

Chapter 332-140 WAC

FOREST PRODUCTS INDUSTRY RECOVERY ACT OF 1982

WAC

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WAC 332-140-010 Introduction and general definitions. (1) The regulations in this chapter are promulgated by the commissioner of public lands of the state of Washington to implement the Forest Products Industry Recovery Act of 1982. Unless provided otherwise herein or unless the context clearly requires otherwise, the following definitions apply to this chapter and to the act:

(a) "The act" means the Forest Products Industry Recovery Act of 1982, which is sections 3 through 9, chapter 222, Laws of 1982.

(b) "ARRF" means the access road revolving fund referred to in the contract and in RCW 79.38.050.

(c) "Assignment" means the assignment of rights or delegation of duties by a purchaser of a sale or contract to another.

(d) A purchaser "commences operations" on a sale by engaging in removals on that sale or by commencing road construction, falling, bucking, or other contract requirements.

(e) A timber sale contract or timber sale which was "purchased," "entered into," or "purchased at auction" in reference to certain dates specified in sections 4, 5 and 6 of the act refers to the date on which the public auction was held at which such contract or sale was offered.

(f) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired and on which there are forest products yet to be removed. Under section 6 of the act, a purchaser may default a sale by giving notification which specifies that the purchaser is waiving all its rights to the sale. Upon receipt of the notification by the department, the purchaser's operating authority on the sale expires.

(g) "Department" means the department of natural resources of the state of Washington.

(h) "Existing," in reference to a sale, means a sale on which the operating authority has not expired and on which there are forest products yet to be removed.

(i) "Expiration date," in reference to a sale, means the date on which the operating authority expires on that sale under the terms of the contract.

(j) To "identify" a sale means to state the name of the sale and its application number.

(k) "Merchantable" forest products means those forest products included in a sale which are "merchantable" as that term is used in the contract and does not include "cull" or "utility" forest products as those terms are defined in the contract.

(l) "MBF" means thousand board feet Scribner Scale of forest products.

(m) "MMBF" means million board feet Scribner Scale of forest products.

(n) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is to remove the forest products which are the subject of the sale.

(o) A "partial cut" sale is one other than a clearcut and on which only part of existing forest products are designated to be removed.

(p) "Performance security" means the surety bond, cash bond, savings account assignment, irrevocable bank letter of credit, or other form of security which insures the faithful performance by the purchaser of the terms of the contract.

(q) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation which owns at least a majority of shares of another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser under the provisions of the act.

(r) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which were sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. The terms "sale" or "contract" shall be used in these regulations. All of the foregoing terms are considered to be synonymous as referred to in the act and these regulations.

(s) "Person" as used in section 5(2) of the act means the business entity which paid extension fees prior to the effective date of the act.

(t) "Window sale" means a sale which is referred to in subsection (2) below.

(2) **Window sales.**

(a) As referred to in these regulations and in sections 4, 5 and 6 of the act, sales or contracts "entered into," "purchased," or "purchased at auction" between January 1, 1978, and July 1, 1980, means those sales for which the auction was held after January 1, 1978, and before July 1, 1980.

(b) "Lincoln day blowdown" sales are those sales identified by the department which were prepared and sold as a result of damage to the timber caused primarily by the Lincoln day windstorm which occurred on or about February 13, 1979. Such term does not include sales sold because of other reasons or sales sold because timber which was damaged by the Lincoln day storm was further substantially damaged by later storms or other causes. The following sales are the only Lincoln day blowdown sales which were auctioned from July 1, 1980, through December 31, 1980, on which there are forest products remaining to be removed:

- (i) Lower Wasankari, Application No. 40694
- (ii) Piedmont Blowdown, Application No. 42799
- (iii) Miller Road Blowdown, Application No. 42817
- (iv) 4 Corners Blowdown, Application No. 43196
- (v) Key Boundary, Application No. 42078
- (vi) Peaks Pickens, Application No. 42933
- (vii) Three Sisters Blowdown, Application No. 42493
- (viii) Little Boy Blew, Application No. 42163
- (ix) Miller Pickup Blowdown, Application No. 43474
- (x) Shay, Application No. 42133

(3) **Full reservation of rights.** These regulations are being adopted because of the presumption that enacted laws are valid. However, all existing, past and future purchasers should be aware that claims have been made that the act is invalid and that there is a possibility that the act or portions thereof may be challenged in court, even by the department or other governmental agency or entity.

