

B.C. Reg. 381/2008
O.C. 918/2008

Deposited December 9, 2008

Forest Act**BC TIMBER SALES REGULATION**

Note: Check the Cumulative Regulation Bulletin 2014
for any non-consolidated amendments to this regulation that may be in effect.

[includes amendments up to B.C. Reg. 278/2012, October 1, 2012]

Point in Time**Contents**

1 Interpretation

Part 1 — Registration as a BC Timber Sales Enterprise

2 Categories

3 Registration, category 1

4 Registration, category 2

5 Registration, category 3

6 Determining aggregate allowable annual cut

7 Refusal to register

8 Updating registration information

9 Deemed cessation of registration

10 Cancellation of registration

11 Bidding

12 Disqualification period

13 Transfer of registration prohibited

Part 2 — Advertising and Deposits

14 Advertising timber sale licences

15 Bid deposits for timber sale licences

16 Deposit amount payable for timber sale licence

16.1 Standing deposit for timber sale licence

16.2 Base deposit amount for timber sale licence

16.3 Interpretation for purposes of section 16.4

16.4 Determining whether applicant for timber sale licence is at level 1, level 2 or level 3

16.5 Deposit payable on transfer of timber sale licence

16.6 Maintaining deposit for timber sale licence

16.7 Application of sections 16 to 16.6

17 Deposits for forest licences and forestry licences to cut

Part 3 — Disposition of Deposits

17.1 Definitions

18 Refund of bid deposit if application not approved

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

19.1 Refund of standing bid deposit

20 Refund if obligations fulfilled or substantially fulfilled

21 Forfeiture of deposit for non-compliance with agreement

Part 4 — Extensions

22 Extension of timber sale licences

Interpretation

1 (1) In this regulation:

"Act" means the Forest Act;

"arm's length" has the same meaning as in the *Income Tax Act* (Canada);

"BC timber sales enterprise" means a person registered in a category referred to in section 2;

"control of a corporation" means beneficial ownership of 50% or more of its issued capital, having full voting rights in all circumstances, by

(a) one person, or

(b) a group of persons not dealing with each other at arm's length;

"forest licence" means a forest licence for which applications were restricted under section 13 (1.1) of the Act, as it was immediately before its repeal;

"money owed" means money that is required to be paid to the government

(a) under the Act, the former Act, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*,

(b) under an agreement entered into under the Act, the former Act or the *Range Act*,

(c) under an arrangement for payment approved under the Act or the former Act by the revenue minister,

(d) under a permit issued under the *Forest and Range Practices Act*, the *Forest Practices Code of British Columbia Act* or the *Wildfire Act*, or

(e) for goods or services, or both, provided by the ministry;

"processing facility" means a facility that processes

(a) timber or wood residue or both,

(b) products produced from timber or wood residue or both, or

(c) products under both paragraphs (a) and (b);

"sawmill" means a processing facility that manufactures lumber, timbers or cants from logs.

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

(a) cut,

(b) remove, or

(c) knock down

any timber authorized for harvest under a timber sale licence.

[am. B.C. Reg. 152/2012, Sch. s. 1.]

Part 1 — Registration as a BC Timber Sales Enterprise

Categories

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

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

Registration, category 1

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

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

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

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

Registration, category 2

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

(2) In order to qualify for registration under this section, a person

- (a) must meet the requirements of section 3 (3) (a) and (c),
- (b) must not be registered in any other category under this regulation,
- (c) must own or lease a processing facility in British Columbia in respect of which no other person is registered in a category under this regulation, and
- (d) must not
 - (i) hold,
 - (ii) be in control of a corporation that holds,
 - (iii) be a corporation that has 50% or more of its shares held by one or more shareholders that are also shareholders in a corporation that

holds,

- (iv) be a corporation that is controlled by a corporation that is also in control of a corporation that holds, or
- (v) be a corporation that is controlled by a corporation that holds a pulpwood agreement or one or more major licences that together have an aggregate allowable annual cut greater than 10 000 m³.

