

and sections 620a to 620j of this title and provisions set out as a note above] may be cited as the 'Forest Resources Conservation and Shortage Relief Act of 1990.'

§ 620a. Restrictions on exports of unprocessed timber originating from Federal lands

(a) Prohibition on export of unprocessed timber originating from Federal lands

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, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States.

(b) Surpluses

(1) Determinations by Secretary concerned

The prohibition contained in subsection (a) shall not apply to specific quantities of grades and species of unprocessed timber originating from Federal lands which the Secretary concerned determines to be surplus to domestic manufacturing needs.

(2) Procedures

Any determination under paragraph (1) shall be made in regulations issued in accordance with section 553 of title 5. Any such determination shall be reviewed at least once in every 3-year period. The Secretary concerned shall publish notice of such review in the Federal Register, and shall give the public an opportunity to comment on such review.

(Pub. L. 101-382, title IV, § 489, Aug. 20, 1990, 104 Stat. 715.)

§ 620b. Limitations on substitution of unprocessed Federal timber for unprocessed timber exported from private lands

(a) Direct substitution

(1) Except as provided in paragraph (3) and subsection (c), 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—

(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

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

(2) Notwithstanding paragraph (1)—

(A) Federal timber purchased pursuant to a contract entered into between the purchaser and the Secretary concerned before the date on which regulations to carry out this subsection are issued under section 620f of this title shall be governed by the regulations of the Secretary concerned in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands;

(B) in the 1-year period beginning on August 20, 1990, any person who operates under a Co-

operative Sustained Yield Unit Agreement, and who has an historic export quota shall be limited to entering into contracts under such a quota to a volume equal to not more than 66 percent of the person's historic export quota used during fiscal year 1989;

(C) a person referred to in subparagraph (B) shall reduce the person's remaining substitution volume by an equal amount each year thereafter such that no volume is substituted under such a quota in fiscal year 1995 or thereafter; and

(D) the 24-month period referred to in paragraph (1)(B) shall not apply to any person who—

(i) before August 20, 1990, has, under an historic export quota approved by the Secretary concerned, purchased unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in substitution for exported unprocessed timber originating from private lands;

(ii) certifies to the Secretary concerned, within 3 months after August 20, 1990, that the person will, within 6 months after August 20, 1990, cease exporting unprocessed timber originating from private lands; and

(iii) ceases exports in accordance with such certification.

(3) **APPLICABILITY.**—In the case of the purchase by a person of unprocessed timber originating from Federal lands west of the 119th meridian in the State of Washington, paragraph (1) shall apply only if—

(A) the private lands referred to in paragraph (1) are owned by the person; or

(B) the person has the exclusive right to harvest timber from the private lands described in paragraph (1) during a period of more than 7 years, and may exercise that right at any time of the person's choosing.

(b) Indirect substitution

(1) In general

Except as provided in paragraph (2), no person may, beginning 21 days after August 20, 1990, purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph.

(2) Exceptions

(A) The Secretary of Agriculture shall, as soon as practicable but not later than 9 months after August 20, 1990, establish, by rule, a limited amount of unprocessed timber originating from Federal lands described in subparagraph (B) which may be purchased by a person otherwise covered by the prohibition contained in paragraph (1). Such limit shall equal—

(i) the amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts

or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990, divided by 3, or

(ii) 15 million board feet,

whichever is less, except that such limit shall not exceed such person's proportionate share, with respect to all persons covered under this paragraph, of 50 million board feet.

(B) The Federal lands referred to in subparagraph (A) are Federal lands administered by the United States Forest Service Region 6 that are located north of the Columbia River from its mouth and east to its first intersection with the 119th meridian, and from that point north of the 46th parallel and east.

(C) Any person may sell, trade, or otherwise exchange with any other person the rights obtained under subparagraph (A), except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A).

(D) Federal timber purchased from Federal lands described in subparagraph (B) pursuant to a contract entered into between the purchaser and the Secretary of Agriculture before the date on which regulations to carry out this subsection are issued under section 620f of this title shall be governed by the regulations of the Secretary of Agriculture in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands.

(c) Sourcing areas

(1) In general

The prohibitions contained in subsections (a) and (b) shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States approved by the Secretary concerned under this subsection by a person who—

(A) in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and

(B) during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area.

The Secretary concerned may waive the 24-month requirement set forth in subparagraph (A) for any person who, within 3 months after August 20, 1990, certifies that, within 6 months after August 20, 1990, such person will, for a period of not less than 3 years, cease exporting unprocessed timber originating from private lands within the sourcing area.

(2) Requirements for application for sourcing areas for processing facilities located outside the northwestern private timber open market area

The Secretaries concerned shall, not later than 3 months after August 20, 1990, prescribe procedures to be used by a person applying for approval of a sourcing area under paragraph (1). Such procedures shall require, at a minimum, the applicant to provide—

(A) information regarding the location of private lands (except private land located in the northwestern private timber open market area) from which such person has, within the previous year, harvested or otherwise acquired unprocessed timber which has been exported from the United States; and

(B) information regarding the location of each timber manufacturing facility owned or operated by such person within the proposed sourcing area boundaries at which the applicant proposes to process timber originating from Federal lands.

