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Forest and Range Practices Act and

Forest Practices Code of British Columbia Act

ADMINISTRATIVE REVIEW AND

APPEAL PROCEDURE REGULATION

Note: Check the Cumulative Regulation Bulletin 2014 and 2015

for any non-consolidated amendments to this regulation that may be in effect.

[includes amendments up to B.C. Reg. 4/2010, January 14, 2010]

Point in Time

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Part 1 — Definitions

Definitions

1 In this regulation:

"appellant" means

(a) for a Forest Act appeal, the person that initiates an appeal under section 147 (1) of that Act,

(b) for a Range Act appeal, the person that initiates an appeal under section 70 (1) of that Act,

(c) for a Forest and Range Practices Act appeal, the person that initiates an appeal under section 82 (1) of that Act, and includes the board if the board initiates an appeal under section 83 (1) of that Act, or

(d) for a Wildfire Act appeal, the person that initiates an appeal under section 39 (1) of that Act, and includes the board if the board initiates an appeal under section 40 (1) of that Act;

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

(a) a determination, order or decision referred to in section 143 (1) of the Forest Act,

(b) an order, decision or amendment referred to in section 69 (1) of the Range Act,

(c) a determination referred to in section 80 (1) of the Forest and Range Practices Act, or

(d) an order referred to in section 37 (1) of the Wildfire 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) of the Forest Act,

(ii) the person authorized by the minister, if the review concerns a determination, order or decision referred to in section 143 (1) (b) of the Forest Act,

(iii) the chief forester if the review concerns a determination, order or decision referred to in section 143 (1) (c) of the Forest Act, or

(iv) 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 person who made the original order or decision or prepared the amendment, or

(ii) another person who under section 69 (1) of the Range Act is designated by the minister to decide the review,

(c) for a review under the Forest and Range Practices Act,

(i) the person who made the original determination, or

(ii) another person who, under this regulation or section 80 (1) of the Forest and Range Practices Act, is designated by the minister to decide the review, or

(d) for a review under the Wildfire Act,

(i) the person who made the original order, or

(ii) another person who under section 37 (1) of the Wildfire Act is designated by the minister to decide the review.

[am. B.C. Regs. 353/2004, s. 1; 83/2006, s. 1.]

Part 2 — Administrative Review Procedure

Division 1 — Requesting a Review

Request for review: content requirements

2 (1) For

- (a) a review of a determination, order or decision referred to in section 143 (1) of the Forest Act,
- (b) a review of an order, decision or amendment referred to in section 69 (1) of the Range Act,
- (c) a review of a determination referred to in section 80 (1) of the Forest and Range Practices Act, or
- (d) a review of an order referred to in section 37 (1) of the Wildfire Act,

the request for review must be signed by, or on behalf of, the person who is the subject of the determination, order, decision or amendment under review, 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) except in the case of a review under the Forest Act, the new evidence that was not available at the time the determination, order, decision or amendment under review was made;
- (h) a statement of the relief requested.

(2) For

- (a) a review of a determination referred to in section 81 (1) of the Forest and Range Practices Act
- (b) a review, under section 214 (3) of the Forest and Range Practices Act, of the approval of, or the giving effect to, a forest development plan or range use plan or an amendment to either, or
- (c) a review of an order referred to in section 38 (1) of the Wildfire Act,

the requirement for review or request for review must be signed by or on behalf of the chair of the board, and must contain all of the following information:

- (d) in the case of a review referred to in paragraph (a) or (c), written consent of the person who is the subject of the determination or order;
- (e) the name of the person who made the determination or order, or who approved or gave effect to the plan or amendment;
- (f) the address for service of the board;
- (g) the grounds for review;
- (h) a statement of the relief requested.

[en. B.C. Reg. 83/2006, s. 2.]

Division 2 — Procedures after Receipt of Request for Review under the Forest Act

Reviews conducted under the Forest Act

3 Sections 4 to 7 apply to reviews under the Forest Act.

[en. B.C. Reg. 83/2006, s. 3.]

Notification of parties following receipt of request for review

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

[en. B.C. Reg. 83/2006, s. 3.]

Deficient request for review

5 (1) If a request for review does not comply with section 2 (1), 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 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.

[en. B.C. Reg. 83/2006, s. 3.]

Notice of review

6 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 5 (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

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

Division 2.1 — Procedures after Receipt of Request for Review under the Range Act

Reviews conducted under the Range Act

7.1 Sections 7.1 to 7.6 apply to reviews under the Range Act.

[en. B.C. Reg. 83/2006, s. 4.]

Notification of parties following receipt of a request for review

7.2 (1) The minister must acknowledge in writing any request for review.

(2) The minister must give a copy of the request to the person who made the order or decision or who prepared the amendment, which order, decision or amendment is the subject of the request.

[en. B.C. Reg. 83/2006, s. 4.]

