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IMPORTANT INFORMATION

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Forest Act
TIMBER HARVESTING CONTRACT
AND SUBCONTRACT REGULATION

[includes amendments up to B.C. Reg. 133/2011, July 21, 2011]

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Part 1 — Interpretation, Application and Notice

Interpretation

1 (1) In this regulation:

"**AAC**" means allowable annual cut;

"**AAC reduction criteria**" means each of the following factors:

(a) achieving a contractor configuration that optimizes the effective utilization of capital within all timber harvesting operations carried out under all licences included by a licence holder in an AAC reduction proposal or a forestry revitalization proposal;

(b) achieving a contractor configuration that optimizes the efficiency of all timber harvesting operations carried out under all licences included in an AAC reduction proposal or a forestry revitalization proposal by a licence holder;

(c) the demonstrated historical operational effectiveness, ability to carry out timber harvesting operations and compliance with safety, environmental and other applicable laws of each contractor with a replaceable contract pertaining to any licences held by a licence holder;

(d) minimizing the overall need for geographic relocation by contractors and company operations to operating areas different than those they have traditionally operated in;

"AAC reduction proposal" means a proposal made under Part 5 Division 5 that the amount of work specified in a replaceable contract be varied or a proposal that a replaceable contract be terminated;

"Act" means the *Forest Act*;

"amount of work compliance period" when used in relation to a licence means

(a) a 5 year period commencing on the date of the commencement of the cut control period of that licence in effect on January 1, 2004,

(b) any consecutive 5 year period commencing at the end of the prior amount of work compliance period, or

(c) any other period of time agreed to by the parties to a replaceable contract;

"amount of work dispute" means a dispute between a licence holder and a contractor with respect to the amount of work to be specified in a replaceable contract as required by sections 17, 18 and 19;

"amount of work proposal" means a proposal made in respect of an amount of work dispute pursuant to section 23 (4) or (10) (d) or (e), in which a licence holder, contractor or union proposes the amount of work to be specified in each of the replaceable contracts entered into by the licence holder with respect to timber harvesting operations that

(a) are carried out under that licence, and

(b) may be affected by the disposition of the amount of work dispute;

"coastal area" means the area within one or more timber supply areas or tree farm licences listed below:

Forest Region	Timber Supply Areas	Tree Farm Licences
Coast	Queen Charlotte, Mid-Coast, North Coast	6, 10, 19, 24, 25, 26,
	Kingcome, Strathcona, Arrowsmith,	37, 38, 39, 43, 44, 45,
	Sunshine Coast, Soo and Fraser	46, 47 and 54

"company contract operations" means any phase of a licence holder's timber harvesting operations other than timber harvesting operations carried out either

- (a) by employees of the licence holder, or
- (b) under a replaceable contract;

"company operations" means any phase of a licence holder's timber harvesting operations carried out by employees of the licence holder;

"contract" and **"subcontract"** mean a contract or a subcontract, as defined in section 152 of the Act, if

- (a) the contract or subcontract provides that the contractor or subcontractor will carry out one or more phases of a licence holder's timber harvesting operation under
 - (i) a replaceable tree farm licence,
 - (ii) a replaceable forest licence,
 - (iii) a non-replaceable forest licence under which the total volume of timber to be sold under the licence, when divided by the original term of the licence in years, is more than 10 000 m³, or
 - (iv) a timber licence under which the total net volume of merchantable timber remaining at the time the contract is entered into is more than 30 000 m³, and
- (b) one or more of the following applies:
 - (i) the contract or subcontract is for a specified term of more than 6 months;
 - (ii) the total specified terms of
 - (A) the contract or subcontract, and
 - (B) any previous contract or subcontract entered into during the same calendar year in relation to the same licenceis more than 6 months;
 - (iii) during a calendar year, the total of
 - (A) the work performed by the contractor or subcontractor under the contract or subcontract, and
 - (B) similar work performed by the contractor or subcontractor under previous contracts in relation to the same licenceis more than the equivalent of 6 months full time work for a contractor or subcontractor performing similar work in similar circumstancesand includes a market contract or market subcontract;

"contractor" has a meaning that corresponds to "contract";

"contractor clause" means a provision in

- (a) a replaceable tree farm licence that requires timber to be harvested by a person under contract with the holder of the licence, or
- (b) a replaceable forest licence under which the minister has required that a portion of the timber harvested under the licence be harvested by

contractors;

"dedicated phase contract" means a replaceable contract that

- (a) pertains to a licence for the coastal area, and
- (b) contains an agreement by the contractor to perform all or part of one or more phases of a timber harvesting operation that are required with respect to
 - (i) the work carried out under another specified replaceable contract entered into by the licence holder with respect to timber harvesting operations carried out under the licence, or
 - (ii) the timber harvesting operations carried out by a specified company operation;

"fibre basket agreement" means an agreement entered into by a licence holder and one or more contractors under section 16;

"forestry revitalization proposal" means a proposal made under Part 5, Division 5.1 that

- (a) changes the licence to which a replaceable contract pertains,
- (b) varies the amount of work specified in a replaceable contract pertaining to a licence held by the licence holder making the proposal, or
- (c) terminates a replaceable contract pertaining to a licence held by the licence holder making the proposal

and includes any amended proposal made under sections 33.43 (1), 33.5 (5) or 33.51 (4);

"full contract" means a contract under which a person under contract agrees with the holder of a licence referred to in the definition of "contractor clause" to carry out some or all of the phases of a timber harvesting operation if they constitute a substantial proportion of a timber harvesting operation;

"interior area" means an area of British Columbia that is not in the coastal area;

"licence" means an agreement entered into under Part 3 of the *Forest Act*;

"logging access road" means a road referred to in section 110 (2) (a) (i) of the *Forest Act*;

"market contract" or **"market subcontract"** means a contract or subcontract in which the remuneration payable to the contractor or subcontractor is determined in whole or in part with reference to the market value of the timber harvested;

"original replaceable contract" means, for the purposes of Part 5, Division 5.2, the replaceable contract in effect between a licence holder and a contractor immediately prior to a licence transfer or to the amendment or replacement of a licence;

"peer" means an individual who is familiar with, and has operational experience with, timber harvesting operations similar to those at issue in a rate dispute, appointed under section 25 (5);

"person under contract" means, for the purposes of Part 6 of this regulation and

sections 14 (g) and 35 (1) (j) of the Act, a person who has a contract to provide timber harvesting services under a full contract or a phase contract with the holder of

(a) a replaceable tree farm licence that requires timber to be harvested by a person under contract with the holder of the licence, or

(b) a replaceable forest licence under which the minister has required that a portion of the timber harvested under the licence be harvested by contractors

but does not include

(c) a person who is a holder of the licence referred to in paragraph (a) or (b),

(d) a corporation in which more than 10% of the outstanding voting shares are beneficially owned, directly or indirectly

(i) by a person who is a holder of the licence referred to in paragraph (a) or (b), or

(ii) by a person who is the beneficial owner of more than 10% of the outstanding voting shares of a corporation that is the holder of a licence referred to in paragraph (a) or (b), or

(e) a person who is the beneficial owner, directly or indirectly, of more than 10% of the outstanding voting shares of a corporation that is the holder of a licence referred to in paragraph (a) or (b);

"phase" , when used in relation to a timber harvesting operation, means felling, bucking, yarding, skidding, processing, decking, loading, hauling, unloading, non-mill or non-custom dryland sorting or booming, logging road construction, logging road maintenance including temporary road deactivation, logging access road construction and any other phases or combinations or components of them that are aspects of a timber harvesting operation under a licence, but does not include catering, cruising, forest engineering, semi-permanent or permanent road deactivation, towing, barging, mill or custom dryland sorting or booming, reforestation, scaling, equipment rental, equipment maintenance or providing support services relating to timber harvesting;

"phase contract" means a contract in which a person under contract agrees with the holder of a licence referred to in the definition of "contractor clause" to carry out one or more phases of a timber harvesting operation, but does not include a full contract;

"phase contribution amount" means the amount of work to be performed annually under a timber harvesting contract expressed in cubic metres per year, having regard to the tables in paragraphs (a) and (b) and determined in accordance with paragraph (c), (d), (e), (f) or (g):

(a) for the coastal area, the relative portion of a timber harvesting operation attributed to each phase of the operation, is as set forth in the following table:

Falling and Bucking	13%
Yarding, Skidding or Forwarding	32%
Loading	5%
Hauling	15%

Dumping, Sorting and Booming	10%
Road Construction	20%
Road Maintenance	5%
Total All Phases	100%

(b) for the interior area, the relative portion of a timber harvesting operation attributable to each phase of the operation, is as set forth in the following table:

Bunching	20%
Processing	25%
Yarding or Skidding	13%
Loading	9%
Hauling	19%
Miscellaneous (sorting, brush piling and others)	7%
Road Construction	7%
Total All Phases	100%

(c) if the contract expresses the amount of work as a percentage of the total amount of that type of work to be performed in a year, the phase contribution amount is

$$A \times B \times C$$

where

- A is the percentage of work expressed in the contract reduced to a fraction,
- B is the aggregate of the percentages shown in the table in paragraph (a) or paragraph (b) for the phases to be performed under the contract, reduced to a fraction, and
- C is the allowable annual cut of the licence, or licences in a fibre basket agreement, to which the contract pertains;

(d) if the contract expresses the amount of work as a fixed volume of timber to be handled in a year, the phase contribution amount is

$$D \times E$$

where

- D is the aggregate of the percentages shown in the table in paragraph (a) or paragraph (b) for the phases to be performed under the contract, reduced to a fraction, and
- E is the fixed volume, expressed in the contract in cubic meters of timber;

(e) if the contract expresses amount of work as a percentage of work to be provided using a specified harvesting system, the phase contribution amount is

$$F \times G / H \times I$$

where

- F is the percentage of work expressed in the contract, reduced to a fraction,
- G is the actual volume of timber harvested by the contractor in the calendar years 2001 through 2003 using that particular harvesting system,

H is the total volume of timber harvested under the licence, or licences in a fibre basket agreement, to which the contract pertains in the calendar years 2001 through 2003, and

I is the allowable annual cut of the licence, or licences in a fibre basket agreement, to which the contract pertains;

(f) if the contract is

(i) for part of a phase,

(ii) for a phase that is not listed in paragraph (a) or (b),

(iii) a dedicated phase contract, or

(iv) a contract not described in paragraph (c), (d) or (e),

the phase contribution amount is an amount that reflects the amount of work to be performed under the contract relative to the total amount of work to be performed under all phases of timber harvesting operations under the licence, or the licences in a fibre basket agreement, to which the contract pertains, determined in a manner consistent with the approach in paragraphs (c), (d) and (e);

(g) if the contract allocates work with reference to a seniority system, the amount of work attributable to each position in the seniority system is

M/N

where

M is the amount of work for all positions in the seniority system determined in accordance with paragraphs (c), (d), (e) or (f), as the case may be, and

N is the number of positions in the seniority system;

"prior timber harvesting services" means similar timber harvesting services provided by a contractor to a licence holder before the provision of timber harvesting services in respect of which a rate dispute has arisen;

"rate dispute" means a dispute that arises when the parties to a replaceable contract or a replaceable subcontract are unable to agree upon the amount to be paid for the timber harvesting services to be provided thereunder;

"rate proposal" means a notice in writing from a licence holder to a contractor with a replaceable contract describing all of the following:

(a) the specific services the licence holder requires the contractor to perform under the replaceable contract;

(b) the replaceable contract in respect of which the proposal is being made;

(c) the rate that the licence holder proposes to pay the contractor for those services;

(d) the estimated quantity of work the licence holder requires the contractor to perform at the proposed rate;

(e) the location where services are to be provided;

(f) the projected start date and completion date for the services;

(g) any other information that is not otherwise available to the contractor, that is in the possession of the licence holder and that is reasonably

necessary for the contractor to assess the proposed rate;

"registered arbitrator" means a person registered as an arbitrator in the Register of Timber Harvesting Contract and Subcontract Mediators and Arbitrators established by the minister under section 156 of the Act;

"registered mediator" means a person registered as a mediator in the Register of Timber Harvesting Contract and Subcontract Mediators and Arbitrators established by the minister under section 156 of the Act;

"Schedule" means a Schedule to this regulation;

"seniority system" means a system for allocating work that describes the sequence in which contractors, or contractors and company operations, will be called upon by a licence holder to provide services that are required from time to time in respect of timber harvesting operations carried out under the licence;

"subcontractor" has a meaning that corresponds to "subcontract";

"substantial proportion of a timber harvesting operation" means

(a) a proportion in which the total cost of the phases, as estimated in the stumpage rate determination plus any credit to stumpage for logging access road construction handled under the contract, constitute at least 65% of the total cost of all the estimated phases of a timber harvesting operation within the area covered by the contract, and

(b) for the interior area, also means any contract that includes all of the following phases:

- (i) felling;
- (ii) bucking;
- (iii) yarding or skidding;
- (iv) decking;
- (v) loading other than loading by a self-loading logging truck;

"timber harvesting services" means services provided in respect of one or more phases of a timber harvesting operation;

"union" means a trade union, as defined in the *Labour Relations Code*, that is certified by the Labour Relations Board as the bargaining agent for employees of

- (a) a licence holder engaged in company operations, or
- (b) a contractor with a replaceable contract;

"volume independent contract" means, for the purposes of Part 5, a replaceable contract that

- (a) pertains to a licence for the coastal area,
- (b) is not a dedicated phase contract, and
- (c) provides exclusively for work relating to one or more phases, where the amount of work associated with that phase does not depend directly on a volume of timber, and by way of example, may include log hauling, logging road construction, logging access road construction, logging road maintenance and temporary logging road deactivation;

"volume of timber harvested" means, for the purposes of Part 6, the total volume of timber that is billed to a licence holder under the licence during the calendar year.

- (2) If a contract or subcontract is deemed to be amended under section 160 (3) of the Act to include a standard provision prescribed under this regulation, a reference to
- (a) the **"licence holder"** in that standard provision is deemed to refer to the party who holds the licence under which the timber harvesting operation to which the contract pertains derives timber,
 - (b) the **"contractor"** in that standard provision is deemed to refer to the party that is the contractor as defined in this section, and
 - (c) the **"subcontractor"** in that standard provision is deemed to refer to the party that is the subcontractor as defined in this section,

and **"licence"** , **"contract"** and **"subcontract"** have corresponding meanings.

