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To: Regional Executive Directors
District Managers
Branch Directors

From: Jim Snetsinger, R.P.F.
Chief Forester

**Re: Forest Planning and Practices Regulation amendments in response
to the Forest Appeals Commission stratification ruling**

On April 20, 2005, the Forest Appeals Commission (FAC) allowed an appeal by Weyerhaeuser Company Ltd. (Weyerhaeuser) and in its decision ruled that the standards unit (SU) is the minimum stratum size for the purpose of determining whether a silviculture obligation has been met.



Although the FAC decision was not precedent-setting, it did create some confusion around the expectations and enforceability of stocking obligations.

After consultations with MFR staff, the Operations Division Legislation and Policy Committee (LPC), and Industry the decision was made to amend the *Forest Planning and Practices Regulations* (FPPR) to address the stratification issue. With these amendments, it is not the ministry's intention to redefine a licensee's silviculture obligations, but rather to clarify the area over which compliance with free growing stocking requirements is to be adjudicated. In doing so, the ministry will avoid the confrontational approach that can result from appeals and legal challenges that are possible under the former legislative wording.

On June 1, 2007, the amendments to the FPPR regarding stratification were deposited. This memo is intended to provide some guidance on interpretation of the regulation changes.

Application

- The changes to the regulation apply to obligations under the *Forest Practices Code* (FPC) or as a default under the *Forest and Range Practices Act* (FRPA). The default under FRPA would cover areas where stratification has not been specifically covered in the Forest Stewardship Plan (FSP).
- Licensees still have the option of incorporating stratification requirements into their FSP and rolling all their FPC blocks into the FSP and, if desired, applying a multi-block approach.

FPPR amendments in response to the Forest Appeals Commission stratification ruling

New FPPR s 46.11 Requirement to establish a free growing stand applies to each hectare

- This section establishes the basic requirement that free growing stands are to be established on every hectare throughout each standards unit within a cutblock, and it also outlines some exceptions where portions of the standard unit may not necessarily have to meet the basic stocking requirement.
- There is a two-part test for assessing whether or not an area within an SU which does not meet the stocking standards is acceptable:
 1. (a) the area is less than 1 ha, or
(b) when the free growing stand is established,
 - (i) the area is mappable and is a minimum of 1 ha and does not exceed 2 ha, and
 - (ii) the portion of the standards unit that is occupied by areas referred to in subparagraph (i), does not exceed 5 percent of the SU net area to reforest (NAR),and,
 2. That the actual stocking achieved in the SU, as a whole, meets the stocking standard specified for the applicable area.
- If these tests are met, then the obligation is met. There is no decision required by the minister's delegate (DM).
- Dimensions as to what constitutes "mappable" are yet to be formally determined, however, it is recommended that in the interim, the draft *Silviculture Information Submission Guidebook* (January 2006) <http://www.for.gov.bc.ca/hfp/pubzlications/00026/pdf/fs708-guide.pdf> be used as a guide.
- Minimum polygon size: Within a standards unit, for any strata to be created, the following minimum sizes apply:
 - For the purposes of regeneration delay and free growing milestones, the minimum size requiring the development of a separate strata or polygon for not satisfactorily restocked or not free growing areas is 1 hectare and must be a minimum of:
 - 20 m wide throughout its length.
 - understocked areas less than 20 m from the nearest not satisfactorily restocked or not free growing area should be considered as contiguous units.
 - The intent is to not consider long tendrils or amorphous thin ameoba-like units as being separate polygons.

FPPR amendments in response to the Forest Appeals Commission stratification ruling

FPPR s 46.2 Requirements if free growing stand cannot be established

- Amends section 46.2 to provide that a person who is making a declaration under section 97.1 that they have met the requirement to establish a free growing stand to the extent that is practicable does also not need to give notice to the DM under this section that the obligation was not fully met.

FPPR s 86 Annual reports

- The additions to this section are to ensure that the new sections 46.11 and 97.1 are included in the annual reporting requirements and that any mappable area that does not meet the stocking standard is reported in the forest inventory.

FPPR s 97 Declaration – obligation met

- The change of the word “cutblock” to “standard unit” brings the regulation in line with current policy and practice.
- Allows for free growing declarations on a standard unit basis.

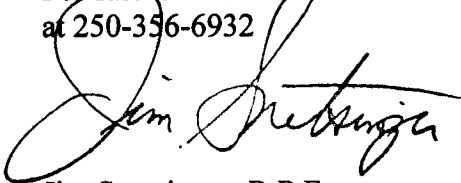
New FPPR s 97.1 Declarations: obligation met to the extent that is practicable

- Adds a new section that enables a person who has an free growing obligation to declare to the DM that they have met that obligation to the extent practicable. This declaration may be made without amending the applicable stocking standards for the area.
- The intent is that declaration under section 97.1 will be submitted through RESULTS as per the current declaration procedures and it is not the intent that the DM is obligated to review every single declaration under this section.
- This section works in combination with section 46.11:
- Section 46.11 provides flexibility within which the obligation is, by definition, fully met.
- Section 97.1 provides that a person may be relieved of an obligation, even where it has not been fully met.
- If errors in past forest management practices have led to the situation where the achievement of the original stocking standard is not practicable then the licensee must comply with the requirements of FPPR s 46.2 or apply for an exemption under FPPR s 91 and should not declare under FPPR 97.1
- This section empowers the DM to reject a declaration if satisfied that, having regard to the circumstances and conditions applicable to the cutblock, it is in the public interest to continue to try to fully comply with the free growing requirement.

**FPPR amendments in response to the
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- It is incumbent on the DM to consider all factors when determining if the standard has been met to the extent practicable and it is a benefit to society to continue to pursue reforestation of the site, including growth and yield implication on the standard unit or cutblock as a whole.

For further information on this issue, please contact Allan Powelson, Forest Practices Branch
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