (3), concerns which are affiliates as defined under subparagraph (B) of this paragraph shall be treated as a single entity.

(B) Definition of affiliates: Concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties

controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(C) Definition of purchaser: For the purposes of this Act, a purchaser is the holder of a contract to purchase timber from the Secretary of Agriculture or the Secretary of the Interior.

**(b) Extension of time for performance of contracts; covered contracts; damages for default**

(1) Timber contracts bid prior to January 1, 1982, not bought out pursuant to subsection (a) and included in the President's program of July 28, 1983, shall not be subject to any further extension of time for performance except as permitted under the President's program of July 28, 1983, as implemented by the Secretary of Agriculture and the Secretary of the Interior, providing for the extension of certain timber sale contracts and requiring the phased harvesting of such extended contracts, which program is hereby ratified except as modified by paragraph (2).

(2) Notwithstanding any other provision of law, timber contracts extended pursuant to the President's program of July 28, 1983, as implemented by the Secretary of Agriculture shall not be subject to inclusion of additional provisions for calculating damages for default.

**(c) Monitoring of bidding patterns on timber sale contracts; discouragement of bids; reporting requirements**

The Secretary of Agriculture and the Secretary of the Interior shall monitor bidding patterns on timber sale contracts and take action to discourage bidding at such a rate as would indicate that the bidder, if awarded the contract, would be unable to perform the obligations as required, or that the bid is otherwise for the purpose of speculation. Each Secretary shall include in the annual report to Congress information concerning actions taken under this subsection.

**(d) Cash down-payment and periodic payments for contracts; effective date**

Effective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash down-payment at the time the contract is executed and periodic payments to be made over the remaining period of the contract.

(Pub. L. 98-478, § 2, Oct. 16, 1984, 98 Stat. 2213.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(4)(B), (7)(C), is Pub. L. 98-478, Oct. 16, 1984, 98 Stat. 2213, which enacted sections 539f, 618, and 619 of this title and provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Pub. L. 98-478, § 1, Oct. 16, 1984, 98 Stat. 2213, provided: "That this Act [enacting this section and sections 539f and 619 of this title] may be cited as 'Federal Timber Contract Payment Modification Act'."

ADMINISTRATIVE APPEALS OF TIMBER SALES

Pub. L. 99-500, § 101(h) [title III, § 320], Oct. 18, 1986, 100 Stat. 1783-242, 1783-286, and Pub. L. 99-591, § 101(h) [title

III, § 320], Oct. 30, 1986, 100 Stat. 3341-242, 3341-287, provided that: "To assure that National Forest and Bureau of Land Management timber included in sales defaulted by the purchaser, or returned under the Federal Timber Contract Payment Modification Act (Public Law 98-478) [see Short Title note above], is available for resale in a timely manner, such sales shall be subject only to one level of administrative appeal. This limitation shall not abridge the right of judicial review. Actions on such administrative appeals should be completed within 90 days of receipt of the notice of appeal. Sales that are reoffered shall be modified, including minor additions or deletions, as appropriate, to reduce adverse environmental impacts, pursuant to current land management plans and guidelines, and such modifications in themselves should not be construed to require the preparation of new or supplemental environmental assessments. This section shall not apply to any decision on the determination of damages due to the Government for defaulted or canceled contracts."

**§ 619. Emergency stumpage rate redeterminations in Alaska**

**(a) Application; applicable period**

Emergency stumpage rate redetermination shall be made upon the written application of the purchaser of National Forest timber in Alaska, bid after January 1, 1974, and rates established as a result thereof shall be effective for timber scaled during a period between January 1, 1981, and five years from October 16, 1984.

**(b) Competitive effect of modification of contracts**

In making the emergency rate redeterminations the Secretary may modify existing contract terms, including the amount of the bid premium, in order to provide rates which will permit the holders of contracts bid after January 1, 1974, to be competitive with other purchasers of National Forest timber.

**(c) Excepted contracts**

The provisions of this section shall not apply to contracts held by the holders of 50-year timber sale contracts in Alaska.

(Pub. L. 98-478, § 4, Oct. 16, 1984, 98 Stat. 2217.)

**§ 620. Findings and purposes**

**(a) Findings**

The Congress makes the following findings:

(1) Timber is essential to the United States.

(2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.

(3) In the interest of conserving those resources, the United States has set aside millions of acres of otherwise harvestable timberlands in the western United States, representing well over 100,000,000 board feet of otherwise harvestable timber.

(4) In recent years, administrative, statutory, or judicial action has been taken to set aside an increased amount of otherwise harvestable timberlands for conservation purposes.

(5) In the next few months and years, additional amounts of otherwise harvestable timberlands may be set aside for conservation purposes, pursuant to the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the National