The prohibition contained in subsection (a) shall not apply to a person before the date which is 1 month after the procedures referred to in this paragraph are prescribed. With respect to any person who submits an application in accordance with such procedures by the end of the time period set forth in the preceding sentence, the prohibition contained in subsection (a) shall not apply to such person before the date on which the Secretary concerned approves or disapproves such application.

(3) Grant of approval for sourcing areas for processing facilities located outside of the northwestern private timber open market area

(A) In general

For each applicant, the Secretary concerned shall, on the record and after an opportunity for a hearing, not later than 4 months after receipt of the application for a sourcing area, either approve or disapprove the application. The Secretary concerned may approve such application only if the Secretary determines that the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located, is geographically and economically separate from any geographic area from which that person harvests for export any unprocessed timber originating from private lands.

(B) For timber manufacturing facilities located in Idaho

Except as provided in subparagraph (D), in making a determination referred to in subparagraph (A), the Secretary concerned shall consider the private timber export and the private and Federal timber sourcing patterns for the applicant's timber manufacturing facilities, as well as the private and Federal timber sourcing patterns for the timber manufacturing facilities of other persons in the same local vicinity of the applicant, and the relative similarity of such private and Federal timber sourcing patterns.

(C) For timber manufacturing facilities located in States other than Idaho

Except as provided in subparagraph (D), in making the determination referred to in subparagraph (A), the Secretary concerned shall consider the private timber export and the Federal timber sourcing patterns for the applicant's timber manufacturing facilities,

as well as the Federal timber sourcing patterns for the timber manufacturing facilities of other persons in the same local vicinity of the applicant, and the relative similarity of such Federal timber sourcing patterns. Private timber sourcing patterns shall not be a factor in such determinations in States other than Idaho.

(D) Area not included

In deciding whether to approve or disapprove an application, the Secretary shall not—

(i) consider land located in the northwestern private timber open market area; or

(ii) condition approval of the application on the inclusion of any such land in the applicant's sourcing area, such land being includable in the sourcing area only to the extent requested by the applicant.

(4) Denial of application for sourcing areas for processing facilities located outside the northwestern private timber open market area

(A) Subject to subparagraph (B), and notwithstanding any other provision of law, in the 9-month period after receiving disapproval of an application submitted pursuant to this subsection, the applicant may purchase unprocessed timber originating from Federal lands in the area which is the subject of the application in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application. In the subsequent 6-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions contained in subsection (a) shall fully apply.

(B) If a person referred to in subparagraph (A) certifies to the Secretary concerned, within 90 days after receiving disapproval of such application, that such person shall, within 15 months after such disapproval, cease the export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved, such person may continue to purchase unprocessed timber originating from Federal lands in the area which is the subject of the application, without being subject to the restrictions of subparagraph (A), except that such purchases during that 15-month period may not exceed 125 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application which was denied.

(C) Any person to whom subparagraph (B) applies may not, during the 15-month period after the person's application for sourcing area boundaries is denied, export unprocessed timber originating from private lands in the geographic area determined by the Secretary concerned for which the application would have been approved in amounts that exceed 125

percent of the annual average of such person's exports of unprocessed timber from such private lands during the 5 full fiscal years immediately prior to submission of the application.

(5) Review of determinations for sourcing areas for processing facilities located outside the northwestern private timber open market area

Determinations made under paragraph (3) shall be reviewed, in accordance with the procedures prescribed in sections 620 to 620j of this title, not less often than every 5 years.

(6) Sourcing areas for processing facilities located in the northwestern private timber open market area

(A) Establishment

In the northwestern private timber open market area—

(i) a sourcing area boundary shall be a circle around the processing facility of the sourcing area applicant or holder;

(ii) the radius of the circle—

(I) shall be the furthest distance that the sourcing area applicant or holder proposes to haul Federal timber for processing at the processing facility; and

(II) shall be determined solely by the sourcing area applicant or holder;

(iii) a sourcing area shall become effective on written notice to the Regional Forester for Region 6 of the Forest Service of the location of the boundary of the sourcing area;

(iv) the 24-month requirement in paragraph (1)(A) shall not apply;

(v) a sourcing area holder—

(I) may adjust the radius of the sourcing area not more frequently than once every 24 months; and

(II) shall provide written notice to the Regional Forester for Region 6 of the adjusted boundary of its sourcing area before using the adjusted sourcing area; and

(vi) a sourcing area holder that relinquishes a sourcing area may not reestablish a sourcing area for that processing facility before the date that is 24 months after the date on which the sourcing area was relinquished.