- (3) Any terms defined in the Act and used in this regulation have the meaning given to them in the Act unless otherwise defined in this regulation.
- (4) Any terms defined in the Act or in this regulation and used in a Schedule to this regulation or in a provision of a Schedule used in a contract or subcontract pursuant to this regulation have the meaning given to them in the Act or regulation unless otherwise defined in the Schedule.
- (5) Where the context requires, a reference to a replaceable contract or replaceable subcontract includes any contract or subcontract that replaces or is replaced by that replaceable contract or replaceable subcontract.
- (6) A reference to "arbitrator" includes an arbitration panel where parties to a dispute have agreed to use a 3 person arbitration panel.
- (7) For the purposes of paragraph (a) (ii) of the definitions of "replaceable contract" and "replaceable subcontract" in section 152 of the Act, a replacement contract or replacement subcontract is on substantially the same terms and conditions as the contract or subcontract it replaces if the replacement contract or replacement subcontract
- (a) pertains to the same area as the one it replaces, or to a similar area,
 - (b) provides the same term as the one it replaces, or for a longer term, expressed as a number of whole years,
 - (c) provides for a specified amount of work that is the same as or greater than the amount of work specified in the one it replaces,
 - (d) subject to the provisions of section 14, provides for the same type of work as the one it replaces or a similar type,
 - (e) is a replaceable contract or a replaceable subcontract as the case may be, and
 - (f) subject to any changes in government enactments or policies affecting the licence holder's timber harvesting operations, provides for other operational terms and conditions that on balance are no less favourable to the contractor or subcontractor than those in the contract or subcontract being replaced and non-operational terms and conditions that are not inconsistent with the requirements of this regulation.

- (8) For the purpose of section 158 (1) (d) of the Act, a replacement contract is on substantially the same terms and conditions as the expired or terminated contract that it replaces if the replacement contract
- (a) pertains to the same area as the expired or terminated contract it replaces, or to a similar area,
 - (b) meets the requirements of subsection (7) (b) to (d),
 - (c) is a replaceable contract, and
 - (d) subject to any changes in government regulations or policies affecting the licence holder's timber harvesting operations, provides for other operational terms and conditions that on balance are not less favourable to the contractor than those of the expired or terminated contract that the contract replaces and non-operational terms and conditions that are not inconsistent with the requirements of this regulation.
- (9) Any reference to "regulation" in a Schedule to this regulation, or in a provision of a Schedule used in a contract or subcontract pursuant to this regulation, means this regulation as amended from time to time.

[am. B.C. Regs. 83/97; 293/2002, Sch. B; 123/2003, Sch. 3; 278/2004, s. 2; 524/2004, s. 1;

133/2011, Sch. s. 26.]

Application

2 This regulation applies to contracts and subcontracts that are

- (a) in force on April 1, 1996, or
- (b) made on or after April 1, 1996.

[en. B.C. Reg. 278/2004, s. 3.]

Giving notice

2.1 If a proposal, notice or other thing is to be delivered or given in this regulation, it must be delivered in accordance with section 8 (13) (b).

[en. B.C. Reg. 278/2004, s. 4.]

Part 2 — Written Contracts and Subcontracts Required

Contracts and subcontracts must be in writing

- 3** (1) Persons entering into a contract or subcontract must do so in writing.
- (2) Each of the parties to a contract or subcontract that does not comply with a requirement of this regulation must make reasonable efforts to cause the contract or subcontract to conform to the requirement.
- (3) With the consent of the parties or intended parties to a contract or subcontract, the minister may by order relieve those parties from the application of subsection (1) in respect of their contract, subcontract, intended contract or intended subcontract, until a specified date or generally.

[am. B.C. Reg. 278/2004, s. 5.]

Part 3 — Assignability of Contracts and Subcontracts

Assignability

- 4 (1) Every replaceable contract must provide that the interests of the contractor are assignable, subject to the consent of the licence holder, and that the consent must not be withheld unreasonably.
- (2) Every replaceable subcontract must provide that the interests of the subcontractor are assignable, subject to the consent of the contractor, and that the consent must not be withheld unreasonably.
- (3) If a licence holder or a contractor withholds consent to an assignment of a contract or subcontract, the onus is on the licence holder or contractor to show that the withholding was reasonable.
- (4) If, 31 or more days after receiving a notice from a contractor or subcontractor requesting consent to the assignment of a contract or subcontract, the licence holder or contractor has not notified the contractor or subcontractor of the reasons for withholding that consent, the licence holder or contractor is deemed to have consented to the assignment.
- (5) A notice from a contractor or subcontractor under subsection (4) must describe the intended assignee of the contract or subcontract.

[am. B.C. Reg. 278/2004, s. 6.]

Part 4 — Dispute Resolution

Division 1 — Dispute Resolution Requirements

Mediation and arbitration requirements

- 5 Every contract or subcontract must provide that all disputes that have arisen or may arise between the parties to the contract or subcontract under or in connection with the contract or subcontract will be referred to mediation and, if not resolved by the parties through mediation, will be referred to arbitration.

Division 2 — Dispute Resolution System

Dispute resolution rules

- 6 (1) If an arbitration has been commenced under this Part or section 23, 25, 32, 33.1, 33.43, 33.5 or 33.51, the arbitration must be conducted under rules determined by the arbitrator to be most appropriate for conducting the arbitration in a cost effective manner within the time frames allowed, including, without restriction, rules for any
 - (a) exchange of documents,
 - (b) discovery of parties,
 - (c) if the dispute is a rate dispute, disclosure of fair market rates by either party under section 25,
 - (d) if the dispute is a rate dispute, capacity for peers to provide information

or opinions on fair market rates and on the considerations described in section 26.01 (2),

(e) manner in which evidence is to be tendered, including the number of witnesses from each party, the use of affidavit evidence, the use of witness statements and the amount of time each party will have to tender evidence and to examine witnesses, and

(f) other matters related to efficient and effective conduct of the arbitration.

- (2) Subject to this Part and to sections 23, 25, 25.2, 32, 33.1, 33.43, 33.5 and 33.51, the *Commercial Arbitration Act* applies to the arbitration of disputes arising under or in connection with a contract or subcontract, and for that purpose the *Commercial Arbitration Act* is adopted as part of the dispute resolution system under this Part 4.
- (3) Except as otherwise provided for in subsection (1) of this section and sections 23, 25, 25.2, 32, 33.1, 33.43, 33.5 and 33.51, the mediation and arbitration of a dispute arising under or in connection with a contract or subcontract will be conducted in accordance with the requirements of section 8.

[en. B.C. Reg. 278/2004, s. 7; am. B.C. Reg. 524/2004, s. 2.]

Registered mediators and arbitrators

- 7 (1) The minister must designate and register in a register to be called the Register of Timber Harvesting Contract and Subcontract Mediators and Arbitrators

(a) 5 or more registered mediators, and

(b) 5 or more registered arbitrators

who are not licence holders, contractors or subcontractors and whom the minister considers are impartial in disputes between licence holders and contractors or between contractors and subcontractors.

- (2) A person may be designated as both a registered mediator and a registered arbitrator.
- (3) On request, the minister must provide to whoever makes the request a copy of the Register of Timber Harvesting Contract and Subcontract Mediators and Arbitrators.

[am. B.C. Reg. 133/2011, Sch. s. 27.]

Mediation and arbitration proceedings

- 8 (1) A party to a dispute may commence proceedings under this Division to resolve the dispute by delivering to the other party to the contract or subcontract, and to the Deputy Minister of Forests and Range, a notice of dispute specifying the nature of the dispute and requesting mediation and arbitration under this division.
- (2) If the parties have not agreed upon a mediator within 14 days of a notice of dispute being delivered as provided for in subsection (1), a party may by written notice to the other party and to the Deputy Minister of Forests and Range request the Deputy Minister of Forests and Range to appoint a mediator.
- (3) Within 14 days of receiving a request under subsection (2) to appoint a mediator, the Deputy Minister of Forests and Range or a person designated by the deputy minister must appoint a registered mediator as mediator.
- (4) If a dispute is not resolved by mediation within 14 days of a mediator being agreed upon by the parties or appointed under subsection (3) or upon earlier written notice by

the mediator to the parties that the dispute is not likely to be resolved through mediation, a party may commence arbitration proceedings by delivering a notice of arbitration to the other party.

- (5) A party may request the Deputy Minister of Forests and Range to appoint a sole arbitrator if, within 14 days of a notice of arbitration being delivered under subsection (4), either
 - (a) the parties have not agreed upon a sole arbitrator, or
 - (b) the parties have agreed that the arbitration be conducted by a 3 person arbitration panel and at least one party has failed to appoint its nominee to the arbitration panel.
- (6) If the nominees of each party to a 3 person panel have not selected a chairperson of the panel within 28 days of the notice of arbitration being delivered, a party may request the Deputy Minister of Forests and Range to appoint a chairperson.
- (7) Within 14 days of receiving a request under subsection (5) or (6) to appoint a sole arbitrator or chairperson, the Deputy Minister of Forests and Range or a person designated by the deputy minister must appoint a registered arbitrator as sole arbitrator or chairperson.
- (8) Mediation proceedings commenced under this Division must be administered by the mediator and conducted in a manner considered appropriate by the mediator in the circumstances.
- (9) Any recommendation made by a mediator is not binding on the parties.
- (10) In any subsequent arbitration or other legal proceeding, with respect to an issue in dispute in the mediation,
 - (a) no party may call the mediator as a witness,
 - (b) no party may introduce evidence regarding
 - (i) any discussions that took place as part of the mediation between the parties, or between one or more parties and the mediator,
 - (ii) any recommendation for settling the dispute made by the mediator or any party as part of the mediation,
 - (iii) any document prepared as part of the mediation by the mediator or any party to the mediation, and
 - (c) no document that is privileged ceases to be privileged solely as a result of being disclosed to the mediator or to another party during the mediation.
- (11) One or more of the provisions of subsection (10) may be waived any time after the mediation by agreement of all the parties to the mediation.
- (12) Arbitration proceedings commenced under this Division must
 - (a) be administered by the arbitrator or a clerk appointed by the arbitrator, unless the parties to the arbitration otherwise agree, and
 - (b) except where inconsistent with requirements of this Part, including any rules established by an arbitrator under section 6, be conducted in accordance with the rules of the British Columbia International Commercial Arbitration Centre for the conduct of domestic commercial arbitration, unless the parties to the arbitration agree otherwise.

(13) A notice referred to in this section must

- (a) provide a brief description of the nature of the dispute, and
- (b) be delivered
 - (i) in accordance with any provision for notice in the contract or subcontract under or in relation to which the dispute arises, or
 - (ii) in the absence of a provision referred to in subparagraph (i), by serving the notice in accordance with the Supreme Court Civil Rules.

(14) A person who has acted as a mediator in a dispute may only act as an arbitrator in subsequent arbitration proceedings with respect to that dispute if, after the conclusion of the mediation, all parties agree.

[am. B.C. Regs. 278/2004, s. 8; 153/2010.]

Fees and expenses of mediation shared

- 9** The fees and expenses of the mediator in a mediation, or of a clerk, secretary or reporter assisting in a mediation, must be shared equally between the parties to the dispute, whether or not the mediation leads, without arbitration, to a settlement of the dispute, unless
- (a) a party fails or refuses to meet with the mediator or participate in the mediation, in which case the expenses must be borne entirely by that party, or
 - (b) the mediator assesses costs against a party for cause.

Parties bear own costs of mediation

- 10** Unless the parties otherwise agree, each party to the mediation must bear that party's own costs of the mediation, apart from the fees and expenses referred to in section 9.

Division 3 — Register of Arbitration Awards

Register of arbitration awards

- 11** (1) With respect to a dispute arising under or in connection with a contract or subcontract, within 14 days of an arbitrator making an award or giving reasons for an award the sole arbitrator or the chairperson of the arbitration panel must deliver a copy of the award or reasons for the award to the Deputy Minister of Forests and Range.
- (2) The Deputy Minister of Forests and Range or person designated by the deputy minister must keep a register to be called the Register of Timber Harvesting Contract and Subcontract Arbitration Awards.
- (3) The Deputy Minister of Forests and Range or person designated by the deputy minister must place in the Register of Timber Harvesting Contract and Subcontract Arbitration Awards every copy of an arbitration award or reasons for an arbitration award received under subsection (1).
- (4) A copy of the Register of Timber Harvesting Contract and Subcontract Arbitration Awards must be kept at each regional office of the ministry and be made available for public review.

Part 5 — Replaceability of Contracts and Subcontracts

Division 1 — Contracts

Certain contracts must be replaceable

- 12** (1) The following contracts, whether or not in writing, are replaceable contracts if they were replaceable contracts and in effect immediately before June 21, 2004:
- (a) a contract to carry out any phase of a licence holder's timber harvesting operations under a replaceable tree farm licence or a replaceable forest licence for the coastal area;
 - (b) a contract to carry out any phase of a licence holder's timber harvesting operations under a timber licence for the coastal area under which the total net volume of merchantable timber remaining at the time the contract is entered into is more than 30 000 m³;
 - (c) a contract to carry out any phase of a licence holder's timber harvesting operations under a replaceable tree farm licence for the interior area if, subject to section 39 (2), the contract is relied on by the licence holder to comply with the contractor clause in the tree farm licence;
 - (d) a contract to carry out any phase of a licence holder's timber harvesting operations under a replaceable forest licence for the interior area that
 - (i) has, or at the time of issue had, an AAC of more than 70 000 m³, and
 - (ii) subject to section 39 (2), is relied on by the licence holder to comply with the contractor clause in the forest licence.
- (2) Despite subsection (1), a contract is not a replaceable contract if
- (a) the parties agree in writing that the contract is not replaceable,
 - (b) the contract was entered into to meet a temporary need of the licence holder's operation, or
 - (c) the contract was entered into for the purposes of an experiment referred to in section 20.
- (3) Subject to section 52, any contract listed in subsection (1) (a) to (d) entered into on or after June 21, 2004 must be a replaceable contract only if it is a contract offered to replace a replaceable contract.
- (4) If a replaceable contract has been terminated by a licence holder for default by the contractor, that licence holder must enter one or more replaceable contracts with other contractors, which contracts must, in aggregate, specify an amount of work equal to or greater than the amount of work specified in the terminated contract.

[en. B.C. Reg. 278/2004, s. 9.]

Term and commencement

- 13** (1) A replaceable contract must provide that
- (a) if the contractor has satisfactorily performed its obligations under the contract, and conditional on the contractor continuing to satisfactorily perform the existing contract, the licence holder must offer a replacement

contract to the contractor, and

(b) the replacement contract must

- (i) be offered 3 months or more before the expiry of the contract being replaced,
- (ii) provide that it commences on or before the expiry of the contract being replaced,
- (iii) provide for payment to the contractor of amounts in respect of timber harvesting services as agreed to by the parties or, failing agreement, as determined under section 25, and
- (iv) otherwise be on substantially the same terms and conditions as the contract it replaces.

(2) If a replaceable contract does not provide for an expiry date, the contract expires on the second anniversary of the date on which the contract commenced.

Flexibility to address change

14 (1) A replaceable contract must provide that, upon reasonable notice to the contractor, the licence holder may require, for bona fide business and operational reasons, that the contractor

- (a) use different timber harvesting methods, technology or silvicultural systems,
- (b) move into a new operating area,
- (c) comply with different specifications, or
- (d) undertake any other operating change necessary to comply with a direction made by a government agency or lawful obligation imposed by any federal, provincial or municipal government.

