

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 1249, Approved and Ordered DEC 11 2004

[Signature]
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 the Woodlot Licence Planning and Practices Regulation, B.C. Reg. 21/2004, is amended as set out in the attached Schedule.

[Signature]
Minister of Forests

[Signature]
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 and Range Practices Act, S.B.C. 2002, c. 69, ss. 13, 17, 18, 141, 142, 146, 147, 149 to 151, 154 to 157, 159, 160 and 162

Other (specify):- oic 24/2004

November 30, 2004

1544 /2004/18

## SCHEDULE

**1 Section 2 (9) and (10) of the Woodlot Licence Planning and Practices Regulation, B.C. Reg. 21/2004 are repealed and the following substituted:**

- (9) A person is exempt from
  - (a) a requirement of Parts 3 and 4 of this regulation, or
  - (b) an obligation under section 29, 47 or 48 of the Actas necessary to allow the person to conform to the *Workers Compensation Act* and the regulations under that Act.
- (10) Until June 1, 2005, this regulation and the standards and objectives made under it apply immediately, despite section 16 (2) of the Act, to a woodlot licence plan.

**2 Section 4 is repealed and the following substituted:**

**Authorization to cut**

- 4 (1) This regulation is a prescribed enactment for the purposes of section 52 (1) (e) (ii) of the Act.
- (2) A woodlot licence holder may cut, damage or destroy Crown timber as necessary for the purpose of carrying out silviculture treatments, stand tending treatments or forest health treatments.

**3 Section 9 (4) is amended by striking out “August 1, 2004” and substituting “December 31, 2004”.**

**4 Section 13 is repealed and the following substituted:**

**Alternative performance requirements**

- 13 (1) A woodlot licence holder may propose an amount, distance or measure as an alternative requirement in respect of one or more of sections 24 (1) (a), 25 (1) (a), (2) (a) or (3) (a), 35 (1) (a), 36 (4) (a), 37 (3) (a), 38 (2) (a), 39 (1), 40 (1) (a), 52 (1) (b), 54 (1) (a) and 56 (1) (a).
- (2) To propose an alternative requirement under subsection (1), a woodlot licence holder must
  - (a) specify in the holder’s woodlot licence plan the provision to which the alternative requirement relates,
  - (b) specify in the holder’s woodlot licence plan the location where the alternative requirement would apply, and
  - (c) submit to the minister a rationale for how the alternative requirement is consistent with the criteria described in section 9, if any, to which the alternative requirement relates.

**5 Section 19 is repealed and the following substituted:**

**Emergency approval**

- 19** For the purpose of section 17 of the Act, the prescribed circumstances in relation to a woodlot licence plan are those described in that section.

**6** *The following section is added:*

**Requirements if free growing stand cannot be established**

- 36.1** (1) Subject to section 108 of the Act, a woodlot licence holder who
- (a) is required to establish a free growing stand under section 35 of this regulation, and
  - (b) knows that the requirements of section 35 and 36 of this regulation cannot be met
- must
- (c) give notice to the minister that the requirements to establish a free growing stand cannot be met, giving the reasons, and
  - (d) submit to the minister a proposal for establishing a free growing stand on the area, including the stocking standards, the free growing height and the latest date by which the stocking standards and free growing height will be achieved.
- (2) The minister must approve a proposal submitted under subsection (1) if the minister considers that the proposal is consistent with section 18 (3).
- (3) The minister must give notice to the holder who submitted the proposal if the proposal has been approved or rejected and, if rejected, must provide written reasons.
- (4) A rejection under subsection (3) is reviewable as set out in sections 80 and 81 of the Act and those sections and sections 82 to 84 of the Act apply in respect of the review.
- (5) A holder who is notified under subsection (3) that the proposal has been approved must ensure that a free growing stand is established that conforms to the approved proposal.

**7** *Section 36 (5) is repealed and the following substituted:*

- (5) If the width of the active flood plain of a stream exceeds the specified width for the riparian management zone, the width of the riparian management zone extends to the outer edge of the active flood plain.

