

Chapter 240-15 WAC

LOG EXPORT RESTRICTIONS

Reviser's note: The following chapter was **not** adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed for publication in the Washington Administrative Code by Governor Booth Gardner. It is shown below exactly as filed with history notes added by the Code Reviser's Office.

WAC

GENERAL

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GENERAL

WAC 240-15-005 Purposes and implementation. The Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382). The act directs the governor to promulgate rules for its implementation consistent with Section 553, of title 5, United States Code. These rules have been promulgated in accordance with the directives of the act rather than Chapter 34.05 RCW.

[WSR 92-11-017, § 240-15-005, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-005, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-005, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-005, filed 11/7/90, effective 1/1/91.]

WAC 240-15-010 Authority and definitions. (1) Applicability. This chapter shall apply to the sale of timber originating from public lands in the state of Washington, when such timber is subject to an order issued by the Secretary of Commerce of the United States under section 491(a) of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382). Western Red Cedar is exempt from these rules. The prohibition on the export of Western Red Cedar is covered by section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406 (i)).

(2) Presidential action. This chapter shall not apply to the extent that an order referred to under WAC 240-15-010(1) is suspended, removed, or modified by the President of the United States under the authority of section 491(e) or 491(f) of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382).

(3) Surplus timber. Timber which has been determined to be surplus to the needs of timber manufacturing facilities in the United States by the Secretary of Agriculture or the Secretary of the Interior of the United States is not subject to regulation under this chapter.

(4) Definitions. As used in this chapter:

(a) "Agency" means any state or local public entity which owns or manages land from which timber is harvested in the state of Washington.

(b) "Export" means either to load on a conveyance or vessel or put in a log raft with the intent to ship to a foreign destination, or to place at a facility such as a port, yard, pond, or dock with the intent to load on a conveyance or vessel or put in a log raft for shipment to a foreign destination.

(c) "Export restricted timber" means unprocessed timber originating from a sale of timber from public lands which has been designated as export restricted under WAC 240-15-015 (1)(a), and includes both logs and stumpage originating from such a sale.

(d) "Person" means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, 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.

(e) "Processing facility" means a facility for converting unprocessed timber into any of the items of processed timber listed in WAC 240-015-010(i). Chip plants, pulp mills and facilities that process only Western Red Cedar Products are not considered processing facilities.

(f) "Public lands" means lands in the state of Washington that are held or owned by the state of Washington, or a 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, or

(iii) Held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(g) "Purchaser" means a person who has been awarded a timber sale contract to harvest or acquire export restricted timber from public lands in the state of Washington.

(h)(i) "Substitution" means the purchase of export restricted timber or possession of an active sale contract for export restricted timber by (A) a person who owns and operates a processing facility (B) where the person owning the processing facility also exports or sells for export from the United States unprocessed timber originating from private lands in the state of Washington and (C) where such lands are owned by the person, or the person has exclusive rights to harvest timber from such lands, where such rights may be exercised at any time during a period of more than seven years. Substitution can occur only when all three above noted conditions are met. Exceptions to this seven year restriction may be considered on a case by case basis by the department of revenue in exceptional circumstances.

(ii) The reference in WAC 240-15-010 (4)(h)(i) to the export from the United States of unprocessed timber originating from private lands shall mean exports which occur at any time:

(A) After that date which is twelve months prior to the award date of the sale of the export restricted timber, except

that it shall not refer to any exports which occur prior to January 1, 1991; and

(B) Prior to that date which is twenty-four months after the award date of the sale of the export restricted timber, or the end of the term of the timber sale contract for the export restricted timber, whichever is later.

(i) "Unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. As used in this chapter, 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 2 and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8 3/4 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 or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

[WSR 92-11-017, § 240-15-010, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-010, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-010, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-010, filed 11/7/90, effective 1/1/91.]

WAC 240-15-015 Prohibitions. (1) Prohibition on export. Except as specifically provided under this chapter, no person may:

(a) Export from the United States export restricted timber; or

(b) Sell, trade, exchange, or otherwise convey to any other person, for the purpose of export from the United States, export restricted timber.

(2) Prohibition on substitution. Except as specifically provided under this chapter, no person may purchase or possess an active contract for export restricted timber from any agency if such person owns and operates a processing facility and the processing of export restricted timber at such facility by such person would constitute substitution.