(2) A replaceable contract must provide that if a requirement made pursuant to subsection (1) results in a substantial change in the timber harvesting services provided by the contractor, the contractor may, within 15 days of receiving notice under subsection (1), elect by notice in writing to the licence holder to terminate the replaceable contract without incurring any liability to the licence holder.

(3) A replaceable contract must provide that, if a requirement is made pursuant to subsection (1) and the contractor does not elect to terminate the replaceable contract as provided for in subsection (2), either party may, within 30 days of the contractor receiving notice under subsection (1), request a review of the rate then in effect.

(4) If, after any changes in timber harvesting services required by the licence holder under subsection (1), the parties are unable to agree upon the rate to be paid for timber harvesting services, a rate dispute is deemed to exist and must be resolved in accordance with Part 5, Division 4.

[am. B.C. Reg. 278/2004, s. 10.]

Termination on expiry of licence

15 A replaceable contract must provide that the contract terminates, to the extent that it relates to the licence, upon the cancellation, expiry or surrender of a licence under which the timber harvesting services provided by the contractor are carried out.

Fibre basket agreement

- 16** (1) A licence holder and one or more contractors may enter into an agreement in which the parties agree
- (a) to treat more than one licence held by the licence holder as a single licence for the purposes of Part 5 of this regulation, and
 - (b) to treat all contracts that are
 - (i) between the licence holder and any of the contractors, and
 - (ii) to carry out any phase of the licence holder's timber harvesting operations under any of the licencesas contracts to carry out phases of the licence holder's operations under that single licence.
- (2) The holder of a tree farm licence and 2 or more contractors may enter into an agreement by which the parties agree
- (a) to treat a defined area of the tree farm licence as comprising a separate segregated licence for the purposes of Part 5 of this regulation, and
 - (b) to treat all contracts that are
 - (i) between the licence holder and any of the contractors, and
 - (ii) to carry out any phase of the licence holder's timber harvesting operations in that areaas contracts to carry out phases of the licence holder's operations under that separate licence.
- (3) Subsections (1) and (2) apply only if every contractor who has a replaceable contract that may be affected by the agreement is a party to the agreement.
- (4) If a fibre basket agreement does not expressly provide for termination, the fibre basket agreement may be terminated only with the consent of all parties.

Division 2 — Amount of Work

Amount of work must be specified

- 17** (1) A replaceable contract must specify an amount of work to be performed in each year during the term of the contract.
- (2) A replaceable contract must provide that the specified amount of work to be performed in each year of the replaceable contract may not be reduced by a licence holder except as expressly provided for in the regulation or in a clause required, or permitted to be in the contract by this regulation.
- (3) A replaceable contract may provide for work to be performed in relation to timber harvesting operations carried out under more than one licence.
- (4) If a replaceable contract provides for work to be performed in relation to timber harvesting operations carried out under more than one licence as provided in subsection (3),
- (a) the replaceable contract must specify an amount of work in respect of each licence, and

(b) the amount of work to be specified in respect of each licence must be determined separately.

Amount of work for coastal contracts

18 (1) Except as otherwise provided in this Part, the amount of work specified in a replaceable contract that pertains to a licence for the coastal area, other than a dedicated phase contract or a volume independent contract, must be expressed as the amount of work required to process an amount of timber where the amount of timber is expressed as a specified percentage of the total amount of timber processed by the licence holder under the licence in that year.

(2) Subject to any adjustment provided for in subsection (7), the specified percentage referred to in subsection (1) must be equal to

$$(A \div B) \times 100$$

where

A is the amount of timber processed by the contractor in the later of 1991 and the calendar year that the contractor first became entitled to a replaceable contract, and

B is the total amount of timber processed by the licence holder under the licence in the year used to determine the value of A.

(3) Except as otherwise provided in this Part, the amount of work specified in a dedicated phase contract that pertains to a licence for the coastal area must be expressed as a specified percentage of the total amount of work that is

(a) of the type provided for in the contract, and

(b) required to facilitate the work carried out under the replaceable contract or by the company operation to which the contract is dedicated.

(4) Subject to any adjustment provided for in subsection (7), the specified percentage referred to in subsection (3) must be equal to

$$(C \div D) \times 100$$

where

C is the total amount of work that was performed by the contractor in the later of 1991 and the calendar year that the contractor first became entitled to a replaceable contract, and

D is the total amount of work of the type provided for in the contract that is required to facilitate the work carried out under the replaceable contract, or by the company operation to which the contract is dedicated, in the year used to determine the value of C.

(5) Except as otherwise provided in this Part, the amount of work specified in a volume independent contract that pertains to a licence for the coastal area must be expressed as an amount equal to the specified percentage of E — F

where

E is the total amount of work of the type provided for in the contract, expressed in units appropriate to that type of work, that is required by the

licence holder in any year for the purposes of all timber harvesting operations carried out under the licence, and

F is the total amount of work of the type provided for in the contract, expressed in the same units that are used to determine the value of E, that is carried out on behalf of the licence holder in the year used to determine the value of E for the purposes of timber harvesting operations under the licence

- (a) pursuant to replaceable contracts described in subsection (1),
- (b) pursuant to dedicated phase contracts, and
- (c) by employees of a licence holder as part of company operations that operate as an integrated unit performing a substantial proportion of a timber harvesting operation but, for greater certainty, not including work that, if performed by a contractor, would be characterized as work performed under a volume independent contract.

- (6) Subject to any adjustment provided for in subsection (7), the specified percentage referred to in subsection (5) must be equal to

$$G \div (H - J) \times 100$$

where

G is the total amount of work of the type provided for in the contract, expressed in units appropriate to that type of work, in the later of 1991 and the calendar year that the contractor first became entitled to a replaceable contract,

H is the total amount of work of the type provided for in the contract, expressed in the same units used to determine the value of G, that was required by the licence holder in the year used to determine the value of G for the purposes of all timber harvesting operations carried out under the licence, and

J is the total amount of work of the type provided for in the contract that was carried out on behalf of the licence holder in the year used to determine the value of G for the purposes of timber harvesting operations under the licence

- (a) pursuant to replaceable contracts described in subsection (1),
- (b) pursuant to dedicated phase contracts, and
- (c) by employees of a licence holder as part of company operations that operate as an integrated unit performing a substantial proportion of a timber harvesting operation but, for greater certainty, not including work that, if performed by a contractor, would be characterized as work performed under a volume independent contract.

- (7) The specified percentage calculated pursuant to subsection (2), (4) or (6) must be adjusted to fairly take into account circumstances in which

- (a) there is a significant difference between the specified percentage as calculated and either
 - (i) the proportion of timber harvesting services that the contractor historically provided or was entitled to provide under previous contracts, or
 - (ii) the proportion of timber harvesting services provided under

replacement contracts entered into after August 31, 1991 if the parties have, in good faith and in the ordinary course of business, specified in the contract a fixed or determinable amount of work,

(b) the specified percentage as calculated, if taken together with the amount of work specified in each of the other replaceable contracts entered into by the licence holder with respect to timber harvesting operations under that licence, would require a reduction in the proportion of timber harvesting operations historically performed by company operations under that licence, or

(c) the amount of work performed by the contractor in the later of 1991 and the calendar year that the contractor first became entitled to a replaceable contract

(i) relates to an operating period of less than 12 consecutive months of normal timber harvesting operations, and

(ii) differs from the amount of work performed or intended by the parties to be performed during the first 12 consecutive months of normal timber harvesting operations

under the contract in effect at that time.

(8) If, on or after April 1, 1996,

(a) a holder of a licence for the coastal area, and

(b) each contractor with a replaceable contract that relates to timber harvesting operations carried out under that licence,

agree, the amount of work provided for in any or all of the replaceable contracts referred to in paragraph (b) may be specified in a manner different from that required under this section.

(9) If, before or after this regulation comes into force, both a licence holder for the coastal area and one or more contractors with contracts that relate to timber harvesting operations carried out under that licence have agreed to a seniority system,

(a) despite subsection (5), the amount of work specified in the contracts must be specified in a manner that incorporates and is consistent with the seniority system, and

(b) the aggregate amount of work that the contractors are entitled to receive under the seniority system must equal the aggregate of the amount of work that each contractor would be entitled to individually under subsection (5) and (6).

[am. B.C. Reg. 278/2004, s. 11.]

Amount of work for interior contracts

19 The amount of work specified in a replaceable contract that pertains to a licence for the interior area must be expressed in a manner that

(a) is consistent with the provisions of the contractor clause in the licence and the provisions of Part 6, and

(b) results in compliance with the contractor clause as provided for under section 41 when taken together with the amount of work specified in the

other contracts, whether replaceable or not, relied upon by the licence holder to comply with the contractor clause.

[am. B.C. Reg. 278/2004, s. 12.]

Experiments

20 (1) A replaceable contract must provide that the licence holder may allocate to the contractor and the contractor must perform, in any given year of the term of the contract, an amount of work that is less than the amount of work specified in the contract to enable the licence holder to experiment with timber harvesting methods, technology or silviculture systems different from those historically used by the licence holder on the licence to which the contract relates, provided that

- (a) the contractor receives reasonable notice,
- (b) the experiment is for bona fide business and operational reasons,
- (c) it is not practicable for the contractor to perform the work required to conduct the experiment, and
- (d) the licence holder has used reasonable efforts to fairly distribute among company operations and other contractors carrying out timber harvesting operations under the licence the reduction of work associated with any experiments.

(2) In an arbitration of a dispute arising from or in relation to a reduction in the amount of work under subsection (1) the onus lies on the licence holder to establish that the conditions entitling the licence holder to reduce the amount of work have been satisfied.

Compliance over time

21 A replaceable contract must provide that the amount of work that the licence holder allocates to the contractor and that the contractor is required to perform in any year during the term of the contract may differ from the amount of work specified in the contract, provided that

- (a) the difference is attributable to bona fide business and operational reasons on the part of the licence holder, and
- (b) the amount of work that the licence holder allocates to the contractor under each replaceable contract over each amount of work compliance period of the licence to which the contract relates is equal to or greater than 95% of the aggregate of the specific amount of work provided for under that contract during that amount of work compliance period, less the aggregate of any reductions in the amount of work imposed during that amount of work compliance period as permitted by sections 20 and 22.

[am. B.C. Reg. 278/2004, s. 13.]

Substituting work

21.1 (1) A licence holder may, for bona fide business and operating reasons, allocate to a contractor with a replaceable contract work that pertains to timber that the licence holder is entitled to harvest outside the licence to which the contract pertains.

(2) If a licence holder allocates work to a contractor under subsection (1),

- (a) the licence holder must advise the contractor that the work is being allocated in substitution for work under the licence to which the contract pertains before the contractor commences the work,
- (b) the work is deemed to be allocated under the contract and all the provisions of the contract apply to the work, and
- (c) there is no obligation for the licence holder to allocate any work outside the licence to the contractor at any other time.

[am. B.C. Reg. 278/2004, s. 14.]

Events beyond control

- 22** (1) A replaceable contract must provide that the licence holder is not liable to the contractor for any failure to allocate to the contractor in any year the amount of work specified in the contract, as adjusted under section 20 or 21, if the failure results from changes in law, natural disasters, interference by a person who is not a party to the contract or any other event beyond the reasonable control of the licence holder other than a change in the market price of logs.
- (2) A replaceable contract must provide that the contractor is not liable to the licence holder for any failure to perform the amount of work allocated by the licence holder in any year if the failure results from changes in law, natural disasters, interference by a person who is not a party to the contract or any other event beyond the reasonable control of the contractor other than a change in the market price of logs.

Division 3 — Amount of Work Disputes

Amount of work dispute

- 23** (1) If the parties to a replaceable contract that relates to a licence for the coastal area have not agreed upon the amount of work to be specified in the contract, and the amount has not been determined in accordance with this section, either party may provide the other with a notice in writing stating the amount of work that party believes should be specified in the contract.
- (2) A contractor who receives a notice from a licence holder in accordance with subsection (1) must, within 30 days of receiving the notice
- (a) advise the licence holder in writing that it agrees that the amount of work stated in the notice is the amount which should be specified in the contract, or
 - (b) provide a notice in writing to the licence holder stating the amount of work the contractor believes should be specified in the contract.
- (3) A contractor who fails to comply with subsection (2) is deemed to have agreed with the amount of work stated in the licence holder's notice, and the replaceable contract is deemed to be amended to specify that amount of work.
- (4) A licence holder who receives a notice from a contractor in accordance with subsection (1) or (2) (b) must, within 30 days of receiving the notice
- (a) advise the contractor in writing that it agrees that the amount of work stated in the notice is the amount of work which should be specified in the contract, or

- (b) make an amount of work proposal.
- (5) A licence holder who fails to comply with subsection (4) is deemed to have agreed with the amount of work stated in the contractor's notice, and the replaceable contract is deemed to be amended to specify that amount of work.
- (6) An amount of work proposal made by a licence holder under subsection (4) (b) must
- (a) be made in writing,
 - (b) be delivered to each contractor who has a replaceable contract to which the proposal relates,
 - (c) describe the nature of the amount of work dispute,
 - (d) state the amount of work that the licence holder proposes to be specified in each replaceable contract relating to the licence,
 - (e) state the amount of work that the licence holder claims it has historically conducted through company operations, and
 - (f) state how the amount of work proposal takes into account the provisions of section 18.
- (7) Repealed. [B.C. Reg. 278/2004, s. 15.]
- (8) If a contractor who receives an amount of work proposal objects to the proposal, the contractor must give written notice to the licence holder within 30 days of delivery of the proposal to that contractor.
- (9) If no contractor who receives an amount of work proposal objects to the proposal in accordance with subsection (8), the proposal is deemed to be accepted, and the replaceable contracts of each contractor to whom the proposal was delivered are deemed to be amended to the extent necessary to implement the proposal.
- (10) If a licence holder receives a notice of objection with respect to an amount of work proposal in accordance with subsection (8), a dispute is deemed to exist with respect to each of the replaceable contracts that the proposal relates to and must be resolved by mediation and, if necessary, arbitration under the system established in Division 2 of Part 4, subject to the following:
- (a) the licence holder and each contractor with a replaceable contract to carry out one or more phases of the licence holder's timber harvesting operations under the licence to which the proposal relates must be parties to the mediation and, if the mediation is not successful, to the arbitration, and any reference to "party" and "parties" in Division 2 of Part 4 must be read accordingly;
 - (b) the licence holder and any contractor with a replaceable contract to which the amount of work proposal relates may commence proceedings by delivering a notice of dispute as provided in section 8 (13) (b);
 - (c) a licence holder or any contractor with a replaceable contract to which the amount of work proposal relates who refers an amount of work proposal to mediation or arbitration must deliver a notice of the time and place of the mediation to each union whose members may be affected by the disposition of the amount of work dispute;
 - (d) a union that is entitled to receive notice under paragraph (c) may take part in the mediation or arbitration as an intervenor by making submissions,

including making an amount of work proposal, and may take part in other ways to the extent permitted by the mediator or arbitrator;

(e) each contractor that is a party to an arbitration regarding an amount of work dispute may make an amount of work proposal;

(f) the arbitration of an amount of work dispute must be conducted by a sole arbitrator;

(g) an arbitrator must resolve a dispute regarding the amount of work to be specified in a replaceable contract having regard to the requirements of section 18;

(h) in adjudicating the dispute, an arbitrator must express the amount of work to be specified in the contract in a manner consistent with the provisions of section 18.

