



The Best Place on Earth

Ministry of Forests
and Range

FIELD OPERATIONS DIVISION

MEMORANDUM

APR 01 2010

File: 18045-02

To: Regional Executive Directors
District Managers
Timber Sales Managers
Branch Directors

From: Dave Peterson
Assistant Deputy Minister
Field Operations Division

Re: **FRPA General Bulletin (Number 24) – 20-Year Time Limit for Establishing a Free Growing Stand under Section 44 (1)(b) of the Forest Planning and Practices Regulation and the Mechanism for Extending the Late Free Growing Date**



A new *Forest and Range Practices Act* General Bulletin (Number 24), “20-Year Time Limit for Establishing a Free Growing Stand under Section 44 (1)(b) of the Forest Planning and Practices Regulation and the Mechanism for Extending the Late Free Growing Date” has just been completed. This bulletin will provide an overview for practitioners and delegated decision makers on the legislation surrounding late free growing dates and mechanisms for extending those free growing dates.

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 Kevin Astridge, Silviculture Operations Specialist, Forest and Range Investments and Practices Branch, Ministry of Forests and Range at (250) 387-8908, or at Kevin.Astridge@gov.bc.ca.

Dave Peterson
Assistant Deputy Minister
Field Operations Division

Attachment: 1

pc: Jennifer Gunter, Executive Director, BC Community Forest Association

Regional Executive Directors
District Managers
Branch Directors

Les Kiss, Vice President, Forestry, Coast Forest Products Association
Archie MacDonald, General Manager, Council of Forest Industries
Bruce Fraser, Board Chair, Forest Practices Board
Jim Langridge, Director, Tenures Branch, Ministry of Forests and Range (MFR)
Jim Sutherland, Director, Forest and Range Investments and Practices Branch, MFR
Kevin Astridge, Silviculture Operations Specialist Forest & Range Investments & Practices Branch, MFR
Allan Powelson, Forest Establishment Initiatives Officer, Forest & Range Investments & Practices Branch, MFR
Tracy Andrews, A/Senior Timber Tenures Forester, Tenures Branch, MFR
Brian Westgate, A/Policy Implementation Manager, Field Operations Division, MFR
Provincial FRPA Implementation Team



FRPA GENERAL BULLETIN

Number 24

March 16, 2010

20-Year Time Limit for Establishing a Free Growing Stand under Section 44 (1)(b) of the Forest Planning and Practices Regulation and the Mechanism for Extending the Late Free Growing Date

The information contained in this bulletin does not constitute legal advice. The sections of legislation contained within have been selected to illustrate specific points and are not intended to be a comprehensive examination of all the pertinent legislation. Practitioners outside government should seek independent legal advice.

Introduction

The ability to specify or modify the late free growing date has been changed for silviculture obligations managed under the *Forest and Range Practices Act* (FRPA). The purpose of this bulletin is to provide both practitioners and delegated decision-makers information on the 20-year time limit for establishing a free growing stand, as required under the Forest Planning and Practices Regulation (FPPR), and the mechanism for extending the time limit if a free growing stand cannot be established within the regulated time limit.

Requirement to Establish a Free Growing Stand in 20 Years

Under Section 29 of FRPA, when a holder of a major licence or community forest agreement harvests timber or a timber sales manager authorizes the harvest of timber on an area subject to a Forest Stewardship Plan (FSP) they must establish a free growing stand on the net area to be reforested in accordance with the FSP and the prescribed requirements. The standards in the FSP and the prescribed requirements also apply to previously harvested areas which have been identified under FRPA, Section 197 as areas to which the FSP stocking standards will apply. The timeline for the establishment of a free growing stand may differ depending on whether FSP stocking standards relate to individual or groups of cut blocks.

Free Growing Stands Generally

FPPR, Section 16(3) states:

16(3)

A person required to prepare a forest stewardship plan must ensure that the plan specifies, for each of the situations or circumstances specified under subsection (1) where

(b) Section 44 (1)(b) will apply, the free growing height and stocking standards,

FSPs are required under FPPR, Section 16 (3)(b) to specify the free growing height, stocking standards, and regeneration date for free growing stands generally, **but not the free growing date**. The free growing date is not required content for FSP stocking standards that apply to cut blocks individually and there is no ability for plan proponents to propose a free growing date within their FSP for these blocks.

The free growing date is specified in FPPR, Section 44(1):

44(1)

A person who has an obligation to establish a free growing stand must establish, for areas that have been identified under Section 16 (1) [stocking standards] as areas to which this section will apply, a stand that

*(b) meets the applicable stocking standards and free growing height set out in the forest stewardship plan for the area by a free growing date that is **no more than 20 years from the commencement date, unless the minister permits a later free growing date,***

A person who has an obligation to establish a free growing stand must meet the applicable stocking standards and free growing height, set out in their FSP, no later than 20 years after the commencement date unless the minister permits a later date. The requirement to establish a free growing stand within 20 years of the commencement date is specified in regulation; as a result **there is no opportunity for a person to specify a date greater than 20 years in their FSP**.