Any purchaser who requests relief under the act does so at its own risk as to the validity of the act and the possibility of judicial orders or decrees affecting it. The department makes no warranty of the validity of the act and reserves the right to immediately terminate, rescind, or otherwise refuse to grant relief under the act if all or a portion of the act is declared invalid, whether such court order or decision is obtained by others or itself. The department further reserves the right to secure all rights, moneys, charges, damages or claims that it would otherwise have been entitled to if the act or portions thereof are declared invalid, and to take such action as may be necessary to secure the same.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-010, filed 7/1/82.]

WAC 332-140-020 Extension procedure. Requests for extensions under the act shall be in writing. Extensions will be granted only by a written extension document. Extensions granted under the act shall only be on a quarterly (3 month) basis and shall be for 3, 6, 9 or 12 months, except as provided in WAC 332-140-050 (2)(c). An extension will not be granted for less time than is reasonably required, as determined by the department, to remove all of the forest products remaining on the sale being extended.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-020, filed 7/1/82.]

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WAC 332-140-030 New plan of operations required. A new plan of operations must be filed and approved for all window sales on which the purchaser commences operations prior to July 15, 1982, before the purchaser commences operations.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-030, filed 7/1/82.]

WAC 332-140-040 Extension time credits. This section implements section 4 of the act.

(1) **Introduction.** "Extension time credit" means the number of calendar days a purchaser receives by engaging in or agreeing to engage in the removal of forest products on a sale which qualifies under subsection (2) below. Extension time credit can be received only for removals engaged in after April 3, 1982. This credit can only be used to extend window sales which exist at the time of the application for an extension of such sale. There are two ways to receive extension time credit. First, a purchaser can "earn" the credit. The extension time credit is "earned" only after the purchaser has satisfactorily engaged in the removals. Second, a purchaser can receive "conditional" credit by agreeing to engage in removals in the future.

(2) **Sales upon which purchaser may earn credit.** The following sales are sales on which the purchaser may earn extension time credit:

(a) All sales auctioned prior to April 3, 1982, but only if and to the extent that the purchaser agrees to and engages in removals and receives a logging release on that sale prior to December 31, 1983.

(b) Sales auctioned on or after April 3, 1982, which, in the prospectus and contract, are identified by the department as sales on which extension time credit may be earned, but only if and to the extent that the purchaser agrees to and engages in removals on that sale prior to the sale's expiration date or December 31, 1983, whichever is sooner. Up to 60% of the number of sales auctioned in 1982 and 1983 may be so designated by the department.

(3) **Amount of extension time credit.** One calendar day of extension time credit is earned for each acre of forest products which the purchaser satisfactorily removes and for which a logging or operating release has been issued, except that on partial cut sales or units on which less than 10 MBF/acre is satisfactorily removed, the following schedule shall be used to compute the number of days of extension time credit which may be earned:

Department's presale cruise volume of forest products (average board feet per acre)	Acres of forest products to be removed to earn one day of Extension Time Credit
9,000 to 9,999	1.1
8,000 to 8,999	1.2
7,000 to 7,999	1.4
6,000 to 6,999	1.7
5,000 to 5,999	2.0
4,000 to 4,999	2.5
3,000 to 3,999	3.3
2,000 to 2,999	5.0
Less than 2,000	10.0

Extension time credit will be computed on the foregoing basis, whether the removal of the forest products actually takes a longer or shorter time. The volume of forest products and acreage of a sale shall be the volume and acreage stated in the contract. Extension time credit is earned for time spent on yarding, loading and hauling activities only and not for road construction, falling and bucking, or for other contract requirements.

