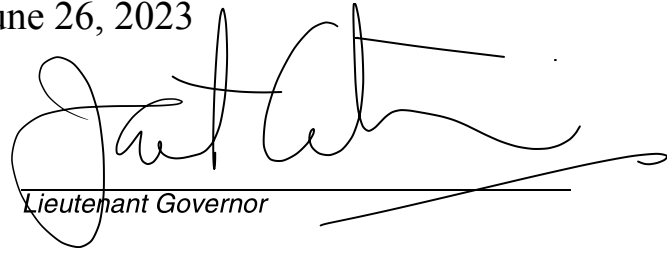


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 388

, Approved and Ordered June 26, 2023



Lieutenant Governor

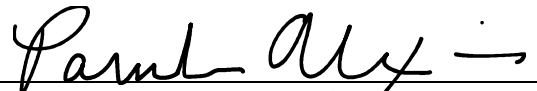
**Executive Council Chambers, Victoria**

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) section 63 of the *Forest Amendment Act, 2021*, S.B.C. 2021, c. 38, is brought into force, and
- (b) the attached Reductions for First Nation Purpose or BCTS Licence Purpose 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, ss. 151 and 276

Other:

R10627810

# REDUCTIONS FOR FIRST NATION PURPOSE OR BCTS LICENCE PURPOSE REGULATION

## *Contents*

- 1 Definitions
- 2 Duty to provide information to minister
- 3 Information that minister may consider in determining compensation
- 4 Criteria for determining relevance of information
- 5 Adjustments to reflect tax and present value
- 6 Application of income tax legislation
- 7 Present value formula
- 8 Interest payable on compensation

## **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;

“**reduction compensation provision**” means section 274 [*compensation for forest licence following reduction*] of the Act;

“**stumpage appraisal policies**” means the policies and procedures approved by the minister under section 105 [*stumpage rate determined*] 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 minister**

- 2** (1) The holder of a forest licence 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 reduction 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 present value;
  - (b) information required to be kept or submitted under
    - (i) section 136 [*records and returns*] of the Act,
    - (ii) the stumpage appraisal policies, 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 forest licence is entitled regardless of whether the holder complies with a request for information under this section.

**Information that minister may consider  
in determining compensation**

- 3**
- (1) For the purposes of determining the compensation to which the holder of a forest licence is entitled under the reduction compensation provision, the minister may consider any of the following:
    - (a) relevant information that the holder provides under section 2, 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**

- 4**
- (1) For the purposes of determining, under the reduction compensation provision, the net income amounts that would be earned during each year of the remaining term of a forest licence, and unless the minister determines otherwise, information described in section 3 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 forest licence, or
      - (ii) under other licences or agreements that the minister considers are comparable to the holder's forest licence;
    - (b) the cutting permit areas or timber sale licence areas have profiles of timber that the minister considers are comparable to the relevant harvest profile;
    - (c) timber harvesting under the cutting permits or timber sale licences was completed not more than 5 years before the effective date of the reduction authorization order;
    - (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 be earned, and the established practices that would be 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 present value**

- 5** (1) This section sets out the adjustments that the minister must make, for the purposes of subsection (3) of the reduction compensation provision, in order to determine the compensation to which the holder of a forest licence is entitled under that provision.
- (2) After determining, under the reduction compensation provision, the net income amounts that would be earned during each year of the remaining term of the forest licence, the minister must do the following:
- (a) for each annual net income amount, determine the after-tax net income amount in accordance with section 6;
  - (b) for each annual after-tax net income amount determined under paragraph (a), determine the present value of that amount in accordance with section 7 [*determining present value amounts*];
  - (c) determine the total amount of compensation to which the holder is entitled under the reduction compensation provision by calculating the sum of the present value amounts determined under paragraph (b).

#### **Rules for determining after-tax net income amounts**

- 6** (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 5 (2) (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 be taxable;
    - (ii) the income tax that would be 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 start date of the remaining term of the forest licence to which the compensation relates.

### Determining present value amounts

- 7 Under section 5 (2) (b), the present value of an after-tax net income amount determined for a year is to be determined using the discounted cash flow approach in accordance with the following formula:

$$\text{present value} = \frac{\text{annual net income (after tax)}}{(1 + \text{discount rate})^{\text{years}}}$$

where

- annual net income (after tax) = the after-tax, net income amount for the particular year, as determined under section 5 (2) (b);
- discount rate = the weighted average cost of capital, as determined using the formula set out in the stumpage appraisal policies;
- years = the number of years that have elapsed since the start of the remaining term of the forest licence.

### Interest payable on compensation

- 8 (1) The minister must pay interest on the amount of compensation that the minister determines is payable to the holder of a forest licence under the reduction compensation provision.
- (2) The following rules apply for the purposes of calculating interest under subsection (1):
- (a) the interest must be calculated from the start date of the remaining term of the forest licence 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*.