

DEC 03 2009

File: 10194-01

VIA EMAIL

To: Regional Executive Directors
District Managers
Branch Directors

From: T.P. (Phil) Zacharatos
A/Assistant Deputy Minister
Operations Division

Re: **FRPA Administrative Bulletin (Number 13) - Silviculture Prescription Stocking Standard Amendments**



A new *Forest and Range Practices Act* Administrative Bulletin (Number 13), "Silviculture Prescription Stocking Standard Amendments" has just been completed. This bulletin provides information and advice to district managers and forest professionals for their consideration when, for example:

- amending *Forest Practices Code of British Columbia Act* (FPC) silviculture prescription (SP) stocking standards.

Electronic copies will be available soon from the Provincial FRPA Implementation Team's website at the following address: <http://www.for.gov.bc.ca/rco/pfit/index.htm>.

If you have any questions about this bulletin, please contact Allan Powelson, Forest Establishment Initiatives Officer, Forest Practices Branch, Ministry of Forests and Range at (250) 812-5054, or by email at, Allan.powelson@gov.bc.ca.



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FRPA ADMINISTRATION BULLETIN

Number 13

Silviculture Prescription Stocking Standard Amendments

Introduction

FRPA Administrative Bulletin number 13 provides information to delegated decision makers and forest professionals for their consideration regarding the amendment of *Forest Practices Code of British Columbia Act* (FPC) silviculture prescription (SP) stocking standards.

An alternative to proposing an amendment to an SP is for the licence holder to specify, as part of their FSP, that the appropriate FRPA FSP stocking standards be applied to the block or standard unit covered by the SP as per FRPA s 197 (4) (5) or (7).

The bulletin should not be interpreted as ministry policy or legal advice and should not be used in place of the *Forest Practices Code of British Columbia Act* (FPC), the *Forest Act* (FA), the *Forest and Range Practices Act* (FRPA), or their associated regulations.

1. Retroactivity of Amendments

An amendment to a SP stocking standard does not “undo” a contravention that occurred prior to approval of the amendment (that is, one cannot amend themselves into compliance), although the amendment may be taken into consideration in deciding on appropriate enforcement actions, if any are required.

2. Amendment Content Requirements

When amending older SP's approved under a previous regulatory regime the specific elements being amended must be to the legislative requirements specified in the FPC¹. The SP holder is not obligated to incorporate transition code content requirements into the amendment that are not directly related to the parameter being amended. Amendments may be limited to specific elements of the SP or stocking standards. For example, an amendment could be limited to specific elements in only one standards unit. The licensee is not necessarily obligated to amend similar elements in other standards units.

¹ Forest Practices Code of British Columbia Act (Transition Version) in effect December 17, 2002 to January 31, 2004

Despite the above, if the management objectives for the area change additional SP elements may be required to be amended. Additionally, the SP holder must ensure that the amendments to the SP stocking standards are logical in regards to past management strategies on the site and that the outcomes of the amendment are achievable and adequately manage and conserve the forest resources of the area to which it applies (FPC s 41 (1)(b)).

It is not the obligation holder's responsibility to update the data in RESULTS for information approved prior to June 1, 2005, (e.g. if minimum heights are indicated on an SP or amendment approved prior to June 1, 2005, but not entered into RESULTS; it is government's responsibility to enter); the paper based and approved SP prevails in this situation. Amendment approval should not be withheld because RESULTS data is missing in these cases.

3. Free growing dates

An SP applies until:

1. a free growing stand is produced;
2. a declaration is submitted under FRPA s 107 or *Forest Planning and Practices Regulation* (FPPR) s 97.1;
3. an exemption is granted under FPPR s 91;
4. relief of the obligation is granted under FRPA s 108; or,
5. the existing SP is replaced with a site plan under FPC s 35 (2).

a. "adequately manage"

Where the holder of an SP requests an extension to the late free growing date the delegated decision maker must decide if managing to a longer free growing timeframe meets the test of the FPC s 41(1)(a) and (b) to "adequately manage" the area. If the licensee has been diligent in managing the area, the delegated decision maker may choose to approve the amendment to extend the late free growing date. However, in situations where a small area, outside of those described in FPPR s 46.11, is holding up the rest of the block and the area has been managed appropriately and sufficient effort has been made to establish a new stand in accordance with appropriate stocking standards but for some reason is still significantly lagging behind the majority of the block, consideration may be given to declaring the area under FPPR s 97.1.

