

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 620d, 620f of this title.

§ 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 pub-

lic 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.

(i) 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) CONTRACTURAL 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 agency 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).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 620f of this title.

§ 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—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 1602 of title 43.

(3) MINOR VIOLATION.—The term “minor violation” means a violation, other than an intentional violation, involving a single contract, purchase order, processing facility, or log yard involving a quantity of logs that is less than 25 logs and has a total value (at the time of the violation) of less than \$10,000.

(4) NORTHWESTERN PRIVATE TIMBER OPEN MARKET AREA.—The term “northwestern private timber open market area” means the State of Washington.

(5) The term “person” means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, and business affiliates where 1 affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(6) The term “private lands” means lands held or owned by a person. Such term does not include Federal lands or public lands, or any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 1602 of title 43.

(7) The term “public lands” means lands west of the 100th meridian in the contiguous 48

States, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is—

(A) held by the United States;

(B) held in trust by the United States for the benefit of any Indian tribe or individual,

(C) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(D) held by any Native Corporation as defined in section 1602 of title 43.

(8) The term “Secretary concerned” means—

(A) the Secretary of Agriculture, with respect to Federal lands administered by that Secretary; and

(B) the Secretary of the Interior with respect to Federal lands administered by that Secretary.

(9)(A) The term “unprocessed timber” means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use.

(B) The term “unprocessed timber” does not include timber processed into any one of the following:

(i) 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.

(ii) 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 in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on 4 sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

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

(vii) Shakes or shingles.

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(ix) Pulp logs, cull logs, and incidental volumes of grade 3 and 4 sawlogs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the primary purpose of conversion of the logs into chips, or to the extent that a small quantity of such logs are processed, into other products at domestic processing facilities.

(10) The acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in “substitution” for exported unprocessed timber originating from private lands means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.