(3) If the processing facility referred to in subsection (2) (c) is a sawmill, the sawmill must include a chipper and a debarker unless the timber sales manager has exempted the sawmill from this requirement.

[am. B.C. Reg. 152/2012, Sch. s. 2.]

Registration, category 3

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

(2) In order to qualify for registration under this section, a person

- (a) must have been registered as a BC timber sales enterprise in category 3 on June 20, 2003,
- (b) must meet the requirements of sections 3 (3) (a) and (c) and 4 (2) (d),
- (c) must not meet the requirement of section 4 (2) (c),
- (d) must not be registered in any other category under this regulation, and
- (e) must state in the application for registration that he or she intends to own or lease a processing facility.

(3) When a person registered in category 3 becomes the owner or lessee of a processing facility in British Columbia in respect of which no other person is registered in a category under this regulation, the person ceases to be registered in category 3 and is registered in category 2.

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

[am. B.C. Reg. 152/2012, Sch. s. 2.]

Determining aggregate allowable annual cut

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

Refusal to register

7 Despite sections 3 to 5 of this regulation, a timber sales manager may refuse to register a person as a BC timber sales enterprise in a category under this regulation if the person

- (a) is a BC timber sales enterprise that has been disqualified under section 78 of the Act,
- (b) is or was
 - (i) a shareholder in,
 - (ii) an officer or director of, or

- (iii) a person not at arm's length with a BC timber sales enterprise that has been disqualified under section 78 of the Act, or
- (c) has not, or is not at arm's length with a person that has not,
 - (i) paid the money required to be paid to the government under the circumstances set out in section 130 (1.1) of the Act by the due date specified under that section, or
 - (ii) made arrangements satisfactory to the revenue minister to pay the money referred to in subparagraph (i).

Updating registration information

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

Deemed cessation of registration

9 (1) If a circumstance set out in subsection (2) applies in relation to a person registered in a category of BC timber sales enterprise, the person is deemed not to be registered in that category until such time as the circumstance does not apply.

(2) The circumstances for the purposes of subsection (1) are as follows:

- (a) the person has ceased to meet the requirements of this regulation for registration in the category;
- (b) the person holds 3 or more licences under which primary timber harvesting operations have not been completed, whether forest licences, timber sale licences, or any combination of the two;
- (c) there is money owed by
 - (i) the person, or
 - (ii) another person that is not at arm's length with the person,

and, of the total amount owing, more than \$500 000 is overdue by more than 84 days.

[en. B.C. Reg. 152/2012, Sch. s. 3.]

Cancellation of registration

10 (1) A timber sales manager must, on application by a person registered as a BC timber sales enterprise in a category under this regulation, cancel the person's registration in that category.

(2) Despite sections 3 to 5 of this regulation, a timber sales manager may cancel the registration of a person who is registered as a BC timber sales enterprise in a category under this regulation if the person

- (a) has not
 - (i) paid the money required to be paid to the government under section 130 of the Act by the due date specified, or
 - (ii) made arrangements satisfactory to the revenue minister to pay the money referred to in subparagraph (i),

- (b) has not notified the timber sales manager in accordance with section 5 (4), or
- (c) has not submitted accurate information to the timber sales manager in accordance with section 8.

(3) A timber sales manager must cancel the registration of a person registered in a category of BC timber sales enterprise if the person does not apply for a timber sale licence under section 20 of the Act within a 5-year period beginning on the later of

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

[am. B.C. Reg. 152/2012, Sch. s. 4.]

Bidding

11 If, under the Act, the timber sales manager specifies that applications for a timber sale licence will be accepted only from BC timber sales enterprises, the timber sales manager may require the applicant to provide proof

- (a) of registration as a BC timber sales enterprise,
- (b) that the applicant continues to meet each of the requirements of this regulation for registration, and
- (c) that the person has not ceased to be a BC timber sales enterprise.

