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Ministry of Forests  
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FIELD OPERATIONS DIVISION

MEMORANDUM

MAR 25 2010

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To: Regional Executive Directors  
District Managers  
Branch Directors

From: Dave Peterson  
Assistant Deputy Minister  
Field Operations

**Re: FRPA General Bulletin (Number 22) – An Overview of FSP Extensions**

A new *Forest and Range Practices Act* General Bulletin (Number 22), “An Overview of FSP Extensions” has just been completed. This bulletin will provide an overview for MFR staff and licensees on the legislation and principles to guide the preparation and approval of FSP extensions. The bulletin emphasizes the importance of communication and professional reliance to ensure an efficient and effective extension process is undertaken.



The bulletin will be available soon from the Provincial FRPA Implementation Team’s website at the following address:

<https://www.for.gov.bc.ca/rco/pfit/index.htm>

If you have any questions about this bulletin, please contact Tracy Andrews, A/Senior Timber Tenures Forester, Tenures Branch, Ministry of Forests and Range at (250) 387-8328, or at [Tracy.Andrews@gov.bc.ca](mailto:Tracy.Andrews@gov.bc.ca).

Dave Peterson  
Assistant Deputy Minister  
Field Operations

Attachment(s): 1

Regional Executive Directors  
District Managers  
Branch Directors

pc: Les Kiss, Vice President, Forestry, Coast Forest Products Association  
Archie MacDonald, General Manager, Council of Forest Industries  
Bruce Fraser, Board Chair, Forest Practices Board  
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Provincial FRPA Implementation Team



## **FRPA GENERAL BULLETIN**

**Number 22**

**March 11, 2010**

### **An Overview of FSP Extensions**

*The information contained in this bulletin does not constitute legal advice. Practitioners within government should seek legal advice from the Ministry of Attorney General, while practitioners outside government should seek independent legal advice.*

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#### **Purpose**

This bulletin provides an overview of the legislation and approval tests surrounding the extension of a Forest Stewardship Plan (FSP). It outlines principles to encourage an efficient process for the extension of FSP's.

#### **Extension Requests**

An FSP extension is simply an extension of the term of an approved FSP. If little has changed within the FDU, and the licensee/BCTS is satisfied with the commitments made within their FSP, an extension may be a simple way to continue operating under the plan.

The authority to extend an FSP is the *Forest and Range Practices Act* (FRPA), Section 6(2). For the purposes of an FSP extension decision, the delegated decision-maker (DDM) is the district manager. An extension request may be initiated before or after the expiry of an FSP. The request should specify the desired extension period to a maximum of an additional 5-year term. The effective date of an extension decision is the date the extension is approved and becomes the start of the new FSP term. The entire FSP is extended; including any declared areas, Section 196 blocks, or any other content that was a part of the approved FSP on the extension effective date.

If an FSP expires, the district manager cannot issue a cutting permit to an agreement holder until an approved FSP is in effect. The timber sales manager cannot invite application for or enter into any TSL or road permit until an approved FSP is in effect. If an extension is approved after FSP expiry, the FSP as it was on the date of expiry is the plan that is extended.

## Approval Tests

The DDM has discretionary authority to extend an FSP. The approval tests for an FSP extension decision include prescribed and discretionary tests. The prescribed tests are the requirements identified in the Forest Planning and Practices Regulation (FPPR), Section 28 that must be met for the FDU, results and strategies. The discretionary tests include a consideration of the other content elements of an FSP that is being extended, including the stocking standards and measures.

As a best practice, licensees/BCTS and MFR staff should engage in up-front communication of any considerations that may affect the ability of an FSP to meet the extension approval tests. The significance of the considerations could vary depending upon the term of the extension and this should be a part of the discussion. It is not recommended that every element in an FSP be re-adjudicated at the time of an extension determination. Ultimately, the DDM must be satisfied that the FSP meets the tests and has the discretion to approve, or not, the extension request.

## Prescribed Tests

In order for an FSP to be extended, the DDM must be satisfied that the FDU, results and strategies in the plan continue to be consistent with established objectives, or will be amended so as to be consistent with established objectives.

In determining satisfaction that the approval tests have been met, one should turn their mind to what circumstances or conditions may have changed within the area to which the FDU, results and strategies apply. Considerations may include:

- Is the FDU subject to an established, varied, or cancelled objective as per FRPA, Section 7(1.1) which has passed the mandatory amendment applicable period?
- Did a result or strategy link the commitment to the term of the plan? An extension of the term may change the nature of such a commitment.
- Was a result or strategy previously approved where the current relevant knowledge and/or understanding of FRPA may lead to a different determination, e.g. improper commitments to default Practice Requirements resulting in unenforceable FSP elements?
- Have any of the commitments in the FSP proven to be not implementable for the licensee/BCTS or unenforceable by MFR, Compliance & Enforcement, e.g. evidence that a result or strategy may not meet the approval tests of i) Consistency with the objective and ii) Statutory definition of result or strategy?
- Is there any new significant information in relation to the area or a forest resource value that invalidates the FDU, result, or strategy, e.g. new science, new inventory information, change in harvesting rights, monitoring results?

The FPPR, Section 28 states that if the DDM is satisfied that the FDU and the results and strategies will be amended so as to be consistent with the objectives, the DDM may approve the extension. This provision is only intended to address mandatory amendments for which the legally established applicable period has not ended. The DDM may approve the extension, given it is the DDM's understanding that the FSP will be amended in the future to be consistent with the newly established, varied, or cancelled objective, enactment, or order within that applicable period.