Deficient request for review

7.3 (1) If a request for review does not comply with section 2 (1), the minister 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 minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

[en. B.C. Reg. 83/2006, s. 4.]

Designation of reviewer

7.4 On receipt of a request for review, the minister must forward the request to

(a) the person who made the order or decision or who prepared the amendment, which order, decision or amendment is the subject of the request, or

(b) another person whom the minister, under section 69 (1) of the Range Act, designates to review the order.

[en. B.C. Reg. 83/2006, s. 4.]

Notice of review

7.5 (1) The reviewer must give a notice of review to

(a) the person who requested the review, and

(b) the persons referred to in section 7.4.

(2) If the review is to involve an oral hearing, the notice of review must specify the date, time and location of the hearing.

[en. B.C. Reg. 83/2006, s. 4.]

Review decision

7.6 The reviewer must give a written decision to the person who is the subject of the order, decision or amendment.

[en. B.C. Reg. 83/2006, s. 4.]

Division 3 — Procedures after Receipt of Request for Review under the Forest and Range Practices Act

Reviews conducted under the Forest and Range Practices Act

8 Sections 9 to 15 apply to reviews under the Forest and Range Practices Act.

[am. B.C. Reg. 353/2004, s. 3.]

Notification of parties following receipt of a request for review

9 (1) The minister must acknowledge in writing any request for review or requirement for review.

(2) If a request for review is made under section 80 (1) of the Forest and Range Practices Act, the minister must give a copy of the request to the person who made the determination that is the subject of the request.

(3) If the board requires a review under section 81 (1) of the Forest and Range Practices Act, the minister must give a copy of the requirement for review to the following:

(a) for a review of a determination made under section 82 or 95 (2) of the Forest Practices Code of British Columbia Act or under section 71 or 74 of the Forest and Range Practices Act,

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

(ii) the person who is the subject of the determination;

(b) for a review of a determination with respect to the approval of a plan under sections 16 or 37 of the Forest and Range Practices Act, or the approval of an amendment to the plan,

(i) the holder of the plan or amendment, and

(ii) the person who made the determination.

(4) If the board requests a review, under section 214 (3) of the Forest and Range Practices Act, of the approval of, or giving effect to, a forest development plan or range use plan or an amendment to either, the minister must give a copy of the request for review to

(a) the holder of the plan or amendment, and

(b) the person who made the determination.

[am. B.C. Reg. 353/2004, s. 4.]

Deficient request for review

10 (1) If a request for review does not comply with section 2 (1), the minister 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 minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

[am. B.C. Reg. 83/2006, s. 5.]

Board's deficient requirement for review

11 (1) If the board's requirement for review or request for review does not comply with section 2 (2) (e) to (h), the minister may give a written notice of deficiencies to the board, inviting the board, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) A review may not proceed if the board's requirement for review does not comply with section 2 (2) (d).

(3) If the minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

[am. B.C. Regs. 353/2004, s. 5; 83/2006, s. 6.]

Agreement holder party to review

12 If the board

(a) requires a review of a determination with respect to the approval of a plan under section 16 or 37 of the Forest and Range Practices Act, or

(b) requests a review, under section 214 (3) of the Forest and Range Practices Act, of the approval of, or the giving effect to, a forest development plan or range use plan or an amendment to either, the agreement holder to which the plan or amendment relates is a party to the review.

[en. B.C. Reg. 353/2004, s. 6.]

Designation of reviewer

13 (1) On receipt of a request or requirement for review, the minister must forward the request or requirement to

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

(b) another person whom the minister, under subsection (2) of this section, or section 80 (1) of the Forest and Range Practices Act, designates to review the determination.

(2) For a request for review under section 214 (3) of the Forest and Range Practices Act, the minister may designate a person employed in the ministry to review the determination that is the subject of the request.

[en. B.C. Reg. 353/2004, s. 7; am. B.C. Reg. 83/2006, s. 7.]

Notice of review

14 (1) The reviewer must give a notice of review to

(a) the person who requested the review, or to the board if the board required or requested the review, and

(b) the persons referred to in section 9 (2) or (3).

(2) If the review is to involve an oral hearing, the notice of review must specify the date, time and location of the hearing.

[am. B.C. Reg. 353/2004, s. 8.]

Review decision

15 The reviewer must give a written decision to

(a) the person who is the subject of the determination, and

(b) the board.

Division 4 — Procedures after Receipt of Request for Review under the Wildfire Act

Reviews conducted under the Wildfire Act

15.1 Sections 15.2 to 15.7 apply to reviews under the Wildfire Act.

[en. B.C. Reg. 83/2006, s. 8.]

Notification of parties following receipt of a request for review

15.2 (1) The minister must acknowledge in writing any request for review or requirement for review.

(2) If a request for review is made under section 37 (1) of the Wildfire Act, the minister must give a copy of the request to the person who made the order that is the subject of the request.

