

NEWFOUNDLAND AND LABRADOR
REGULATION 12/08

Directed Sale of Timber Regulations

under the
Forestry Act
(O.C. 2008-038)

(Filed February 26, 2008)

Under the authority of section 38 of the Forestry Act , the Lieutenant-Governor in Council makes the following.

Dated at St. John's , February 25, 2008 .

Gary Norris
Clerk of the Executive Council

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Short title

1. These regulations may be cited as the Directed Sale of Timber Regulations .

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Interpretation

2. (1) In these regulations

(a) "Act" means the Forestry Act ;

(b) "applicant" means a person who

(i) applies for a cutting permit under section 27 of the Act; or

(ii) proposes to enter into a timber sale agreement with the minister under section 22 of the Act;

(c) "designated purchaser" means a person to whom timber cut under a cutting permit or a timber sale agreement shall be offered for sale, as specified by the Lieutenant-Governor in Council under subsection 22(2) or 27(8) of the Act;

(d) "directed sale" means a sale by an applicant to a designated purchaser under the terms of a cutting permit or a timber sale agreement; and

(e) "Labrador Inuit Settlement Area" has the meaning assigned to it in the Labrador Inuit Land Claims Agreement as defined in the Labrador Inuit Land Claims Agreement Act.

(2) Unless otherwise stated, a reference in these regulations to a notice means a notice in a form approved by the minister.

(3) In these regulations, communications may be made by electronic means and are not required to be in writing unless that requirement is specifically stated.

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Non-application of regulations

3. These regulations shall not apply to the Labrador Inuit Settlement Area.

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Notice of directed sale

4. (1) Where the Lieutenant-Governor in Council requires that timber which is the subject of

(a) a cutting permit; or

(b) a timber sale agreement

be offered for sale to a designated purchaser, the minister shall notify the applicant and the designated purchaser of that requirement at the time an application for a cutting permit is made or a timber sale agreement is proposed.

(2) The notice referred to in subsection (1) shall contain the following information:

(a) contact information for the designated purchaser and the applicant;

(b) the volume of timber proposed to be cut;

(c) the location where the timber is to be cut;

(d) the category or categories of timber to which the requirement of the directed sale applies;

(e) other information that the minister considers relevant to a determination of the sale price of the timber; and

(f) the duration of the directed sale conditions.

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Directed sale agreement required

5. (1) Upon receipt of the notice referred to in subsection 4(1), the applicant and the designated purchaser shall enter into negotiations respecting an agreement for the directed sale of timber.

(2) A cutting permit shall not be issued or a timber sale agreement shall not be concluded until

(a) the applicant and the designated purchaser have each advised the minister in writing that an agreement for the directed sale of timber has been concluded; or

(b) the designated purchaser has, in writing, advised the applicant and the minister that he or she has waived his or her right to enter into a directed sale agreement under section 7.

(3) The provisions of an agreement referred to in this section shall not form a term or condition of a cutting permit or a timber sale agreement unless it is required to be so by the Lieutenant-Governor in Council under subsection 22(2) or 27(8) of the Act.

(4) The minister is not a party to a directed sale agreement.

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Duration of directed sale agreement

6. (1) An agreement for the directed sale of timber concluded under these regulations shall remain in effect as follows:

(a) where an agreement for the directed sale of timber has been concluded as a condition of the issuance of a cutting permit, the directed sale agreement shall remain in effect for the term of the cutting permit; and

(b) where an agreement for the directed sale of timber has been concluded as a condition of entry into a timber sale agreement between the applicant and the minister, the directed sale agreement shall remain in effect for

(i) the term of the timber sale agreement, or

(ii) one calendar year

whichever time period is the lesser.

(2) Where a timber sale agreement is for a term of more than one calendar year and the directed sale agreement referred to in subsection (1) expires while the timber sale agreement is in effect, timber shall not be cut under the timber sale agreement until

(a) the applicant and designated purchaser have concluded a new agreement for the directed sale of timber; or

(b) the designated purchaser has waived his or her right to enter into a directed sale agreement under section 7.

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Waiver

7. (1) A designated purchaser may waive his or her right to enter into an agreement for the directed sale of timber at any time

(a) before a directed sale agreement is reached; or

(b) where an arbitration has commenced, before the minister notifies the parties that an arbitrator has reached a decision in the arbitration.

(2) Where an applicant or a designated purchaser has referred a matter to arbitration under section 8 and the arbitrator has issued a decision, the designated purchaser may not waive his or her right to enter into an agreement for the directed sale of timber if the applicant has consented to the decision of the arbitrator under section 9.

