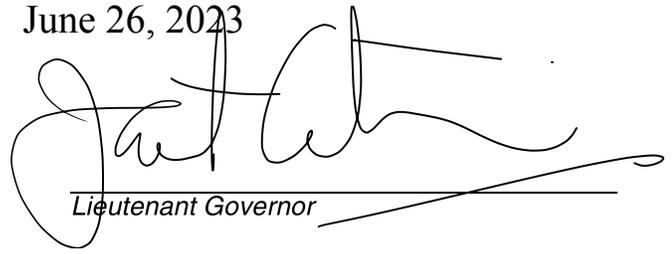


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 387

, Approved and Ordered June 26, 2023



Lieutenant Governor

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, effective July 15, 2023,

- (a) sections 56, 57 and 61 of the *Forest Amendment Act, 2021*, S.B.C. 2021, c. 38, are brought into force, and
- (b) the attached Designated Areas Compensation Regulation is made.



Minister of Forests



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 Amendment Act, 2021*, S.B.C. 2021, c. 38, s. 75;
Forest Act, R.S.B.C. 1996, c. 157, s. 151

Other:

R10627710

DESIGNATED AREAS COMPENSATION REGULATION

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Definitions

- 1 In this regulation:

“**Act**” means the *Forest Act*;

“**court order interest rate**” has the same meaning as “interest rate” in Part 2 [*Post-Judgment Interest*] of the *Court Order Interest Act*;

“**cutting permit area**”, in relation to a cutting permit, means the area of land to which the cutting permit applies;

“**designated areas compensation provision**” means section 175.2 [*compensation for fifth and subsequent years of designation*] of the Act;

“**timber sale licence area**”, in relation to a timber sale licence, means the area described in the timber sale licence.

Duty to provide information to chief forester

- 2 (1) For the purposes of specifying the harvest profile under the designated areas compensation provision, the chief forester may, by written request served on the holder of an area-based licence, require the holder to provide the following information:
- (a) the approved management plan for the licence;
 - (b) information used or obtained in preparing the approved management plan for the licence;
 - (c) information used or included in the holder’s inventory of a forest resource, as prepared and maintained under Part 6.1 [*Forest Resource Inventories*] of the Act;
 - (d) other information that the chief forester may specify.
- (2) Information requested under subsection (1) must be provided in the form and manner and within the time period specified by the chief forester.
- (3) The chief forester must specify the harvest profile regardless of whether the holder of the area-based licence complies with a request for information under this section.

Duty to provide information to minister

- 3** (1) The holder of an agreement must provide to the minister, on request, specified information that the minister considers may be relevant for the purposes of determining the compensation to which the holder is entitled under the designated areas compensation provision.
- (2) Without limiting subsection (1), the minister may request any of the following:
- (a) information related to
 - (i) net income, including revenues and costs, referred to in the formula set out in section 228 [*meaning of “net income”*] of the Act,
 - (ii) established practices, or
 - (iii) adjustments to net income to reflect notional income tax and accrued interest;
 - (b) information required to be kept or submitted under
 - (i) section 136 [*records and returns*] of the Act,
 - (ii) the policies and procedures approved by the minister under section 105 [*stumpage rate determined*] of the Act, or
 - (iii) any other provision of the Act.
- (3) Information requested under this section must be provided in the form and manner and within the time period specified by the minister.
- (4) The minister may extend, by not more than 2 months, the time period specified under subsection (3), but an extension may be granted only once.
- (5) The minister must determine the compensation to which the holder of the agreement is entitled regardless of whether the holder complies with a request for information under this section.

Information that minister may consider in determining compensation

- 4** (1) For the purposes of determining the compensation to which the holder of an agreement is entitled under the designated areas compensation provision, the minister may consider any of the following:
- (a) relevant information that the holder provides under section 3, or otherwise provides under the Act;
 - (b) aggregated information derived from relevant information that the holder or other persons provide under the Act;
 - (c) relevant information, including statistical information, that is publicly available or is otherwise available to the minister.
- (2) The minister may refuse to consider information described in subsection (1) if, in the minister’s opinion, the information is incomplete or inaccurate.