Multi-Block Stocking Standards

It is only if the person specifies in their FSP that the standards to be met at free growing apply to a group of cut blocks that they would not be subject to the requirement under Section 44(1)(b) to establish a free growing stand within 20 years of the commencement date. In these situations, they are subject to the requirements under FPPR, Sections 16 (3)(d) and 45 (2):

16(3)

A person required to prepare a FSP must ensure that the plan specifies, for each of the situations or circumstances specified under subsection (1) where

*(d) Section 45 (2) will apply, the **free growing date** and the stocking standards, as approved by the chief forester,*

45(2)

*If a person specifies in a FSP, under Section 16 (1), that the requirement to be met by the free growing date relates to a group of cut blocks, the person must establish stands on the net areas to be reforested that conform to the applicable stocking standards **by the applicable free growing date as identified under Section 16 (3)(d).***

Section 45(2) does not specify a 20-year time frame, but rather a date that is applied for and approved by the chief forester under FPPR, Section 16(3)(d).

Extending the Late Free Growing Date Beyond 20 Years

FPPR, Section 46.2 provides the mechanism under which the delegated decision-maker (DDM) can permit a later free growing date as indicated under FPPR, Section 44 (1)(b):

46.2(1)

Subject to Section 108 of the Act and Section 97.1 of this regulation, a person who

(a) is required to establish a free growing stand under Section 44 to 46.1 of this regulation, and

(b) knows that the requirements of Section 44 to 46.1 of this regulation, as applicable, 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.

If a person who is required to establish a free growing stand knows that they cannot meet the requirements including the free growing date of 20 years, they must give notice to the DDM acknowledging the reasons for not meeting the requirements and submit to the DDM a proposal for establishing a free growing stand on the area.

The proposal must include the stocking standards, the free growing height and the latest date by which the stocking standards and free growing height will be achieved, and may also include a rationale or supporting documentation outlining why the extension of the free growing time limit is warranted and justifying any proposed changes to the stocking standards. The DDM will then review the proposal and must approve it if he determines that it is consistent with the stocking standards tests outlined in FPPR, Section 26(3). The DDM must provide the person who has submitted the proposal written notice indicating whether the proposal has been approved or rejected. If rejected, the DDM must also provide a written rationale with the notice as to why it is being rejected. If approved, the free growing date identified in the proposal is considered to be a free growing date approved by the minister for the purposes of FPPR, Section 44 (1)(b).

If the DDM approves, a later Free Growing Date under Section 46.2, the stocking standards for the applicable Standards Unit must be updated in RESULTS, including the new late free growing date and any revised free growing heights, if applicable.

FRPA, Section 108

Section 46.2 of the FPPR is subject to FRPA, Section 108. Under FRPA, Section 108, the government can grant funding for free growing obligations or relieve a person of the obligation to establish a free growing stand if because of an event causing damage the obligation cannot be met. To determine the eligibility of obligations for these provisions, the obligation holder should refer to FRPA, Section 108, and FPPR, Section 96 to determine whether the event causing damage qualifies for relief or funding of obligations.

FPPR, Section 97.1

FPPR, Section 46.2 is also subject to Section 97.1 of the FPPR. If a person who has the obligation to establish a free growing stand considers that the obligation has been met to the extent practicable, they may declare it under FPPR, Section 97.1. Further information on FRPA, Section 97.1 is available in FRPA, General Bulletin Number 20 “Declaration Regarding Free Growing Stand Obligations Met to the Extent Practicable Under Forest Planning and Practices Regulation (FPPR), Section 97.1.”

http://www.for.gov.bc.ca/hth/timten/FRPA_implementation/Bulletins/122574%20FRPA%20Bulletin%20v2.pdf

Delegation

At the time of publication of this bulletin, the delegated decision-maker for Section 46.2 of the FPPR, as well as Section 108 of FRPA, and Section 97.1 of FRPA is the district manager. Practitioners may wish to consult with district staff as to whether Section 108 of FRPA or Section 97.1 of the FPPR are applicable prior to submitting a proposal under Section 46.2 to extend a late free growing date.

Contacts

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

Forest and Range Investments and Practices Branch

Kevin Astridge	(250) 387 - 8909	Kevin.astridge@gov.bc.ca
Allan Powelson	(250) 356 - 6932	Allan.powelson@gov.bc.ca