

Regulations - Forest Act/Forest Practices Code of BC Act

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**ADMINISTRATIVE REVIEW AND APPEAL
PROCEDURE REGULATION**

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PART 1 - DEFINITIONS

Definitions

1 (1) In this regulation:

"**appellant**" means

- (a) for a *Forest Act* appeal, the person that initiates an appeal under section 147 (1) of the Act,
- (b) for a *Range Act* appeal, the person that initiates an appeal under section 41 (4) of the Act, or
- (c) for a *Forest Practices Code of British Columbia Act* appeal, the person that initiates an appeal under section 131 (1) of that Act, and includes the board if the board initiates an appeal under section 131 (1) of that Act;

"**requesting person**" means a person that requests a review of

- (a) a determination, order or decision under the *Forest Act* or *Range Act*, or,
- (b) a determination under the *Forest Practices Code of British Columbia Act*,

and includes the board if the board requests a review of a determination, or a failure to make a determination, under the *Forest Practices Code of British Columbia Act*;

"**reviewer**" means

- (a) for a review under the *Forest Act*,
 - (i) the regional manager if the review concerns a determination, order or decision referred to in section 143 (1) (a) or (c) of the *Forest Act*,
 - (ii) the chief forester if the review concerns a determination, order or decision referred to in section 143 (1) (b) of the *Forest Act*, or
 - (iii) the person to whom, under section 143 (3) of the *Forest Act*, the regional manager or chief forester delegates the power to decide the review,
- (b) for a review under the *Range Act*,
 - (i) the regional manager if the review concerns a determination, order or decision referred to in section 41 (1) (a) or (b) of the *Range Act*, or
 - (ii) the person to whom, under section 41 (3) of the *Range Act*, the regional

manager delegates the power to decide the review, or

(c) for a review under the *Forest Practices Code of British Columbia Act*, "reviewer" as defined in section 1 (1) of that Act.

(2) For the purposes of Division 4 of Part 6 of the *Forest Practices Code of British Columbia Act* and this regulation, "**ministries**" means the Ministry of Forests, the Ministry of Environment, Lands and Parks and the Ministry of Energy and Mines.

Part 2 - Administrative Review Procedure

Division 1 – Requesting a Review

Review requests by board

2 (1) The board may request a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to approval of a forest development plan, range use plan or amendment to either plan if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of that Act or the regulations made under that Act.

(2) The board may request a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to

- (a) a forest development plan,
- (b) a range use plan, or,
- (c) an amendment to either plan

if the board believes that, in relation to preparation of the plan or amendment, there has been a contravention of the *Forest Practices Code of British Columbia Act* or the regulations made under that Act.

(3) The prescribed period for the purposes of section 128 (4) of the *Forest Practices Code of British Columbia Act* is 45 days.

Request for review: content requirements

3 (1) For

- (a) a review of a determination, order or decision referred to in section 143 (1) of the *Forest Act* or section 41 (1) of the *Range Act*
- (b) a review of a determination referred to in section 127 (1) or 128 (1) (a) of the *Forest Practices Code of British Columbia Act*
- (c) a review of a failure to make a determination referred to in section 128 (1) (b) of the *Forest Practices Code of British Columbia Act*, or

(d) a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan,

the request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

- (e) the name and address of the requesting person;
 - (f) the address for service of the requesting person;
 - (g) the grounds for review;
 - (h) a statement of the relief requested.
- (2) In addition to the requirements of subsection (1), a request made by the board must also include the following information:
- (a) for a review of a failure to make a determination, the name of the person whose failure to make a determination is the subject of the request;
 - (b) for a review of a determination with respect to the approval of a forest development plan, range use plan or amendment to either plan,
 - (i) the name of the agreement holder to which the plan or amendment relates, and
 - (ii) the name of the person who made the determination;
 - (c) for a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan, the name of the person who gave effect to the plan or amendment.

Division 2 – Procedures after Receipt of Request for Review under the *Forest Act* and *Range Act*

Reviews conducted under the *Forest Act* and *Range Act*

4 Sections 5 to 8 apply to requests for reviews under the *Forest Act* and *Range Act*.

Notification of parties following receipt of request for review

5 The reviewer must acknowledge in writing any request for review.

Deficient request for review

6 (1) If a request for review does not comply with section 3, the reviewer may serve a written notice of deficiencies to the

requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer serves a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the reviewer of further material remedying the deficiencies.

(3) The reviewer must serve a copy of the request and any notice of deficiency to the person who made the determination, order or decision that is the subject of the request.

Notice of review

7 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 6 (3), setting out,

(a) in accordance with section 145 (1) of the *Forest Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

8 The prescribed period for the purposes of section 145 (3) (a) of the *Forest Act* is 60 days.

Division 3 - Procedures after Receipt of Request for Review under the *Forest Practices Code of British Columbia Act*

Reviews conducted under the *Forest Practices Code of British Columbia Act*

9 Sections 10 to 14 apply to request for reviews under the *Forest Practices Code of British Columbia Act*.

Notification of parties following receipt of a request for review

10(1) The review official must acknowledge in writing any request for review.