To apply the test of FPC s 41 (1)(b) to amendments to extend the regeneration date or free growing assessment period requires consideration of what the requirement to "adequately manage" means in this context. To "adequately manage" requires that a free growing stand on productive forestland be established within appropriate time frames. More information on the test of FPC s 41 (1)(b) can be found in DDM bulletin #4.

b. Extensions

Extensions of established timeframes for the regeneration date and free growing assessment period may compromise the obligation of the Crown to ensure adequate management of the forest resource. However, current legislation as per FPPR s 44 (1)(b) allows for up to 20 years from the commencement date to establish a free

growing stand. Any amendment that proposes a late free growing date within this timeframe could be considered as “adequately managing”.

Amendments to extend the time frames due to plantation damage caused by natural disturbances may also warrant approval (in some circumstances, described under FPPR s 96, funding or relief under FRPA s 108 may be appropriate).

4. Requirements if stocking standard is unlikely to be achieved

Where it is determined that a SP under the FPC is unlikely to succeed in achieving the obligation, the licensee is legally obligated (e.g. FPC s 35) to submit an amendment and the DDM is required to approve the amendment if it meets the criteria under FPC s 41 (1) (a) and (b). Where the obligation holder believes it is not practicable to amend the SP, they must submit a report to the DM (FPC s 36) identifying why the plan cannot be amended and the extent to which the requirements will not be met.

In determining if the holder of a SP was aware that the results specified in the SP were impossible to achieve or unlikely to be attained, it is important to determine how this information could have been identified in the field. Obligation holders must monitor their blocks, they cannot ignore areas until free growing. The "reasonably ought to know" criteria in FPC s 35 obligates the DDM to consider accessibility and seasonal variations.

Neither FPC s 35 nor 36 specify when the amendment or report needs to be submitted. Otherwise, the time would be dependent on the situation. Serious time sensitive issues should be dealt with more promptly. The legislation does not specify a modifier like “promptly”, “timely” or “as soon as practical” so the DDM and obligation holder have to work together to determine appropriate timing.

For further discussion of the differences between FPC sections 35 and 36 refer to chapter 2.0 of the administrative guide titled “Administration of Forest Operational Plans”.

Failure to submit amendments may result in compliance or enforcement actions.

a. Amendment not necessary (FPPR s 97.1)

For free growing obligations under both the FPC and FRPA, if a person who has an obligation to establish a free growing stand considers that the obligation has been met on an area to the extent that is practicable, the person may submit to the district manager a written declaration as per FPPR s 97.1. In other words, if the site has been managed appropriately and sufficient effort has been made to establish a new stand in accordance with appropriate stocking standards but due to circumstances beyond the control of the obligation holder, or due to situations that were not foreseeable at the time of the original prescription development, the stocking standard is not likely to be achieved, the obligation holder has the option of declaring the area as having met the free growing obligation to the extent practicable under FPPR s 97.1.

Declarations under FPPR s 97.1 must include, among other things, a description of the reasoning why the stocking standard has been met only to the extent practicable, must specify which element(s) of the stocking standard has not been met, and provide an accurate current inventory of the stocking on the site.

More information on FPPR s 97.1 can be found in FRPA General Bulletin # 20 and FRPA General Bulletin #3 for more information on the “practicable”.

5. Voluntary amendments

FPC s 34 provides the opportunity for persons who hold SPs to be able to request an amendment at any time. This section does not place a responsibility on the holder of the SP to submit an amendment. Two limitations on voluntary amendments are that a person:

- a. can submit an amendment at any time even if in non-compliance, however, the non-compliance is not negated by the amendment, that is the obligation holder cannot amend themselves out of a contravention if the contravention has already occurred; and,
- b. cannot amend the prescription to the detriment of another person who has relied on the prescription.