(4) **Request to earn extension time credit.** To earn extension time credit on a sale qualifying under subsection (2) above, a purchaser must submit a written request to the department. Extension time credit will be granted only for forest products removed on or after the day the request is received by the department. This request must identify the sale(s) on which the purchaser wishes to operate to earn extension time credit. The department shall determine the amount of extension time credit available to be earned on a sale in accordance with subsection (3) above. The department and the purchaser shall enter into a written agreement on a form provided by the department which sets forth the limitations of subsection (2) above as well as the amount of extension time credit which can be earned by engaging in such removals. The department shall establish an extension time credit account for the purchaser. After extension time credit is earned on a sale, the department will credit the purchaser's extension time credit account with the proper number of days of extension time credit. The account shall be debited from time to time as extension time credit is used under subsection (9) below. The purchaser which earns the extension time credit may not assign that credit to another purchaser.

(5) **Request to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982.** If a purchaser wishes to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982, it must submit a written request to the department on or before May 14, 1982. This request must identify the sale on which the purchaser wishes to receive the credit. The department shall determine the proper number of days of extension time credit in accordance with subsection (3) above and shall credit the purchaser's extension time credit account accordingly. If a purchaser fails to meet the foregoing deadline, it shall not receive credit for engaging in removals from April 3, 1982, up through the time it submits a request on that sale under subsection (4) above.

(6) **Conditional extension time credit.** If a purchaser needs to extend a window sale and does not have a sufficient amount of extension time credit in its extension time credit account to do so, the purchaser may submit a written request to the department to receive conditional extension time credit. The request must identify the window sale to be extended and the sale on which the purchaser will agree to engage in removals to receive the conditional credit.

The department and the purchaser shall enter into an agreement, on a form provided by the department, which identifies the sale being extended, the sale on which the purchaser agrees to engage in removals, the amount of extension time credit being conditionally granted, and the date by which the purchaser must complete the removals agreed upon. Failure of the purchaser to complete the removals by the foregoing date subjects the purchaser to subsection (8)

below. A purchaser which receives conditional extension time credit may not assign that credit to another purchaser.

(7) **Performance security required for agreements involving conditional credit.** An agreement extending a sale using conditionally granted extension time credit shall be secured by the initial deposit and the performance security on the sale being extended and by the initial deposit of the sale on which the purchaser agrees to engage in removals. An adequate amount of the deposits and such security, as determined by the department, must be maintained until the purchaser completes the removals as agreed to, or can substitute the conditionally granted credit with credit actually earned after the date of the agreement referred to above.

(8) **Purchaser's failure to engage in removals.** If the purchaser fails to meet the completion date for removals as stated in the agreement referred to in subsection (6) above, all of the conditional extension time credit granted on that sale will be disallowed, and the sale(s) which was extended using the conditional extension time credit shall not receive such credit. The purchaser shall receive no extension time credit for the removals engaged in. The department shall notify the purchaser in writing of a failure to meet the completion date. Within 30 days of the date of mailing or personal service of this notice, the purchaser must pay for any extension granted, to the extent that it was granted using conditional credits, as that extension fee would have been computed under the contract as limited only by section 9 of the act. In addition, the purchaser shall pay an additional interest charge on the value of that portion of the extension granted using conditional credit at 12 percent per annum from the date the extension was granted through the date of actual payment by the purchaser. If the purchaser fails to make this payment within 30 days following the above notice, the purchaser's operating authority on the sale shall terminate, and the department may recover damages against the purchaser and its surety as allowed by law.

(9) **Use of extension time credit to extend a window sale.**

(a) Credit earned and credited to the purchaser's extension time credit account may be used by the department to extend a window sale upon written application by the purchaser. Extensions under section 4 of the act will be granted only by written extension agreement. The purchaser must deliver to the department a properly executed extension agreement on or before the expiration date of the sale which the purchaser wishes to extend under section 4 of the act. Failure to meet the above deadline will disqualify the sale for an extension under section 4 of the act.

(b) The purchaser may use the extension time credit earned or conditionally granted to extend as many window sales as it selects. Sales may be extended for 3, 6, 9 or 12 months only, but the purchaser may apply as much credit as it has earned toward the extension. Extension time credit earned may be applied together with cash or road credit in any combination toward the extension fee. Conditionally granted extension time credit may also be used, but only if needed.