[am. B.C. Reg. 278/2004, s. 15.]

If no party issues notice to arbitrate

24 After the end of mediation of an amount of work dispute involving an amount of work proposal made by a licence holder, if the amount of work dispute is not resolved and no party issues a notice to arbitrate within 14 days, the amount of work proposal made by the licence holder is deemed to be accepted and the replaceable contracts of each contractor to whom the proposal was delivered are deemed to be amended to the extent necessary to implement the proposal.

Division 4 – Rate Disputes

Rate disputes

24.1 A replaceable contract must provide that if a licence holder and a contractor have been unable to agree on rates for work that a licence holder requires a contractor to perform under the contract, the rate dispute will be resolved in accordance with this Division.

[en. B.C. Reg. 278/2004, s. 16.]

Setting rates

25 (1) If a licence holder and a contractor have been unable to agree on rates for work that a licence holder requires a contractor to perform under a replaceable contract,

(a) the licence holder may deliver a rate proposal to the contractor, and

(b) the licence holder must, if requested by the contractor, deliver a rate proposal to the contractor within 15 days of receiving the contractor's request.

(2) A contractor who receives a rate proposal from a licence holder under subsection (1) must, within 15 days of receiving the proposal, deliver a notice in writing to the licence holder either

(a) accepting the rate proposed in the rate proposal, or

(b) rejecting the rate proposed in the rate proposal and offering a rate the contractor believes to be the fair market rate for the work described in the rate proposal.

- (3) A contractor who fails to respond to a rate proposal or who responds to the proposal but fails to offer a rate for the work described in the proposal in accordance with subsection (2) is deemed to have accepted the rate proposed by the licence holder in the rate proposal.
- (4) A rate dispute is deemed to exist, in respect of a replaceable contract, and the dispute must be resolved by mediation and arbitration under subsection (5) or (6), if the licence holder does not
 - (a) make a rate proposal under subsection (1) (b), or
 - (b) within 7 days of receiving a notice under subsection (2) (b) accept the rate offered by the contractor in the notice.
- (5) The following applies to a rate dispute referred to in subsection (4) in respect of a replaceable contract pertaining to a licence in the coastal area:
 - (a) if the parties have not agreed on a mediator within 7 days of a rate dispute being deemed to exist, a party may by written notice to the other party and to the Deputy Minister of Forests and Range request the deputy minister to appoint a mediator;
 - (b) within 7 days of receiving a request under paragraph (a) to appoint a mediator, the Deputy Minister of Forests and Range or a person designated by the deputy minister must appoint a registered mediator as mediator;
 - (c) if requested by the mediator, or if agreed to by the parties, each party must appoint one peer to assist the mediator during the mediation process;
 - (d) if a party fails or refuses to appoint a peer under paragraph (c) within 7 days of the request by the mediator, the mediator may proceed without the appointment of the peer, or may appoint one;
 - (e) if a rate dispute is not resolved by mediation within 30 days of a mediator being agreed on by the parties or appointed under paragraph (b), or on earlier written notice by the mediator to the parties that the dispute is not likely to be resolved through mediation, a party may commence arbitration proceedings by delivering a notice of arbitration to the other party and to the mediator;
 - (f) unless, within 7 days of a notice of arbitration being delivered under paragraph (e), the parties agree on another person to serve as arbitrator, the person agreed to or appointed as mediator must serve as arbitrator;
 - (g) arbitration proceedings commenced under this Division must be conducted on an expedited basis as follows:
 - (i) an arbitration hearing must be completed within 30 days of a notice of arbitration being delivered under paragraph (e);
 - (ii) the arbitrator must deliver an award within 15 days of the arbitration hearing being completed;
 - (iii) the award must be 5 pages or fewer.
- (6) The following apply to a rate dispute referred to in subsection (4) in respect of a replaceable contract pertaining to a licence in the interior area:
 - (a) if the parties have not agreed on a mediator within 7 days of a rate dispute being deemed to exist, a party may by written notice to the other

party and to the Deputy Minister of Forests and Range request the deputy minister to appoint a mediator;

(b) if the parties have not agreed on an arbitrator within 7 days of a rate dispute being deemed to exist, a party may by written notice to the other party and to the Deputy Minister of Forests and Range request the deputy minister to appoint an arbitrator;

(c) within 7 days of receiving a request under paragraph (a) to appoint a mediator, the Deputy Minister of Forests and Range or a person designated by the deputy minister must appoint a registered mediator as mediator;

(d) within 7 days of receiving a request under paragraph (b) to appoint an arbitrator, the Deputy Minister of Forests and Range or a person designated by the deputy minister must appoint a registered arbitrator as arbitrator;

(e) within 7 days of the appointment of a mediator, each party must deliver to the other in writing a mediation proposal that outlines the rate for the work described in the rate proposal delivered under subsection (1) and the basis on which they believe that rate is consistent with the criteria set out in section 26.01;

(f) at any time the parties may agree that the mediation proposals required under paragraph (e) are the final offers of the parties for the purposes of paragraphs (h) and (i);

(g) if a rate dispute is not resolved by mediation within 7 days of the parties delivering the mediation proposals required under paragraph (e), or if a party fails to deliver a mediation proposal as required under paragraph (e), or on earlier written notice by the mediator to the parties that the dispute is not likely to be resolved through mediation, a party may commence arbitration proceedings by delivering a notice of arbitration to the other party and to the arbitrator;

(h) within 14 days of the delivery of a notice of arbitration under paragraph (g), each party must deliver to the other and to the arbitrator in writing a final offer that proposes a rate for the work described in the rate proposal delivered under subsection (1) and the basis on which this rate is consistent with the criteria set out in section 26.01;

(i) arbitration proceedings commenced under this Division must be conducted on an expedited basis as follows:

(i) an arbitration hearing must be completed within 7 days of the parties delivering the final offers required under paragraph (g);

(ii) each party is allowed up to one full hearing day to present its final offer;

(iii) the arbitrator must deliver an award within 7 days of the arbitration hearing being completed;

(iv) in delivering the award, the arbitrator must select one of the final offers;

(v) in determining which final offer to select, the arbitrator must select the final offer that proposes the rate the arbitrator believes best reflects the test set out in section 26.01 (1);

(vi) the award must be 5 pages or fewer.

- (7) If a rate has been accepted, deemed to have been accepted, resolved or determined by arbitration, the licence holder must make the work described in the rate proposal available to the contractor to perform and the contractor must perform that work in accordance with the rate proposal at the rate that was accepted, deemed to have been accepted or determined.

[en. B.C. Reg. 278/2004, s. 17.]

Disclosure of market rate

25 . 1 At the request of a mediator or arbitrator, each party to a rate dispute must do all of the following:

- (a) disclose all rates known to it and described in section 26.01 (2) (a), (b), (c) and (d);
- (b) disclose any relevant information known to it that, having regard to the considerations in section 26.01 (2) (e), may be reasonably necessary to make meaningful comparisons between those rates disclosed under paragraph (a) and the rate that is subject to the rate dispute;
- (c) not disclose to any third party any confidential information received under paragraph (a) or (b);
- (d) not use any information received under paragraph (a) or (b) for any purpose other than the rate dispute.

[en. B.C. Reg. 278/2004, s. 18.]

Role of peers

25 . 2 If peers are appointed under section 25 (5) to assist the mediator in a rate dispute,

- (a) the peers may provide the mediator with information or opinions with respect to the comparability of any rate as a fair market rate, and the mediator may authorize the peers to perform additional functions,
- (b) any information or opinion of a peer with respect to the comparability of a rate as a fair market rate may be considered by an arbitrator in the adjudication of a rate dispute and may be given the weight determined by the arbitrator to be appropriate in the circumstances, and
- (c) if the arbitrator intends to consider any information or opinion of a peer, the arbitrator must first disclose that information or opinion to the parties and permit the parties to make submissions with respect to it.

[en. B.C. Reg. 278/2004, s. 18.]

Provisional rates

26 If a rate dispute arises under a replaceable contract,

- (a) except as otherwise provided for under this section, the parties must continue to observe their respective rights and obligations under the contract unless both parties agree otherwise,
- (b) if the parties to a rate dispute are unable to agree on the amount to be paid for timber harvesting services provided under the contract from the

beginning of the rate dispute until it is resolved, the contractor must be paid a provisional rate equal to the rate in effect for prior timber harvesting services provided by the contractor immediately before the rate dispute,

(c) a party to a rate dispute may apply to an arbitrator to increase or decrease the provisional rate as determined by paragraph (b) to reflect any significant change in operating conditions, operating costs or market rates relative to those encountered for prior timber harvesting services under the contract, and

(d) the rate determined by an arbitrator in a rate dispute is retroactive to the beginning of the commencement of the work in respect of which the rate dispute arose, and the award by the arbitrator must provide for repayment of any difference between the rate awarded and the provisional rate agreed to by the parties or determined by this section.

[en. B.C. Reg. 278/2004, s. 19.]

Rate test

26.01 (1) If a rate dispute is referred to arbitration, the arbitrator must determine the rate according to what a willing licence holder and a willing contractor acting reasonably and at arm's length in similar circumstances would agree is a fair market rate, on the earlier of

(a) the date the rate proposal was delivered to the contractor, and

(b) the date the timber harvesting operations commenced.

(2) In determining a fair market rate under subsection (1), an arbitrator may take into consideration the following:

(a) rates agreed to by the licence holder and contractor for prior timber harvesting services;

(b) rates agreed to under another contract by either the licence holder or contractor for similar timber harvesting services;

(c) rates agreed to under another contract by either the licence holder, the contractor or another person for each phase or component of a similar timber harvesting operation;

(d) rates agreed to by other persons for similar timber harvesting services;

(e) if necessary to make meaningful comparisons to any of the rates agreed to in paragraphs (a), (b), (c) and (d) above, the impact on fair market rates likely to arise from differences between the timber harvesting operations that pertain to the rate in dispute, and the timber harvesting operations that pertain to any rate described in paragraphs (a), (b), (c) and (d), including the following:

(i) differences in operating conditions including, without limitation, differences in terrain, yarding distances, hauling distances, volume of timber per hectare;

(ii) differences in the total amount of timber processed;

(iii) differences in the required equipment configuration;

(iv) differences in required phases;

- (v) differences in operating specifications;
 - (vi) differences in law;
 - (vii) differences in contractual obligations;
 - (viii) differences in the underlying costs of timber harvesting operations in the forest industry generally which would affect fair market rates, including changes in the cost of labour, fuel, parts and supplies;
 - (ix) differences in the cost of moving to a new operating area, if any;
- (f) any other similar data or criteria that the arbitrator considers relevant.
- (3) In determining fair market rates under subsection (1) an arbitrator must not include any consideration or goodwill associated with purchasing a replaceable contract or otherwise acquiring the right to provide timber harvesting services pursuant to a replaceable contract.
- (4) In determining a fair market rate under subsection (1), an arbitrator may consider rates for timber harvesting services on land other than Crown land.

[en. B.C. Reg. 278/2004, s. 20.]

Transition

- 26.02** If a notice of dispute in respect of a rate dispute was delivered under section 8 (1) before the date this section comes into force, that rate dispute will be governed by sections 25 and 26 as they were immediately before that date, unless the parties agree otherwise.

[en. B.C. Reg. 278/2004, s. 20.]

Division 5 — AAC Reductions

Applicability

- 26.1** This Division does not apply to an AAC reduction referred to in section 27 if the AAC is reduced under the *Forestry Revitalization Act*.

[en. B.C. Reg. 291/2003.]

AAC reductions

- 27** A replaceable contract must provide that if the AAC of a replaceable licence is reduced, or if a licence to which a fibre basket agreement applies is cancelled, expires or is surrendered, the licence holder may make an AAC reduction proposal, regarding any or all of the replaceable contracts entered into by the licence holder with respect to timber harvesting operations carried out under that licence or fibre basket agreement, to reduce the amount of work specified in, or to terminate, one or more of those replaceable contracts.

Contents of AAC reduction proposal by a licence holder

- 28** (1) An AAC reduction proposal made by a licence holder under section 27 must
- (a) be made in writing,
 - (b) be delivered in accordance with section 8 (13) (b) to each contractor with a replaceable contract to carry out one or more phases of the licence holder's timber harvesting operations under the licence to which the AAC reduction

proposal relates,

(c) be delivered no later than 120 days following the later of

(i) the date the event giving rise to the AAC reduction proposal takes effect, and

(ii) the date upon which the ministry notifies the licence holder of the event giving rise to the AAC reduction proposal,

(d) specify how the licence holder proposes that the amount of work performed by each contractor with a replaceable contract on the one hand, and by company operations and company contract operations on the other hand, will be changed as a result of the AAC reduction, and

(e) outline how the AAC reduction proposal takes into account the AAC reduction criteria.

(2) If

(a) no proposal is made within the time period provided for under subsection (1),

(b) an AAC reduction proposal is withdrawn under section 31, or

(c) after the end of mediation of an AAC reduction dispute under section 32 the dispute is not resolved and no party has issued a notice to arbitrate within 14 days,

then

(d) the licence holder must apportion the effect of the reduction in AAC or cancellations, the expiry or the surrender of a licence to which a fibre basket agreement applies proportionately among

(i) all contractors holding replaceable contracts,

(ii) any company operations, and

(iii) any company contract operations

in respect of the licence or fibre basket agreement, and

(e) the parties to a replaceable contract must amend their contract, if necessary, to comply with paragraph (d).

(3) Despite subsection (2) (d), as among the company operations and the company contract operations, the licence holder may determine the proportions.

[am. B.C. Reg. 278/2004, s. 21.]

Notice of objection to AAC reduction proposal

29 If a contractor objects to an AAC reduction proposal received from a licence holder under section 27, the contractor must give written notice of the objection to the licence holder within 30 days of delivery of the AAC reduction proposal to that contractor.

Deemed acceptance of proposal

30 If no contractor gives the licence holder written notice of an objection under section 29 the AAC reduction proposal is deemed to be accepted and each contract entered into by the licence holder with respect to that licence is deemed to be amended or terminated as provided for in the AAC reduction proposal.