Disqualification period

12 (1) For the purposes of section 78 (4) (a) and (5) of the Act, the timber sales manager must, on a case-by-case basis and in accordance with the limits set out in subsection (2) and the criteria set out in subsection (3) of this section, determine the period of disqualification of a person who is the successful applicant for a BC timber sales agreement and who does not enter into the agreement.

(2) The period of disqualification referred to in subsection (1) may be

- (a) 6 months long or longer, or
- (b) indefinite in length.

(3) In determining the period of disqualification, the timber sales manager must take into consideration the following criteria:

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

relevant.

Transfer of registration prohibited

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

Part 2 — Advertising and Deposits

Advertising timber sale licences

14 An advertisement inviting applications for a timber sale licence must be published by posting the advertisement on a publicly accessible website maintained by or on behalf of the ministry, in accordance with the following:

- (a) if
 - (i) the total volume of timber to be authorized for harvesting under the licence is less than 2 000 m³, or
 - (ii) the timber must be removed expeditiously because it is in imminent danger of being damaged, destroyed or otherwise lost, a minimum of 5 days before the date of sale;
- (b) if the total volume of timber to be authorized for harvesting under the licence is 2 000 m³ or more, but less than 15 000 m³, a minimum of 3 weeks before the date of sale;
- (c) if the total volume of timber to be authorized for harvesting under the licence is 15 000 m³ or more, but less than 100 000 m³, a minimum of 4 weeks before the date of sale;
- (d) if the total volume of timber to be authorized for harvesting under the licence is 100 000 m³ or more, a minimum of 8 weeks before the date of sale.

Bid deposits for timber sale licences

15 (1) If, under section 20 of the Act, an application is made for a timber sale licence, the application must

- (a) include, in cash, by certified cheque or by other security acceptable to the minister, a bid deposit calculated under subsection (3), or
- (b) specify that the applicant relies on a standing bid deposit previously received by the government,
 - (i) in the form of cash, certified cheque or other security acceptable to the minister, and
 - (ii) calculated under subsection (4).

(2) Despite subsection (1),

- (a) the bid deposit required under subsection (1) (a) may be in an amount specified by the timber sales manager that is less than the amount calculated under subsection (3), or

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

Deposit amount payable for timber sale licence

16 (1) Subject to section 16.1, before entering into a timber sale licence, the successful applicant for the licence must pay to the government, on demand, a deposit for the licence in the amount required under this section.

(2) The deposit amount payable under this section is based on

- (a) the base deposit amount for the timber sale licence, as determined by the timber sales manager under section 16.2, and
- (b) whether the successful applicant is a level 1, level 2 or level 3 applicant, as determined by the timber sales manager under section 16.4 based on primary performance criteria, financial performance criteria and other criteria set out in section 16.3.

(3) If the successful applicant for the timber sale licence is

- (a) a level 1 applicant, the applicant must pay a deposit in an amount equal to the base deposit amount,
- (b) a level 2 applicant, the applicant must pay a deposit in an amount equal to 2 times the base deposit amount, and
- (c) a level 3 applicant, the applicant must pay a deposit in an amount equal to 3 times the base deposit amount.

(4) If

- (a) the application of the successful applicant specified a standing bid deposit as described in section 15 (1) (b), or
- (b) the timber sales manager, under section 15 (2) (b), considered a bid deposit to be unnecessary

the applicant must pay to the government the full deposit amount required under this section.

(5) If the application of the successful applicant included a bid deposit described in section 15 (1) (a) or (2) (a), the applicant must pay to the government the difference between

- (a) the full deposit amount required under this section, and
- (b) the bid deposit.

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Standing deposit for timber sale licence

16.1 (1) If the criteria set out in subsection (3) are met, then instead of paying a deposit in the amount required under section 16, the successful applicant for the timber sale licence may specify that the applicant relies on a standing deposit.