(c) Days of extension time credit earned shall be applied to a sale without regard to whether the extension is during the operating season, closed or winter season, or shutdowns,

except that contract termination date adjustments under contract clause 14-4 may still be made.

(d) The department will grant no extension under section 4 of the act after December 31, 1983, except that the department may exercise its rights under subsection (8) above after December 31, 1983. The term of extensions granted under section 4 of the act shall not extend beyond December 31, 1984.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-040, filed 7/1/82.]

WAC 332-140-050 Paid extension credit. This section implements section 5 of the act.

(1) Section 5(1).

(a) **Qualifying sales.** Only window sales which exists as of the date of the application under this subsection qualify for a paid extension credit under section 5(1) of the act.

(b) **Written application.** To qualify for the paid extension credit, an extension agreement, properly executed by the purchaser and surety (if applicable), must be received by the department at least one working day prior to the then current expiration date of the sale on which the purchaser seeks a paid extension credit. No credits will be granted under section 5(1) of the act if the purchaser does not meet the foregoing deadline.

(c) **Amount of paid extension credit.** The amount of the paid extension credit on a sale shall be equal to the total amount of the extension fees paid by the purchaser on that sale after April 3, 1982 by cash or road credits.

(d) **Same sale.** The paid extension credit shall be applied, dollar for dollar, to payments for forest products only on the same sale as the extension fee is paid by the purchaser. The paid extension credit may not be used to pay ARRF charges.

(e) **Length of extensions.** The extensions granted on a sale under section 5(1) of the act shall only be 3, 6, 9 or 12 months in length. The department's authority to grant extensions under section 5(1) of the act expires on December 31, 1984.

(2) Section 5(2).

(a) **Qualifying sales.** Section 5(2) of the act applies only to extensions which were requested, paid for, and for which the extension agreements were executed on or before April 2, 1982. Section 5(2) of the act applies to all sales existing as of the date of the purchaser's application hereunder. Extensions of sales for which extensions were paid after April 2, 1982, do not qualify for an equivalent extension under section 5(2) of the act. A person may not receive a credit under section 5(2) of the act for minimum fee (\$100) extensions granted before April 3, 1982, but only for extensions paid in cash by the purchaser.

(b) **Written application.** A person wishing to receive an extension on a sale under section 5(2) of the act must make a written application to the department which identifies the sale, the amount of extension time claimed under section 5(2) of the act, and the dates and periods of past extensions purchased on that sale.

(c) If a person satisfies the provisions of (2)(a) and (b) above, the department shall, without any charge, grant the person applying for an extension under section 5(2) of the act an extension equal in time to the total time of the extensions

on that sale which were paid by the person extending the sale, up to a total of twelve months.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-050, filed 7/1/82.]

WAC 332-140-060 Defaults. This section is to implement section 6 of the act.

(1)(a) **Qualifying sales.** Section 6 of the act applies only to window sales which were in existence as of April 3, 1982, or for which a payment is made after April 3, 1982, under section 7 of the act to reinstate the sale.

(b) **Written notification.** The purchaser must provide the department with written notification on or before July 14, 1982, stating that the purchaser elects to terminate or default a sale under section 6 of the act. Such notification must state that the purchaser is giving up all of its rights under that contract as of the date of the notification. The notification must be accompanied by a sworn written statement by an authorized representative of the purchaser which identifies the names of all affiliates, subsidiaries, and parent companies of the purchaser which purchased a window sale. The department shall provide the form for this statement. The notification must also be accompanied by a \$2,500 administrative fee. The notification will be considered received by the department only when the fee and sworn statement are received by the department.

(c) **Limitation on sales to be defaulted.** The following limitations apply to the sales which a purchaser may terminate or default under section 6 of the act.