(3) Prohibition on certain indirect transactions. Except as specifically provided under this chapter, no person may purchase from any other person export restricted timber if such person is prohibited under WAC 240-15-015(2) (relating to substitution) from purchasing such timber directly from the agency managing the public lands from which such timber originated.

(4) Exemptions. Notwithstanding any other provisions of this chapter;

(a) The prohibition in WAC 240-15-015(2) (relating to substitution) shall not apply to the use of timber originating from public lands which is either (i) hardwood timber, or (ii) Western Red Cedar.

(b) The prohibitions in WAC 240-15-015(3) (relating to certain indirect purchases) shall not prohibit the sale of up to 33 1/3 percent of the volume (not including hardwoods and western red cedar) in any sale purchased in calendar year 1991 to a person or persons who are otherwise ineligible under WAC 240-15-015(3) to purchase such timber, provided the timber is processed at a domestic facility. For timber sales sold in calendar year 1992, the volume that may be sold to such persons shall be reduced to 20 percent of the total volume (not including hardwoods and western red cedar). For timber sales sold in calendar year 1993 and after, the volume that may be sold to such persons shall be reduced to 10 percent of the total volume (not including hardwoods and western red cedar). The transferor shall notify the department of revenue, in writing, of any such transaction prior to physically transferring the timber to the transferee. Rights to purchase export restricted timber under this paragraph may be used on a sale by sale basis and may not be accumulated or transferred to other sales. The advertised volume or volume specified in the sale agreement shall serve as the basis for determining the sale volume to which the percentage applies.

(c) The prohibition in WAC 240-15-015(2) (relating to substitution) shall not prohibit the purchase by any person of export restricted timber originating from public lands in Ferry County or any other county in the State of Washington partially or entirely east of the Columbia River if such person does not export or sell for export timber from private lands in that geographic area.

(d) The prohibition in WAC 240-15-015(2) (relating to substitution) shall not apply to any log, regardless of gross scale, sold to a domestic processing facility for the purpose of conversion into chips, pulp or pulp products.

[WSR 92-11-017, § 240-15-015, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-015, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-015, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-015, filed 11/7/90, effective 1/1/91.]

WAC 240-15-020 Agency requirements. (1) Designation of export restricted timber.

(a) Each agency managing public lands subject to this chapter shall designate timber sales to be sold as export restricted and as exportable. Pursuant to an order issued by the Secretary of Commerce of the United States for calendar years 1992 and 1993, each agency shall designate as export restricted, sales that include 75 per cent of the volume of unprocessed timber from such agency's annual sales program, excluding Western Red Cedar. This percentage shall remain in effect until revised by order of the Secretary of Commerce of the United States under section 491(a) of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382). Sales designated as export restricted shall be distributed proportionately throughout the geographical area of land owned or managed by the agency. Timber originating from sales designated as export restricted

shall be representative of the species and grade distribution of the agency's sale program.

(b) Designation of timber sales as export restricted and as exportable shall be on a sale by sale basis and shall apply to the entire sale being considered; except that a sale shall be subdivided into portions that are export restricted and exportable if there are insufficient sales in the annual sales program to insure that designation on a sale by sale basis meets the applicable requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 (Public Law 101-382).

(2) Report to the governor. By March 31 of each year, each agency selling timber from public lands shall report to the governor on the results of its sales program in compliance with the Forest Resources Conservation and Shortage Relief Act (Public Law 101-382) for the preceding calendar year. The report shall include information on the volume, species, grade, and geographical distribution of sales sold as export restricted and not export restricted.

(3) Reports on the purchase of timber. Not later than five days after the receipt of a Purchaser Certification furnished to an agency under WAC 240-15-025, the agency shall submit a copy of such certification to the Washington department of revenue. The agency shall make copies of such reports available to the public at reasonable times and locations.

(4) Contract provisions. Agencies contracting for the sale of export restricted timber from public lands shall include in such contracts clauses incorporating the applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). In addition, such contracts shall include clauses which provide that a violation by the purchaser of the prohibitions under WAC 240-15-025 (relating to the prohibitions on export and substitution) shall be sufficient cause for the agency to cancel the contract.

(5) Prohibition on accepting bids from ineligible purchasers. Agencies shall not accept bids for sales of export restricted timber from persons included on the list of ineligible purchasers published by the department of revenue under this chapter.

(6) List of ineligible purchasers. Agencies contracting for the sale of export restricted timber from public lands shall attach to such contracts a copy of the most recent list of ineligible purchasers published by the department of revenue.

