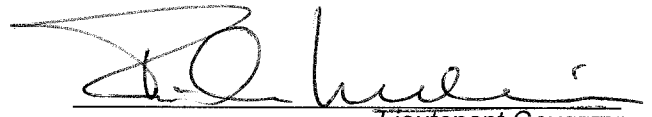


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **162**, Approved and Ordered **MAR 27 2006**



Lieutenant Governor
Administrator

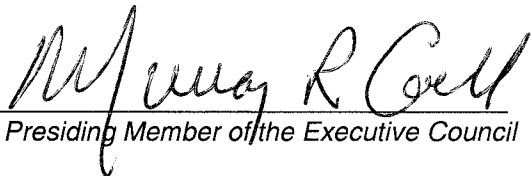
Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that
Administrator

- (a) the attached Advertising, Deposits, Disposition and Extension Regulation is made, and
- (b) the Advertising, Deposits, Disposition and Extensions Regulation, B. C. Reg. 277/2004 is repealed.



Minister of Forests and Range and
Minister Responsible for Housing



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Forest Act, s. 151 (1) and (2) (e)

Other (specify):- oic 613/2004

ADVERTISING, DEPOSITS, DISPOSITION AND EXTENSION REGULATION

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Definitions

- 1 (1) In this regulation, “**Act**” means the *Forest Act*.
- (2) In this regulation and section 58.3 of the Act, “**harvesting**” means to
 - (a) cut,
 - (b) remove, or
 - (c) knock downany timber authorized for harvest under a timber sale licence.

PART 1 – ADVERTISING

Timber sale licence and forest licence

- 2 An advertisement inviting applications for a forest licence or a timber sale licence must,
 - (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,

be published at least once, a minimum of 5 days before the date of sale, in at least one newspaper circulating in or near the area proposed for the licence,
- (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, be published
 - (i) in at least one issue of the Gazette, and
 - (ii) at least once, within a period of 3 consecutive weeks following the date of the publication in the Gazette, in at least one newspaper circulating in or near the area proposed for the licence,
- (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, be published
 - (i) in at least one issue of the Gazette, and
 - (ii) at least once every 2 weeks, within a period of 4 consecutive weeks following the date of publication in the Gazette, in at least one newspaper circulating in or near the area proposed for the licence, or
- (d) if the total volume of timber to be authorized for harvesting under the licence is 100 000 m³ or more, be published
 - (i) in at least one issue of the Gazette, and
 - (ii) at least once every 2 weeks, within a period of 8 consecutive weeks following the date of the publication in the Gazette, in at least one newspaper circulating in or near the area proposed for the licence.

Tree farm licence

- 3 An advertisement inviting applications for a tree farm licence
 - (a) must be published
 - (i) in at least one issue of the Gazette, and
 - (ii) in at least one newspaper circulating in or near the area proposed for the licence with at least one advertisement in every second week within the period of 8 consecutive weeks from the date of the publication in the Gazette,
 - (b) must be broadcast at least once every second week within a period of 8 consecutive weeks on a radio or television station received in or near the area proposed for the licence, and
 - (c) must include
 - (i) an informal description of the land proposed for the licence,
 - (ii) the place and a date, at least 4 months following the publication in the Gazette, for the public hearing referred to in section 33 (2) of the Act, and
 - (iii) a name of a place in the forest region where persons are able to obtain details of the proposed licence.

Probationary community forest agreement

- 4 An advertisement inviting applications for a probationary community forest agreement
- (a) must be published
 - (i) in at least one issue of the Gazette, and
 - (ii) in at least one newspaper circulating in or near the area proposed for the agreement, at least once every 2 weeks within a period of 4 consecutive weeks following the date of the publication in the Gazette, and
 - (b) must include
 - (i) an informal description of
 - (A) the land that is proposed for the agreement, or
 - (B) the geographic area where the agreement area will be located, and
 - (ii) the name of a place in the forest region or forest district where persons can obtain details of the proposed agreement.

Community salvage licence

- 5 An advertisement inviting applications for a community salvage licence
- (a) must be published
 - (i) in at least one issue of the Gazette, and
 - (ii) in at least one newspaper circulating in or near the area proposed for the licence, at least once every 2 weeks within a period of 4 consecutive weeks following the date of the publication in the Gazette, and
 - (b) must include
 - (i) an informal description of the land proposed for the licence, and
 - (ii) the name of a place in the forest region or forest district where persons can obtain details of the proposed licence.