(i) The purchaser may default on the sale(s) of its choice of which it was the purchaser as of April 3, 1982, if the sale qualifies under subsection (1)(a) above and if the cumulative volume remaining on those sales for which notification is given does not exceed 15 MMBF of forest products as of the date of the notification. The volume remaining on a sale shall be computed by the department by subtracting the volume of merchantable forest products removed from the department's presale cruise volume of merchantable forest products stated in the contract.

(ii) No sales which have been assigned after April 3, 1982, may be terminated or defaulted.

(iii) Only entire sales may be defaulted. A purchaser may not default on part of a sale under section 6 and choose to retain any right to remove forest products from any part of the same sale.

(iv) A sale may be terminated or defaulted even though the purchaser has operated on it and removed forest products from the sale, subject to the further limitations of subsection (1)(d) below.

(v) A sale on which all of the forest products have been removed may not be terminated or defaulted under section 6 of the act.

(d) **Limitations on defaults of sales on which operations have occurred.** A sale which otherwise qualifies for termination or default under section 6 of the act and this section may be defaulted subject to the following obligations and reservations:

(i) All forest products must be paid for which were removed from the sale and all due ARRF payments and other payments due must be paid, including all payments for forest products and ARRF deferred under a deferred payment

agreement. The department reserves the full right to take appropriate action against the purchaser and its surety to recover all applicable damages for a failure of the purchaser to make the foregoing payments on or before the receipt of the notification of default.

(ii) All outstanding contract requirements (other than removal of forest products) which arose as a result of the purchaser's activities on the sale must be performed. These requirements include, but are not limited to, slash disposal preparation work, stream cleanout, falling nonmerchantable forest products, road maintenance, ditching, waterbarring and fire trail construction. If the purchaser fails to perform the foregoing outstanding requirements, the department shall determine the current cost of performing that work and charge the purchaser therefor. If the purchaser fails to promptly pay such charges, the department may take appropriate action to recover the same from the purchaser and its surety.

(iii) The purchaser and its surety are not released from any liability or duty to indemnify the department which arose as a result of the acts or omissions of the purchaser or its delegate relating to the sale being defaulted.

(2) **No refunds or credits.** Upon notification under subsection (1)(b) above, the department shall make no refunds nor give any credits of any cash payments made to the department in connection with the contract which is being defaulted. Such cash payments include, but are not limited to, the initial deposit, extension fees, cash advance payments, and cash performance bonds, whether the foregoing deposits or payments are used or unused. All such sums shall be retained by the department.

(3)(a) **Road credits.** Upon receipt of notification under subsection (1)(b) above, the department shall compute the road credit which is provided by section 6(3) of the act. The credit shall only be allowed for construction of roads that are listed under the ROAD DEVELOPMENT section of the timber sale prospectus, as shown on the timber sale map.

(b) **Amount of road credit.** The amount of the road credit shall be determined based upon the percentage of road work satisfactorily completed in each road construction phase. The phases of road construction are those separate phases expressly identified in the road appraisal work forms used by the department in the presale appraisal. The percentages of satisfactory completion shall be applied to the road construction cost estimates as stated in the department's road construction presale appraisal.

(c) **Reduction of credit.** The total amount of the road credit as computed in subsection (3)(b) above shall be reduced by the difference between the current costs, as determined by the department, of correcting road work which was unsatisfactorily performed and the cost of completing such road work as computed in the department's original presale road construction appraisal.

(d) **Amortization.** The amount of the road credits shall be further reduced by the same percentage as the percentage of forest products removed on that sale. The percentage of forest products removed shall be computed by dividing the volume of merchantable forest products removed by the volume stated in the contract.

(4) **Application of road credit.**

(a) Road credit will be applied only upon written application of the purchaser and after the department has determined the amount of the road credit. Such credit may be applied to one-half of any required payment for stumpage, cash deposits for performance security, or extension fee on a sale. Road credits cannot be applied to the initial deposit on a sale nor to a payment made under section 7 of the act.

(b) Road credit will only be applied to sales of that purchaser which are situated on land of the same trust and beneficiary as the sale on which the road credit is given. If the sale on which the road credit is given is situated on land of more than one trust and beneficiary the total road credit for the sale shall be divided in proportion to the acreage of each trust and beneficiary and applied separately and only to sales situated on the same trust and beneficiary.

