


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 918, Approved and Ordered DEC - 8 2008

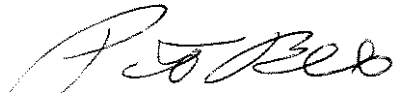


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) *the BC Timber Sales Regulation, B.C. Reg. 265/88, is repealed,*
- (b) *the BC Timber Sales Regulation attached as Schedule A is made, and*
- (c) *the Advertising, Deposits, Disposition and Extension Regulation, B.C. Reg. 55/2006, is amended as set out in the attached Schedule B.*



Minister of Forests and Range



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- *Forest Act, R.S.B.C. 1996, c. 157, sections 20 (2), 78 (5), 151 (1), (1.1), (2) (e) and (2) (y)*

Other (specify):- *oic 1326/88, oic 162/2006*

October 16, 2008

R/860/2008/22

SCHEDULE A

BC TIMBER SALES REGULATION

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Interpretation

- 1 (1) In this regulation:
- “Act” means the *Forest Act*;
 - “arm’s length” has the same meaning as in the *Income Tax Act (Canada)*;
 - “BC timber sales enterprise” means a person registered in a category referred to in section 2;
 - “control of a corporation” means beneficial ownership of 50% or more of its issued capital, having full voting rights in all circumstances, by
 - (a) one person, or
 - (b) a group of persons not dealing with each other at arm’s length;
 - “forest licence” means a forest licence for which applications were restricted under section 13 (1.1) of the Act, as it was immediately before its repeal;

“sawmill” means a timber processing facility that manufactures lumber, timbers or cants from logs;

“timber processing facility” means a facility that processes

- (a) timber or wood residue or both,
- (b) products produced from timber or wood residue or both, or
- (c) products under both paragraphs (a) and (b).

(2) In section 21 of this regulation and section 58.3 of the Act, “harvesting” means to

- (a) cut,
- (b) remove, or
- (c) knock down

any timber authorized for harvest under a timber sale licence.

PART 1 – REGISTRATION AS A BC TIMBER SALES ENTERPRISE

Categories

2 For the purposes of the Act, 3 categories of BC timber sales enterprises are established,

- (a) category 1 comprised of persons referred to in section 3,
- (b) category 2 comprised of persons referred to in section 4, and
- (c) category 3 comprised of persons referred to in section 5.

Registration, category 1

3 (1) For the purposes of subsection (3), “shareholder” means a shareholder of a corporation who, directly or indirectly, beneficially owns more than 10% of the issued and outstanding voting shares of the corporation.

(2) A person may be registered as a BC timber sales enterprise in category 1 if the person meets each of the requirements of subsection (3) and applies to a timber sales manager in a manner approved by the manager.

(3) In order to be registered under this section a person must

- (a) be an individual at least 19 years of age or be a corporation registered in British Columbia,
- (b) not be any of the following:
 - (i) registered in any other category under this regulation;
 - (ii) a shareholder of a corporation registered in a category under this regulation;
 - (iii) a corporation that has a shareholder that is also a shareholder of a corporation registered in a category under this regulation, and
- (c) not be the holder of BC timber sales agreement the rights under which are suspended under section 78 or 78.1 of the Act.

Registration, category 2

- 4 (1) A person may be registered as a BC timber sales enterprise in category 2 if the person meets each of the requirements of subsection (2) and applies to the timber sales manager in a manner approved by the manager.
- (2) In order to qualify for registration under this section, a person
- (a) must meet the requirements of section 3 (3) (a) and (c),
 - (b) must not be registered in any other category under this regulation,
 - (c) must own or lease a timber processing facility in British Columbia in respect of which no other person is registered in a category under this regulation, and
 - (d) must not
 - (i) hold,
 - (ii) be in control of a corporation that holds,
 - (iii) be a corporation that has 50% or more of its shares held by one or more shareholders that are also shareholders in a corporation that holds,
 - (iv) be a corporation that is controlled by a corporation that is also in control of a corporation that holds, or
 - (v) be a corporation that is controlled by a corporation that holds a pulpwood agreement or one or more major licences that together have an aggregate allowable annual cut greater than 10 000 m³.
- (3) If the timber processing facility referred to in subsection (2) (c) is a sawmill, the sawmill must include a chipper and a debarker unless the timber sales manager has exempted the sawmill from this requirement.

