

WAC 332-140-060 Defaults. This section is to implement section 6 of the act.

(1)(a) **Qualifying sales.** Section 6 of the act applies only to window sales which were in existence as of April 3, 1982, or for which a payment is made after April 3, 1982, under section 7 of the act to reinstate the sale.

(b) **Written notification.** The purchaser must provide the department with written notification on or before July 14, 1982, stating that the purchaser elects to terminate or default a sale under section 6 of the act. Such notification must state that the purchaser is giving up all of its rights under that contract as of the date of the notification. The notification must be accompanied by a sworn written statement by an authorized representative of the purchaser which identifies the names of all affiliates, subsidiaries, and parent companies of the purchaser which purchased a window sale. The department shall provide the form for this statement. The notification must also be accompanied by a \$2,500 administrative fee. The notification will be considered received by the department only when the fee and sworn statement are received by the department.

(c) **Limitation on sales to be defaulted.** The following limitations apply to the sales which a purchaser may terminate or default under section 6 of the act.

(i) The purchaser may default on the sale(s) of its choice of which it was the purchaser as of April 3, 1982, if the sale qualifies under subsection (1)(a) above and if the cumulative volume remaining on those sales for which notification is given does not exceed 15 MMBF of forest products as of the date of the notification. The volume remaining on a sale shall be computed by the department by subtracting the volume of merchantable forest products removed from the department's presale cruise volume of merchantable forest products stated in the contract.

(ii) No sales which have been assigned after April 3, 1982, may be terminated or defaulted.

(iii) Only entire sales may be defaulted. A purchaser may not default on part of a sale under section 6 and choose to retain any right to remove forest products from any part of the same sale.

(iv) A sale may be terminated or defaulted even though the purchaser has operated on it and removed forest products from the sale, subject to the further limitations of subsection (1)(d) below.

(v) A sale on which all of the forest products have been removed may not be terminated or defaulted under section 6 of the act.

(d) **Limitations on defaults of sales on which operations have occurred.** A sale which otherwise qualifies for termination or default under section 6 of the act and this section may be defaulted subject to the following obligations and reservations:

(i) All forest products must be paid for which were removed from the sale and all due ARRF payments and other payments due must be paid, including all payments for forest products and ARRF deferred under a deferred payment agreement. The department reserves the full right to take appropriate action against the purchaser and its surety to recover all applicable damages for a failure of the purchaser to make the foregoing payments on or before the receipt of the notification of default.

(ii) All outstanding contract requirements (other than removal of forest products) which arose as a result of the purchaser's activities on the sale must be performed. These requirements include, but are not limited to, slash disposal preparation work, stream cleanout, falling

nonmerchantable forest products, road maintenance, ditching, waterbar-ring and fire trail construction. If the purchaser fails to perform the foregoing outstanding requirements, the department shall determine the current cost of performing that work and charge the purchaser therefor. If the purchaser fails to promptly pay such charges, the department may take appropriate action to recover the same from the purchaser and its surety.

(iii) The purchaser and its surety are not released from any liability or duty to indemnify the department which arose as a result of the acts or omissions of the purchaser or its delegate relating to the sale being defaulted.

(2) **No refunds or credits.** Upon notification under subsection (1)(b) above, the department shall make no refunds nor give any credits of any cash payments made to the department in connection with the contract which is being defaulted. Such cash payments include, but are not limited to, the initial deposit, extension fees, cash advance payments, and cash performance bonds, whether the foregoing deposits or payments are used or unused. All such sums shall be retained by the department.

(3)(a) **Road credits.** Upon receipt of notification under subsection (1)(b) above, the department shall compute the road credit which is provided by section 6(3) of the act. The credit shall only be allowed for construction of roads that are listed under the ROAD DEVELOPMENT section of the timber sale prospectus, as shown on the timber sale map.

(b) **Amount of road credit.** The amount of the road credit shall be determined based upon the percentage of road work satisfactorily completed in each road construction phase. The phases of road construction are those separate phases expressly identified in the road appraisal work forms used by the department in the presale appraisal. The percentages of satisfactory completion shall be applied to the road construction cost estimates as stated in the department's road construction presale appraisal.

(c) **Reduction of credit.** The total amount of the road credit as computed in subsection (3)(b) above shall be reduced by the difference between the current costs, as determined by the department, of correcting road work which was unsatisfactorily performed and the cost of completing such road work as computed in the department's original presale road construction appraisal.

(d) **Amortization.** The amount of the road credits shall be further reduced by the same percentage as the percentage of forest products removed on that sale. The percentage of forest products removed shall be computed by dividing the volume of merchantable forest products removed by the volume stated in the contract.

(4) **Application of road credit.**

(a) Road credit will be applied only upon written application of the purchaser and after the department has determined the amount of the road credit. Such credit may be applied to one-half of any required payment for stumpage, cash deposits for performance security, or extension fee on a sale. Road credits cannot be applied to the initial deposit on a sale nor to a payment made under section 7 of the act.

(b) Road credit will only be applied to sales of that purchaser which are situated on land of the same trust and beneficiary as the sale on which the road credit is given. If the sale on which the road credit is given is situated on land of more than one trust and beneficiary the total road credit for the sale shall be divided in propor-

tion to the acreage of each trust and beneficiary and applied separately and only to sales situated on the same trust and beneficiary.

(5) A purchaser whose sale expires or expired without removing all of the forest products from the sale and which sale does not qualify to be terminated or defaulted by the purchaser under section 6(1) of the act remains fully liable to the department for whatever damages that may be recovered under law notwithstanding the provisions of the act. This includes a sale which had expired as of April 3, 1982, and which the purchaser does not reinstate under section 7 of the act on or before July 14, 1982.

[Statutory Authority: 1982 c 222 § 8. WSR 82-14-058 (Order 380), § 332-140-060, filed 7/1/82.]