



General Bulletin

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Licensee Compliance with Road Maintenance Requirements

Introduction

Several districts have requested advice as to what they can enforce with respect to a licensee's road maintenance program. The Code has placed the responsibility for determining road problems and remedial measures squarely with the holders of permits related to road use (road permits, road use permits and cutting permits). Therefore, our responsibility is that of enforcing compliance with the forest road regulation, not establishing suitable maintenance practices.

Clarification of Permit Holders' Responsibilities

The following items are intended to clarify this issue, and provide guidance to Compliance and Enforcement staff who may be required to monitor licensee maintenance:

- under section 63 of the *Forest Practices Code of British Columbia Act* (the Act), cutting and road permit holders are required to maintain all roads under a road permit (or under a cutting permit for on-block roads). In addition, the holder of a road use permit may be required by the District Manager under section 63(5) or 63(7) of the Act to maintain that portion of a road to which the road use permit applies;
- under section 18 of the Forest Road Regulation, a person who is required to maintain a road under section 63 of the Act is obligated to inspect the road and carry out repairs to meet the objectives of section 18(1) of the Forest Road Regulation;
- the permit holder must carry out inspections at a frequency that addresses the risk issues outlined in section 18(2) of the Forest Road Regulation;
- under section 18(3) of the Forest Road Regulation, any deficiencies noted during an inspection must be remedied by the permit holder. The identified deficiencies must be remedied by the earliest of:

1. a time that is reasonable taking into account the risk to the road, its users, and the environment;
2. a time specified in the inspection report (only if such a report was completed); or,
3. a time determined by the District Manager.

A forest official does not have the statutory authority to dictate when identified deficiencies must be remedied;

- inspecting a permit holder's maintenance obligations may include reviewing any maintenance records that may be kept by the permit holder. There is no requirement under the *Forest Act* or the Code that maintenance records be regularly submitted to the MOF. Therefore, maintenance records are not required to be produced under section 107(4)(b) of the Code. However, section 110 of the Code empowers a senior official to require the permittee to produce any maintenance record kept by the permittee. In addition, maintenance information may be contained in reports submitted to the MOF by the permit holder, as may be required under the terms of the licence or the permit.
- if the government inspector is inspecting the permit holder's roads, he/she may note any deficiencies; in addition, field staff may notice a deficiency during other field inspections. These deficiencies would be as a result of the permit holder failing to meet any of the four inspection and maintenance criteria specified in section 18(1). Any deficiency should be brought to the attention of the permit holder, so the repair work can be scheduled. The deficiency could be communicated in writing on an inspection form or field memo pad, but as noted above should not include instructions to remedy the deficiency by a given date. The inspector should keep a record of the time of year and the weather conditions, as these could be determining factors as to the seriousness of the deficiency;
- the government inspector should enquire of the permittee when they intend to remedy the deficiency. If the inspector does not receive an adequate response the inspector should bring the perceived deficiency to the attention of the District Manager (or delegate), and recommend that the District Manager (or delegate) determine under section 18(3) of the regulation a date by which the repairs must be completed;
- a decision under section 18(3) will have to be reasonable and in accordance with administrative law principles. However it may only be made after the road has been inspected by the person who maintains the road under section 63 of the Act. What is reasonable in each situation will depend on the specific circumstances, and will require the District Manager (or delegate) to be satisfied that one or more of the section 18(1) criteria are at an unacceptable level of risk. The District Manager's authority to establish a time frame under section 18(3) for remedying

deficiencies is on a case-specific basis. Section 18(3) does not provide for the District Manager to make a blanket requirement that all deficiencies be addressed within a specified time of their discovery; and,

- non-compliance issues revolve around:
 - section 18 (1) Failure to carry out an inspection on the road and maintain the road as required.
 - section 18 (2) Failure to carry out road maintenance inspections at the required frequency.
 - section 18 (3) Failure to carry out remedial work identified by an inspection within the appropriate time.
 - section 18 (4) Causing a reduction in water quality to an unacceptable level

Tracking of Road Inspections and Findings

The Enforcement Actions, Administrative Reviews and Appeals Tracking System (ERA) was created to capture information related to non-compliance issues. It is designed to track contraventions found by compliance staff which can be dealt with in the field through use of informal enforcement actions (warnings, compliance notices, etc.), or which require more formal enforcement actions (stopwork orders, penalty determinations, remediation orders or violation tickets, etc.).

Where an inspector believes that there is potential for non-compliance (plugged culverts, ditchlines etc.), but the permittee has not yet contravened legislation as outlined in this bulletin, an ERA case file is not to be initiated. For example where an inspector believes that road maintenance may be deficient the inspector shall note the suspected deficiency on an inspection form and in the Forest Tenures Administration System (FTAS) inspection screen only. In FTAS the inspection of the permit/licence shall be recorded as being **in compliance** with a file note specifically stating the suspected problem.

Where the inspector determines it necessary to bring the matter to the District Manager's attention and the DM determines it necessary to require a deficiency to be remedied, an ERA case file shall be opened at that time. The DM's notice to a licensee shall be considered a compliance notice (called an instruction in ERA) and entered as such into ERA. If a licensee fails to comply with the notice, a formal determination is likely in order.

Summary

There is no legal requirement for permittees to submit inspection reports regularly to government. However maintenance reports to the Ministry of Forests may be required under the terms of the permit or licence. Also, any maintenance records kept by the permittee may be ordered to be produced under section 110 of the Code.

The permittee is not required to repair road deficiencies immediately upon their discovery, unless such repair is required under section 18(3) of the Forest Road Regulation.

The Ministry of Forests' role is to ensure that roads under Road Permits, Road Use Permit, etc. are properly maintained. By and large, we should ensure that the end results meet the Code requirements, while generally leaving the process to the obligation holder - the permittee.

Further, for isolated minor problems, it might be prudent for an inspector (or other MOF staff who encounter the problem) to take a shovel and remove a drainage impediment, then move on to other issues, rather than pursuing orders, informal or otherwise.

Contacts

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