Receipt of notice of objection

- 31** (1) If a licence holder receives a notice of objection with respect to a AAC reduction proposal in accordance with section 29, the licence holder may
- (a) withdraw the AAC reduction proposal, or
 - (b) refer the AAC reduction proposal to mediation and arbitration under section 32.
- (2) If a licence holder has not referred an AAC reduction proposal to mediation and arbitration under section 32 within 14 days of first receiving a notice of objection in respect of that AAC reduction proposal, the licence holder is deemed to have withdrawn the AAC reduction proposal.

Dispute resolution proceedings for an AAC reduction proposal

- 32** If a licence holder refers an AAC reduction proposal to mediation and arbitration as provided for in section 31, a single dispute is deemed to exist as of the date of referral between the licence holder and all contractors with replaceable contracts entered into with respect to timber harvesting operations carried out under the licence, and the dispute must be resolved by mediation and arbitration under the system established in Division 2 of Part 4 subject to the following:
- (a) the licence holder and each contractor who has a replaceable contract to carry out one or more phases of the licence holder's timber harvesting operations under the licence to which the AAC reduction proposal relates must be parties to the mediation and, if the mediation is not successful, the arbitration and any reference to "party" or "parties" in Division 2 of Part 4 must be read accordingly;
 - (b) the licence holder must commence proceedings by delivering a notice of dispute as provided for in section 8 (13) (b) to each contractor described in paragraph (a);
 - (c) a licence holder who refers an AAC reduction proposal to mediation and arbitration must deliver a notice of the time and place of the mediation or arbitration to each union whose members may be affected by the disposition of the dispute;
 - (d) a union that is entitled to receive notice under paragraph (c) may take part in the mediation or arbitration as an intervenor
 - (i) by making submissions, including making an AAC reduction proposal, and
 - (ii) to the extent permitted by the mediator or arbitrator;
 - (e) the arbitration of a dispute under this section must be conducted by a sole arbitrator;
 - (f) each contractor that is a party to a mediation or an arbitration regarding the dispute may make an AAC reduction proposal that the contractor believes fairly takes into account each of the AAC reduction criteria;
 - (g) an arbitrator must resolve the dispute in the manner that the arbitrator believes most fairly takes into account each of the AAC reduction criteria;
 - (h) for greater certainty, in making a decision with respect to the dispute

- (i) an arbitrator is not restricted to choosing between any of the various AAC reduction proposals made by the parties to the arbitration, and
- (ii) an arbitrator may make an award that includes the termination of one or more of the replaceable contracts, or reduces the amount of work available to any contractor or company operation in a manner that is not proportionate to the reduction in AAC.

[am. B.C. Reg. 278/2004, s. 22.]

Contractor may elect to terminate

- 33** A replaceable contract must provide that if the amount of work available under the contract is reduced as a result of a reduction in the AAC of a licence, or the cancellation, expiry or surrender of a licence to which a fibre basket agreement applies, the contractor may, by written notice to the licence holder, within 90 days of the reduction taking effect, terminate the contract without incurring any liability to the licence holder.

Division 5.1 — *Forestry Revitalization Act* AAC Reductions

Interpretation and disputes

33.1 (1) In this Division:

"conciliator" means a person appointed as both mediator and arbitrator under subsection (8);

"fairness objection" means the inclusion in an objection to a forestry revitalization proposal under section 33.4 by an impacted contractor of notice that the contractor believes the requirements of section 33.22 (h) have not been met in respect of that contractor and the reasons why the requirements have not been met;

"group of licences" means a group of licences as defined in section 1 of the *Forestry Revitalization Act* except that, if licences shown for a group of licences in Schedule 1 to the Act have been eliminated or have been added to licences shown for another group of licences in Schedule 1 to the Act through

- (a) the acquisition of one or more licence holders by another licence holder,
- (b) the amalgamation of two or more licence holders, or
- (c) the transfer of licences,

the group of licences must reflect that elimination or addition;

"impacted contractor" means, in respect of a forestry revitalization proposal, a contractor with a replaceable contract in which the parties have specified the amount of work

- (a) as a percentage of the total amount of that type of work under the licence, or licences in a fibre basket agreement, to which the contract pertains, and the licence holder proposes to reduce that percentage,
- (b) as a fixed amount, and the licence holder proposes to reduce the fixed amount of work by more than the percentage reduction under the *Forestry Revitalization Act* in the allowable annual cut of the licence, or licences in a fibre basket agreement, to which the contract pertains, or

(c) in a manner other than as described in paragraph (a) or (b), and the licence holder proposes to reduce the amount of work by more than the percentage reduction under the *Forestry Revitalization Act* in the allowable annual cut of the licence, or licences in a fibre basket agreement, to which the contract pertains;

"licence holder" means all licence holders for a group of licences or an ungrouped licence;

"minimum replaceable contract proportion" means the replaceable contract proportion for

(a) a group of licences immediately before the order of the minister under section 3 (2) of the *Forestry Revitalization Act* made in relation to the group of licences, or

(b) an ungrouped licence on March 31, 2003;

"proportionate reduction" means the apportionment of the effect of

(a) an order of the minister under section 3 (2) of the *Forestry Revitalization Act*, for a group of licences, and

(b) that Act, for an ungrouped licence,

such that the amount of work to be performed under each replaceable contract that pertains to a licence or licences in a fibre basket agreement, other than a contract that is subject to a seniority system, is reduced by a percentage equal to

$$\left(\frac{A-B}{A} \right) \times 100$$

where

A is the allowable annual cut of the licence, or licences in a fibre basket agreement, that the replaceable contract pertains to immediately before any reduction in allowable annual cut to that licence or licences under the *Forestry Revitalization Act*, and

B is the allowable annual cut of the licence, or licences in a fibre basket agreement, that the replaceable contract pertains to immediately following all reductions in allowable annual cut to that licence or licences under the *Forestry Revitalization Act*;

"rejection threshold", when used in relation to contractors who have replaceable contracts that pertain to those licences included by a licence holder in a forestry revitalization proposal, means objection by either

(a) more than one third of those contractors, or

(b) sufficient of those contractors that they have in aggregate greater than one third of the aggregate amount of work to be performed under all replaceable contracts that pertain to the licences, in which the amount of work to be performed under each contract is determined with regard to the phase contribution amounts for the phases included in that contract;

"replaceable contract proportion" means, at any given time for an ungrouped licence or a group of licences, the proportion determined by the formula

$$A/B$$

where

A is the aggregate amount of work, to be performed under all replaceable contracts pertaining to that ungrouped licence or group of licences having regard to the phase contribution amounts for phases under each contract, and

B is the allowable annual cut of that ungrouped licence or the aggregate of the allowable annual cuts of the group of licences;

"ungrouped licence" means an ungrouped licence as defined in section 1 of the *Forestry Revitalization Act*.

- (2) For the purposes of determining if a rejection threshold under section 33.41 (2) has been achieved, a replaceable contract does not include a contract for hauling if
 - (a) the amount of work is specified in the contract with reference to a seniority system, or the work available to the contractor is otherwise subject to a seniority system,
 - (b) the seniority system is not changed by a forestry revitalization proposal, and
 - (c) the licence, or licences in a fibre basket agreement, to which the seniority system pertains must not be affected by a forestry revitalization proposal in a manner that would reduce the total amount of work available to the group of contractors in the seniority system any more than would have occurred under proportionate reduction.
- (3) If a contractor who has a replaceable contract with a licence holder disagrees with the licence holder on the interpretation or application of any part of this Division, including
 - (a) the definition of "impacted contractor" and whether a contractor is an impacted contractor,
 - (b) the definition of "minimum replaceable contract proportion" and the determination of that proportion,
 - (c) the definition of "replaceable contract proportion" and the determination of that proportion,
 - (d) the definition of "proportionate reduction" and the calculation of reductions to contracts under a proportionate reduction,
 - (e) the definition of "rejection threshold" and whether a rejection threshold has been properly determined in respect of a forestry revitalization proposal, or
 - (f) section 33.41 and whether a forestry revitalization proposal has been accepted or rejected,

the contractor may, by written notice to the licence holder, commence a dispute.

- (4) If any provision in this Division requires either a licence holder or a contractor who has a replaceable contract with that licence holder to do something or not to do something, and the licence holder or contractor contravenes that requirement,
 - (a) any contractor, if the licence holder has contravened the requirement, or
 - (b) the licence holder, if a contractor has contravened the requirement,

may, by written notice to the other party, commence a dispute.

- (5) If a dispute has been commenced in respect of those matters described in subsection

- (3) (b) or (c), all contractors who have replaceable contracts with the licence holder are parties to the dispute.
- (6) If a dispute has been commenced in respect of a matter described in subsection (3) (d), all contractors who have replaceable contracts that pertain to the licence that is subject to proportionate reduction are parties to the dispute.
- (7) If a dispute has been commenced in respect of those matters described in subsection (3) (e) or (f), all contractors who have replaceable contracts that pertain to a licence included in the forestry revitalization proposal are parties to the dispute.
- (8) All disputes under this Division must be resolved by mediation and arbitration under the system established in Division 2 of Part 4 subject to sections 33.5 and 33.51 and to the following:
- (a) within 7 days of the commencement of a dispute the licence holder must notify each contractor that is a party to the dispute as to the person the licence holder proposes to appoint as a conciliator to resolve the dispute;
 - (b) if there is more than one contractor that is a party to the dispute, the notice under paragraph (a) must list each contractor;
 - (c) within 7 days of receiving a notice under paragraph (a), a contractor may, by written notice to the licence holder, object to the appointment of the conciliator proposed by the licence holder;
 - (d) if one third or fewer contractors who are parties to the dispute object under paragraph (c) to the conciliator proposed by the licence holder, that person is the conciliator for the dispute;
 - (e) if more than one third of the contractors who are parties to the dispute object under paragraph (c) to the conciliator proposed by the licence holder, or if the licence holder fails to give notice under paragraph (a), any party to the dispute, by written notice to the other parties and to the Deputy Minister of Forests and Range, may request the deputy minister to appoint a conciliator;
 - (f) within 7 days of receiving a request under paragraph (e) to appoint a conciliator, the Deputy Minister of Forests and Range or a person designated by the deputy minister must appoint a registered mediator or a registered arbitrator to act as conciliator;
 - (g) mediation and arbitration proceedings must be conducted by the conciliator described in paragraph (d) or appointed under paragraph (f);
 - (h) the person appointed as the conciliator for a dispute deemed to exist with respect to a particular forestry revitalization proposal must act as conciliator in respect of all disputes that arise with respect to the ungrouped licence or group of licences to which the forestry revitalization proposal pertains.
- (9) A notice given or delivered under this Division must be given or delivered in accordance with section 8 (13) (b).

[en. B.C. Reg. 524/2004, s. 3.]

Forestry revitalization proposals

- 33.2** (1) Subject to subsection (4), after receipt of an order from the minister under section 3 (2) of the *Forestry Revitalization Act* for a group of licences, or after June 21, 2004 for an

ungrouped licence, a licence holder may make one or more forestry revitalization proposals regarding the replaceable contracts pertaining to those licences to

- (a) vary the amount of work specified in, or to terminate, one or more of those replaceable contracts, or
 - (b) change a contract such that it pertains to a different licence.
- (2) The minister may, by order, specify the date by which a licence holder must make a forestry revitalization proposal under subsection (1).
- (3) A licence holder must not make a forestry revitalization proposal, other than an amended proposal, after the time specified in the order from the minister under subsection (2).
- (4) Subject to subsection (5), a licence holder must not include a licence in a forestry revitalization proposal, other than an amendment of a proposal that included that licence, if
 - (a) the licence was included in a previous forestry revitalization proposal, or
 - (b) the licence has been subject to a proportionate reduction under section 33.6.
- (5) Despite subsection (4), the licence holder may include a licence in more than one forestry revitalization proposal if
 - (a) the licence was included in an order under section 3 of the *Forestry Revitalization Act* and was either included in a forestry revitalization proposal or was subject to proportionate reduction under section 33.6, and
 - (b) the licence holder receives a subsequent order from the minister under section 3 of the *Forestry Revitalization Act* in respect of that licence.
- (6) A forestry revitalization proposal may include licences from the coastal area or licences from the interior area, but not both.

[en. B.C. Reg. 278/2004, s. 23; am. B.C. Reg. 524/2004, s. 4.]

Maximum replaceable contract reduction

33.21 (1) Subject to subsection (2), the total effect of the reduction in allowable annual cut for an ungrouped licence or for a group of licences under the *Forestry Revitalization Act* as

- (a) proposed in all forestry revitalization proposals made by the licence holder for that ungrouped licence or group of licences and accepted or deemed to be accepted under this Division, and
- (b) imposed by proportionate reduction under section 33.6

must not result in the replaceable contract proportion being less than the minimum replaceable contract proportion.

- (2) The minister may by order permit the effect of the reduction in allowable annual cut for an ungrouped licence or a group of licences to be applied in a manner that results in the replaceable contract proportion being less than the minimum replaceable contract proportion.
- (3) If, as a result of a proportionate reduction or of one or more forestry revitalization proposals, or both, in respect of an ungrouped licence or a group of licences, the

proportion of timber harvesting services to be carried out by contractors under replaceable contracts with the licence holder is less than

- (a) the minimum replaceable contract proportion, or
- (b) some other proportion ordered by the minister under subsection (2),

the amount of work in each replaceable contract that pertains to the ungrouped licence or group of licences is increased proportionately such that the replaceable contract proportion equals the minimum replaceable contract proportion, or some other proportion ordered by the minister under subsection (2).

[en. B.C. Reg. 524/2004, s. 5.]

Contents and delivery of forestry revitalization proposal by a licence holder

33.22 A licence holder in making a forestry revitalization proposal must do the following:

- (a) make the proposal in writing;
- (b) specify the licences that are included in the proposal;
- (c) list each contractor with a replaceable contract that pertains to a licence included in the forestry revitalization proposal and show the amount of work specified in each contract;
- (d) specify how the licence holder proposes that the amount of work specified in each replaceable contract will be increased or decreased, if at all, and the proposed date of increase or decrease;
- (e) specify those replaceable contracts that the licence holder proposes to terminate, if any, and the proposed date of termination;
- (f) specify any proposed changes to a replaceable contract to cause it to pertain to a different licence and the proposed date of change;
- (g) describe how the forestry revitalization proposal takes into account the AAC reduction criteria;
- (h) apply the AAC reduction criteria fairly, impartially and without regard to any past disagreements between the parties;
- (i) include enough information to allow a contractor acting reasonably to determine if and how the licence holder is complying with section 33.21;
- (j) deliver the proposal to each contractor with a replaceable contract that pertains to a licence that is included in the forestry revitalization proposal.

[en. B.C. Reg. 524/2004, s. 6.]

No content

33.3 *[no content]*

Notice of objection

33.4 (1) If a contractor believes a forestry revitalization proposal received from a licence holder under section 33.22 does not comply with the AAC reduction criteria, the contractor may give written notice of the objection to the licence holder within 30 days of delivery of the proposal to that contractor.