(2) A standing deposit must be

- (a) in the amount of \$100 000, and
- (b) paid in cash, by certified cheque or by other security acceptable to the minister.

(3) The criteria for the purposes of subsection (1) are as follows:

- (a) the applicant must be a level 1 applicant, as determined by the timber sales manager under section 16.4 (1);
- (b) the applicant must be a BC timber sales enterprise;
- (c) the government must have already received the standing deposit from the applicant.

(4) A standing deposit is non-refundable during the 12-month period immediately following the date on which the standing deposit is first established.

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Base deposit amount for timber sale licence

16.2 (1) The timber sales manager must determine the base deposit amount for a timber sale licence.

(2) The base deposit amount must not be less than the sum of

- (a) 10% of the first \$100 000 of the total estimated value of the licence, and
- (b) 5% of the remaining total estimated value of the licence.

(3) For the purposes of subsection (2), the "total estimated value of the licence" is equal to the sum of

- (a) the total estimated stumpage value of the licence, and
- (b) the bonus offer proposed by the successful applicant for the licence, if a bonus offer is required to be proposed under section 20 (3) of the Act.

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Interpretation for purposes of section 16.4

16.3 (1) In this section:

"closing date for applications", in relation to an application for a timber sale

licence, means the closing date set out in the advertisement inviting applications for the licence;

"financial performance evaluation period", in relation to the successful applicant for a timber sale licence, means the shorter of the following periods:

- (a) the period beginning on October 1, 2012 and ending on the closing date for applications for the licence;
- (b) the 24-month period immediately preceding the closing date for applications for the licence;

"primary performance evaluation period", in relation to the successful applicant for a timber sale licence, means the shorter of the following periods:

- (a) the period beginning on October 1, 2012 and ending on the closing date for applications for the licence;
- (b) the 48-month period immediately preceding the closing date for applications for the licence.

(2) For the purposes of section 16.4, the successful applicant for a timber sale licence meets the primary performance criteria if the timber sales manager determines that,

- (a) in the 48-month period immediately preceding the closing date for applications for the licence, the applicant held one or more timber sale licences, and
- (b) during the primary performance evaluation period,
 - (i) the applicant did not refuse to enter into a timber sale licence,
 - (ii) no final determinations were made under the Act disqualifying the applicant from
 - (A) being registered as a BC timber sales enterprise, or
 - (B) making an application for a timber sale licence,
 - (iii) no final determinations were made under the Act
 - (A) suspending a right held by the applicant under a timber sale licence, or
 - (B) cancelling a timber sale licence held by the applicant, and
 - (iv) no deposits paid by the applicant in respect of a timber sale licence were
 - (A) disposed of under section 21 (2) of this regulation, or
 - (B) forfeited to the government under section 21 (4) of this regulation.

(3) For the purposes of section 16.4, the successful applicant for a timber sale licence meets the financial performance criteria if,

- (a) in the case of an applicant that has been registered as a BC timber sales enterprise for less than 24 months, the timber sales manager determines that, of the total amount of money, if any, owed by
 - (i) the applicant, or
 - (ii) a person that is not at arm's length with the applicantnot more than \$100 000 was overdue by more than 28 days at any time during the financial performance evaluation period, or

(b) in the case of an applicant that has been registered as a BC timber sales enterprise for 24 months or more, the timber sales manager determines that, of the total amount of money, if any, owed by

- (i) the applicant, or
- (ii) a person that is not at arm's length with the applicant not more than \$500 000 was overdue by more than 84 days at any time during the financial performance evaluation period.

(4) For the purposes of section 16.4 (1) (c) and subsection (3) of this section, the timber sales manager must determine whether the successful applicant for a timber sale licence, as of the closing date for applications for the licence, has been registered as a BC timber sales enterprise for

- (a) less than 24 months, or
- (b) 24 months or more.