Registration, category 3

- 5 (1) A person may be registered as a BC timber sales enterprise in category 3 if the person meets the requirements of subsection (2) and applies to a timber sales manager in a manner approved by the manager.
- (2) In order to qualify for registration under this section, a person
- (a) must have been registered as a BC timber sales enterprise in category 3 on June 20, 2003,
 - (b) must meet the requirements of sections 3 (3) (a) and (c) and 4 (2) (d),
 - (c) must not meet the requirement of section 4 (2) (c),
 - (d) must not be registered in any other category under this regulation, and
 - (e) must state in the application for registration that he or she intends to own or lease a timber processing facility.
- (3) When a person registered in category 3 becomes the owner or lessee of a timber processing facility in British Columbia in respect of which no other person is registered in a category under this regulation, the person ceases to be registered in category 3 and is registered in category 2.

- (4) A person who, under subsection (3), has become an owner or lessee of a timber processing facility must notify a timber sales manager in a manner approved by the manager.

Determining aggregate allowable annual cut

- 6 In determining the aggregate allowable annual cut under section 4 (2) (d) or 5 (2) (b), the allowable annual cut of a forest licence must not be included.

Refusal to register

- 7 Despite sections 3 to 5 of this regulation, a timber sales manager may refuse to register a person as a BC timber sales enterprise in a category under this regulation if the person
- (a) is a BC timber sales enterprise that has been disqualified under section 78 of the Act,
 - (b) is or was
 - (i) a shareholder in,
 - (ii) an officer or director of, or
 - (iii) a person not at arm's length witha BC timber sales enterprise that has been disqualified under section 78 of the Act, or
 - (c) has not, or is not at arm's length with a person that has not,
 - (i) paid the money required to be paid to the government under the circumstances set out in section 130 (1.1) of the Act by the due date specified under that section, or
 - (ii) made arrangements satisfactory to the revenue minister to pay the money referred to in subparagraph (i).

Updating registration information

- 8 If a person registered as a BC timber sales enterprise under this regulation knows, or reasonably ought to know, that information included in the person's application for registration has ceased to be accurate, the person must submit accurate information to the timber sales manager in the time and manner approved by the manager.

Deemed cessation of registration

- 9 (1) If a person registered in a category under this regulation
- (a) ceases to meet the requirements of this regulation for registration in that category, or
 - (b) holds 3 or more licences under which primary timber harvesting operations have not been completed, whether forest licences, timber sale licences, or any combination of the two,
- the person is deemed not to be registered in that category until such time as the circumstances described in paragraphs (a) and (b) do not apply to the person.
- (2) If a person registered in a category under this regulation does not apply for a timber sale licence under section 20 of the Act within a 5-year period beginning on the later of

- (a) the date the person was registered in the category under this regulation, or
 - (b) the date the person most recently applied for a timber sale licence under section 20 of the Act,
- the person ceases to be registered in that category.

Cancellation of registration

- 10** (1) A timber sales manager must, on application by a person registered as a BC timber sales enterprise in a category under this regulation, cancel the person's registration in that category.
- (2) Despite sections 3 to 5 of this regulation, a timber sales manager may cancel the registration of a person who is registered as a BC timber sales enterprise in a category under this regulation if the person
- (a) has not
 - (i) paid the money required to be paid to the government under section 130 of the Act by the due date specified, or
 - (ii) made arrangements satisfactory to the revenue minister to pay the money referred to in subparagraph (i),
 - (b) has not notified the timber sales manager in accordance with section 5 (4), or
 - (c) has not submitted accurate information to the timber sales manager in accordance with section 8.

Bidding

- 11** If, under the Act, the timber sales manager specifies that applications for a timber sale licence will be accepted only from BC timber sales enterprises, the timber sales manager may require the applicant to provide proof
- (a) of registration as a BC timber sales enterprise,
 - (b) that the applicant continues to meet each of the requirements of this regulation for registration, and
 - (c) that the person has not ceased to be a BC timber sales enterprise.