Woodlot licence

- 6 An advertisement inviting applications for a woodlot licence
- (a) must be published
 - (i) in at least one issue of the Gazette, and
 - (ii) in at least one newspaper circulating in or near the area proposed for the licence, at least once every 2 weeks within a period of 4 consecutive weeks following the date of publication in the Gazette, and
 - (b) must include
 - (i) an informal description of the land proposed for the licence, and
 - (ii) the name of a place in the forest region or forest district where persons can obtain details of the proposed licence.

Publication of offer or intent to offer replacement licence

- 7 (1) Notice of
- (a) an offer of a forest licence made under section 15 (1.1) or (1.2) of the Act or an intent to offer a forest licence under section 15 (1.1) of the Act,
 - (b) an offer of a timber licence made under section 28 (2) of the Act,
 - (c) an offer of a tree farm licence made under section 36 (1.1) or (1.2) of the Act or an intent to offer a tree farm licence under section 36 (1.1) of the Act, or
 - (d) an offer of a woodlot licence made under section 46 (1) of the Act
- must be published in the Gazette and in at least one issue of at least one newspaper circulating in or near the area of the licence not later than 6 weeks after the offer or intent to offer, as the case may be, is made.
- (2) A notice published under subsection (1) must
- (a) identify the person to whom the offer or intent to offer was made,
 - (b) describe informally the land and timber that is subject to the licence offered or intended to be offered, and
 - (c) describe the term of the licence offered or intended to be offered.

PART 2 – DEPOSITS

Deposits

- 8 (1) If, under Part 3 of the Act, an application is made for a forest licence, timber licence, tree farm licence, community salvage licence, woodlot licence or forestry licence to cut, the application must include
- (a) in cash or by certified cheque an amount that equals one year's rent for the licence, as calculated according to the Act, and
 - (b) in cash, by certified cheque or by other security acceptable to the minister, a deposit that equals the amount calculated under section 9, according to the information available at the time of the application.
- (2) If
- (a) an offer of a replacement for a forest licence, timber licence, tree farm licence or woodlot licence is made, or
 - (b) a forest licence, timber licence, tree farm licence or woodlot licence is surrendered for replacement,
- the person who accepts the offer or surrenders the licence
- (c) must maintain on deposit with the government an amount equal to one year's rent for the replacement licence plus a deposit for that licence calculated in accordance with section 9, and
 - (d) if the amounts required to be maintained on deposit by paragraph (c) exceed the like amounts on deposit with the government in respect of the licence being replaced, must pay the government the difference on demand.

- (3) An application for a forest licence, timber licence, tree farm licence or woodlot licence or for an offer or surrender of one that relates to
 - (a) the construction or operation of a timber processing facility or other improvement, or
 - (b) land on which is situated the personal property owned by a person other than
 - (i) the applicant,
 - (ii) a person accepting the offer or surrendering the agreement, or
 - (iii) the government,

must include in cash, by certified cheque or by other security acceptable to the minister a deposit in the amount specified in the invitation for application or the offer or surrender, as the case may be.

Amount of deposit

- 9 (1) The deposit referred to in section 8 (1) or (2) is
 - (a) for a tree farm licence, 10¢/m³ of the allowable annual cut,
 - (b) for a forest licence, 15¢/m³ of the allowable annual cut,
 - (c) for a community salvage licence, \$1 500,
 - (d) for a woodlot licence, \$200,
 - (e) for a forestry licence to cut entered into under
 - (i) section 24.8 or 24.9 of the Act, 20¢/m³ of the total licence volume,
 - (ii) section 47.3 of the Act, 20¢/m³ of the total licence volume,
 - (iii) section 47.6 (2) of the Act, an amount determined by the regional manager or district manager that is the sum of 10% of the first \$100 000 of the total estimated stumpage value plus 5% of the remaining total estimated stumpage value,
 - (f) for a forestry licence to cut entered into under
 - (i) section 47.6 (3) of the Act, an amount determined by the timber sales manager, and
 - (ii) section 47.6 (4) of the Act, an amount determined by the regional manager or district manager.
- (2) If under subsection (1) (e) (iii) the minimum amount of deposit is less than \$500, the deposit required must be
 - (a) zero, or
 - (b) \$500,
 as determined by the regional manager or the district manager.

Bid deposits for timber sale licences

- 10 (1) If, under Part 3 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 in accordance 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.