[WSR 92-11-017, § 240-15-020, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-020, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-020, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-020, filed 11/7/90, effective 1/1/91.]

WAC 240-15-025 Reporting requirements. (1) Purchaser certification. Prior to issuing a contract for the sale of export restricted timber, an agency which has offered such timber for sale shall require that the purchaser submit two signed copies of a purchaser certification, in such form as the department of revenue may require, which affirms, under penalty of law, the truth of each of the following:

(a) That such timber, while still in unprocessed form, will not be:

(i) Exported by the purchaser or used in substitution by the purchaser; or

(5/12/92)

(ii) Transferred to any other person for the purpose either of export or to be used in substitution.

(b) That hammer brands and red paint applied to such timber as required by this chapter shall remain on such timber until it is domestically processed.

(c) That prior to selling, trading, exchanging, or otherwise conveying any timber which is export restricted timber to any other person, the purchaser (transferor) shall require the transferee to provide to the purchaser (transferor) two signed copies of a completed transferee certification, in such form as the department of revenue shall require; and that the purchaser (transferor) shall provide the department with one copy not later than five days after receipt from the transferee.

(d) That the purchaser (transferor) shall not sell, trade, exchange, or otherwise convey export restricted timber to any person identified on the list of ineligible purchasers published by the department of revenue under this chapter.

(2) Transferee certification. Any person possessing export restricted timber shall, prior to selling, trading, exchanging, or otherwise conveying such timber to any other person, require the transferee to provide to the transferor two signed copies of a completed transferee certification, in such form as the department of revenue shall require. The transferee certification shall include an affirmation, under penalty of law, as to the truth of each of the items required to be affirmed in a purchaser certification, (except insofar as the transfer is pursuant to WAC 240-15-015 (4)(b) (relating to certain indirect transactions)[)] as well as the quantity of export restricted timber which is being transferred. The transferor shall provide to the department of revenue one signed copy of the transferee certification not later than five days after the receipt from the transferee.

(3) Reporting requirements for certain purchasers of export restricted timber. Any person who:

(a) Processes export restricted timber, and

(b) Either owns forest lands the state of Washington, or has the exclusive right to harvest timber from lands in the state of Washington for a period of more than seven years, shall, for purposes of the reporting requirements under this section, treat any timber harvested from lands referred to in WAC 240-15-025 (3)(b) during the period of time referred to under WAC 240-15-010 (4)(g)(ii)(B) as though it were export restricted timber originating from public lands. However, nothing in this section shall require painting or branding of timber originating on private lands.

(4) Every person who purchases export restricted timber or who comes into possession of export restricted timber shall keep and preserve for a period of five years, suitable records as may be necessary to determine the final distribution and use of such export restricted timber, and the final distribution and use of timber which is subject to the prohibition against substitution in WAC 240-15-015(2).

[WSR 92-11-017, § 240-15-025, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-025, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-025, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-025, filed 11/7/90, effective 1/1/91.]

WAC 240-15-030 Enforcement. (1) Debarment.

(a) Any person who knowingly violates any of the prohibitions in WAC 240-15-015(1) (relating to exports), WAC 240-15-015(2) (relating to substitution), or WAC 240-15-

015(3) (relating to certain indirect transactions) shall be debarred, by an order issued by the department of revenue from bidding on or purchasing export restricted timber originating from any public lands covered by this chapter for a period of two years.

(b) A second debarment of any person under this section which is for a violation by the same person committed after the first debarment of such person under this section shall result in a permanent debarment of such person from bidding on or purchasing export restricted timber originating from any public lands covered by this chapter.

(c) The Washington Administrative Procedure Act shall apply to the issuance of any order by a state agency under this subsection. Agencies other than state agencies shall follow appropriate procedures in issuing any order under this subsection.

(d) For purposes of this section, the term "person" shall include any previously formed but no longer existing entity which would be included in WAC 240-15-010 (4)(d) if existing now.

(2) Log branding and marking requirements.

(a)(i) All log ends 10 inches or greater in diameter from sales of unprocessed timber by a public agency covered by this chapter shall, prior to removal from the sale area, be hammer branded with a brand registered under chapter 76.36 RCW, as amended.

(ii) In addition to the branding requirements of WAC 240-15-030 (2)(a)(i), both ends of all logs from those sales designated as export restricted under WAC 240-15-020 (1)(a) shall, prior to removal from the sale area, be painted with durable red paint.