Disqualification period

- 12** (1) For the purposes of section 78 (4) (a) and (5) of the Act, the timber sales manager must, on a case-by-case basis and in accordance with the limits set out in subsection (2) and the criteria set out in subsection (3) of this section, determine the period of disqualification of a person who is the successful applicant for a BC timber sales agreement and who does not enter into the agreement.
- (2) The period of disqualification referred to in subsection (1) may be
- (a) 6 months long or longer, or
 - (b) indefinite in length.
- (3) In determining the period of disqualification, the timber sales manager must take into consideration the following criteria:

- (a) whether the person has refused to enter into one or more previous agreements in respect of which the person was the successful applicant;
- (b) an estimate of the direct and indirect costs to government resulting from the person's refusal to enter into the agreement referred to in subsection (1) including but not limited to
 - (i) foregone stumpage, and
 - (ii) costs that are or will be incurred by the government in the ordinary course of business because of the person's refusal to enter into the agreement;
- (c) any other information that the timber sales manager considers to be relevant.

Transfer of registration prohibited

- 13** A person registered as a BC timber sales enterprise under this regulation may not transfer that registration to another individual or corporation.

PART 2 – ADVERTISING AND DEPOSITS

Advertising timber sale licences

- 14** An advertisement inviting applications for a timber sale licence must be published by posting the advertisement on a publicly accessible website maintained by or on behalf of the ministry, in accordance with the following:
- (a) if
 - (i) the total volume of timber to be authorized for harvesting under the licence is less than 2 000 m³, or
 - (ii) the timber must be removed expeditiously because it is in imminent danger of being damaged, destroyed or otherwise lost,
 a minimum of 5 days before the date of sale;
 - (b) if the total volume of timber to be authorized for harvesting under the licence is 2 000 m³ or more, but less than 15 000 m³, a minimum of 3 weeks before the date of sale;
 - (c) if the total volume of timber to be authorized for harvesting under the licence is 15 000 m³ or more, but less than 100 000 m³, a minimum of 4 weeks before the date of sale;
 - (d) if the total volume of timber to be authorized for harvesting under the licence is 100 000 m³ or more, a minimum of 8 weeks before the date of sale.

Bid deposits for timber sale licences

- 15** (1) If, under section 20 of the Act, an application is made for a timber sale licence, the application must
- (a) include, in cash, by certified cheque or by other security acceptable to the minister, a bid deposit calculated under subsection (3), or

- (b) specify that the applicant relies on a standing bid deposit previously received by the government,
 - (i) in the form of cash, certified cheque or other security acceptable to the minister, and
 - (ii) calculated under subsection (4).
- (2) Despite subsection (1),
 - (a) the bid deposit required under subsection (1) (a) may be in an amount specified by the timber sales manager that is less than the amount calculated under subsection (3), or
 - (b) if a bid deposit is unnecessary in the opinion of the timber sales manager, an application
 - (i) may be without any bid deposit, in the case of an application to which subsection (1) (a) applies, or
 - (ii) need not specify as set out in subsection (1) (b), in the case of an application to which that provision applies.
- (3) Subject to subsection (2), the bid deposit referred to in subsection (1) (a) must be in an amount of not less than the greater of \$3 000 and 2% of the total estimated upset stumpage value.
- (4) The standing bid deposit referred to in subsection (1) (b) is non-refundable during the 12-month period immediately following the date it is made and must be in the amount of
 - (a) \$10 000 for a deposit applicable only in respect of applications for timber sale licences, each with a total volume authorized for harvesting that is 10 000 m³ or less, or
 - (b) \$25 000 for a deposit applicable in respect of applications for timber sale licences of any size.

Amount of deposit for timber sale licence

- 16**
- (1) Before entering into a timber sale licence, the successful applicant for the licence must pay the government, on demand,
 - (a) the difference between the bid deposit referred to in section 15 (1) (a) or (2) (a), whichever is applicable, and the deposit calculated under subsection (2) of this section, or
 - (b) the full amount of the deposit calculated under subsection (2) of this section if the application is one described in section 15 (1) (b) or (2) (b).
 - (2) The deposit for a timber sale licence must be in an amount not less than the sum of
 - (a) 10% of the first \$100 000 of total estimated stumpage value, and
 - (b) 5% of the remaining total estimated stumpage value.
 - (3) If all or part of the deposit is used by the government during the term of a timber sale licence, the successful applicant must make, on demand, a further payment to the government to maintain the deposit in the amount determined under this section.

- (4) Despite subsection (3), section 7 of the Advertising, Deposits and Disposition Regulation, B.C. Reg. 552/78, as it read immediately before November 4, 2003, applies to a timber sale licence that was advertised or entered into before that date.