(5) In making a determination under subsection (4),

- (a) the timber sales manager may consider only the period of time since the applicant's most recent registration as a BC timber sales enterprise, and
- (b) if the period of time since an applicant's most recent registration as a BC timber sales enterprise includes a period during which the applicant is deemed not to be registered under section 9, the timber sales manager must proceed as though the period of deemed non-registration were a period of registration.

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Determining whether applicant for timber sale licence is at level 1, level 2 or level 3

16.4 (1) The successful applicant for a timber sale licence is a level 1 applicant if all of the following apply:

- (a) the applicant meets the primary performance criteria referred to in section 16.3 (2);
- (b) the applicant meets the applicable financial performance criteria referred to in section 16.3 (3);
- (c) in the case of an applicant that has been registered as a BC timber sales enterprise for less than 24 months, the timber sales manager is satisfied that, during the period of time in which the applicant has been registered as a BC timber sales enterprise, the applicant has completed timber harvesting operations under a timber sale licence.

(2) The successful applicant for a timber sale licence is a level 2 applicant if one of the following applies:

- (a) the applicant meets the primary performance criteria referred to in section 16.3 (2) but does not meet the applicable financial performance criteria referred to in section 16.3 (3);
- (b) the applicant does not meet the primary performance criteria referred to in section 16.3 (2) but meets the applicable financial performance criteria referred to in section 16.3 (3).

(3) The successful applicant for a timber sale licence is a level 3 applicant if both of the

following apply:

- (a) the applicant does not meet the primary performance criteria referred to in section 16.3 (2);
- (b) the applicant does not meet the applicable financial performance criteria referred to in section 16.3 (3).

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Deposit payable on transfer of timber sale licence

16.5 (1) Subject to subsection (2), on completion of the disposition of a timber sale licence, the recipient of the licence must pay to the government a deposit for the licence in the amount determined in accordance with section 16 (3) and sections 16.2 to 16.4.

(2) If the criteria in section 16.1 (3) are met, then instead of paying a deposit in the amount required under subsection (1) of this section, the recipient of the timber sale licence may specify that the recipient relies on a standing deposit.

(3) For the purposes of this section,

- (a) a reference in section 16 (3), 16.1 (3), 16.2 (3) (b), 16.3 or 16.4 to the applicant or successful applicant for a timber sale licence must be read as a reference to the recipient of the timber sale licence, and
- (b) a reference in section 16.3 to the closing date for applications for the licence must be read as a reference to the completion date of the disposition.

(4) Section 16.1 (2) and (4) applies to a standing deposit specified under subsection (2) of this section.

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Maintaining deposit for timber sale licence

16.6 (1) If all or part of a deposit, other than a standing deposit specified under section 16.1 or 16.5 (2), for a timber sale licence is used by the government during the term of the licence, the holder of the licence must make, on demand, a further payment to the government to maintain the deposit in the applicable amount required under section 16 (3).

(2) If all or part of a standing deposit specified under section 16.1 or 16.5 (2) for a timber sale licence is used by the government during the term of a timber sale licence, the holder of the licence must make, on demand, a further payment to the government to maintain the standing deposit in the amount set out in section 16.1 (2) (a).

(3) Despite subsection (1) of this section, section 7 of the Advertising, Deposits and Disposition Regulation, B.C. Reg. 552/78, as it read immediately before November 4, 2003, applies to a timber sale licence that was advertised or entered into before that date.

[en. B.C. Reg. 152/2012, Sch. s. 5.]

Application of sections 16 to 16.6

16.7 (1) Sections 16 to 16.6 apply to every timber sale licence advertised on or after October 1, 2012.

(2) Section 16, as it read immediately before October 1, 2012, applies to a timber sale

licence advertised before that date.

[en. B.C. 152/2012, Sch. s. 5; am. B.C. Reg. 278/2012, s. (c).]

Deposits for forest licences and forestry licences to cut

17 (1) If a person enters into a forest licence, the person must maintain on deposit with the government an amount equal to 15¢/m³ of the allowable annual cut.