(B) Transition

With respect to a portion of a sourcing area established before November 14, 1997, that contains Federal timber under contract before November 14, 1997, and is outside the boundary of a new sourcing area established under subparagraph (A)—

(i) that portion shall continue to be a sourcing area only until unprocessed Federal timber from the portion is no longer in the possession of the sourcing area holder; and

(ii) unprocessed timber from private land in that portion shall be exportable immediately after unprocessed timber from Federal land in the portion is no longer in the possession of the sourcing area holder.

(7) Relinquishment and termination of sourcing areas

(A) In general

A sourcing area may be relinquished at any time.

(B) Effective date

A relinquishment of a sourcing area shall be effective as of the date on which written notice is provided by the sourcing area holder to the Regional Forester with jurisdiction over the sourcing area where the processing facility of the holder is located.

(C) Exportability

(i) In general

On relinquishment or termination of a sourcing area, unprocessed timber from private land within the former boundary of the relinquished or terminated sourcing area is exportable immediately after unprocessed timber from Federal land from within that area is no longer in the possession of the former sourcing area holder.

(ii) No restriction

The exportability of unprocessed timber from private land located outside of a sourcing area shall not be restricted or in any way affected by relinquishment or termination of a sourcing area.

(d) Domestic transportation and processing of private timber

Nothing in this section restricts or authorizes any restriction on the domestic transportation or processing of timber harvested from private land, except that the Secretary may prohibit processing facilities located in the State of Idaho that have sourcing areas from processing timber harvested from private land outside of the boundaries of those sourcing areas.

(Pub. L. 101-382, title IV, §490, Aug. 20, 1990, 104 Stat. 715; Pub. L. 105-83, title VI, §602(a), Nov. 14, 1997, 111 Stat. 1618.)

Editorial Notes

REFERENCES IN TEXT

August 20, 1990, referred to in subsec. (a)(2)(B), was in the original “the effective date of this title”, which is the date of enactment of title IV of Pub. L. 101-382, approved Aug. 20, 1990, except as otherwise provided in sections 620 to 620j of this title, see section 494 of Pub. L. 101-382, set out as an Effective Date note under section 620 of this title.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-83, §602(a)(1)(A), inserted “paragraph (3) and” after “Except as provided in”.

Subsec. (a)(3). Pub. L. 105-83, §602(a)(1)(B), added par. (3).

Subsec. (c). Pub. L. 105-83, §602(a)(2)(A), struck out “Approval of” before “Sourcing areas” in heading.

Subsec. (c)(2). Pub. L. 105-83, §602(a)(2)(B)(i), inserted “for sourcing areas for processing facilities located outside the northwestern private timber open market area” after “application” in heading.

Subsec. (c)(2)(A). Pub. L. 105-83, §602(a)(2)(B)(ii), inserted “(except private land located in the northwestern private timber open market area)” after “private lands”.

Subsec. (c)(3). Pub. L. 105-83, §602(a)(2)(C), inserted “for sourcing areas for processing facilities located outside of the northwestern private timber open market area” in heading, designated existing provisions as subpar. (A), inserted heading, and struck out at end “In making a determination referred to in this paragraph, the Secretary concerned shall consider equally the timber purchasing patterns, on private and Federal lands, of the applicant as well as other persons in the same local vicinity as the applicant, and the relative similarity of such purchasing patterns.”, and added subpars. (B) to (D).

Subsec. (c)(4), (5). Pub. L. 105-83, §602(a)(2)(D), (E), inserted “for sourcing areas for processing facilities located outside the northwestern private timber open market area” in headings.

Subsec. (c)(6), (7). Pub. L. 105-83, §602(a)(2)(F), added pars. (6) and (7).

Subsec. (d). Pub. L. 105-83, §602(a)(3), added subsec. (d).

§ 620c. Restriction on exports of unprocessed timber from State and other public lands

(a) Order to prohibit export of unprocessed timber originating from State or other public lands

Except as provided in subsection (g), the Secretary of Commerce shall issue orders to prohibit the export from the United States of unprocessed timber originating from public lands, as provided in subsection (b).

(b) Schedule for determination to prohibit export of unprocessed timber originating from State or other public lands

(1) States with annual sales of 400,000,000 board feet or less

With respect to States with annual sales volumes of 400,000,000 board feet or less, the Secretary of Commerce shall issue an order referred to in subsection (a) to prohibit, notwithstanding any other provision of law, the export of unprocessed timber originating from public lands, effective June 1, 1993.

(2) States with annual sales of greater than 400,000,000 board feet

With respect to any State with an annual sales volume greater than 400,000,000 board feet, the Secretary of Commerce shall issue an order referred to in subsection (a) to prohibit, notwithstanding any other provision of law, the export of unprocessed timber originating from public lands, effective as of November 14, 1997.

(3) Prohibition on substitution

(A) Prohibition

Subject to subparagraph (B), each order of the Secretary of Commerce under paragraph (1) or (2) shall also prohibit, notwithstanding any other provision of law, any person from purchasing, directly or indirectly, unprocessed timber originating from public lands in a State if—

(i) such unprocessed timber would be used in substitution for exported unprocessed timber originating from private lands in that State; or

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