Deposits for forest licences and forestry licences to cut

- 17 (1) If a person enters into a forest licence, the person must maintain on deposit with the government an amount equal to 15¢/m³ of the allowable annual cut.
- (2) If a person enters into a forestry licence to cut under section 47.6 (3) of the Act, the person must maintain on deposit with the government an amount determined by the timber sales manager.
- (3) A deposit required under this section must be submitted in the form of cash, certified cheque or other security acceptable to the minister.
- (4) If all or part of the deposit is used by the government during the term of a forest licence or forestry licence to cut under section 47.6 (3), the holder of the licence must make, on demand, a further payment to the government to maintain the deposit in the amount determined under this section.

PART 3 – DISPOSITION OF DEPOSITS

Refund if application not approved or if conditionally approved

- 18 If an application for a timber sale licence is not approved or is approved subject to a condition, the money paid under section 15 (1) (a) in respect of the application may be refunded if the timber sales manager is satisfied that there is no need for the deposit.

Forfeiture of bid deposit or standing bid deposit for not entering into agreement

- 19 (1) If an application for a timber sale licence is approved or conditionally approved but the applicant does not enter into the licence, the money paid under section 15 (1) (a) in respect of the application, or the standing bid deposit referred to in section 15 (1) (b), is forfeited to the government.
- (2) At the request of an applicant who did not enter into the licence, the minister or person authorized by the minister may relieve the applicant from the forfeiture imposed under subsection (1) if the minister or person authorized by the minister is satisfied that the applicant did not enter into the licence as the result of
 - (a) an event that
 - (i) is not related to financial circumstances of the applicant,
 - (ii) is beyond the control of the applicant, and
 - (iii) would, if the licence were entered into, prevent the licence obligations from being carried out, or
 - (b) a mistake made by the government which would make the licence voidable.
- (3) A request referred to in subsection (2) must
 - (a) be submitted within 30 days after the date the requesting person is notified that the deposit has been forfeited under subsection (1),

- (b) be signed by, or on behalf of, the requesting person, and
- (c) specify the reasons for the request.

Refund if obligations fulfilled or substantially fulfilled

- 20 A deposit paid under this regulation in respect of a BC timber sales agreement may be refunded
- (a) in full, if the timber sales manager is satisfied that the agreement holder has fulfilled its obligations under or in respect of the agreement, or
 - (b) in an amount not exceeding 75% of the original deposit, if the timber sales manager is satisfied that the agreement holder has substantially fulfilled the obligations under or in respect of the agreement.

Forfeiture of deposit for non-compliance with agreement

- 21 (1) The timber sales manager must realize a deposit, other than a standing deposit, paid under this regulation in respect of a BC timber sales agreement if
- (a) the timber sales manager is satisfied that its holder did not comply with
 - (i) the agreement or a road permit issued in conjunction with the agreement,
 - (ii) the Act or a regulation made under the Act,
 - (iii) the *Forest and Range Practices Act* or a regulation or standard made under that Act, or
 - (iv) the *Wildfire Act* or a regulation made under that Act, and
 - (b) the agreement
 - (i) is cancelled,
 - (ii) expires, or
 - (iii) has expired and the holder has not remedied the non-compliance by a date, not exceeding 2 years from the date of expiry, specified by the timber sales manager.
- (2) The amount realized from the deposit under subsection (1) must be disposed of as follows:
- (a) first, if the timber sales manager considers it to be necessary or desirable, for the purposes of remedying an outstanding obligation
 - (i) in respect of the agreement or a road permit issued in conjunction with the agreement, or
 - (ii) in respect of the agreement or a road permit issued in conjunction with the agreement that is related to
 - (A) the Act or a regulation made under the Act,
 - (B) the *Forest and Range Practices Act* or a regulation or standard made under that Act, or
 - (C) the *Wildfire Act* or a regulation made under that Act;
 - (b) then, as to any amount remaining,
 - (i) 50% of the original deposit, or all of the balance remaining if the balance is less than 50%, to the government, and