(2) If a person enters into a forestry licence to cut under section 47.6 (3) of the Act, the person must maintain on deposit with the government an amount determined by the timber sales manager.

(3) A deposit required under this section must be submitted in the form of cash, certified cheque or other security acceptable to the minister.

(4) If all or part of the deposit is used by the government during the term of a forest licence or forestry licence to cut under section 47.6 (3), the holder of the licence must make, on demand, a further payment to the government to maintain the deposit in the amount determined under this section.

Part 3 — Disposition of Deposits

Definitions

17.1 In this Part:

"bid deposit" means a bid deposit paid under section 15 (1) (a);

"deposit" means a deposit paid under section 16 or 16.5 (1);

"standing bid deposit" means a standing bid deposit specified under section 15 (1) (b);

"standing deposit" means a standing deposit specified under section 16.1 or 16.5 (2).

[en. B.C. Reg. 152/2012, Sch. s. 6.]

Refund of bid deposit if application not approved

18 If an application for a timber sale licence is not approved, the bid deposit in respect of the application may be refunded if the timber sales manager is satisfied that there is no need for the bid deposit.

[en. B.C. Reg. 152/2012, Sch. s. 7.]

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

19 (1) If an application for a timber sale licence is approved but the applicant does not enter into the licence, the bid deposit or standing bid deposit in respect of the application is forfeited to the government.

(2) At the request of an applicant who did not enter into the licence, the minister or person authorized by the minister may relieve the applicant from the forfeiture imposed under subsection (1) if the minister or person authorized by the minister is satisfied that the applicant did not enter into the licence as the result of

- (a) an event that
 - (i) is not related to financial circumstances of the applicant,
 - (ii) is beyond the control of the applicant, and
 - (iii) would, if the licence were entered into, prevent the licence obligations from being carried out, or
- (b) a mistake made by the government which would make the licence voidable.

(3) A request referred to in subsection (2) must

- (a) be submitted within 30 days after the date the requesting person is notified that the bid deposit or standing bid deposit has been forfeited under subsection (1),
- (b) be signed by, or on behalf of, the requesting person, and
- (c) specify the reasons for the request.

[am. B.C. Reg. 152/2012, Sch. ss. 8 and 9.]

Refund of standing bid deposit

19.1 Subject to section 15 (4), a standing bid deposit in respect of a timber sale licence may be refunded if the applicant is not relying on that deposit in respect of another application for a timber sale licence.

[en. B.C. Reg. 152/2012, Sch. s. 10.]

Refund if obligations fulfilled or substantially fulfilled

20 (1) A deposit in respect of a BC timber sales agreement may be refunded

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

(2) A standing deposit in respect of a timber sale licence may be refunded in full if

- (a) the holder of the licence is not relying on the standing deposit in respect of another timber sale licence, and
- (b) the timber sales manager is satisfied that the licence holder has fulfilled all obligations under or in respect of the licence.

[am. B.C. Reg. 152/2012, Sch. s. 11.]

Forfeiture of deposit for non-compliance with agreement

21 (1) The timber sales manager must realize a deposit or standing deposit in respect of a BC timber sales agreement if

- (a) the timber sales manager is satisfied that its holder did not comply with
 - (i) the agreement or a road permit issued in conjunction with the agreement,
 - (ii) the Act or a regulation made under the Act,
 - (iii) the *Forest and Range Practices Act* or a regulation or standard

made under that Act, or

(iv) the *Wildfire Act* or a regulation made under that Act, and

(b) the agreement

(i) is cancelled,

(ii) expires, or

(iii) has expired and the holder has not remedied the non-compliance by a date, not exceeding 2 years from the date of expiry, specified by the timber sales manager.