## **Discretionary Tests**

### *Stocking Standards*

When an FSP is extended, the DDM may consider whether the stocking standards in the plan continue to meet the approval tests outlined in the FPPR, Section 26. The stocking standards test revolves around the ecological suitability, the consideration of short and long-term forest health issues, the maintenance or enhancement of an economically valuable supply of commercial timber, and consistency with the timber supply analysis that applies to the area. More details on the tests are discussed in: [An Overview Reference for The Evaluation of Stocking Standards Under FRPA.](#)

Considerations that may influence or demonstrate the continued ability of a standard to meet the approval tests include:

- Was the stocking standard approved as a trial standard for a limited time frame? If so, it may be prudent to ensure an extension request specifies the intent of extending or not that particular standard and include as part of a rationale a summary of the monitoring results from the trial.
- Is there any significant information available that demonstrates a standard, as currently approved, does not continue to meet approval tests, e.g. new science, operational trends, major Biogeoclimatic Ecosystem Classification system updates, silviculture strategies, regional forest health issues, recent TSR assumptions?

### *Measures*

When an FSP is extended, the DDM may consider whether the measures in the plan continue to meet the approval tests outlined in the FPPR, Sections 17 and 18. The invasive plant measures must specify how the FSP holder will prevent the introduction or spread of species of plants that are invasive plants under the Invasive Plant Regulation, if the introduction or spread is likely to be the result of the person's forest practices. The natural range barriers measures must specify how the FSP holder will mitigate the effect of removing or rendering ineffective natural range barriers.

Considerations that may influence or demonstrate the continued ability of a measure to meet the approval tests include:

- Have any new species been added to the Invasive Plant Regulation?
- Is there any new significant information that demonstrates that the measures, as approved, have not successfully resulted in mitigation?

## **Public Review and Comment**

There is no legal requirement in FRPA for an FSP extension to go through the public review and comment process.

## **First Nations Consultation**

First Nations consultation is required for FSP extension decisions to ensure that any aboriginal interests and potential impacts of the decision on those interests are considered and, if necessary, accommodated. Consultation should be conducted in accordance with relevant existing ministry and/or provincial policy. Licensees/BCTS and government should discuss the consultation plan prior to an extension request.

The appropriate depth or level of consultation on an FSP extension decision will be based upon a consideration of the aboriginal interests and the potential impact the decision may have on these aboriginal interests. Consideration must be given to existing aboriginal interest information, aboriginal interest information and concerns raised during the FSP consultation process, as well as aboriginal interest information provided during consultation processes after FSP approval.

Once the MFR has reviewed the available information regarding aboriginal interests, and assessed the potential impact an extension may have, a decision should be made on the suggested level of consultation. The existing aboriginal interest information, the potential impact the proposed decision may have on these interests, and the suggested level of consultation should be discussed with the First Nation as part of the consultation process. New information provided by the First Nation during the consultation process regarding the proposed FSP extension decision may require further consideration and an adjustment to the level of consultation may be appropriate.

In many cases, government has made commitments within agreements with First Nations on consultation frameworks, including consultation timelines [e.g. Forest and Range Agreements (FRA) or Interim Agreements on Forest and Range Opportunities (FRO)]. Consultation on FSP extension decisions may be subject to timelines based upon these commitments where such decisions are captured by the agreement. Early engagement with the MFR district staff can help in assessing the minimum timelines to be expected in carrying out the consultation process. Any engagement and information sharing conducted by the licensee/BCTS with First Nations leading up to an extension request may be important and relevant information which may help in ensuring an efficient consultation process.

## **Amendments**

If the DDM is not satisfied the FSP meets the extension approval tests, an amendment will be required in order to extend the FSP. Such an amendment may be minor in nature or be an amendment requiring approval. In the case of a minor amendment, a copy should be received by the district manager prior to an extension determination, ideally a copy could be provided as part of the extension request. In the case of an amendment requiring approval, it could be submitted and approved at the same time as the extension or prior to it. Any amendment requiring approval is subject to the public review and comment provisions of FRPA.

## Principles to Guide FSP Extensions

The following principles are designed to provide for an efficient and effective FSP extension process:

- Encourage up-front dialogue between licensee/BCTS and MFR review staff well in advance of initiating an FSP extension. This will provide opportunity for all parties to discuss the significance of any considerations that may affect the ability of an FSP to meet the extension approval tests, First Nations consultation plans, and expected timelines.
- Identify and share information relating to forest resource values and associated FSP elements that will be significant to the extension determination. This may include monitoring results, licensee/BCTS and Compliance & Enforcement feedback from FSP implementation, new science, new inventory data, updated strategies, etc.
- Concentrate limited FSP development, review, and approval resources on elements of the FSP where innovative strategies or operational trials were implemented, on objectives where significant information relating to the forest resource value is likely to invalidate the FSP element, or where implementation challenges have occurred.
- Embrace professional reliance during the extension process. The ABCFP report, *Applying Professional Reliance Under FRPA* is a good reference in implementing this principle.
- Strive for consistency across districts in the review process and determination results where there is consistency in the FSP being extended and the surrounding circumstances. This requires adequate communication of intentions by the FSP holder as well as communication between reviewing districts.

### Contacts:

If there are any questions about the content of this bulletin, please contact:

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