(b) If timber that has been properly marked and branded, as required under WAC 240-15-030 (2)(a), is subdivided into smaller pieces for any purpose other than immediate processing, each piece shall be marked in the same manner as the original timber.

[WSR 92-11-017, § 240-15-030, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-030, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-030, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-030, filed 11/7/90, effective 1/1/91.]

WAC 240-15-035 Requirements applicable to the department of revenue. (1) Administration. Administration of this chapter shall be the responsibility of the Washington department of revenue.

(2) Referrals of violations. Whenever the department of revenue becomes aware of a violation, or possible violation, of the prohibitions in WAC 240-15-015(1) (relating to export), WAC 240-15-015(2) (relating to substitution), or WAC 240-15-015(3) (relating to certain indirect transactions) it shall notify the managing agency so that such agency may promptly take appropriate action, as provided in this chapter.

(3) Monitoring.

(a) The department of revenue shall develop and implement a program for the monitoring of export restricted timber in transit and at ports and other facilities for the purpose of ensuring that

(i) Export restricted timber is not exported from the United States or used in substitution, and

(ii) Timber harvested from lands referred to in WAC 240-15-025 (3)(b) (relating to reporting requirements for certain purchasers of export restricted timber) at any time during the period of time referred to in WAC 240-15-010 (4)(g)(ii), is not exported from the United States.

(b) The department of revenue may enter into contracts or agreements with other appropriate state or federal authorities for the purpose of meeting the requirements of WAC 240-15-035 (3)(a).

(4) Certifications.

(a) The department of revenue shall issue uniform forms which shall be used as Purchaser Certifications required to be submitted under WAC 240-15-025(1), and Transferee Certifications required to be submitted under WAC 240-15-025(2). Each such form shall include a notification, conspicuously placed, that the making of a false statement on such certification is punishable as a gross misdemeanor under RCW 9A.72.040.

(b) Copies of all certifications received by the department of revenue shall be available for public inspection at reasonable hours and locations.

(c) The department of revenue may audit certifications submitted by any person under WAC 240-15-025 (relating to reporting requirements) in order to assure that such person is able to account for the disposition of all export restricted timber which such person has purchased from a public agency or received by means of transfer from any other person.

(d) The department of revenue shall develop and implement a program to audit certifications submitted under WAC 240-15-025 (relating to reporting requirements) in order to assure that persons who acquire export restricted timber are able to account for the disposition of all export restricted timber which they have purchased from a public agency or received by means of transfer from any other person.

(5) List of ineligible purchasers.

(a) The department of revenue shall establish and maintain a list of persons who, due to violations of this chapter, are ineligible to purchase export restricted timber.

(b) The department of revenue shall add a person to the list referred to in WAC 240-15-035 (5)(a) whenever:

(i) It finds under WAC 240-15-030(1) (relating to debarment) that such person has violated WAC 240-15-015(1) (relating to the prohibition on exports), WAC 240-15-015(2) (relating to the prohibition on substitution), or WAC 240-15-015(3) (relating to certain indirect transactions); or

(ii) It receives notification from an agency which sells export restricted timber that such agency has made a finding, under WAC 240-15-030(1) (relating to debarment) that such person has violated WAC 240-15-015(1) (relating to the prohibition on exports) WAC 240-15-015(2) (relating to the prohibition on substitution), or WAC 240-15-015(3) (relating to certain indirect transactions).

(c) The department of revenue shall remove a person from the list referred to in WAC 240-15-035 (5)(a) after such period of time has elapsed as is required under the order debarring such person under WAC 240-15-030(1) (relating to debarment). No person who is placed on the list as the result of being debarred for a violation which occurred subsequent to the first debarment of such person under WAC 240-15-030(1) shall be removed from the list.

(d) The department of revenue shall provide a copy of the list of ineligible purchasers referred to in WAC 240-15-035 (5)(a)(i) to each agency which sells export restricted timber, and (ii) each person who requests to receive copies of the list. The department of revenue shall provide revised copies of the list to all such agencies and persons whenever a person is added to or removed from the list.

[WSR 92-11-017, § 240-15-035, filed 5/12/92, effective 7/1/92; WSR 91-14-040, § 240-15-035, filed 6/27/91, effective 8/16/91. Statutory Authority: Public Law 101-382. WSR 91-02-111, § 240-15-035, filed 1/2/91, effective 1/2/91; WSR 90-22-105, § 240-15-035, filed 11/7/90, effective 1/1/91.]