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20.02.11 - TIMBER SUPPLY STABILIZATION ACT OF 1989 ON STATE FORESTS

000. (RESERVED).

001. TITLE AND SCOPE.

These rules set forth the policy and procedures to promote wood processing and manufacturing in Idaho to generate related business and employment opportunities, creating additional corporate and individual income and property taxes for the state and its endowed institutions, and act as a market participant in the forest products market in a way that helps enhance the long-term maximum value of state forests by ensuring that an adequate proportion of the total sales of forest products sold by the state of Idaho is sold to qualified purchasers within Idaho. (6-3-91)

002. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners. (6-3-91)
02. Director. The director of the Idaho Department of Lands or his authorized representative. (6-3-91)
03. Dislocations. An event or combination of events, including but not limited to the closure and/or curtailment of production of wood processing or manufacturing facilities; natural catastrophic events which modify the normal and planned forest products harvest on state forests; or economic conditions which disrupt or modify the ability of qualified bidders to fully utilize the forest products from state forests in a geographic area. (6-3-91)
04. Forest Products. Major forest resources including sawlogs, pulp, cedar poles, and cedar products suitable for split products or other marketable materials. (6-3-91)
05. Person. Any individual, association, partnership, corporation, trust, or other legal entity. (6-3-91)
06. Pulp Logs. Any portion of a tree that does not meet the sawlog merchantability specifications of thirty three and one-third percent (33 1/3%) net scale. (6-3-91)
07. Qualified Bidder. A person who has neither processed outside of Idaho, nor sold to another person who has processed outside of Idaho, five percent (5%) or more of the cumulative estimated (advertised) total of the forest products from state forests he or she has purchased; provided, however, that the purchase and disposition of pulp logs, as such logs are defined by the Board, shall not be considered in determining whether a purchaser is qualified. (6-3-91)
08. State. The state of Idaho. (6-3-91)
09. State Forests. All forest lands owned by the state of Idaho, including those lands granted to an institution by the federal government, which are managed or controlled by the Board pursuant to section 8, article IX, of the constitution of the state of Idaho. (1-26-94)
10. Timber Sales. Sales exceeding the net appraised value established for salvage sales by the state board of land commissioners and one million (1,000,000) board feet of forest products in estimated volume designed to produce maximum returns to the endowment funds consistent with prudent long-term management practices. (7-1-96)
11. Wood Processing or Manufacturing. The conversion of forest products into finished wood products generally recognized as consumer goods, including, but not limited to: paper, shakes, lumber, shingles, plywood and panel products, utility and other finished poles, and posts and other fence products. Wood processing or manufacturing shall not include removing bark and the intermediate underlying surfaces of logs thereby producing cants for export outside the boundaries of the state. (6-3-91)

**011. -- 014. (RESERVED).**

**015. SALE OF STATE TIMBER.**

The director shall prepare an annual sales plan which will describe the timber sales to be offered for sale during the forthcoming fiscal year. Ninety-five percent (95%) of the total estimated (advertised) volume of timber sales, exclusive of the estimated pulp log volumes shall be offered for sale to qualified bidders. The remaining five percent (5%) of the total estimated (advertised) volume of the year's timber sales shall be offered to all persons, regardless of whether they are qualified bidders under these rules. The sales to be offered to all persons shall be so indicated on the annual sales plan. (6-3-91)

**016. -- 019. (RESERVED).**

**020. BOARD POLICY.**

The Board shall, if it finds after consideration of unanticipated dislocations in local forest products supplies that the forest products from state timber sales in certain regions of the state will not be needed by qualified bidders, offer such timber sales for sale to all persons regardless of whether they are qualified bidders under these rules. In addition, if the Board determines that a purchaser who has previously acquired state timber sales is adversely affected by a market dislocation, such purchaser may dispose of his forest products without affecting his qualified bidder status. In the event qualified bidders do not purchase timber sales offered for sale exclusively to them, the Board, if it finds after consideration of the reasons the timber sale was not sold, that it is in the best interests of the state and the endowed institutions, may offer the timber sale to all bidders, without regard to whether they are qualified bidders. The purchase and disposition of such timber sales shall not be considered in determining whether a person is a qualified bidder for subsequent timber sales. (6-3-91)