(5) A purchaser whose sale expires or expired without removing all of the forest products from the sale and which sale does not qualify to be terminated or defaulted by the purchaser under section 6(1) of the act remains fully liable to the department for whatever damages that may be recovered under law notwithstanding the provisions of the act. This includes a sale which had expired as of April 3, 1982, and which the purchaser does not reinstate under section 7 of the act on or before July 14, 1982.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-060, filed 7/1/82.]

WAC 332-140-070 Reinstatement of sales. This section implements section 7 of the act.

(1) **Qualifying sales.** Section 7 of the act applies to sales on which the operating authority had expired as of April 3, 1982 which otherwise would qualify for extension under sections 4 or 5 of the act or to be defaulted under section 6 of the act. The purpose of section 7 of the act is to allow the purchaser to make a payment to reinstate such a sale and thereby make that sale eligible for relief under sections 4, 5, 6 and 9 of the act. A reinstatement payment made under section 7 of the act is not considered an extension payment for purposes of section 5 of the act.

(2) **Application for reinstatement.** To reinstate a sale under section 7 of the act, the purchaser must make written application to the department for reinstatement on or before July 14, 1982.

(3) **Reinstatement payment.** To be effective, an application for reinstatement under section 7 of the act must be accompanied by a payment equal to the extension payment for that sale computed from the date the sale or a previous extension thereof expired through the date the application is received. The amount of this payment shall be computed as provided in the contract for extensions. The interest limitation of section 9 of the act does not apply to the extension computation under the provisions of section 7 of the act and this section. Road credits under section 6 of the act may not be used to make the reinstatement payments required by section 7 of the act.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-070, filed 7/1/82.]

WAC 332-140-090 Extension interest rate limitation. This section implements section 9 of the act.

(1) Section 9 of the act applies to extensions on sales which were auctioned on or before December 30, 1980, for which extensions are granted after April 3, 1982, but before December 31, 1984. In computing the fees for such extensions, the department shall use the interest rate stated in the contract or 13 percent, whichever is less, in computing the interest charge on the unpaid portion of the contract which forms part of the extension fee.

(2) Reinstatement payments made under section 7 of the act are not subject to the interest rate limitation of section 9 of the act.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-090, filed 7/1/82.]

WAC 332-140-100 Mt. St. Helens sales excluded.

Sections 2 through 9 of the act do not apply to any sales sold before or after any eruption of Mt. St. Helens and which include or included timber damaged by any such eruption.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-100, filed 7/1/82.]

WAC 332-140-200 Introduction and definitions. (1)

Implementation of RCW 79.01.126. These regulations, WAC 332-140-200 through 332-140-240, are promulgated by the department of natural resources for the purpose of implementing RCW 79.01.126, which provides for the adjustment of contract bid prices on timber sales sold on a scale basis having a minimum appraisal value over twenty thousand dollars and which are auctioned on or after October 1, 1983 but before October 1, 1987. Stumpage rate adjustment shall apply only to major species of timber removed.

(2) Definitions. As used in these regulation and in RCW 79.01.126, where applicable:

(a) "Coast publication" means the market indexes published by the Western Woods Products Association in its publication known as the PNW Coast Lumber Price Index.

(b) "Inland publication" means the market indexes published by the Western Wood Products Association in its publication known as the Inland Lumber Price Index.

(c) "Contract bid price" for a given species of timber means the price for that species bid by the purchaser or set in the contract where bidding is not allowed on that species.

(d) "Department" means the department of natural resources.

(e) "Market index change amount" means the same in these regulations as it is defined in RCW 79.01.126(2).

(f) Timber "removed" means and includes only timber that is taken from the sale area.

(g) "Timber removed during a calendar quarter" shall be determined using the date the timber removed is scaled as provided for in the contract.

[Statutory Authority: RCW 79.01.126. WSR 87-22-076 (Order 521), § 332-140-200, filed 11/4/87; WSR 83-18-009 (Order 401), § 332-140-200, filed 8/26/83.]