**8** *Section 39 is amended by adding the following:*

- (2.1) A woodlot licence holder must not construct a road in a riparian reserve zone in a cutblock unless the construction has been specified in a woodlot licence plan.

**9** *Section 40 (4) is repealed and the following substituted:*

- (4) Unless exempted under section 78 (1), a woodlot licence holder who cuts, modifies or removes trees within a riparian management zone for an S4, S5 or S6 stream that has trees that contribute significantly to the maintenance of stream bank or channel stability, must retain enough trees adjacent to the stream to maintain the stream bank or channel stability, if the stream
  - (a) is a direct tributary to an S1, S2 or S3 stream,
  - (b) flows directly into the ocean, at a point near to or where one or more of the following is located:
    - (i) a herring spawning area;
    - (ii) a shellfish bed;
    - (iii) a saltwater marsh area;
    - (iv) an aquaculture site;
    - (v) a juvenile salmonid rearing area or an adult salmon holding area, or
  - (c) flows directly into the ocean at a point near to the location of an area referred to in paragraph (b) and failure to maintain stream bank or channel stability will have a material adverse impact on that area.

**10 Sections 42, 43 and 49 are repealed and the following substituted:**

**Temperature sensitive streams**

- 42** Unless exempted under section 78 (1), a woodlot licence holder who fells, modifies or removes trees within a riparian reserve zone or riparian management zone adjacent to a temperature sensitive stream, or a stream that is a direct tributary to a temperature sensitive stream, must retain either or both of the following in an amount sufficient to prevent the temperature of the temperature sensitive stream from increasing to an extent that would have a material adverse impact on fish:
  - (a) streamside trees whose crowns provide shade to the stream;
  - (b) understory vegetation that provides shade to the stream.

**Stream crossings**

- 43** (1) Unless exempted under section 78 (1), a woodlot licence holder who builds a stream crossing as part of a temporary access structure or permanent access structure must locate, build and use the crossing in a manner that
  - (a) protects the stream channel and stream bank immediately above and below the stream crossing, and
  - (b) mitigates disturbance to the stream channel and stream bank at the crossing.
- (2) Unless exempted under section 78 (1), a woodlot licence holder who builds a stream crossing as part of a temporary access structure must remove the crossing when it is no longer required by the holder.

**Excavated or bladed trails**

- 49** Unless exempted under section 78 (1), a woodlot licence holder who
  - (a) carries out timber harvesting, and
  - (b) constructs an excavated or bladed trail in a community watershed,

must ensure that doing so does not cause sediment delivery that would be harmful to human health to enter a stream, wetland or lake from which water is being diverted for human consumption by a licensed waterworks.

**11** *Sections 57 and 58 are amended by striking out “section 78 (1)” and substituting “section 79 (2)”.*

**12** *The following section is added:*

**Objectives set by government for visual quality**

**59.1** (1) In this section:

“**scenic area**” means an area of land established as a scenic area under the *Forest Practices Code of British Columbia Act* on or before October 24, 2002 and continued as a scenic area under section 180 (c) of the Act;

“**visual sensitivity class**” means a visual sensitivity class established on or before October 24, 2002, particulars of which are publicly available in the Land and Resource Data Warehouse maintained by the minister responsible for the *Land Act*.

(2) If a woodlot licence holder carries out a primary forest activity in a scenic area, that

- (a) on or before October 24, 2002 was established by the district manager, and
- (b) for which there is no visual quality objective

the holder must ensure that the primary forest activities in the area are consistent with an altered forest landscape for the scenic area that

- (c) in visual sensitivity class 1 is in either the *preservation* or *retention* category,
- (d) in visual sensitivity class 2 is in either the *retention* or *partial retention* category,
- (e) in visual sensitivity class 3 is in either the *partial retention* or *modification* category,
- (f) in visual sensitivity class 4 is in either the *partial retention* or *modification* category, and
- (g) in visual sensitivity class 5 is in either the *modification* or *maximum modification* category.

**13** *Section 71 (1) (d) is repealed and the following substituted:*

- (d) stabilize the road prism or the clearing width of the road if the stabilization is necessary to reduce the likelihood of a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act, .