(3) A waiver under subsection (1) shall be in writing and a copy shall be delivered to the minister, the applicant, and the arbitrator where one has been appointed.

PART I ARBITRATION PROCESS

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Referral to arbitration

8. (1) Where an agreement for the directed sale of timber has not been concluded within 30 days of the issuance of the notice referred to in subsection 4(1), either the applicant or the designated purchaser may ask the minister to appoint an arbitrator to whom the outstanding matter may be submitted and shall provide the other party with a copy of that request.

(2) At the discretion of the minister, 2 or more applicants may join together as a party to an arbitration.

(3) Within 14 days of receipt of the request for the appointment of a arbitrator referred to in subsection (1), the minister shall appoint an arbitrator and notify the applicant and the designated purchaser of that appointment.

(4) Within 10 days of the appointment of the arbitrator by the minister, the designated purchaser and the applicant shall each provide the arbitrator with a written submission setting out:

(a) the names of the applicant and designated purchaser;

(b) a summary of the facts;

(c) the issue or issues requiring settlement;

(d) a final offer by each to the other party respecting the price of timber and any terms and conditions of the directed sale; and

(e) any other matter considered relevant by the applicant or the designated purchaser

and each party shall provide the other with a copy of the party's submission under this subsection.

(5) A party to an arbitration under this section may, within 5 days of the date that the arbitrator has received both submissions under subsection (4), submit to the arbitrator a rebuttal to the information contained in the submission of the other party.

(6) Where an arbitrator considers it necessary to clarify a final offer or other matter contained in a submission or a rebuttal, he or she may request and receive oral or written information from either party.

(7) Where an arbitrator requests additional information from a party under this section that information may be provided orally or in writing and the other party to the arbitration shall be informed of that request and be provided with the opportunity to hear that information and respond to it within the time period set by the arbitrator.

(8) The arbitrator shall conduct the arbitration proceedings in the manner the arbitrator considers appropriate having regard to the circumstances of the dispute.

(9) The arbitrator is not bound by the rules of evidence and has the power to determine the admissibility, relevance and weight of evidence and may determine the manner in which evidence is to be admitted.

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Arbitrator's decision

9. (1) The arbitrator shall, within 14 days of the date

(a) on which he or she is first in receipt of the submission of both the applicant and the designated purchaser; or

(b) on which the arbitrator is first in receipt of the additional information requested under section 8,

file his or her decision with the minister.

(2) The arbitrator's decision shall be in writing and shall be based on a selection of one of the parties' final offers as submitted to the arbitrator.

(3) An arbitrator is not required to provide written reasons in support of his or her decision.

(4) The minister shall, within 5 days of receiving the arbitrator's decision, notify the parties of that decision.

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Offer of settlement

10. (1) A party to an arbitration may make an offer of settlement in writing to the other at any time before the minister notifies the parties that the arbitrator has reached a decision in the arbitration.

(2) If an offer of settlement made under subsection (1) is accepted by the other party, the applicant and the designated purchaser shall each

(a) notify the arbitrator in writing of the settlement agreement; and

(b) notify the minister in writing that the request for the appointment of an arbitrator or a submission under an arbitration is revoked and that an agreement for the directed sale of timber has been concluded.

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When arbitrator's decision becomes binding

11. (1) Participation in the arbitration process as set out in these regulations shall not be construed as requiring an applicant to pursue a cutting permit or timber sale agreement under the Act.

(2) Where the applicant submits to the decision of the arbitrator,

(a) the decision shall become binding on both parties; and

(b) the applicant and the designated purchaser shall each notify the minister in writing that the matter has been resolved and that an agreement for the directed sale of timber has been concluded.

(3) The provisions of an arbitrator's decision under this section shall not form a term or condition of a cutting permit or a timber sale agreement unless it is required to be so by the Lieutenant-Governor in Council under subsection 22(2) or 27(8) of the Act.

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Costs of arbitration

12. (1) Each party to arbitration is responsible for the cost of preparing and presenting his or her own case in arbitration.

(2) The fees and expenses of the arbitrator and the costs of the administrative services in the arbitration shall be shared equally by the parties to the arbitration.

(3) This section shall apply notwithstanding that

(a) during the course of the arbitration, a settlement was agreed to by the parties or a waiver under section 7 was exercised by the designated purchaser; or

(b) an applicant chooses not to pursue a cutting permit or timber sale agreement under the Act.

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Arbitration Act does not apply

13. The Arbitration Act does not apply to an arbitration conducted under these regulations.

PART II RIGHT OF FIRST REFUSAL

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Right of first refusal

14. (1) Where the Lieutenant-Governor in Council requires that timber which is the subject of

(a) a cutting permit; or

(b) a timber sale agreement

is to be first offered for sale to a specified person, the minister shall notify the applicant and the designated purchaser at the time an application for a cutting permit is made or a timber sale agreement is proposed by the applicant.