(2) A notice under subsection (1) must explain why the contractor believes the proposal

does not comply with the AAC reduction criteria.

- (3) A contractor may notify the licence holder that the contractor accepts the proposal and the acceptance is binding on the contractor.
- (4) If a contractor does not give written notice of an objection to a forestry revitalization proposal under subsection (1) in accordance with subsection (2), the contractor is deemed to have accepted the proposal.
- (5) If an impacted contractor who objects to a proposal under subsection (1) believes the proposal does not meet the requirements of section 33.22 (h) in respect of that contractor, that contractor may include a fairness objection in the notice under subsection (2).

[en. B.C. Reg. 278/2004, s. 23; am. B.C. Reg. 524/2004, s. 7.]

Acceptance of a proposal

- 33.41** (1) If no impacted contractor gives the licence holder written notice of an objection to a forestry revitalization proposal under section 33.4, the proposal is deemed to be accepted and each contract entered into by the licence holder with respect to the licences held by that licence holder and included in the proposal is deemed to be amended or terminated on the expiry of the 30 day period referred to in section 33.4 (1) or on a later date provided in the proposal.
- (2) If a rejection threshold of contractors gives a licence holder written notice of an objection to a forestry revitalization proposal under section 33.4, and at least one of those contractors is an impacted contractor, the forestry revitalization proposal is rejected.
 - (3) If a forestry revitalization proposal is not rejected under subsection (2), it is deemed to be accepted.
 - (4) If a forestry revitalization proposal is rejected under subsection (2) or deemed to be accepted under subsection (1) or (3), the licence holder, within 7 days of the rejection or acceptance, must provide written notice of the rejection or acceptance to all contractors who received the proposal under section 33.22, which notice must list those contractors who gave written notice of objection under section 33.4.

[en. B.C. Reg. 278/2004, s. 23.]

Fairness objections

- 33.42** (1) If a forestry revitalization proposal in respect of the coastal area is not rejected under section 33.41 (2) within 30 days after the last day the proposal is delivered to a contractor,
- (a) the forestry revitalization proposal is deemed to be accepted and each contract entered into by the licence holder in respect of the licences in the proposal is deemed to be amended or terminated as provided for in the proposal, and
 - (b) if one or more impacted contractors who objected to the proposal have made a fairness objection under section 33.4 (5), a dispute is deemed to exist between the licence holder and each impacted contractor who objected to the proposal and who made a fairness objection.
- (2) For a dispute deemed to exist under subsection (1),

- (a) the sole issue is whether a forestry revitalization proposal deemed to be accepted meets the requirements of section 33.22 (h) with respect to the impacted contractors who have made fairness objections,
 - (b) the conciliator may have regard to other forestry revitalization proposals made by the licence holder, and
 - (c) if the conciliator concludes that the requirements of section 33.22 (h) are not met in respect of one or more of the impacted contractors who have made fairness objections, the licence holder is liable to those impacted contractors for damages in an amount determined by the conciliator in accordance with section 33.7.
- (3) If a forestry revitalization proposal in respect of the interior area is not rejected under section 33.41 (2) within 30 days after the last day the proposal was delivered to a contractor, and
- (a) if no impacted contractor who objected to the proposal has made a fairness objection, the forestry revitalization proposal is deemed to be accepted and each contract entered into by the licence holder in respect of the licences in the proposal is deemed to be amended or terminated as provided for in the proposal, or
 - (b) if one or more impacted contractors who objected to the proposal has made a fairness objection under section 33.4 (5), a dispute is deemed to exist between the licence holder and those impacted contractors, which dispute must be resolved in accordance with section 33.51 (9) and (10).

[en. B.C. Reg. 524/2004, s. 8.]

Rejection of proposal

33.43 (1) If a forestry revitalization proposal is rejected under section 33.41 (2) within 30 days after the last day the proposal was delivered to a contractor, the licence holder may, within 30 days after receipt of the last notice of objection under section 33.4, by written notice to all contractors who received the forestry revitalization proposal,

- (a) elect proportionate reduction,
 - (b) make an amended forestry revitalization proposal, or
 - (c) commence mediation and arbitration proceedings under section 8.
- (2) The licence holder is deemed to have elected proportionate reduction if the licence holder, in accordance with subsection (1), does not
- (a) elect proportionate reduction,
 - (b) make an amended forestry revitalization proposal, or
 - (c) commence mediation and arbitration.

[en. B.C. Reg. 524/2004, s. 9.]

Dispute resolution proceedings for a forestry revitalization proposal on the coast

33.5 (1) If a licence holder commences mediation and arbitration referred to in section 33.43 (1) (c) because a forestry revitalization proposal in respect of licences in the coastal area was rejected, a single dispute is deemed to exist, as of the date of commencement, between the licence holder and all impacted contractors who have delivered notices of

objection to the licence holder under section 33.4 (1).

- (2) The following apply to mediation or arbitration commenced in respect of a dispute deemed to exist under subsection (1):
 - (a) a licence holder must deliver a notice of the dispute resolution proceedings to each contractor with a replaceable contract that pertains to a licence included in the forestry revitalization proposal, and to each union whose members may be affected by the disposition of the dispute;
 - (b) the following may take part in the mediation or arbitration as an intervenor to the extent permitted by the conciliator:
 - (i) a contractor who is entitled to receive notice under paragraph (a), and who is not an impacted contractor who delivered a notice of objection under section 33.4 (1);
 - (ii) a union that is entitled to receive notice under paragraph (a);
 - (c) the conciliator must determine
 - (i) if the forestry revitalization proposal is consistent with the AAC reduction criteria, and
 - (ii) if the requirements of section 33.22 (h) have been met in respect of a contractor who is a party to the dispute and has made a fairness objection under section 33.4 (5),

and in making a determination under subparagraph (i) or (ii), the conciliator may have regard to other forestry revitalization proposals made by the licence holder.

- (3) If the conciliator determines under subsection (2) that the forestry revitalization proposal is consistent with the AAC reduction criteria and meets the requirements of section 33.22 (h), the forestry revitalization proposal is deemed to be accepted and each contract entered into by the licence holder in respect of licences in the proposal is deemed to be amended or terminated as provided for in the proposal.
- (4) If the conciliator determines under subsection (2) that the forestry revitalization proposal is consistent with the AAC reduction criteria, but that the requirements of section 33.22 (h) have not been met with respect to one or more impacted contractors who made fairness objections,
 - (a) the forestry revitalization proposal is deemed to be accepted and each contract entered into by the licence holder in respect of licences in the proposal is deemed to be amended or terminated as provided for in the proposal, and
 - (b) the licence holder is liable to those impacted contractors for damages in an amount to be determined by the conciliator in accordance with section 33.7.
- (5) If the conciliator determines under subsection (2) that the forestry revitalization proposal is not consistent with AAC reduction criteria, the licence holder may, within 30 days of the determination by the conciliator and by written notice to each contractor with a replaceable contract that pertains to the forestry revitalization proposal,
 - (a) impose the forestry revitalization proposal,
 - (b) make an amended forestry revitalization proposal, or

(c) elect proportionate reduction.

(6) A licence holder is deemed to have elected proportionate reduction if the holder

(a) has not imposed the forestry revitalization proposal,

(b) made an amended forestry revitalization proposal, or

(c) elected proportionate reduction

within 30 days of the determination under subsection (2) that the proposal is not consistent with the AAC reduction criteria.

(7) If a licence holder imposes the forestry revitalization proposal under subsection (5)

(a),

(a) that proposal is deemed to be accepted and each contract entered into by the licence holder with respect to the licences held by the licence holder and included in the proposal is deemed to be amended or terminated on the date provided in the proposal, and

(b) the licence holder is liable to any impacted contractor who objected to the proposal for damages in an amount determined by the conciliator in accordance with section 33.7.

(8) If a licence holder makes an amended forestry revitalization proposal, under subsection (5), in respect of licences, and a rejection threshold of contractors gives the licence holder written notice of objection to the amended forestry revitalization proposal under section 33.4,

(a) despite section 33.43, that proposal is deemed to be accepted, and each contract that is entered into by the licence holder with respect to the licences held by the licence holder and included in the proposal is deemed to be amended or terminated on the date provided in the proposal, and

(b) the licence holder is liable to each impacted contractor who objected to that proposal in an amount determined by the conciliator in accordance with section 33.7.

(9) If a licence holder makes an amended forestry revitalization proposal, under subsection (5), in respect of licences, and a rejection threshold of contractors does not give the licence holder written notice of objection to the amended forestry revitalization proposal under section 33.4

(a) that proposal is deemed to be accepted and each contract entered into by the licence holder with respect to the licences held by the licence holder and included in the proposal is deemed to be amended or terminated on the date provided in the proposal,

(b) the conciliator may determine if the amended forestry revitalization proposal meets the requirements of section 33.22 (h), on the application of any impacted contractor who made a fairness objection in relation to that proposal within 30 days after receipt of the amended forestry revitalization proposal from the licence holder, and

(c) if the conciliator makes a determination under paragraph (b) that the amended proposal does not meet the requirements of section 3.22 (h) in respect of one or more of the impacted contractors who objected, the licence holder is liable in damages to those contractors in an amount to be

determined by the conciliator in accordance with section 33.7.

[en. B.C. Reg. 524/2004, s. 10.]

Dispute resolution proceedings for a forestry revitalization proposal for the interior

33.51 (1) If a licence holder commences mediation and arbitration referred to in section 33.43 (1) (c) because a forestry revitalization proposal in respect of licences in the interior area was rejected, a single dispute is deemed to exist, as of the date of commencement, between the licence holder and all impacted contractors who have delivered notices of objection to the licence holder under section 33.4 (1).

(2) The following apply to mediation or arbitration commenced in respect of a dispute deemed to exist under subsection (1):

(a) a licence holder must deliver a notice of the dispute resolution proceedings to each contractor with a replaceable contract that pertains to a licence included in the forestry revitalization proposal, and to each union whose members may be affected by the disposition of the dispute;

(b) the following may take part in the mediation or arbitration as an intervenor to the extent permitted by the conciliator:

(i) a contractor who is entitled to receive notice under paragraph (a), and who is not an impacted contractor who delivered a notice of objection under section 33.4 (1);

(ii) a union that is entitled to receive notice under paragraph (a);

(c) the conciliator must determine

(i) if the forestry revitalization proposal is consistent with the AAC reduction criteria, and

(ii) if the requirements of section 33.22 (h) have been met in respect of a contractor who is a party to the dispute and has made a fairness objection under section 33.4 (5),

and in making a determination under subparagraph (i) or (ii), the conciliator may have regard to other forestry revitalization proposals made by the licence holder.

(3) If the conciliator determines under subsection (2) that the forestry revitalization proposal is consistent with the AAC reduction criteria, and

(a) meets the requirements of section 33.22 (h), the forestry revitalization proposal is deemed to be accepted and each contract entered into by the licence holder in respect of licences in the proposal is deemed to be amended or terminated as provided for in the proposal, or

(b) does not meet the requirements of section 33.22 (h), subsection (10) will apply.

(4) If the conciliator has determined under subsection (2) that the forestry revitalization proposal is not consistent with AAC reduction criteria, the licence holder may, within 30 days of the determination by the conciliator and by written notice to each contractor with a replaceable contract that pertains to the forestry revitalization proposal,

(a) make an amended forestry revitalization proposal, or

(b) elect proportionate reduction.

(5) If a licence holder has not made an amended forestry revitalization proposal, or elected proportionate reduction, within 30 days of the determination under subsection (2) that the proposal is not consistent with the AAC reduction criteria, the licence holder is deemed to have elected proportionate reduction.

(6) If, in respect of an amended forestry revitalization proposal made under subsection (4),

(a) a rejection threshold of contractors gives a licence holder written notice of objection to the proposal under section 33.4, and

(b) at least one of those contractors is an impacted contractor

the licence holder, by written notice to all contractors who received the proposal, must

(c) elect proportionate reduction, or

(d) refer the proposal to the conciliator.

(7) If a licence holder refers the amended forestry revitalization proposal to a conciliator under subsection (6), subsection (2) will apply, except that if the conciliator determines that the forestry revitalization proposal is consistent with the AAC reduction criteria, but that the requirements of section 33.22 (h) have not been met with respect to one or more impacted contractors who made fairness objections,

(a) the forestry revitalization proposal is deemed to be accepted and each contract entered into by the licence holder in respect of licences in the proposal is deemed to be amended or terminated as provided for in the proposal, and

(b) the licence holder is liable to those impacted contractors for damages in an amount to be determined by the conciliator in accordance with section 33.7.

(8) If

(a) the conciliator has determined under subsection (2) that the amended forestry revitalization proposal referred under subsection (6) is not consistent with the AAC reduction criteria, or

(b) the licence holder has not elected proportionate reduction or referred an amended forestry revitalization proposal to the conciliator under subsection (5),

the licence holder is deemed to have elected proportionate reduction.

(9) For a dispute deemed to exist under section 33.42 (3), the sole issue is whether a forestry revitalization proposal deemed to be accepted meets the requirements of section 33.22 (h) with respect to the impacted contractors who have made fairness objections.

(10) If

(a) for a dispute deemed to exist under section 33.42 (3), the conciliator determines that the requirements of section 33.22 (h) are not met in respect of one or more of the impacted contractors who have made fairness objections to the forestry revitalization proposal, or

(b) the conciliator has determined under subsection (2) that the forestry

revitalization proposal is consistent with the AAC reduction criteria, but that the requirements of section 33.22 (h) have not been met with respect to one or more impacted contractors who made fairness objections to the proposal, the licence holder may, within 30 days of the determination and by written notice to those contractors,

(c) amend the forestry revitalization proposal with respect to those impacted contractors only, or

(d) elect to pay damages to those impacted contractors in respect of whom the conciliator has found that the requirements of section 33.22 (h) have not been met, in an amount determined by the conciliator in accordance with section 33.7.

(11) If a licence holder amends a forestry revitalization proposal under subsection (10), and one or more of the impacted contractors in respect of whom the proposal was amended objects to the amendment, the conciliator may, on the application of any of those impacted contractors made within 30 days after receipt of the amended forestry revitalization proposal from the licence holder, determine if the amended forestry revitalization proposal meets the requirements of section 33.22 (h).

(12) If the conciliator makes a determination under subsection (11) that the amended proposal does not meet the requirements of section 33.22 (h) in respect of one or more impacted contractors, or if the licence holder fails to make an amended forestry revitalization proposal under subsection (10) (c) or to elect damages under paragraph (10) (d), the licence holder is liable for damages to those contractors in an amount to be determined by the conciliator in accordance with section 33.7.

(13) The amended forestry revitalization proposal made under subsection (10) (c), or if an amended proposal is not made, the forestry revitalization proposal described in subsection (10) (a) or (b), as the case may be, is deemed to be accepted and each contract entered into by the licence holder in respect of licences in the proposal is deemed to be amended or terminated as provided for in the proposal.