- (ii) the remainder to the holder of the agreement, unless the timber sales manager is satisfied that some or all of the remainder should be retained by the government after consideration of the following:
 - (A) whether the holder owes money to the government that may be set-off under the *Financial Administration Act*;
 - (B) an estimate of the direct and indirect costs to the government resulting from the holder's non-compliance including but not limited to
 - (I) foregone stumpage, and
 - (II) costs that are or will be incurred by the government in the ordinary course of business because of the non-compliance;
 - (C) any other information that the timber sales manager considers to be relevant.
- (3) Despite subsection (2), if the timber sales manager is satisfied that the holder has substantially fulfilled its obligations under or in respect of a BC timber sales agreement or a road permit issued in conjunction with the agreement, the timber sales manager must dispose of the amount realized from a deposit as follows:
 - (a) first, if the timber sales manager considers it to be necessary or desirable, for the purposes of remedying an outstanding obligation
 - (i) in respect of the agreement or a road permit issued in conjunction with the agreement, or
 - (ii) in respect of the agreement or a road permit issued in conjunction with the agreement that is related to
 - (A) the Act or a regulation made under the Act,
 - (B) the *Forest and Range Practices Act* or a regulation or standard made under that Act, or
 - (C) the *Wildfire Act* or a regulation made under that Act;
 - (b) then, as to any amount remaining,
 - (i) 25% of the original deposit, or all of the balance remaining if the balance is less than 25%, to the government, and
 - (ii) the remainder to the holder unless the holder owes money to the government that may be set-off under the *Financial Administration Act*.
- (4) Despite subsections (1) to (3), a deposit paid under this regulation in respect of a timber sale licence is forfeited to the government if
 - (a) the licence is cancelled or expires, and
 - (b) no harvesting has taken place under the licence.
- (5) Despite subsections (1) to (4), and at the request of the holder of an agreement referred to in subsections (1) to (4), the minister or the minister's delegate may relieve the holder from
 - (a) the realization of a deposit under subsection (1), or
 - (b) a forfeiture under subsection (4),

if satisfied that the non-compliance or non-harvesting was the result of an event that

- (c) is not related to the financial circumstances of the holder,
 - (d) is beyond the control of the holder, and
 - (e) prevents the agreement obligations being carried out or prevents the harvesting being carried out.
- (6) A request referred to in subsection (5) must
- (a) be submitted within 30 days after the date the holder is advised that all or a portion of the holder's deposit has been realized under subsection (1) or forfeited under subsection (4),
 - (b) be signed by, or on behalf of, the requesting person, and
 - (c) specify the reasons for the request.
- (7) Subsections (1) to (3) do not apply to a timber sale licence that was advertised before July 5, 2002
- (a) under section 20 of the Act, or section 21 of the Act before its repeal, and
 - (b) for which, under those sections, applications were restricted to one or more categories of small business forest enterprises.

PART 4 – EXTENSIONS

Extension of timber sale licences

- 22** (1) An application to extend the term of a timber sale licence must be in a form required by the timber sales manager.
- (2) For the purposes of section 58.1 (5) (a) and (b) of the Act, the prescribed percentage is 5% of the amount calculated under 58.1 (5) (a) or (b) of the Act, as the case may be.

SCHEDULE B

- 1** *Section 1 of the Advertising, Deposits, Disposition and Extension Regulation, B.C. Reg. 55/2006, is repealed and the following substituted:*

Definitions

- 1** In this regulation:

“**Act**” means the *Forest Act*;

“**forest licence**” means a forest licence that is not a BC timber sales agreement;

“**forestry licence to cut**” means a forestry licence to cut other than one entered into under section 47.6 (3) of the Act.

- 2** *Sections 2.1, 9 (1) (f) (i), 10 and 11 are repealed.*

- 3** *Section 12 is repealed and the following substituted:*

Refund if application not approved or if conditionally approved

- 12** If an application for a forest licence, timber licence, tree farm licence, community salvage licence, woodlot licence or forestry licence to cut is not approved or is approved subject to a condition, the money paid under section 8 in respect of the application may be refunded, if the regional manager or district manager, as applicable, is satisfied that there is no need for a deposit.

- 4** *Section 13 (1) is amended by striking out “forest licence, timber sale licence, timber licence,” and substituting “forest licence, timber licence,” and by striking out “or 10”.*

- 5** *Section 14 is amended*

(a) in subsection (1) (a) and (c) by striking out “that is not a BC timber sales agreement” in both places, and

(b) by repealing subsection (2).

- 6** *Sections 16 and 17 are repealed.*