FPC s 34 does not provide authority for government to require amendments to SPs. The government has very limited authority for requiring amendments and these are provided under FPC s 37.

Amendments that meet the conditions of FPC s 42.1 (a) or operational and site planning regulation (OSPR) s 7.1 are at the discretion of the prescribing forester. As per OSPR s 7.3 (c) only amendments with respect to the regeneration date, the free growing assessment period, the stocking requirements or matters referred to in FPC s 70 (4) (d) and (e) require approval. Amendments made under FPC s 42.1 (1) that otherwise conforms to the FPC, its regulations and the applicable standards, and does not materially affect the likelihood of achieving the objectives or the results specified in the prescription, or meets the prescribed requirements does not require DDM approval.

If the test in FPC s 35 is met (i.e. the holder knows, or reasonably ought to know, that performing the operations specified in the operational plan will not ensure the achievement of the results specified in the operational plan) then the holder is required to submit an amendment for DDM approval.

6. Prescribed treatments

SP's submitted for approval prior to June 15, 1998, were required to specify a regime of silviculture treatments designed to meet the target-stocking requirement. Post June 15, 1998, this was no longer a SP content requirement and it has been replaced by the requirements of the *Silviculture Practices Regulations*ⁱ (SPR) 11. Until the repeal of FPC s 247 on February 26, 2001, amendments of pre June 15, 1998, SP's were required to comply with the legislation as it was prior to June 15, 1998. Following the repeal, there is no requirement to amend silviculture treatments in SP's approved pre June 15, 1998, as silviculture treatments are no longer a SP content requirement.

However, per the requirements of FPC s 70(2) or (3) the SP holder of pre June 15, 1998, SP's must continue to establish a free growing stand in accordance with the treatments specified in the prescription. If the SP holder intends to deviate from a pre June 15, 1998, plan an amendment is required to avoid violation of FPC s 67 and 70. The amendment would remove the requirement to undertake specific treatments. There is no requirement

to replace the voided treatments with alternatives, as this is no longer a SP content requirement. If the holder of the plan or prescription determines that this type of amendment does not materially affect the likelihood of achieving the objectives or results specified, then the amendment would be considered minor under FPC s 42.1 (a) and provided the amendment is not restricted by OSPR s 7.3 and DDM approval is not required.

7. Area Changes

When new information from more precise measurement techniques results in a change in opening area and there has been no change to the on-the ground configuration of the opening an amendment under FPC s 34 should be undertaken. If the holder of the plan or prescription determines that the amendment meets the requirements of FPC s 42.1 (a) or OSPR s 7.1 no DDM approval is required. In many instances changes in area post harvest would likely meet the conditions of OSPR s 7.1 (b).

8. Amendments wrongly made

Under OSPR s 7.2, if the holder of a silviculture prescription has made an amendment under FPC s 42.1 (1) without the approval of the DDM, and the DDM considers that the amendment was wrongly made, the DDM, in a written notice to the holder, may order the suspension of operations on the area that are subject to the amendment. Orders under OSPR s 7.2 (2) remain in effect until the approval of the amendment under FPC s 41 or the DDM rescinds the order.

Contacts

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ⁱ SPR s 11 (1) A person who, after June 15, 1998, is required to establish a free growing stand on an area under a silviculture prescription approved or given effect on or after June 15, 1998, must do the following:

- (a) retain a registered professional forester to specify a regime of silviculture treatments that can reasonably be expected to produce the target stocking levels specified in the silviculture prescription by the end of the free growing assessment period specified in the silviculture prescription;
- (b) implement the regime of treatments referred to in paragraph (a);
- (c) keep a written record that allows the district manager to determine whether the requirements of paragraph (a) and (b) have been met;
- (d) provide the written record to the district manager promptly on request.

(2) A holder of a silviculture prescription is exempted from the requirements of section 70 (4) (d) of the Act and subsection (1) if the timber harvesting proposed for the area under the silviculture prescription is limited to intermediate cuttings, and there are no regeneration objectives specified in the silviculture prescription.

(3) Subsection (2) applies despite any silviculture prescription approved or given effect before June 15, 1998.