**021. -- 024. (RESERVED).**

**025. CERTIFICATION AND APPROVAL OF BIDDERS.**

01. Purchaser List. The director shall prepare a list of timber sale purchasers for fiscal years 1980-1989. The list will be submitted to the Board to certify qualified bidders. All purchasers on this list will be considered qualified bidders as of July 1, 1989. The list of qualified bidders shall be maintained and updated by the department and approved by the Board. At the request of the Board each bidder shall present forest products purchase and disposition records to show the cumulative annual purchases and disposition of forest products from state forests for the years preceding the date of timber sale in support of certification. However, in no event shall the disposition of forest products from timber sales sold prior to July 1, 1989, be considered. (6-3-91)

02. Purchaser Certification. Any person seeking certification who has not previously purchased timber sales shall provide the Board with names and addresses of all persons who have any financial interest in the purchase or disposition of forest products, whether such interest results from open loans, mortgages, conditional sales, contracts, silent partnerships, trusts, or any other basis other than trade accounts incurred in the ordinary course of business, and the amounts of such interest. Persons seeking certification shall further provide any other information the Board reasonably requires to determine whether such person is a qualified bidder. In determining the status of a person, the Board may take into consideration other evidence, such as scaling records, load tickets for vehicles transporting forest products, and other written and oral testimony. The information received shall be subject to disclosure according to Chapter 3, Title 9, Idaho Code, and shall not be available to the general public unless the person seeking to become a qualified bidder authorizes a release of such information. (1-26-94)

**026. -- 029. (RESERVED).**

**030. REMOVAL FROM LIST OF CERTIFIED BIDDERS.**

The Board shall maintain a list of all certified bidders. The Board shall immediately remove from its list of certified bidders any person who ceases to meet the definition of a qualified bidder. Any person removed from the list of qualified bidders shall be ineligible to participate in any bidding on timber sales reserved for qualified bidders for a period of five (5) years. The Board shall retain the power to make the final determination upon a bidder's status. (6-3-91)

**031. -- 034. (RESERVED).**

**035. BRANDING OF FOREST PRODUCTS.**

The Board or the director may require that the forest products harvested from state timber sales be branded for identification as forest products derived from state timber sales. (6-3-91)

**036. EXPORT OF UNPROCESSED TIMBER BEYOND THE BOUNDARIES OF THE UNITED STATES.**

01. Export of Unprocessed Forest Products. Unprocessed forest products, as defined in section 493 of the Forest Resources Conservation and Shortage Relief Act of 1990, Publ. L. No. 101-382, section 487, 104 Stat. 714, (1990) (to be codified at 16 U.S.C. 620), originating from lands owned by the state shall not be exported from the United States or be sold, traded, exchanged, or otherwise given to any person unless that person agrees not to export such timber products from the United States. (6-3-91)

02. Export Defined. The term "export" shall mean either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An export yard or pond is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. (6-3-91)

03. Indirect Export. Unprocessed timber is exported indirectly when export occurs as a result of a sale to another person, as a result of any subsequent transaction, or as a result of direct or indirect substitution as defined by the Act, 16 U.S.C. section 620(a)(1) and 16 U.S.C. section 620(b)(1), except that for the purposes of this regulation, the term "private lands" shall mean "private lands within the state of Idaho," the term "federal lands" shall mean "lands owned by the state of Idaho," and references to "any department or agency of the United States" shall mean "any department or agency of the state of Idaho"; and for purposes of computing the twenty four (24) month period under section 620(a)(1)(B) exports of unprocessed timber originating from private lands in the state of Idaho occurring prior to the adoption of the Act shall be disregarded. (6-3-91)

04. Indirect Export; Limitation. No person shall be deemed to have indirectly exported unprocessed timber as a result of actual export by a subsequent purchaser, if the person obtained from the person to which it sold, traded, or otherwise disposed of the unprocessed timber a written statement that the buyer would not export said unprocessed timber prior to its manufacture into a product not within the definition of unprocessed timber as defined in the Act. (6-3-91)

05. Applicability. The provisions of this rule shall apply to all state of Idaho timber sales occurring since the adoption of the Act. (6-3-91)

**037. -- 999. (RESERVED).**