



Ministry of Forests



BCTS
BC Timber Sales

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Advisory Bulletin No. 2024-02-27 – Category 4 TSLs Administering & Enforcing the Performance Obligation

The BCTS Category 4 – Value-added Program (Cat 4) is a key element of the Ministry of Forests' strategy to sustain, diversify and grow value-added manufacturing in BC and support the forest sector to transition from high-volume to high-value.

Purpose

This bulletin provides information to BC Timber Sales (BCTS) staff, and Category 2 and 4 registrants regarding administration and enforcement of the performance obligation associated with Cat 4 Timber Sale Licences (TSLs). Category 2 registrants may bid on Cat 4 TSLs for a one-year period (transition year) ending December 31, 2024.

A Cat 4 TSL contains the new performance obligation that requires, during the term, the TSL holder to utilize a minimum value, in dollars, of input materials either from timber or wood fibre harvested from the cutting authority area or received in trade for timber or wood fibre harvested from the cutting authority area, and produce, in dollars, a minimum value of products. Both parts of the obligation must be completed at the processing facility identified in the TSL holder's registration application.

The performance obligation is the defining feature of a Cat 4 TSL, and fulfillment of this obligation is paramount to the success of the Cat 4 Program. It is this obligation that distinguishes Cat 4 TSLs from TSLs offered to Category 1 registrants.

Performance Obligation

During the transition year, the performance obligation is:

- 1) *During the term of this Licence, the Licensee must, at the processing facility identified in the Licensee's application for BC timber sales enterprise registration:*
 - (a) *utilize a minimum value of [50% value, in dollars] of timber or wood fibre:*
 - (i) *harvested from the Cutting Authority Area; or*
 - (ii) *received in trade for timber harvested from the Cutting Authority Area.*
 - (b) *produce a minimum value of [75% value, in dollars] of products.*
- 2) *The Licensee will only be entitled to credit under this Part for processing that is completed in compliance with (1) during the period that the Licensee continues to own or lease the processing facility identified in the Licensee's application for BC timber sales enterprise registration.*
- 3) *If the Licensee holds more than one timber sale licence, the minimum values in (a) and (b) will be in addition to any minimum values required by the other timber sale licence(s) held by the Licensee.*

Section 1 of the performance obligation consists of two parts:

1. Part (a) requires the TSL holder to utilize 50 percent of the appraised TSL value, in dollars, of input materials. The percentage is initially set at 50 percent and may be adjusted upward depending on the characteristics of the individual TSL and based on experience gained over time in the Cat 4 Program.

In the interior, the TSL value is based on the appraised TSL stand selling price of timber or wood fibre and is taken from the Interior Market Pricing System Stumpage Rate Details, at the time of advertisement. On the coast, it is based on the average log prices as published by Timber Pricing Branch of the Ministry of Forests at the time of advertisement and multiplied by the percentage of the species and grades derived from the timber cruise of the cutting authority area.

To satisfy part (a) the TSL holder can utilize the volume harvested from the cutting authority area or volume that is received in trade for timber or wood fibre harvested from the cutting authority area. Selling the TSL volume to receive cash to then purchase input materials will not contribute to meeting part (a) of the obligation.

It is important to note that once part (a) of the obligation has been met, the TSL holder may utilize the remaining TSL volume at the processing facility, trade or sell to receive cash to then purchase the profile or products needed at their facility.

2. Part (b) of the obligation requires the TSL holder to produce 75 percent of the appraised TSL value, in dollars, of products processed at their facility. The percentage is initially set at a minimum of 75% and may be adjusted upward depending on the characteristics of the individual TSL and based on experience gained over time in the Cat 4 Program.

To satisfy part (b), input materials may include timber or wood fibre harvested from the cutting authority area, received in trade, or purchased.

Once a TSL is advertised, the minimum values assigned to a specific Cat 4 TSL as performance measures are not changed, and they cannot be transferred, assigned, or double counted towards another Cat 4 TSL.

The standard to measure value-added in a Cat 4 TSL is based on 50% of the appraised TSL value used in input materials to then produce 75% of the appraised TSL value in products.

Reporting – Performance Report & Trade Agreements

Records

Records may be requested to verify whether a TSL holder has met parts (a) and (b) of the performance obligation. Such records may include, but are not limited to, sales invoices, slips, or other documentation to demonstrate the obligation has been met. These records must be in the same name as the full legal name of the corporation or individual as identified in the application for registration and as the TSL holder.

Performance Report

The TSL holder is required to submit a performance report to the timber sales manager (TSM) to demonstrate the performance obligation was met by the expiry of the TSL. The performance report and instructions on how to complete it are included in the tender package for an advertised Cat 4 TSL.

If a registrant holds more than one Cat 4 TSL, they must identify all TSLs with overlapping terms in the performance report, even in different business areas. Each TSL will be evaluated separately.

Trade Agreement

To satisfy part (a) of the obligation, if the TSL volume is traded to obtain the profile or products (e.g., lumber) needed at the processing facility, a trade agreement is required to be submitted to the TSM with the performance report. Both documents are to be submitted by the TSL expiry.

A trade agreement template is provided in the tender package and requires information regarding:

- the TSL volume and profile that was traded,
- the volume and profile of products (e.g., lumber) received from the trade, and
- information identifying each party with whom the TSL holder has traded.

If the TSL volume is utilized at the processing facility to meet part (a) then a trade agreement is not required. Once the TSL holder has met part (a) of the obligation, they may utilize the remaining TSL volume at their processing facility, trade or sell to obtain the input materials needed, and this remaining volume is not required to be documented in the trade agreement.

Failure to Meet the Performance Obligation

If the TSL holder has:

- Failed to submit the performance report and/or trade agreement when required or requested.
- Failed to satisfy the performance obligation within the term of the TSL.
- Submitted a performance report and/or trade agreement containing false information or misrepresented performance; or
- Failed to comply with a request for the submission of records.

Then the TSL holder may be subject to action under:

- Section 9 of the BC Timber Sales Regulation – Suspension of registration
- Section 10 of the BC Timber Sales Regulation – Cancellation of registration
- Section 21 of the BC Timber Sales Regulation – Forfeiture of deposit for non-compliance with agreement
- Section 78 of the *Forest Act* – Disqualification, suspension and cancellation
- Section 8 of the Administrative Orders and Remedies Regulation – Penalties

A determination under section 78 of the *Forest Act* or section 21(2) of the BC Timber Sales Regulation may impact the TSL holder's primary performance designation under section 16.3 of the BC Timber Sales Regulation, which determines the amount of deposit required to be submitted for any future TSLs that may be awarded to the registrant.

TSL Extensions

The TSL holder must satisfy the performance obligation by the expiry date of the TSL. They may apply for an extension to the TSL term under section 58.1 of the *Forest Act* prior to the expiry, and the TSM must grant this extension providing all other requirements of section 58.1 are met and the TSL does not prohibit extensions.

There is no opportunity to extend the time to satisfy the performance obligation after the expiry of the TSL.

Audits

An audit may be conducted to verify whether the performance obligation was satisfied.

Contact

BCTS Category 2 and 4 registrants may contact their local BCTS Timber Sales Office with inquiries regarding this bulletin.