WAC 332-140-210 Market indexes established. (1)

Following the conclusion of each calendar quarter, the department shall establish the amount of each market index for that quarter for the species of timber listed below. These species are determined to be major species, for which reasonably available and reliable market price information is avail-

able. Each index amount shall be established by extracting from the appropriate Western Wood Products Association index the quarterly average prices per thousand board feet. The major species will be indexed to the following indexes:

(a) Douglas fir and larch. For Douglas fir situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Douglas fir" index of the Coast publication. For Douglas fir and larch situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "dry Douglas fir-larch" index of the Inland publication. Larch situated west of the cascade crest is not a major species and shall not be subject to adjustment of the contract bid price.

(b) Hemlock/true fir. For the hemlocks and true firs situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "hem-fir" index of the Coast publication. For the hemlocks and true firs situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white fir (hem-fir)" index of the Inland publication.

(c) Ponderosa pine. For ponderosa pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "coast-inland north ponderosa pine" index of the Inland publication. Ponderosa pine situated west of the cascade crest is not a major species and is not subject to adjustment of the contract bid price.

(d) White pine. For white pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Idaho white pine" index of the Inland publication. White pine situated west of the cascade crest is not a major species and is not subject to adjustment of the contract bid price.

(e) Engelmann spruce and lodgepole pine. For Englemann spruce and lodgepole pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white woods" index of the Inland publication. Englemann spruce and lodgepole pine situated west of cascade crest are not major species and are not subject to adjustment of the contract bid prices.

(2) Other species not indexed. Species other than those listed above are not major species. There is no readily available and reliable market information for such species and they are not subject to adjustment of the contract bid price.

(3) Cull volume not indexed. Cull logs, including utility logs as defined in the contract, of all species are not major species. There is no readily available and reliable market information for such logs and they are not subject to adjustment of the contract bid price.

[Statutory Authority: RCW 79.01.126. WSR 83-18-009 (Order 401), § 332-140-210, filed 8/26/83.]

WAC 332-140-220 Price to be paid for timber removed. The rate to be paid by the purchaser for each species of timber subject to adjustment of the contract bid price shall be the contract bid price plus or minus the market index change amount, as appropriate, but not less than sixty-five percent of the contract bid price.

[Statutory Authority: RCW 79.01.126. WSR 83-18-009 (Order 401), § 332-140-220, filed 8/26/83.]

WAC 332-140-230 Payment and adjustments. The periodic payments made by the purchaser for timber removed during a given quarter shall be based upon the adjusted price for the previous quarter, except that for removals during a quarter in which the sale is sold, the price used shall be the contract bid price. Following the establishment of the market index for the quarter, the appropriate adjustments will be made to the payments for the timber removed during that quarter.

[Statutory Authority: RCW 79.01.126. WSR 83-18-009 (Order 401), § 332-140-230, filed 8/26/83.]

WAC 332-140-240 Effect of expiration of RCW 79.01.126. Although RCW 79.01.126 will cease to be effective October 1, 1987, the regulations concerning stumpage rate adjustment will continue to apply to sales auctioned during the effective dates of RCW 79.01.126. The regulations will not apply to sales auctioned on or after October 1, 1987.

[Statutory Authority: RCW 79.01.126. WSR 87-22-076 (Order 521), § 332-140-240, filed 11/4/87.]

WAC 332-140-300 Initial deposit rate. (1) The rate for the initial deposit specified in RCW 79.01.132 and 79.01.204 shall be ten percent of the actual purchase price for lump sum sales and ten percent of the projected purchase price for scale sales, except as follows:

(a) In the case of lump sum sales over five thousand dollars, the initial deposit shall not be less than five thousand dollars.

(b) When the purchaser is a defaulter, the initial deposit shall be twenty-five percent of the purchase price for lump sum sales and twenty-five percent of the projected purchase price for scale sales, subject to subsection (1)(a).

(c) When a sale is assigned to a defaulter, the initial deposit shall be increased to twenty-five percent of the purchase price for lump sum sales and twenty-five percent of the projected purchase price for scale sales, subject to subsection (1)(a).

