

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 96-1023295-6295-01]

RIN 0694-XX06

Notice of General Order Prohibiting Exports of Unprocessed Timber from Certain Public Lands.

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice; Order on Log Exports.

SUMMARY: Section 319 of Title III of Section 101(d) of Title I of Public Law 104-208 requires the Secretary of Commerce to issue an Order concerning the export of timber originating from non-Federal public lands in the western continental United States pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C.

620 et seq. (1994) This notice announces the Department's Order and publishes that Order as an appendix to this notice.

DATE: Order signed on October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.
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SUPPLEMENTARY INFORMATION:

Background

Section 319 of Title III of Section 101(d) Title I of Public Law 104-208 requires the Secretary of Commerce to issue an Order extending, through September 30, 1997, the total prohibition contained in Section 491(b)(2)(A) of the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 U.S.C. 620 et seq. (1994)) on the export of unprocessed timber originating from public lands in states west of the 100th meridian in the contiguous 48 States with more than 400,000,000 board feet of annual sales volumes of such timber. Section 319 also requires the Department to issue an order, beginning October 1, 1997, for states with annual timber sales in excess 400,000,000 million, allowing the export of such timber that is

in excess of 400,000,000 board feet. The Secretary of Commerce has delegated the authority for carrying out the policies and programs necessary to administer laws regarding the control of U.S. exports to the Under Secretary of Commerce for Export Administration. On October 18, 1996, the Under Secretary of Commerce for Export Administration signed the Order for the above described purposes. The Order is reproduced in the following Appendix.

DATED:

Sue E. Eckert

Assistant Secretary

for Export Administration

Appendix

GENERAL ORDER PROHIBITING EXPORTS OF UNPROCESSED TIMBER FROM CERTAIN PUBLIC LANDS

This order¹ is issued pursuant to Public Law No. 104-208. Section 319 of Title III of Section 101(d) of Title I of Public Law No. 104-208 requires the Secretary of Commerce to extend, through September 30, 1997, the total prohibition of section 491(b)(2)(A) of the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (the Act) (16 U.S.C. 620 *et seq.* (1994)) on the export of unprocessed timber originating from public lands in states west of the 100th meridian in the contiguous 48 States with more than 400,000,000 board feet of annual sales volumes of such timber. Section 319 also requires the Secretary of Commerce to make effective, on October 1, 1997, the prohibition of section 491(b)(2)(B) of the Act on the export of only the lesser of 400,000,000 board feet or the annual sales volume of unprocessed timber originating from public lands in states west of the 100th meridian in the contiguous 48 States with more than 400,000,000 board feet of annual sales volumes of such timber. As the Secretary of Commerce has delegated the authority for carrying out the policies and programs necessary to administer laws regarding the control of U.S. exports to the Under Secretary for Export Administration, I therefore order the following:

- (a) States with annual sales volumes of greater than 400,000,000 board feet of unprocessed timber originating from state or other public lands

Notwithstanding any other provision of law, the export, from the United States to any destination, of unprocessed timber originating from public lands in any state located west of the 100th meridian in the contiguous 48 States with annual sales volumes of such timber greater than 400,000,000 board feet is prohibited through September 30, 1997. Effective October 1, 1997, however, only the export, from the United States to any destination, of the lesser of 400,000,000 board feet or the state's annual sales volume of such timber is prohibited. The export of the excess of 400,000,000 board feet of such timber is, therefore, permitted effective October 1, 1997, unless otherwise prohibited by any provision of law. (Section 319 of Title III of Section 101(d) of Title I, Public Law 104-208 and 16 U.S.C. 620c(b)(2)(A) and (B)).

¹ This order does not affect the prohibition on the export of any unprocessed timber originating from public lands in any state located west of the 100th meridian in the contiguous 48 States with annual sales volumes of 400,000,000 board feet or less of such timber. (16 U.S.C. 620c(b)(1) and General Order Prohibiting Exports of Unprocessed Timber from Certain Public Lands, 58 FR 55038 (October 25, 1993)).

(b) Prohibition on substitution

Notwithstanding any other provision of law, all persons are prohibited from purchasing, directly or indirectly, unprocessed timber originating from public lands in a state if: (1) Such unprocessed timber would be used in substitution for exported unprocessed timber originating from private lands in that State; or (2) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands in that State. (16 U.S.C. 620c(b)(3)(A)).

(c) Exemption

The prohibitions in section (b) of this Order do not apply in a state on or after the date on which: (1) The Governor of that state provides the Secretary of Commerce with notification of a prior state program under section 491(d)(2)(C) (16 U.S.C. 620c(d)(2)(C)) of the Act; or (2) the Secretary of Commerce approves a state program under section 491(d)(2)(A) (16 U.S.C. 620c(d)(2)(A)) of the Act; or (3) the Secretary of Commerce issues implementing regulations under the Act, whichever occurs first.² (16 U.S.C. 620c(b)(3)(B)).

(d) Prior contracts

This Order does not apply to any contract for the purchase of unprocessed timber from public lands entered into before September 10, 1990, with respect to states with annual sales volumes of 400,000,000 board feet or less, or January 1, 1991, with respect to states with annual sales volumes greater than 400,000,000 board feet, or any contract under which exports were permitted pursuant to an Order of the Secretary of Commerce in effect under the Act before October 23, 1992. (16 U.S.C. 620c(e)).

(e) Western Red Cedar

This Order shall not be construed to supersede the controls on the export of Western Red Cedar required by section 7(I) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2406(I)), as supplemented by the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), Executive Order 12924 of August 19, 1994 (59 FR 43437, August 27, 1994), and the Presidential Notices of August 15, 1995 and August 14, 1996, and as set out in section 754.4 of the Export Administration Regulations (15 CFR 754.4). (16 U.S.C. 620c(f)).

(f) Definitions

(1) Public lands. As defined in section 493(5) (16 U.S.C. 620e(5)) of the Act, "public lands" means lands west of the 100th meridian in the contiguous 48 states that are held or

² On June 1, 1995, Secretary Brown gave final approval to the programs of Washington and Oregon.

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:

- (i) held by the United States;
- (ii) held in trust by the United States for the benefit of any Indian tribe or individual;
- (iii) held by any Indian tribe or an individual subject to a restriction by the United States against alienation; or
- (iv) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) Unprocessed Timber. As defined in section 493(7) (16 U.S.C. 620e(7)) of the Act, the term "unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. 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 Standard 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 four sides, not to exceed twelve 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 four sides, with wane less than one-quarter of any face, not exceeding eight and three-quarters 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, export for processing into pulp.

(ix) Pulp logs or cull logs proceed at domestic operations for the purpose of conversion of the logs into chips.

(3) Substitution. Consistent with section 493(8) (16 U.S.C. 620e(8)) of the Act, the acquisition of unprocessed timber from public 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 public lands and engaging in export, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.

(4) Acquisition. As defined in section 493(1) (16 U.S.C. 620e (1)) of the Act, 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.

(5) Person. As defined in section 493(3) (16 U.S.C. 620e(3)) of the Act, 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 one affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

Dated: October 18, 1996

William A. Reinsch
Under Secretary for Export Administration
U. S. Department of Commerce