[en. B.C. Reg. 524/2004, s. 11.]

Proportionate reduction

33 . 6 (1) If a forestry revitalization proposal has not been accepted under section 33.41 or referred to dispute resolution under section 33.43 (1) (c), the licence holder may elect proportionate reduction, by written notice to all contractors holding replaceable contracts in respect of a group of licences or an ungrouped licence, at any time after

(a) receiving an order of the minister under the *Forestry Revitalization Act* for that group of licences, or

(b) the coming into force of this section for an ungrouped licence.

(2) Subject to subsection (1), the licence holder must implement proportionate reduction by written notice to all contractors holding replaceable contracts in respect of an ungrouped licence or group of licences, if, in respect of the ungrouped licence or group of licences, the licence holder has failed to make a forestry revitalization proposal by the time specified in section 33.2 (3).

(3) A licence holder who has elected or is deemed to have elected proportionate reduction under section 33.43, 33.5 or 33.51 must give a written notice to all contractors

holding replaceable contracts affected by the reduction.

- (4) The notice under subsections (1) to (3) must specify the effect of the proportionate reduction on each contract to which it applies with enough information to allow a reasonable person to determine if the licensee is complying with the requirements of section 33.21.
- (5) If proportionate reduction is elected, deemed elected or implemented, the parties to a replaceable contract must amend their contract, if necessary, to reflect that reduction.

[en. B.C. Reg. 278/2004, s. 23; am. B.C. Reg. 524/2004, s. 12.]

Damages

- 33.7** (1) If an impacted contractor is entitled to receive damages from a licence holder under either section 33.5 or 33.51, the amount of damages payable by the licence holder must equal

$$X - Y$$

where

X is the damages that the conciliator determines would be payable based on a wrongful termination of a replaceable contract with an amount of work equal to the difference between

- (i) the amount of work each year that would be available to that contractor based on a proportionate reduction, and
- (ii) the amount of work each year as proposed for that contractor in the forestry revitalization proposal,

which determination is to be made without reference to any requirement by the contractor to mitigate the loss associated with that difference whether under the Forestry Revitalization Trust or otherwise, and

Y is the amount of mitigation funds that a contractor will receive under the Forestry Revitalization Trust based on a reduction in amount of work equivalent to the difference between

- (i) the amount of work each year that would be available to that contractor based on a proportionate reduction, and
- (ii) the amount of work each year as proposed for that contractor in the forestry revitalization plan.

- (2) Except as provided in subsection (1), a licence holder is not liable to a contractor or subcontractor for any damages or other remedy arising directly or indirectly from a reduction in the amount of work in, or termination of, a replaceable contract, that takes place as a result of this Division.
- (3) A contractor is not liable to a subcontractor for any damages or other remedy arising directly or indirectly from a reduction in the amount of work in, or termination of, a replaceable contract, that takes place as a result of this Division.
- (4) A contractor or subcontractor, within 90 days of receiving notice that the amount of work under the contract or subcontract has been reduced under this Division, may terminate a replaceable contract or subcontract, by written notice to the licence holder or contractor, without incurring any liability to the other party.

[en. B.C. Reg. 524/2004, s. 13.]

Division 5.2 – Licence Transfer, Subdivision and Consolidation

Licence transfer

- 33.8** A replaceable contract must provide that if the licence that the contract pertains to is

transferred, the licence holder must require, as a condition of such transfer, that the transferee either

- (a) assume the licence holder's obligations under the contract, or
- (b) offer a new replaceable contract to the contractor on substantially the same terms and conditions as the original replaceable contract.

[en. B.C. Reg. 278/2004, s. 23.]

Licence subdivision

33.9 A replaceable contract must provide that if the licence that the contract pertains to is amended with the result that the harvesting rights granted under the licence are granted under two or more licences and the replaceable contract is affected by the amendment

- (a) the licence holder must offer the contractor one or more replaceable contracts that pertain to one or more of the licences arising out of the amendment,
- (b) the amount of work specified in the replaceable contracts offered to the contractor under paragraph (a) must be, in the aggregate, equivalent to or greater than the amount of work specified in the original replaceable contract, and
- (c) the replaceable contracts offered to the contractor under paragraph (a) must be on substantially the same terms and conditions as the original replaceable contract, except for the amount of work specified in each contract.

[en. B.C. Reg. 278/2004, s. 23.]

Licence consolidation

33.91 A replaceable contract must provide that if the licence that the contract pertains to, together with one or more other licences held by the licence holder, is replaced with a single licence,

- (a) the licence holder must offer the contractor a replaceable contract that pertains to the single licence,
- (b) subject to paragraphs (c) and (d), the amount of work specified in the replaceable contract offered to the contractor under paragraph (a) must be equal to

$$N \times (O \div P)$$

where

N = the amount of work specified in the original replaceable contract,
O = the allowable annual cut of the licence that the original contract pertained to, and

P = allowable annual cut of the single licence arising out of the replacement of the licence that the original replaceable contract pertains to,

- (c) if the contractor and licence holder have agreed to specify the amount of work in the original replaceable contract as a fixed quantity, the amount of

work specified in the new replaceable contract offered to the contractor under paragraph (a) must be the same as the amount of work specified in the original replaceable contract,

(d) if the contractor and licence holder have agreed to specify the amount of work in the original replaceable contract in a manner other than as a percentage of the total amount of such work to be performed under the licence or as a fixed quantity, the amount of work specified in the new replaceable contract offered to the contractor under paragraph (a) must be equivalent to the amount of work in the original replaceable contract, and

(e) except as provided in paragraphs (b) and (d), a replaceable contract offered to the contractor under paragraph (a) must be on substantially the same terms and conditions as the original replaceable contract.

[en. B.C. Reg. 278/2004, s. 23.]

Division 6 – Subcontracts

Replaceable subcontracts

34 A contractor who offers a person a subcontract to replace the person's replaceable subcontract must do so with a replaceable subcontract.

[en. B.C. Reg. 278/2004, s. 24.]

Length and commencement of term and replaceability

35 (1) The replaceable subcontract that a contractor is required to offer to a subcontractor under section 34 or 37.1 must provide that, if the subcontractor has satisfactorily performed its obligations under the subcontract, and subject to the contractor continuing to satisfactorily perform the existing subcontract,

(a) the contractor must offer a replacement subcontract to the subcontractor, and

(b) the replacement subcontract must

(i) be offered 3 months or more before the expiry of the subcontract being replaced,

(ii) provide that it commences on or before the expiry of the subcontract being replaced,

(iii) be for a term no shorter than the term of the subcontract being replaced,

(iv) provide for payment to the subcontractor of amounts in respect of timber harvesting services as agreed to by the parties or, failing agreement, as determined in accordance with section 25, and

(v) otherwise be on substantially the same terms and conditions as the contract it replaces.

(2) If a replaceable subcontract does not provide for an expiry date the subcontract expires on the second anniversary of the date on which the contract commenced.

[am. B.C. Reg. 278/2004, s. 25.]

Amount of work

- 36** (1) A replaceable subcontract must specify an amount of work to be performed during the term of the subcontract.
- (2) The amount of work specified in a replaceable subcontract must be expressed as
- (a) a fixed amount of work expressed in units of work appropriate to the type of work performed under the subcontract, or
 - (b) a specified percentage of the total amount of work of the type performed by the subcontractor that is required by the contractor in respect of all timber harvesting operations carried out under the replaceable contract during each term of the replaceable subcontract.
- (3) If a replaceable subcontract does not specify an amount of work in a manner provided for in subsection (2), the replacement subcontract that the contractor is required to offer to the subcontractor is deemed to specify an amount of work in accordance with subsection (2) (b) where the specified percentage is equal to

$$(K \div L) \times 100$$

where

K is the total amount of work performed by the subcontractor under the replaceable subcontract during the term of the subcontract being replaced, and

L is the total amount of work of the type performed by the subcontractor that is required by the contractor in respect of all timber harvesting operations carried out under the replaceable contract during the term of the subcontract being replaced.

Right respecting insufficient work

- 37** (1) Replaceable subcontracts must provide that the obligation of the contractor to offer a replacement subcontract is subject to it being apparent, at the time when the offer otherwise must be made, that there will continue to be a sufficient amount of work available for the replacement subcontract.
- (2) Replacement subcontracts must provide that if the contractor runs out of work available for the purposes of the replacement subcontract, then either the contractor or the subcontractor, on written notice to the other, may terminate the contract without either party incurring any liability to the other.

Licence transfer, subdivision or consolidation

- 37.1** A replaceable subcontract must provide that if a contract is offered to a contractor under a provision required by section 33.8, 33.9 or 33.91 in replacement for a replaceable contract to which the replaceable subcontract pertains, the contractor must offer the subcontractor one or more replaceable subcontracts to replace the subcontract.

[en. B.C. Reg. 278/2004, s. 26.]

Contract transfer

- 37.2** A replaceable subcontract must provide that if the replaceable contract that the subcontract pertains to is assigned, the contractor must require, as a condition of such transfer, that the transferee either

- (a) assume the contractor's obligations under the subcontract, or
- (b) offer a new replaceable subcontract to the subcontractor on substantially the same terms and conditions as the subcontract.

[en. B.C. Reg. 278/2004, s. 26.]

Other sections applicable to subcontracts

- 38** Sections 22, 24.1, 25, 25.1, 25.2, 26 and 26.01 apply to replaceable subcontracts, and a reference to a licence holder or contractor or to a licence or contract in those sections, or any standard provision required by those sections, applies to a contractor or subcontractor or to a contract or subcontract as the context requires.

[en. B.C. Reg. 278/2004, s. 27.]

Part 6 — Contractor Clause Compliance

Compliance with contractor clause to be assessed annually

- 39** (1) Compliance, by the holder of a licence as referred to in the definition of "contractor clause", must be assessed for each calendar year in accordance with this regulation.
- (2) If on April 1, 1996 the holder of a tree farm licence or a forest licence for the interior area is relying on a contract that is not a replaceable contract to comply with the contractor clause in that licence, the licence holder may at any time before January 1, 1997, substitute any replaceable contract relating to the licence for that non-replaceable contract for the purpose of compliance with the contractor clause.

Coastal area compliance

- 40** The holder of a replaceable tree farm licence for the coastal area complies with the contractor clause only if the volume of timber that is required to be harvested under the licence by a person under contract is so harvested under any combination of full contracts, each of which provides for a term of at least 5 years, and phase contracts each of which provides for a term of at least 2 years.

Interior area compliance

- 41** The holder of a replaceable tree farm licence or replaceable forest licence for the interior area referred to in the definition of "**contractor clause**" complies with the contractor clause only if
- (a) at least 70% of the volume of timber that is required to be harvested under the licence by a person under contract is so harvested under
 - (i) full contracts, each of which provides for a term of at least 5 years,
 - (ii) phase contracts, each of which provides for a term of at least 5 years, or
 - (iii) any combination of full contracts described in subparagraph (i) and phase contracts described in subparagraph (ii), and
 - (b) the remaining volume of timber that is required to be harvested by a person under contract is so harvested under
 - (i) full contracts, each of which provides for a term of at least 2 years,

- (ii) phase contracts, each of which provides for a term of at least 2 years, or
- (iii) any combination of full contracts described in subparagraph (i) and phase contracts described in subparagraph (ii).

Notification to contractors for the interior area

42 For each contract used by a licence holder for the purpose of complying with a contractor clause in a licence for the interior area, the licence holder must

- (a) provide a copy of the contract to the ministry on request, and
- (b) advise the contractor, on request, whether the contract is being used for the purpose of complying with the contractor clause in the licence and, if so, of the volume of timber attributed to the contract by the licence holder for the purposes of complying with the contractor clause in that licence.

Volume attributable to full contracts

43 For assessment of compliance with a contractor clause,

- (a) timber that is included in the calculation of the volume harvested under a full contract must not be included in the calculation of the volume of timber handled under a phase contract, and
- (b) the volume of timber harvested under a full contract during a calendar year is the attributable volume.

Volume attributable to phase contracts

44 For assessment of compliance with a contractor clause

- (a) the volume of timber deemed to be harvested under a phase contract, other than a phase contract for logging road construction, logging road maintenance and logging access road construction, is calculated by applying the formula

$$M \times P$$

where

M is the aggregate of the phase contribution amounts for the phases included in the contract divided by the allowable

annual cut of the licence to which the contract pertains, and

P is the volume of timber harvested under the phase contract,

- (b) the volume of timber deemed to be harvested under a phase contract for logging road construction, logging road maintenance or logging access road construction is calculated by applying the formula

$$Q \times (R \div S)$$

where

Q is the volume of timber harvested under the licence,

R is the total cost for the appropriate phase contract in the year of construction or maintenance, as the case may be, and

S is the total cost incurred by the licence holder for all phases of the timber harvesting operation on the licence, and

(c) the volume of timber harvested under phase contracts during a calendar year is the sum of the volumes as calculated under paragraphs (a) and (b) and is the attributable volume.

[am. B.C. Reg. 524/2004, s. 14.]

Total volume deemed contracted

45 The total volume of timber attributable to contracts is the sum of the volume of timber attributable to full contracts and phase contracts.

Condition on relief — tree farm licences

46 The minister, in granting the relief referred to in section 35 (1) (l) of the Act, must not relieve the holder of a tree farm licence from the provisions of section 35 (1) (l) of the Act unless satisfied that compliance is not feasible in the circumstances.

Discretion to grant relief for forest licences

47 (1) The minister by order may relieve the holder of a forest licence for the interior from one or more provisions of this Part, subject to the conditions, if any, imposed by the minister.

(2) The minister must exercise the power granted by subsection (1) only if satisfied that compliance is not feasible in the circumstances.

Part 7 — Standard Provisions

Required provisions

48 To comply with the requirements of each of the sections listed below, a contract or subcontract must contain either the provision set out in the Schedule listed beside the section below, or a provision agreed to by the parties that is consistent in all material ways with the requirement represented by that section 17.

Section	Schedule
4 (1)	1
4 (2)	2
5	3
13	4
14	5
15	6
17 (2)	7
18 (1)	8
18 (3)	9
18 (5)	10
20	11
21	12
22 (1) and (2)	13
24.1	13.1

27	15
33	16
33.8	16.1
33.9	16.2
33.91	16.3
35	17
36 (2)	18
37 (1)	19
37 (2)	20
37.1	21
37.2	22

[en. B.C. Reg. 278/2004, s. 29.]

Standard dispute resolution provision

- 49** To comply with the requirement of section 5, a contract or subcontract must contain either
- (a) the standard provision set out in Schedule 3, or
 - (b) a provision for dispute resolution agreed to by the parties on or after April 1, 1996 that is consistent with the *Commercial Arbitration Act*, that provides for the use of both mediation and arbitration, and that provides for the appointment of a mediator and, if necessary, an arbitrator within the time frames provided for in section 8.