(2)(a) The purchaser shall certify to the department on the day of the sale in the form prescribed by the department whether the purchaser is a defaulter.

(b) When a sale is assigned, the assignee shall certify to the department in the form prescribed by the department whether the assignee is a defaulter. If the assignee is a defaulter, the assignee shall deposit the additional amount before the assignment is approved by the department.

(3)(a) The increased initial deposit for a defaulter shall remain in effect throughout the term of the sale, except as provided in subsections (3)(b) and (c).

(b) The initial deposit for a defaulter may be reduced to ten percent only if the defaulter has resolved all sales which were offered for bid after January 1, 1982, and were defaulted after September 19, 1984.

(c) The initial deposit may be reduced to ten percent if the defaulter assigns the sale to an assignee who is not a defaulter, but only if the condition in (3)(b) is met by the original purchaser.

(d) If the initial deposit is reduced pursuant to subsection (3)(b) or (c), the excess deposit shall be credited to stumpage or installment payments under the timber sales contract on which the increased deposit was required.

(4) The following definitions apply to this section.

(a) "Assign" means to transfer the rights and duties of a purchaser of a sale to another pursuant to the provisions of the timber sale contract.

(b) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired without completion of performance or full payment of amounts due, or the department has terminated the sale prior to expiration of the operating period for a breach of contract.

(c) "Defaulter" means a purchaser who (i) defaults on a sale after September 19, 1984, which sale was offered for bid after January 1, 1982, and (ii) has not resolved the defaulted sale.

(d) "Department" means the department of natural resources of [the] state of Washington.

(e) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is required to remove the forest products which are the subject of the sale.

(f) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation which owns a controlling interest in another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser.

(g) "Resolved" in reference to a sale in default means full compliance with the terms of (i) an agreement by the department and the defaulter of all disputed matters arising from the sale or (ii) final disposition by a court including termination of judicial review.

(h) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which have been or are being sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. All of the foregoing terms are considered to be synonymous as referred to in these regulations.

(5) The provisions of WAC 332-140-300 shall be deemed to be incorporated into the terms of all timber sales purchased after the effective date of these rules. A violation of these rules shall be deemed a breach of the provisions of the applicable timber sale.

[Statutory Authority: RCW 43.30.150 (2) and (6) and 43.30.070. WSR 85-01-066 (Order 438), § 332-140-300, filed 12/18/84.]

WAC 332-140-400 Eligible enterprise petition requirements to purchase set aside timber. A business concern and its affiliates, as defined in 13 C.F.R. 121.3, in effect January 1, 1988, (enterprise) which operates in the state of Washington one or more facilities manufacturing

lumber, plywood, veneer, posts, poles, pilings, shakes, or shingles must petition the department to become eligible to purchase timber reserved under chapter 424, Laws of 1989. The values on the petition must be certified by a certified public accountant in Washington state. The petition must be sent or delivered to the Timber Sales Division, Department of Natural Resources, Olympia, Washington 98504. The values required are:

(1) Total timber volume, converted to Scribner decimal C (Scribner) log scale, purchased by the enterprise in each of the previous three years.

(2) Scribner timber volume purchased by the enterprise from state and federally owned sources in each of the previous three years.

(3) Total Scribner volume purchased by the enterprise processed as defined by chapter 424, Laws of 1989 in the state of Washington in the previous year.

(4) Names and addresses of manufacturing facilities in Washington owned and/or affiliated with the enterprise.

The department will review the petition and supporting documents and determine if the petitioner is eligible under chapter 424, Laws of 1989 and if so add that enterprise to the eligibility list maintained in the Timber Sales Division, Department of Natural Resources, Olympia, Washington 98504, for sales reserved under chapter 424, Laws of 1989. The petitioner will remain on the list for one year from the date of petition. The enterprise may reestablish themselves on the list by petitioning again under this section.

[Statutory Authority: 1989 c 424 § 2. WSR 89-17-057 (Order 566), § 332-140-400, filed 8/15/89, effective 9/15/89.]