Amount of deposit for timber sale licence

- 11**
- (1) Before entering into a timber sale licence, the successful applicant for the licence must pay the government, on demand,
 - (a) the difference between the bid deposit referred to in section 10 (1) (a) or (2) (a), whichever is applicable, and the deposit calculated under subsection (2) of this section, or
 - (b) the full amount of the deposit calculated under subsection (2) of this section if the application is one described in section 10 (1) (b) or (2) (b).
 - (2) The deposit for a timber sale licence must be in an amount of not less than the sum of
 - (a) 10% of the first \$100 000 of total estimated stumpage value, and
 - (b) 5% of the remaining total estimated stumpage value.
 - (3) If all or part of the deposit is used by the government during the term of a timber sale licence, the successful applicant must make, on demand, a further payment to the government to maintain the deposit in the amount determined under this section.

- (4) Despite subsection (3), 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.

PART 3 – DISPOSITION OF DEPOSITS

Refund if application not approved or if conditionally approved

- 12** If an application for a forest licence, timber sale licence, timber licence, tree farm licence, community salvage licence, woodlot licence or forestry licence to cut is not approved or is approved subject to a condition, the money paid under section 8 or 10 (1) (a) in respect of the application may be refunded, if the regional manager, timber sales manager or district manager, as applicable, is satisfied that there is no need for a deposit.

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

- 13** (1) If an application for a forest licence, timber sale licence, timber licence, tree farm licence, community salvage licence, woodlot licence or forestry licence to cut is approved or conditionally approved but the applicant does not enter into the licence, the money paid under section 8 or 10 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 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.

Refund if obligations fulfilled or substantially fulfilled

- 14** (1) A deposit paid under this regulation in respect of
- (a) a forest licence that is not a BC timber sales agreement,
 - (b) a timber licence, tree farm licence, community salvage licence or woodlot licence, or
 - (c) a forestry licence to cut that is not a BC timber sales agreement

may be refunded,

(d) in full, if the regional manager or district manager is satisfied that the licensee has fulfilled its obligations under or in respect of the licence, or

(e) in part, if the regional manager or district manager is satisfied that the licensee has substantially fulfilled its obligations under or in respect of the licence.

(2) A deposit paid under this regulation 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.

**Forfeiture of deposit for non-compliance with licences
other than BC timber sales agreements**

15 (1) The regional manager or district manager must realize a deposit paid in respect of a licence described in section 14 (1) (a), (b) or (c)

(a) if satisfied that the licensee did not comply with the licence, and

(b) the licence is cancelled or expires.

(2) The regional manager or district manager must dispose of the amount realized from the deposit, first, under the terms of the licence, and then as to any amount remaining,

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

(b) the remainder to the licensee, unless the regional manager or district manager is satisfied that some or all of the remainder should be retained by the government after consideration of the following:

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

(ii) an estimate of the direct and indirect costs to the government resulting from the licensee's non-compliance with the licence including but not limited to

(A) foregone stumpage, and

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

(iii) any other information that the regional manager or district manager considers to be relevant.

(3) Despite subsections (1) and (2), the minister or the minister's delegate may waive the requirement to realize a deposit under this section or may realize a different amount than determined under subsection (2) if satisfied that the non-compliance was the result of an event that

(a) is not related to financial circumstances of the licensee,

- (b) is beyond the control of the licensee, and
- (c) prevents the licence obligations from being carried out.

Forfeiture of deposit for non-compliance with BC timber sales agreement

- 16** (1) The timber sales manager must realize a deposit other than a standing deposit paid under this regulation 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 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 all of the balance remaining if the balance is less than 50%, to the government, and
 - (ii) the remainder to the holder of the BC timber sales 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 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 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 paid under this regulation 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 or licence 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 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 financial circumstances of the holder,
 - (d) is beyond the control of the holder, and
 - (e) prevents the agreement obligations from 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 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.

PART 4 – EXTENSIONS

Extension of timber sale licences

- 17** (1) An application to extend the term of a timber sale licence must be in a form required by the timber sales manager.
- (2) Before an application to extend a timber sale licence is approved, the applicant is required to pay the government a fee equal to 5% of the amount calculated under section 58.1 (5) of the Act.

Extension of cutting permits

- 18** (1) An application to extend the term of a cutting permit must be in a form required by the district manager.
- (2) Before an extension of a cutting permit is approved, the applicant is required to pay to the government a fee equal to the amount calculated according to the following formula:

$$\left[\begin{array}{c} \text{the total stumpage rate} \\ \text{in effect at time of} \\ \text{cutting permit issuance} \end{array} \right] \times \left[\begin{array}{c} \text{the total net cruise volume at the time of cutting permit} \\ \text{issuance or, in the absence of the total net cruise volume,} \\ \text{an estimation of the total volume} \end{array} \right] \times 5\%$$