(2) If a request for review is

(a) made by a requesting person, other than the board, the review official must give a copy of the request to

(i) the person who made the determination that is the subject of the request,

and

(ii) the board, or

(b) made by the board, the review official must give a copy of the request to the following:

(i) for the review of a failure to make a determination, the person whose failure to make a determination is the subject of the request;

(ii) for a review of a determination with respect to the approval of a forest development plan, range use plan or amendment to either of those plans, the agreement holder to which the plan or amendment relates and the person who made the determination;

(iii) for a review of giving effect, under section 40 of the *Forest Practices Code of British Columbia Act*, to a forest development plan, range use plan or amendment to either plan, the person who gave effect to the plan or amendment.

Deficient request for review

11 (1) If a request for review does not comply with section 3, the review official may give a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the review official gives a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the review official of further material remedying the deficiencies.

Agreement holder party to review

11.1 If the board has requested a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to the approval of a forest development plan, range use plan or amendment to either plan, the agreement holder to which the plan or amendment relates is a party to the review.

Designation of reviewer

12 On receipt of a request for review, the review official must designate the reviewer or reviewers and, if more than one, appoint one of them as the chair.

Notice of review

13 The reviewer must give a notice of review to the person who requested the review, and to the persons referred to in section 10 (2), setting out,

(a) in accordance with section 129 (2) of the *Forest Practices Code of British Columbia Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

14 The prescribed period for the purposes of section 129 (6) (a) of the *Forest Practices Code of British Columbia Act* is 60 days.

Part 3 - Forest Appeals Commission Procedure

Notice of appeal

15 The notice of appeal referred to in section 147 (1) of the *Forest Act* and section 131 (1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

16 (1) If a notice of appeal does not comply with section 15, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest Practices Code of British Columbia Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of

- (a) the expiry of the period specified in the notice of deficiencies, or
- (b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

17 The commission must acknowledge in writing any notice of appeal, and

- (a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and
- (b) in the case of an appeal under the *Forest Practices Code of British Columbia Act*, give a copy of the notice of appeal to the deputy minister of the Ministry of Forests, in addition to the persons referred to in section 131 (6) of that Act.

Procedure following receipt of notice of appeal

18 (1) Within 30 days after receipt of the notice of appeal, the commission must

- (a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,
 - (b) designate the panel members if the commission determines that the appeal is to be considered by a panel,
 - (c) subject to subsections (2) and (3), set the date, time and location of the hearing, and
 - (d) give notice of hearing to the parties if the appeal is under the *Forest Practices Code of British Columbia Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act* or *Range Act*.
- (2) The prescribed period for the purposes of section 148 (1) (b) of the *Forest Act* is 45 days after the commission receives the notice of appeal.
- (3) Despite subsection (2), the parties and the commission may agree to a period other than 45 days.

Panel chair determined

19 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

- (a) if the chair of the commission is on the panel, he or she is the panel chair;
- (b) if the chair of the commission is not on the panel but a vice chair of the

commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

20 (1) If the board is added as a party to an appeal under section 131 (7) of the *Forest Practices Code of British Columbia Act* , the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131 (8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

21 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131 (13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131 (13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to take part.

Transcripts

22 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

23 The prescribed period for the purposes of section 149.1 (3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4 - Annual Report of Forest Appeals Commission

Content

24 (1) By April 30 of each year, the chair of the commission must

submit the annual report for the immediately preceding calendar year required by section 197 (2) of the *Forest Practices Code of British Columbia Act*.

- (2) The annual report referred to in subsection (1) must contain
- (a) the number of appeals initiated during the year,
 - (b) the number of appeals completed during the year,
 - (c) the resources used in hearing the appeals,
 - (d) a summary of the results of the appeals completed during the year,
 - (e) the annual evaluation referred to in section 197 (1) (b) of the *Forest Practices Code of British Columbia Act*, and
 - (f) any recommendations referred to in section 197 (1) (c) of the *Forest Practices Code of British Columbia Act*.

Part 5 - Transition

Administrative appeals

25 If, before June 15, 1995, a person contravenes a section of the *Forest Act* or *Range Act* that is repealed and replaced by a provision of the *Forest Practices Code of British Columbia Act*, and at the date of the contravention the *Forest Act* or *Range Act* provided a right of appeal in respect of contraventions of that section, the person may appeal a determination that they contravened the section and the appeal provisions of the *Forest Act* or *Range Act* that are in effect at the date of the determination apply to the appeal.

Note: This regulation repeals B.C. Reg. 163/95 Administrative Review and Appeal Procedure (Forest Act) Regulation and B.C. Reg. 167/95 Administrative Review and Appeal Procedure (Forest Practices) Regulation.