**14** *Section 74 (1) is repealed and the following substituted:*

- (1) A woodlot licence holder must notify the district manager before
  - (a) beginning

- (i) timber harvesting in a cutblock that comprises more than one hectare,  
or
- (ii) construction of a road that is a permanent access structure, and
- (b) re-starting the activities described in paragraph (a) (i) and (ii) in a cutblock that comprises more than one hectare after an inactive period of 3 months or more.

**15 Section 76 (3) is repealed and the following substituted:**

- (3) In addition to the information required under subsection (1) (b), a woodlot licence holder must include with the annual report information respecting the following matters that occurred during the period to which the annual report applies:
  - (a) a copy of any amendment that was made under section 20 (1) of the Act, unless the holder had previously provided a copy of the amendment to the minister;
  - (b) a copy of any amendment to the wildlife tree retention strategy made under section 11;
  - (c) a map describing the location of any area that has been the subject of one or more of the following:
    - (i) a transfer under section 29.1 (3) of the Act;
    - (ii) an exemption under section 78 or 79;
    - (iii) a declaration under section 107 of the Act that an obligation has been completed;
    - (iv) relief being granted under section 108 of the Act;
  - (d) the approximate location of any resource feature or wildlife habitat feature contiguous to a cutblock or road that the holder became aware of, if
    - (i) the holder has not previously reported the resource feature or wildlife habitat feature, and
    - (ii) the order establishing the resource feature or wildlife habitat feature requires the location of the resource feature or wildlife habitat feature to be reported under this section.

**16 Sections 78, 79 and 81 are repealed and the following substituted:**

**Minister may grant exemptions**

- 78** (1) If the minister is satisfied that it is not practicable, given the circumstances or conditions applicable to a particular area, the minister may exempt a woodlot licence holder from
  - (a) one or more of the following sections of the Act: 29; 29.1, or
  - (b) one or more of the following sections of this regulation: 14; 15; 30; 31; 39 (3); 40 (2), (3) and (4); 41; 42; 43 to 52; 54; 56 (1); 59 to 62; 64; 65; 67; 68; 72 to 74.

- (2) The minister may exempt a woodlot licence holder from section 29 (3) of the Act and section 34 or 35 of this regulation, in relation to a specific area, if all of the following apply:
  - (a) the timber to be harvested is in danger of being significantly reduced in value, lost or destroyed;
  - (b) the volume will not exceed 500 m<sup>3</sup>;
  - (c) the area, when taken together with adjoining areas, will not result in a clearcut exceeding 1 ha, unless the adjoining area is occupied by a free growing stand.

**Exemptions by minister responsible for *Wildlife Act***

- 79** (1) The minister responsible for the *Wildlife Act* may exempt a person from section 55 of this regulation in relation to a general wildlife measure, if satisfied that
- (a) the intent of the general wildlife measure will be achieved, or
  - (b) compliance with that provision is not practicable, given the circumstances or conditions applicable to a particular area.
- (2) The minister responsible for the *Wildlife Act* may exempt a person from section 56 (2), 57 or 58 of this regulation if satisfied that compliance with that provision is not practicable, given the circumstances or conditions applicable to a particular area.

**Transfer of obligations**

- 81** (1) For the purpose of section 29.1 (1) (b) or (3) (b) of the Act, a woodlot licence holder may transfer an obligation to establish a free growing stand if the minister is satisfied that the person to whom the obligation is to be transferred
- (a) is likely to meet the obligation, and
  - (b) has provided security to the minister in a form and in an amount specified by the minister.
- (2) If the minister approves an agreement under section 29.1 (1) (c) or (3) (c) of the Act, the minister must return to the person who transferred the obligation any security deposit provided by that person specifically for that obligation.
- (3) Subject to subsections (4) and (5), the stocking standards referred to in section 29.1 (5) of the Act are the stocking standards that were in effect for the transferred obligation immediately before the transfer became effective.
- (4) The minister may approve stocking standards other than those referred to in subsection (3) if satisfied that the stocking standards are consistent with section 26.
- (5) A person to whom an obligation is transferred under section 29.1 of the Act must comply with Part 3 and section 75 of this regulation.