Criteria for determining relevance of information

- 5** (1) For the purposes of determining, under the designated areas compensation provision, the net income amounts that would have been earned during each year of the compensable period, and unless the minister determines otherwise,

information described in section 4 is to be considered relevant if the information relates to the harvest and sale of timber harvested under cutting permits or timber sale licences that meet the following criteria:

- (a) in the case of cutting permits, the cutting permits were issued
 - (i) under the holder's agreement, or
 - (ii) under other agreements that the minister considers are comparable to the holder's agreement;
 - (b) the cutting permit areas or timber sale licence areas have profiles of timber that the minister considers are comparable to the harvest profile that the chief forester specifies for the purposes of the designated areas compensation provision;
 - (c) timber harvesting under the cutting permits or timber sale licences was completed not more than 5 years before the year of the compensable period to which the net income amount relates;
 - (d) the volume of timber harvested under the cutting permits or timber sale licences is sufficient to accurately indicate the net income amounts that would have been earned, and the established practices that would have been carried out, in relation to the harvested timber for which the holder is being compensated.
- (2) In subsection (1) (b), **“profiles of timber”** means the composition of timber in the cutting permit areas or timber sale licence areas, having regard to the following factors:
- (a) the types of timber in the areas;
 - (b) the types of terrain in the areas;
 - (c) other factors that the minister considers relevant.

Adjustments to reflect tax and accrued interest

- 6** (1) This section sets out the adjustments that the minister must make, for the purposes of subsection (4) of the designated areas compensation provision, in order to determine the compensation to which the holder of an agreement is entitled under that provision.
- (2) After determining, under the designated areas compensation provision, the net income amounts that would have been earned during each year of the compensable period, the minister must do the following:
- (a) for each annual net income amount, determine the after-tax net income amount in accordance with section 7;
 - (b) determine the total net income amount that would have been earned during the compensable period by calculating the sum of the annual after-tax net income amounts determined under paragraph (a);
 - (c) for each year of the compensable period, determine an accrued interest amount in accordance with section 8 [*determining accrued interest*];
 - (d) determine the total accrued interest amount for the compensable period by calculating the sum of the annual accrued interest amounts determined under paragraph (c);

- (e) determine the total amount of compensation to which the holder is entitled under the designated areas compensation provision by calculating the sum of
 - (i) the total net income amount determined under paragraph (b), and
 - (ii) the total accrued interest amount determined under paragraph (d).

Rules for determining after-tax net income amounts

- 7** (1) In this section, “**income tax legislation**” means the following:
- (a) the *Income Tax Act*;
 - (b) the *Income Tax Act (Canada)*;
 - (c) the regulations under the *Income Tax Act* and the *Income Tax Act (Canada)*.
- (2) For the purposes of section 6 (a), the after-tax net income amounts are to be determined as follows:
- (a) for each annual net income amount, estimate the following notional amounts:
 - (i) the portion of the net income amount that would have been taxable;
 - (ii) the income tax that would have been payable on the taxable net income amount estimated under subparagraph (i) of this paragraph;
 - (b) for each annual net income amount, determine the after-tax net income amount by deducting, from that annual net income amount, the notional income tax amount estimated under paragraph (a) (ii) of this subsection.
- (3) A notional amount described in subsection (2) (a) (i) or (ii) must be estimated based on the income tax legislation, as that legislation reads at the beginning of the particular year to which the annual net income amount relates.

Determining accrued interest

- 8** For the purposes of determining, under section 6 (2) (d) [*adjustments to reflect tax and accrued interest*], the accrued interest amount for a particular year, the minister must do the following:
- (a) determine a cumulative net income amount by calculating the sum of the following amounts, as determined under section 6 (2) (a):
 - (i) the annual after-tax net income amount determined for the particular year;
 - (ii) the annual after-tax net income amount determined for each previous year of the compensable period;
 - (b) calculate interest on the cumulative net income amount determined under paragraph (a) of this section by applying the court order interest rate in accordance with section 7 (3) and (4) [*interest rate*] of the *Court Order Interest Act*.

Interest payable on total net income amount

- 9** (1) The minister must pay interest on the total net income amount, as determined under section 6 (2) (b) [*adjustments to reflect tax and accrued interest*], that

would have been earned by the holder of the agreement during the compensable period.

- (2) The following rules apply for the purposes of calculating interest under subsection (1):
 - (a) the interest must be calculated from the date that is immediately after the end date of the compensable period to the date of payment;
 - (b) the interest must be calculated at the court order interest rate;
 - (c) the interest must be calculated in accordance with section 7 (3) and (4) [*interest rate*] of the *Court Order Interest Act*.