(3) If the board requires a review under section 38 (1) of the Wildfire Act, the minister must give a copy of the requirement for review to the following:

(a) the person who made the order that is the subject of the requirement;

(b) the person who is the subject of the order.

[en. B.C. Reg. 83/2006, s. 8.]

Deficient request for review

15.3 (1) If a request for review does not comply with section 2 (1), the minister 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 minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

[en. B.C. Reg. 83/2006, s. 8.]

Board's deficient requirement for review

15.4 (1) If the board's requirement for review does not comply with section 2 (2) (e) to (h), the minister may give a written notice of deficiencies to the board, inviting the board, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) A review may not proceed if the board's requirement for review does not comply with section 2 (2) (d).

(3) If the minister gives a notice of deficiencies under subsection (1), the review may proceed only after the submission to the minister of further material remedying the deficiencies.

[en. B.C. Reg. 83/2006, s. 8.]

Designation of reviewer

15.5 On receipt of a request or requirement for review, the minister must forward the request or requirement to

- (a) the person who made the order that is the subject of the request, or
- (b) another person whom the minister, under section 37 (1) of the Wildfire Act, designates to review the order.

[en. B.C. Reg. 83/2006, s. 8.]

Notice of review

15.6 (1) The reviewer must give a notice of review to

- (a) the person who requested the review, or to the board if the board required the review, and
 - (b) the persons referred to in section 15.2 (2) or (3).
- (2) If the review is to involve an oral hearing, the notice of review must specify the date, time and location of the hearing.

[en. B.C. Reg. 83/2006, s. 8.]

Review decision

15.7 The reviewer must give a written decision to

- (a) the person who is the subject of the order, and
- (b) the board.

[en. B.C. Reg. 83/2006, s. 8.]

Part 3 — Forest Appeals Commission Procedure

Exemption from time specified to appeal a determination

16 (1) In respect of an appeal under section 83 of the Forest and Range Practices Act, the board is exempt from the requirement under section 131 of the Forest Practices Code of British Columbia Act to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the Forest and Range Practices Act, and

(f) any review under section 80 or 81 of the Forest and Range Practices Act

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(2) In respect of an appeal under section 40 of the Wildfire Act, the board is exempt from the requirement under section 131 of the Forest Practices Code of British Columbia Act to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 35 of the Wildfire Act, and

(f) any review under section 37 or 38 of the Wildfire Act

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(3) In respect of an appeal under section 70 (1) of the Range Act, section 82 (1) of the Forest and Range Practices Act or section 39 (1) of the Wildfire Act, a person whose request for a review is denied by the reviewer for the reason described in subsection (4) is exempt from the requirement under section 131 of the Forest Practices Code of British Columbia Act to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision, or

(e) any correction under the Range Act, the Forest and Range Practices Act or the Wildfire Act

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

(4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

[am. B.C. Reg. 83/2006, s. 9.]

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83 (2) (b) of the Forest and Range Practices Act is 6 months.

Notice of appeal

18 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 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.

[am. B.C. Reg. 83/2006, s. 10.]

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, 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

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the Range Act, Forest and Range Practices Act or the Wildfire 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 submission to the commission of further material remedying the deficiencies.

[am. B.C. Reg. 83/2006, s. 11.]

Notification of parties following receipt of notice of appeal

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

(a) in the case of an appeal under the Forest Act, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the administration of those portions of the Forest Act for which the Minister of Finance is not responsible,

(a.1) in the case of an appeal under the Range Act, give a copy of the notice of appeal to the minister,

(b) in the case of an appeal under the Forest and Range Practices Act, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board, and

(c) in the case of an appeal under the Wildfire Act, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the order, or

(B) the person who is the subject of the order, if the notice was delivered by the board.

[am. B.C. Regs. 83/2006, s. 12; 4/2010, s. 2.]

Procedure following receipt of notice of appeal

21 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) set the date, time and location of the hearing, and
- (d) give notice of hearing to the parties if the appeal is under the Range Act, Forest and Range Practices Act or the Wildfire Act, or serve notice of hearing on the parties if the appeal is under the Forest Act.

[en. B.C. Reg. 83/2006, s. 13.]

Panel chair determined

22 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

23 (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

24 (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 participate.

Transcripts

25 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

26 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

27 (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 under the Forest Act, the Range Act, the Forest and Range Practices Act or the Wildfire Act, during the year,

(b) the number of appeals completed under the Forest Act, the Range Act, the Forest and Range Practices Act or the Wildfire Act, 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.

[am. B.C. Reg. 83/2006, s. 14.]

Part 5 — Transition

Repealed

28 Repealed. [B.C. Reg. 525/2004, s. (c).]

[Provisions relevant to the enactment of this regulation: Forest and Range Practices Act, S.B.C. 2002, c. 69, sections 141, 165, 166 and 167; Forest Practices Code of British Columbia Act, R.S.B.C. 1996, c. 159, sections 198 and 220]