**17 Section 83 is amended:**

- (a) by adding the following:

- (1.1) For the purpose of section 108 of the Act, “**an event causing damage**”, in relation to an area in which a person has an obligation to establish a free growing stand, means
- (a) an occurrence of wildfire,
  - (b) an outbreak of *dothiostroma*, or
  - (c) another event that renders the area ill-suited for the establishment of a free growing stand. , **and**

**(b) by repealing subsections (2) and (3) and substituting the following:**

- (2) A woodlot licence holder claiming, under section 108 of the Act, relief from, or funding for, the obligation to establish a free growing stand, must provide to the minister the following information:
- (a) the nature of the relief sought and why the woodlot licence holder is entitled to it;
  - (b) if the relief sought is funding under section 108 (4) of the Act, a proposal for returning the stand to the condition referred to in that subsection;
  - (c) an estimate of the extra expense involved in carrying out the course of action, as described in section 108 (3) of the Act.
- (3) If the minister is satisfied that relief or funding is required, the minister must, within one year of receiving the information referred to in subsection (2),
- (a) grant the relief,
  - (b) determine whether or not to provide the funds necessary for the proposal under subsection (2) (b), or
  - (c) provide and fund an alternate course of action to that proposed under subsection (2) (b), if the minister determines that
    - (i) the obligation to establish a free growing stand should continue, and
    - (ii) either
      - (A) the woodlot licence holder has not provided a proposed course of action under subsection (2) (b), or
      - (B) the proposed course of action under subsection (2) (b) is unacceptable.
- (4) During the period of one year described in subsection (3), a person who makes a request is not required to meet a requirement of the Act or this regulation that relates to the request.

**18 Sections 85 and 87 are repealed.**

**19 Section 90 (2) is amended by adding “section 59.1 [visual quality: transition];” after “section 59 [visual quality objectives];”.**

**20 Sections 92, 93 and 94 are repealed.**

**21 The following Part is added:**



## PART 9 – TRANSITION

### Preparing a forest development plan for a transitional period after December 31, 2004

- 95 (1) Despite section 12 of the Act, during the period beginning on January 1, 2005 and ending on December 31, 2005, the holder of a woodlot licence under the *Forest Act* may prepare and submit for the district manager's approval a forest development plan or an amendment to one.
- (2) Section 200 (2) and (3) of the Act apply in respect of a forest development plan referred to in subsection (1) of this section.

### Applying for cutting permits and road permits for a transitional period after December 31, 2005

- 96 (1) If
- (a) a forest development plan ceases to have effect on April 1, 2005 under section 199 (c) of the Act, and
  - (b) the former holder of the plan continues to be the woodlot licence holder,
- then
- (c) the former holder of the plan may apply after that date and before January 1, 2007 for a cutting permit or road permit or for an amendment or extension to either of them, and
  - (d) the *Forest Act*, the Code and the Code regulations as defined in section 177 of the Act apply in respect of that application
- as if the plan were still in effect.
- (2) A person who
- (a) harvests timber, or
  - (b) constructs a road
- under a cutting permit or road permit referred to in subsection (1) must comply with the requirements of the Code and the Code regulations.
- (3) For the purposes of subsection (2), the specifications that were applicable under a forest development plan described in subsection (1) immediately before December 31, 2005 continue to be applicable.

### 22 *Section 4 (a) of the Schedule entitled "Factors" is repealed and the following substituted:*

- (a) the type of management regime that is required for a riparian area, having regard to
  - (i) the need to buffer the aquatic ecosystem of a stream, wetland or lake from the introduction of materials that are deleterious to water quality or fish habitat,
  - (ii) the role played by trees and understory vegetation in conserving water quality, fish habitat, wildlife habitat and biodiversity,
  - (iii) the need to maintain stream bank and stream channel integrity, and

- (iv) the relative importance and sensitivity of different riparian classes of streams, wetlands and lakes in conserving water quality, fish habitat, wildlife habitat and biodiversity; .