Standard provisions

- 50** The provisions set out in Schedules 1 to 22 are standard provisions for the purpose of section 160 of the Act.

[am. B.C. Reg. 278/2004, s. 30.]

Deadlines for amendment

- 51** For the purpose of section 160 of the Act, the deadline before which the parties to a contract or subcontract that does not comply with section 4 (1) or (2), 5, 13, 14, 15, 17 (2), 18 (1), (3) and (5), 20, 21, 22 (1) or (2), 24.1, 27, 33, 33.8, 33.9, 33.91, 35, 36 (2), 37 (1) or (2), 37.1 or 37.2 must amend the contract or subcontract in order to comply is
- (a) June 21, 2004, for those contracts and subcontracts in effect on June 21, 2004, and
 - (b) the date the contract or subcontract is made, for those contracts and subcontracts entered into after June 21, 2004.

[en. B.C. Reg. 278/2004, s. 31.]

Part 8 — Waiver or Amendment of Requirement

Waiver or amendment of certain requirements of the regulation

- 52** If, on or after June 21, 2004, a licence holder and a contractor or a contractor and a subcontractor agree in writing, they may waive or amend any of the requirements of sections 6, 8 to 10, 12 to 15, 17 to 26.02, 34 to 38 and those requirements of Part 7 that

relate to any of those sections.

[en. B.C. Reg. 278/2004, s. 32.]

Schedule 1

(Section 4 (1))

Standard Provision — Assignability of

Replaceable Contracts

- 1** The contractor may assign any of its rights or interest under this contract, provided the contractor first obtains the consent of the licence holder.
- 2** The licence holder will not unreasonably withhold its consent to any assignment proposed by the contractor.

Schedule 2

(Section 4 (2))

Standard Provision — Assignability of

Replaceable Subcontracts

- 1** The subcontractor may assign any of its rights or interest under this contract, provided the subcontractor first obtains the consent of the contractor.
- 2** The contractor will not unreasonably withhold its consent to any assignment proposed by the contractor.

Schedule 3

[en. B.C. Reg. 278/2004, s. 33.]

(Section 5)

Standard Provision — Resolution of Disputes

- 1** All disputes that have arisen or may arise between the parties under or in connection with this contract will be referred to mediation and, if not resolved by the parties through mediation, will be referred to arbitration in accordance with the dispute resolution systems established by the regulation.

Schedule 4

(Section 13)

Standard Provision — Replacement Contract

- 1** Provided that the contractor has satisfactorily performed the contractor's obligations under this contract, and subject to the contractor continuing to do so, the licence holder will, at least 3 months before the expiry of this contract, offer the contractor a

replacement contract that

- (a) commences on or before the expiry of this contract,
- (b) except as provided for in paragraph (c) and in the regulation, has substantially the same terms and conditions as this contract, and
- (c) provides for payment to the contractor of amounts to be agreed upon by the parties, or failing agreement, determined by the method of dispute resolution provided for in the contract.

Schedule 5

[am. B.C. Regs. 278/2004, s. 34; 524/2004, s. 15.]

(Section 14)

Standard Provision — Changes

1 Subject to section 2, the licence holder may, for bona fide business and operational reasons and on reasonable notice to the contractor, require the contractor to do one or more of the following:

- (a) use timber harvesting methods, technology or silviculture systems that are different than those historically used by the contractor under the contract;
- (b) move to a new operating area;
- (c) comply with different operating specifications;
- (d) undertake any other operating change necessary to comply with a direction made by a government agency or lawful obligation imposed by a federal, provincial or municipal government;

and the contractor will comply with the requirements.

2 Despite section 1, if a requirement made by a licence holder under section 1 results in a substantial change in the timber harvesting services provided by the contractor, the contractor may, within 30 days of receiving notice of the requirement, and by written notice to the licence holder, terminate the contract without liability to the licence holder.

3 If a requirement is made under section 1 and the contractor does not elect to terminate this contract under section 2, either party may, within 90 days of the contractor receiving notice under section 1, request a review of the rate then in effect.

4 If either party requests a rate review pursuant to section 3 and the parties are unable to agree upon a new rate, a rate dispute is deemed to exist and must be resolved in accordance with Part 5, Division 4 of the regulation.

Schedule 6

(Section 15)

Standard Provision — Termination

1 If a licence in respect of which the contractor is providing timber harvesting services

under this contract expires or is cancelled or surrendered, this contract may be terminated by either party, to the extent that it relates to that licence, without liability to the other party.

Schedule 7

(Section 17 (2))

Amount of Work

1 Except as provided in the regulation, or in a provision of this contract permitted or required by the regulation, the licence holder will not reduce the specified amount of work to be performed by the contractor in each year of this contract.

Schedule 8

(Section 18 (1))

Volume Dependent Contract

1 Subject to the regulation, and subject to a provision of this contract permitted or required by the regulation, in each year of the term of this contract the licence holder will allocate to the contractor and the contractor will perform the timber harvesting services of the type provided for in this contract that are required to process percent (.....%) of the total amount of timber processed by the licence holder under the licence in that year.

Schedule 9

(Section 18 (3))

Dedicated Phase Contract

1 Subject to the regulation, or a provision of this contract permitted or required by the regulation, in each year of the term of this contract the licence holder will allocate to the contractor and the contractor will perform the timber harvesting services of the type provided for in this contract that are required to process percent (.....%) of the work of that type which is required to facilitate the timber harvesting operations of *[insert the name of the contractor or a description of the company operation to which this contract is dedicated]*.

Schedule 10

(Section 18 (5))

Volume Independent Contract

1 Subject to the regulation, or a provision of this contract permitted or required by the regulation, in each year of the term of this contract the licence holder will allocate to the contractor and the contractor will perform the timber harvesting services of the type provided for in this contract that are required to process percent (.....%) of the difference between A and B where

A is the total amount of work of the type provided for in this contract required by the licence holder in that year for the purposes of all timber harvesting operations carried out under the licence, and

B is the total amount of work of the type provided for in this contract that is provided to the licence holder in that year for the purpose of timber harvesting operations under the licence

- (a) under replaceable contracts described in section 18 (1) of the regulation that pertain to the licence,
- (b) under dedicated phase contracts, as defined in the regulation, that pertain to the licence, and
- (c) by employees of a licence holder as part of one or more company operations that operate as an integrated unit performing a substantial portion of a timber harvesting operation but, for greater certainty, not including work that, if performed by a contractor, would be characterized as work performed under a volume independent contract.

Schedule 11

(Section 20)

Experiments

1 In any year during the term of this contract, the licence holder may allocate to the contractor, and the contractor must perform, an amount of work that is less than the amount of work specified in the contract, if

- (a) the reduction in the amount of work is necessary to enable the licence holder to experiment with timber harvesting methods, technology or silviculture systems different than those used historically by the licence holder on the licence to which the contract relates,
- (b) the contractor receives reasonable notice of the reduction,
- (c) the experiment is for bona fide business and operational reasons,
- (d) it is not practicable for the contractor to perform the work required to conduct the experiment, and
- (e) the licence holder has used reasonable efforts to distribute the reduction of work associated with any experiments fairly among company operations and other contractors carrying out timber harvesting operations under the licence.

Schedule 12

[am. B.C. Reg. 278/2004, s. 35.]

(Section 21)

Differing Amount of Work

1 In any year during the term of this contract, the licence holder may allocate to the

contractor and the contractor must perform an amount of work that differs from the amount of work specified in the contract, provided that

- (a) the difference is attributable to bona fide business and operating reasons on the part of the licence holder, and
- (b) the amount of work that the licence holder allocates to the contractor and that the contractor is required to perform under this contract over each amount of work compliance period of the licence is equal to or greater than 95% of the aggregate of the specified amount of work provided for during that amount of work compliance period, less the aggregate of any reductions in that amount of work imposed during that amount of work compliance period as permitted by a provision of this contract required or permitted by section 20 or 22 of the regulation.

Schedule 13

(Section 22 (1) and (2))

Standard Provision — Events Beyond Control

- 1** The licence holder is not liable to the contractor for any failure to allocate to the contractor in any year the amount of work specified in this contract, as adjusted pursuant to a provision of this contract required or permitted by sections 20 or 21 of the regulation, if the failure results from changes in law, natural disasters, interference by a person who is not a party to the contract or any other event beyond the reasonable control of the licence holder, other than a change in the market price of logs.
- 2** The contractor is not liable to the licence holder for any failure to perform the amount of work allocated by the licence holder in any year if the failure results from changes in law, natural disasters, interference by a person who is not a party to this contract or any other event beyond the reasonable control of the contractor, other than a change in the market price of logs.

Schedule 13.1

[en. B.C. Reg. 278/2004, s. 36.]

(Section 24.1)

Standard Provision — Rate Dispute

- 1** If a rate dispute as defined in the regulation arises, the dispute will be resolved in accordance with the provisions of this contract for dispute resolution and as required by Part 5, Division 4 of the regulation.

Schedule 14

Repealed. [B.C. Reg. 278/2004, s. 37.]

Schedule 15

(Section 27)

Standard Provision – AAC Reduction Proposal

1 The licence holder may make a proposal to the contractor to reduce the amount of work specified in this contract or to terminate this contract in accordance with section 27 of the regulation if

- (a) the allowable annual cut of the licence in respect of which the contractor is providing services under this contract is reduced, or
- (b) a licence that is subject to a fibre basket agreement affecting this contract expires or is cancelled or surrendered.

2 The amount of work specified in this contract will be amended or this contract terminated in accordance with the resolution of a proposal made under section 1.

Schedule 16

(Section 33)

Standard Provision – Termination

Due to Work Reduction

1 If the amount of work to be provided by the contractor under this contract is reduced as a result of a proposal made in accordance with a provision of this contract required by section 27 of the regulation, the contractor may, within 90 days of the reduction taking effect, by written notice to the licence holder, terminate this contract without incurring any liability to the licence holder.

Schedule 16.1

[en. B.C. Reg. 278/2004, s. 38.]

(Section 33.8)

Licence Transfer

1 If the licence holder transfers the licence, the licence holder will require, as a condition of the transfer of the licence, that the transferee of the licence either

- (a) assume the licence holder's obligations under this contract, or
- (b) offer a new contract to the contractor on substantially the same terms and conditions as the contract.

Schedule 16.2

[en. B.C. Reg. 278/2004, s. 38.]

(Section 33.9)

Licence Subdivision

1 If the licence to which this contract pertains is amended such that the harvesting

rights granted under that licence are granted under two or more licences, and the contractor's rights under this contract are affected by the amendment, the licence holder will offer the contractor one or more contracts that

- (a) commence on the date of amendment,
- (b) terminate and replace this contract,
- (c) pertain to one or more licences that arise from the subdivision,
- (d) specify an amount of work that, in aggregate with all contracts offered to the contractor under this section, is equivalent to the specified amount of work in this contract, and
- (e) except as otherwise provided in this section, are on substantially the same terms and conditions as this contract.

Schedule 16.3

[en. B.C. Reg. 278/2004, s. 38.]

(Section 33.91)

Licence Consolidation

1 If the licence to which this contract pertains, together with one or more other licences held by the licence holder, are replaced with a single licence, the licence holder will offer the contractor a contract that

- (a) commences on the date of replacement,
- (b) terminates and replaces this contract,
- (c) pertains to the licence that arises from the replacement,
- (d) subject to paragraphs (e) and (f), specifies an amount of work equal to

$$N \times (O \div P)$$

where

N = the amount of work specified in the contract,

O = the allowable annual cut of the licence to which this contract pertains, and

P = the allowable annual cut of the replacement licence,

- (e) specifies the same amount of work as this contract if this contract specifies the amount of work as a fixed quantity,
- (f) specifies the equivalent amount of work as this contract if this contract specifies that amount of work in a manner other than as a fixed amount or a percentage, and
- (g) except as otherwise provided in this section, is on substantially the same terms and conditions as this contract.

Schedule 17

(Section 35)

Replacement Subcontract

1 Provided that the subcontractor has satisfactorily performed the subcontractor's obligations under this subcontract, and subject to the contractor continuing to do so, the contractor will, at least 3 months before the expiry of this subcontract, offer the subcontractor a replacement subcontract that

- (a) commences on or before expiry of this subcontract,
- (b) except as provided for in paragraph (c) and in the regulation, has substantially the same terms and conditions as this subcontract, and
- (c) provides for payment to the subcontractor of amounts to be agreed upon by the parties, or failing agreement, to be settled by the method of dispute resolution applicable to the subcontract.

Schedule 18

(Section 36 (2))

Amount of Work

1 Unless the parties have otherwise agreed to a fixed amount of work to be performed during the term of this contract and subject to the regulation, during the term of this subcontract the subcontractor will provide, and the contractor will direct the subcontractor to provide, percent (.....%) of the [*insert description of the type of work to be performed under the subcontract*] services that are required by the contractor in order to perform the contract in relation to which this subcontract was made.

Schedule 19

(Section 37 (1))

Standard Provision — Insufficient Work

1 The contractor's obligation to offer a replacement subcontract to the subcontractor is subject to it being reasonably apparent at the time when the offer otherwise must be made that there will be a sufficient amount of work available for the replacement subcontract, based upon the contractor's then current or a future replacement contract with the licence holder.

Schedule 20

(Section 37 (2))

Standard Provision — Termination of Replacement

Subcontract Due to Insufficient Work

1 If, during the term of this replacement subcontract, the contractor runs out of work available for the purposes of this replacement subcontract, either the contractor or the subcontractor, on written notice to the other, may terminate this replacement

subcontract without either party incurring liability to the other.

Schedule 21

[en. B.C. Reg. 278/2004, s. 38; am. B.C. Reg. 524/2004, s. 16.]

(Section 37.1)

Standard Provision — Replacement of Subcontract on

Licence, Transfer, Subdivision or Consolidation

1 If the contract to which this subcontract pertains is replaced with one or more replaceable contracts as a result of a provision required by section 33.8, 33.9 or 33.91 of the regulation, the contractor will enter into one or more replaceable subcontracts with the subcontractor on substantially the same terms and conditions as this subcontract, which subcontracts must specify, in the aggregate, an amount of work equivalent to or greater than the amount of work specified in this subcontract.

Schedule 22

[en. B.C. Reg. 278/2004, s. 38.]

(Section 37.2)

Standard Provision — Replacement of Subcontract

on Assignment of Contract

1 If the contract to which this subcontract pertains is assigned by the contractor, the contractor will require that person either

- (a) to assume the contractor's rights and obligations under this subcontract, or
- (b) to offer the subcontractor a replaceable subcontract on substantially the same terms and conditions as this subcontract.

Note: *this regulation replaces B.C. Reg. 258/91.*

[Provisions of the *Forest Act*, R.S.B.C. 1996, c. 157, relevant to the enactment of this regulation: sections 151 to 160]