(2) The notice referred to in subsection (1) shall contain the following information:

(a) contact information for the designated purchaser and the applicant;

(b) the volume of timber proposed to be cut;

(c) the location where the timber is to be cut;

(d) the category or categories of timber subject to the right of first refusal;

(e) any other information that the minister considers relevant to the selling price of the timber;
and

(f) the duration of the right of first refusal.

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Operation of right of first refusal

15. (1) Where the sale of the timber is subject to a right of first refusal and the applicant receives an acceptable offer from a third party, he or she shall deliver a written copy of that offer to the designated purchaser.

(2) Within 14 days of receipt of a copy of the third party offer, the designated purchaser may exercise or waive his or her right of first refusal and shall advise the applicant and the minister in writing.

(3) Notwithstanding subsection (2), a designated purchaser may waive his or her right of first refusal at any time, including where no third party offers have been received, and where the designated purchaser waives that right, he or she shall advise the applicant and the minister of that waiver in writing.

(4) Where the designated purchaser elects to exercise his or her right of first refusal, he or she shall submit to the applicant, before the expiry of the period referred to in subsection (2), an offer which shall be on the same terms and conditions as, or better than, the offer made by the third party.

(5) The applicant may choose to accept an offer made under subsection (4) but an offer made by a designated purchaser in the exercise of the right of first refusal shall not be construed as requiring an applicant to pursue a cutting permit or timber sale agreement under the Act.

(6) Where an offer made under subsection (4) is accepted by the applicant, the applicant and the designated purchaser shall each notify the minister in writing that an agreement for the sale of timber has been concluded and the minister may then issue a cutting permit or conclude a timber sale agreement as appropriate.

(7) The provisions of an agreement referred to in subsection (6) shall not form a term or condition of a cutting permit or a timber sale agreement unless it is required to be so by the Lieutenant-Governor in Council under subsection 22(2) or 27(8) of the Act.

(8) Where the designated purchaser waives his or her right of first refusal within the period specified in subsection (2), the applicant shall be free to enter into an agreement with a third party provided that the agreement is on the same terms and conditions as the offer submitted to the designated purchaser.

(9) Where the designated purchaser does not respond to the applicant within the period referred to in subsection (2), he or she shall be considered to have waived his or her right of first refusal and the applicant shall be free to enter into an agreement with another person for the sale of timber.

(10) Where a right of first refusal has been waived under subsection (2) or (3), or is considered to have been waived under subsection (9), it shall not be exercised by the designated purchaser

(a) in the case of a right of first refusal under a cutting permit, for the term of the permit; and

(b) in the case of a right of first refusal under a proposed timber sale agreement, for one calendar year or the term of the timber sale agreement, whichever is the lesser.

(11) The minister is not a party to an agreement reached in the exercise of a right of first refusal under this section.

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Duration of agreement

16. (1) An agreement for the sale of timber concluded between the applicant and the designated purchaser under subsection 15(5) shall remain in effect

(a) where an agreement for the sale of timber has been concluded as a condition of the issuance of a cutting permit, the sale agreement shall remain in effect for the term of the cutting permit; and

(b) where an agreement for the sale of timber has been concluded as a condition of entry into a timber sale agreement between the applicant and the minister, the sale agreement shall remain in effect for

(i) the term of the timber sale agreement, or

(ii) one calendar year

whichever time period is the lesser.

(2) Where an agreement between the applicant and the designated purchaser expires under paragraph (1)(b) while the timber sale agreement is in effect, the applicant may not cut timber under the timber sale agreement until

(a) the designated purchaser has been given a new opportunity to exercise his or her right of first refusal in accordance with these regulations; and

(b) the applicant and the designated purchaser have concluded a new agreement or the designated purchaser has waived his or her right of first refusal.

(3) The requirements of paragraph (1)(b) and subsection (2) apply to an agreement concluded under paragraph (2)(b).

PART III GENERAL

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Transfer of right

17. A right conferred under these regulations is not transferable.

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Application of regulations

18. (1) These regulations shall apply to a person who applies for a cutting permit or to enter into a timber sale agreement where that application is made for an area of the province where a transfer agreement under section 12 of the Act is in force.

(2) These regulations shall apply to a person who applies for a cutting permit or to enter into a timber sale agreement where that application is made for an area of the province within which the Crown requires that timber be offered for sale under the agreement referred to in the Government-Corner Brook Pulp and Paper Limited Agreement Act, 1994.

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