(2) The amount realized from the deposit or standing deposit under subsection (1) must be disposed of as follows:

(a) first, if the timber sales manager considers it to be necessary or desirable, for the purposes of remedying an outstanding obligation

(i) in respect of the agreement or a road permit issued in conjunction with the agreement, or

(ii) in respect of the agreement or a road permit issued in conjunction with the agreement that is related to

(A) the Act or a regulation made under the Act,

(B) the *Forest and Range Practices Act* or a regulation or standard made under that Act, or

(C) the *Wildfire Act* or a regulation made under that Act;

(b) then, as to any amount remaining,

(i) 50% of the original deposit or standing deposit, or all of the balance remaining if the balance is less than 50%, to the government, and

(ii) the remainder to the holder of the agreement, unless the timber sales manager is satisfied that some or all of the remainder should be retained by the government after consideration of the following:

(A) whether the holder owes money to the government that may be set-off under the *Financial Administration Act*;

(B) an estimate of the direct and indirect costs to the government resulting from the holder's non-compliance including but not limited to

(I) foregone stumpage, and

(II) costs that are or will be incurred by the government in the ordinary course of business because of the non-compliance;

(C) any other information that the timber sales manager considers to be relevant.

(3) Despite subsection (2), if the timber sales manager is satisfied that the holder has substantially fulfilled its obligations under or in respect of a BC timber sales agreement or a road permit issued in conjunction with the agreement, the timber sales manager must dispose of the amount realized from a deposit or standing deposit as follows:

(a) first, if the timber sales manager considers it to be necessary or desirable, for the purposes of remedying an outstanding obligation

(i) in respect of the agreement or a road permit issued in conjunction

with the agreement, or

(ii) in respect of the agreement or a road permit issued in conjunction with the agreement that is related to

(A) the Act or a regulation made under the Act,

(B) the *Forest and Range Practices Act* or a regulation or standard made under that Act, or

(C) the *Wildfire Act* or a regulation made under that Act;

(b) then, as to any amount remaining,

(i) 25% of the original deposit or standing deposit, or all of the balance remaining if the balance is less than 25%, to the government, and

(ii) the remainder to the holder unless the holder owes money to the government that may be set-off under the *Financial Administration Act*.

(4) Despite subsections (1) to (3), a deposit or standing deposit in respect of a timber sale licence is forfeited to the government if

(a) the licence is cancelled or expires, and

(b) no harvesting has taken place under the licence.

(5) Despite subsections (1) to (4), and at the request of the holder of an agreement referred to in subsections (1) to (4), the minister or the minister's delegate may relieve the holder from

(a) the realization of a deposit or standing deposit under subsection (1), or

(b) a forfeiture under subsection (4),

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

(c) is not related to the financial circumstances of the holder,

(d) is beyond the control of the holder, and

(e) prevents the agreement obligations being carried out or prevents the harvesting being carried out.

(6) A request referred to in subsection (5) must

(a) be submitted within 30 days after the date the holder is advised that all or a portion of the holder's deposit or standing deposit has been realized under subsection (1) or forfeited under subsection (4),

(b) be signed by, or on behalf of, the requesting person, and

(c) specify the reasons for the request.

(7) Subsections (1) to (3) do not apply to a timber sale licence that was advertised before July 5, 2002

(a) under section 20 of the Act, or section 21 of the Act before its repeal, and

(b) for which, under those sections, applications were restricted to one or more categories of small business forest enterprises.

[am. B.C. Reg. 152/2012, Sch. s. 12.]

Part 4 — Extensions

Extension of timber sale licences

22 (1) An application to extend the term of a timber sale licence must be in a form required by the timber sales manager.

(2) For the purposes of section 58.1 (5) (a) and (b) of the Act, the prescribed percentage is 5% of the amount calculated under 58.1 (5) (a) or (b) of the Act, as the case may be.

Note: this regulation replaces B.C. Reg. 265/88.

[Provisions relevant to the enactment of this regulation: *Forest Act*, R.S.B.C. 1996, c. 157, sections 20 (2), 78 (5), 151 (1), (1.1) and (2) (y)]

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada