

### Proposed Elements of the Federal Program

This notice announces the Department of Commerce's intention to issue regulations implementing the ban on the export of state timber originating in the 15 States identified in the Order which have not had programs approved or had FRCSRA's prohibitions modified or removed pursuant to Section 491(h). Before drafting regulations, however, the Department seeks comments from interested parties on the following proposed elements of the Federal Program:

1. *Procedures to identify and mark State timber.* Pursuant to section 491(c)(1) of the FRCSRA, the Department proposes to require *owners/purchasers* of State timber:

(a) To identify and paint, by means described at subparagraphs (b) and (c) of this paragraph, State timber (sometimes hereafter "logs requiring domestic processing");

(b) To use highway yellow paint to identify logs requiring domestic processing. Before removal from the harvest area, the owner must paint each log at each end with a spot of highway yellow paint not less than three inches square;

(c) To retain the identification placed on an unprocessed log until the log is domestically processed. If a log is cut into two or more segments before processing, the owner is required to identify each segment in the same manner as the original log. The marking requirement would include all State timber;

2. *Procedures for documenting transfers of State timber.* Pursuant to Sections 492(a)(3) and 492(a)(4) of the FRCSRA, the Department proposes to require the following reporting procedures for the receipt and disposition of the unprocessed public timber:

(a) *Documenting the transfer of unprocessed State timber.* Each person who transfers to another person State timber must, before completing the transfer:

(i) Provide to the other person a written document identifying the public lands from which the timber originated and giving notice to the person of the prohibition against exporting the State timber or substituting it for exported private timber;

(ii) receive from the purchaser written acknowledgement of the notice, and a written agreement that the recipient of the timber will comply with all the requirements of the FRCSRA; and

(iii) provide annually to the Secretary of Commerce copies of all notices,

acknowledgements, and agreements referred to in paragraphs (3)(a)(i) and (3)(a)(ii).

(b) *Documenting the acquisition of unprocessed State timber.* Each person who directly or indirectly acquires or processes State timber shall report the receipt and disposition of the timber to the Secretary of Commerce as follows:

(i) the source of the State timber acquired.

(ii) from whom the timber was acquired and to whom the timber was sold, transferred or otherwise conveyed; and

(iii) an accounting by source, in net board feet Scribner, or cubic feet, of the volume of State timber acquired, the volume domestically processed by the purchaser and the volume sold for domestic processing.

This requirement would apply to all intermediate parties until a purchaser sends the logs to a domestic sawmill and they are processed;

3. *Procedures for assessing civil penalties and applying administrative remedies for violations of the FRCSRA.* Pursuant to Section 492(c)(1)(B), if the Secretary of Commerce finds, on the record and after an opportunity for a hearing, that a person has exported or caused to be exported State timber with willful disregard of the Secretary's Orders, the Secretary may assess a civil penalty on such person. The civil penalty may be up to \$500,000 for each violation or 3 times the gross value of unprocessed timber involved in the violation, whichever amount is greater.

Pursuant to Section 492(c)(2)(B), if the Secretary of Commerce finds on the record and after an opportunity for a hearing, that a person has violated any provision of the FRCSRA or any regulation issued under the FRCSRA 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 the FRCSRA, the Secretary may impose a civil penalty of up to \$75,000 for each violation or up to \$500,000 depending on the nature of the violation.

4. *Definition.* Pursuant to Section 493(7) of the FRCSRA, the term unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. It does not include among other things chips, pulp, or pulp products and pulp logs or cull logs.

### Petitions for Minimizing the Reporting Burdens on Those States That Do Not Export Timber From Public Lands

The Department is aware that a number of the states subject to the export ban have very small state timber sales volumes or do not sell state timber at all. The Department also is aware that some states do not have any unprocessed timber exported from state public lands. The Department is prepared to consider requests from such states for removal or modification of state restrictions, including reporting requirements of the Federal Program, pursuant to section 491(h) of the FRCSRA.

### Particularly Useful Comments

The Department invites written comments from interested parties that may assist it in implementing the Federal Program. Specifically, information concerning the following would be particularly useful:

1. Under what circumstance should the Secretary include substitution as part of the rules for the Federal Program?

2. Are the Department's procedures for identifying and marking export-restricted State timber adequate to track such timber and prevent unauthorized export? Should the Department require persons/purchasers of State timber to hammer brand a log on each end with a brand approved for use by the Forest Supervisor of the State Forest in each affected State?

3. Are there more cost-effective ways to identify and track export-restricted State timber?

4. Is the Department's annual reporting requirement sufficient to track the flow of State timber?

### Comment Procedures

The Department will consider public comments in the development of proposed regulations. The Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The following procedures will apply to any comments submitted pursuant to this procedure:

1. Interested parties are invited to submit written comments (3 copies), opinions, data, information, or advice with respect to this notice to the address above by the dates specified above.

2. The Department will consider all comments received by the close of the comment period in developing proposed regulations. While comments received after the end of the comment period will be considered if possible, this cannot be assured.