

From: [Gillis, Diana L.](#)
To: [REDACTED] [Berg, Karen E.](#)
Cc: [REDACTED] [Walsh, Kathryn E.](#)
Subject: RE: Questions re Unproductive Real Property Exemption [REDACTED]
Date: Thursday, June 23, 2016 2:52:00 PM

1. We agree with your analysis.
2. In this situation, where both the mill and timberlands are sold to the same buyer, the mill is a manufacturing facility, and therefore is not “unproductive real property,” per 802.2(c)(2)(ii). Because the timberlands are used in conjunction with the mill, the timberlands also cannot qualify as unproductive real property, per 802.2(c)(2)(iii).

See, e.g., Example 7 in the reg: 7. “A” proposes to purchase from “B,” for in excess of \$50 million (as adjusted), a 100 acre parcel of land that includes a currently operating factory occupying 10 acres. The other 90 adjoining acres are vacant and unimproved and are used by “B” for storage of supplies and equipment. The factory and the unimproved acreage have an aggregate fair market value of in excess of \$50 million (as adjusted). The transaction is not exempt under §802.2(c) because the vacant property is adjacent to property occupied by the operating factory. Moreover, if the 90 acres were not adjacent to the 10 acres occupied by the factory, the transaction would not be exempt because the 90 acres are being used in conjunction with the factory being acquired and thus are not unproductive property.

From: [REDACTED]
Sent: Tuesday, June 21, 2016 4:50 PM
To: Berg, Karen E.; Gillis, Diana L.
Cc: [REDACTED]
Subject: Questions re Unproductive Real Property Exemption [REDACTED]

Dear Ms. Berg or Ms. Gillis:

We would appreciate your input regarding the exemption for transactions in unproductive real property, 18 C.F.R. 802.2(c), as it applies to timberlands.

An ultimate parent entity (the “Company”) intends to sell various contiguous and non-contiguous parcels of timberland property (collectively the “Timberlands”) and may sell a mill owned by the Company, which is not contiguous with any of the Timberlands (the “Mill”).

The Company makes sales of timber directly from the Timberlands to purchasers of timber (the “Unmanufactured Sales”).

In addition, the Company transfers the harvested timber from the Timberlands to the Mill. We understand that this intracompany transfer of timber is not counted against the \$5,000,000 threshold under 16 C.F.R. 802.2(c). See [HSR Informal Interpretation Letters # 0511018](#) (Nov. 18, 2005).

At the Mill, the Company manufactures the timber and sells the manufactured products to buyers on the open market (the “Manufactured Sales”).

We have two questions:

1. If the Company sells the Timberlands and the Mill to different and nonaffiliated buyers, we

understand that the Company should count only the Unmanufactured Sales towards the \$5,000,000 threshold calculation of the parcels of Timberlands under 16 C.F.R. 802.2(c). In other words, in this scenario, Manufactured Sales should not be counted in the calculation of the \$5,000,000 threshold with respect to the Timberlands. Do you agree?

2. If the Company sells both of the Timberlands and the Mill to the same buyer, we understand that the analysis is the same and only the Unmanufactured Sales should count towards the \$5,000,000 threshold under 16 C.F.R. 802.2(c) because the Timberlands are not contiguous with the Mill. Do you agree?

Thank you.

Regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]