

MAY 02 2012

File: 18045-02

BY EMAIL

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

From: Dave Peterson
Assistant Deputy Minister
Tenures, Competitiveness and Innovation Division

Re: FRPA General Bulletin (Number 27) – Adding/Removing/Transferring a Party to/from an Existing Forest Stewardship Plan

A new *Forest and Range Practices Act* (FRPA), General Bulletin (Number 27), “Adding/Removing/Transferring a Party to/from an Existing Forest Stewardship Plan” has been completed. As a result of changes to the FRPA, this bulletin provides guidance to delegated decision makers (DDM) and forest professionals when amending Forest Stewardship Plans (FSPs) for the purposes of:

- Adding a party to an existing FSP;
- Adding a licence to an existing FSP;
- Removing a party or a licence from a FSP;
- Transferring a licence to an existing FSP.

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

<http://www.for.gov.bc.ca/hth/frpa-admin/frpa-implementation/bulletins.htm>

Regional Executive Directors
District Managers
Timber Sales Managers
Branch Directors

If you have any questions about this bulletin, please contact Ian Miller, Manager Sustainable Resource Management, Resource Practices Branch (250) 387-8398, or Paul Picard, Timber Tenures Forester, Forest Tenures Branch at (250) 387-8328.



Dave Peterson
Assistant Deputy Minister
Tenures, Competitiveness and Innovation Division

Attachment: FRPA General Bulletin Number 27

pc: Les Kiss, Vice President, Forestry, Coast Forest Products Association
Archie MacDonald, General Manager, Forestry, Council of Forest Industries
Susanna Laaksonen-Craig, Executive Director, Resource Stewardship Division
Doug Stewart, Director, Forest Tenures Branch
Rodger Stewart, Director, Resource Management, Cariboo Region
Jim Sutherland, Director, Resource Practices Branch
Brian Westgate, Senior Timber Tenures Forester, Forest tenures Branch
Paul Picard, Timber Tenures Forester, Forest tenures Branch
Ian Miller, Manager Sustainable Forest management, Resource Practices Branch
Chuck Rowan, Silviculturist, West Coast Region
Troy Larden, Senior Ecosystem Biologist, Skeena Region
Cathy Middleton, Tenures Forester, Vanderhoof Forest District
Larry Hanlon, Regional Forest Practices Specialist, Kootenay Boundary Region
Bernie Peschke, Silviculture Practices Specialist, Thompson Okanagan Forest Region



FRPA GENERAL BULLETIN

Number 27

April 27, 2012

Adding/Removing/Transferring a Party to/from an Existing Forest Stewardship Plan

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.

PURPOSE

Amendments to the *Forest and Range Practices Act* (FRPA), Sections 3, 21; 47 and 48, dated June 9, 2011, resulted in changes to:

- How to add a party to an existing FSP.
- Removing a party or a licence from a FSP.

This bulletin provides guidance on the implementation of these changes along with clarification of:

- How to add a licence to an existing FSP.
- How to transfer a licence to an existing FSP.

ADDING A PARTY TO AN EXISTING FSP:

As a result of the changes to FRPA, Section 3, before the holder of a licence or an agreement (licensee) or a BCTS timber sales manager (TSM) harvests timber or constructs a road, the licensee or BCTS TSM must either prepare and obtain the minister's approval of a FSP or propose and obtain the minister's approval of amendments that provide for the licensee or BCTS TSM to become a party to an approved FSP.

Public Review and Comments and First Nations Consultation:

Licensees or BCTS must now complete public review and comment requirements (see i. and ii. below for flexibility to these requirements) specified in legislation and the delegated decision maker (DDM) must ensure First Nations consultation is complete to an appropriate level related to the amendment decision.

i. Public review/comments requirements:

As with any other amendments requiring approval, public review and comment is required as per Forest Planning and Practices Regulation (FPPR), Sections 20 to 22. There is, however, flexibility enabling the DDM to modify the review and comment period [FPPR, Section 20 (2)] or to exempt a licensee or BCTS from the requirement to publish a notice beforehand if deemed appropriate [FPPR, Section 20 (3)]. An exemption under FPPR, Section 20 (3) means FPPR, Sections 21 and 22 are not triggered, but a notice is still required to be published as per FPPR, Section 20 (4). It is also important to remember that an amendment requiring approval does not open the entire plan for review and comment.

ii. First Nations consultation requirements:

Consultation should be conducted in accordance with relevant existing ministry and/or provincial policy at an appropriate level relative to the amendment as with any other amendment requiring government approval. The scope and intensity of the consultation process will vary depending on the implications to First Nations aboriginal interests and the potential impacts as a result of the proposed amendment and may be limited to notification when the situation warrants it.

As mentioned above, the regulations provide the DDM some flexibility with regard to the public review and comment period. Examples of factors a DDM should consider when deciding whether to exercise that flexibility may include:

1. The significance of adding a new party to the FSP relative to the FSP being amended;
2. The public review and comment and First Nations consultation process that was used in the FSP being amended;
3. The level of interest and concerns generated by the public and First Nations in 2) above; and
4. The amount or significance of new information pertaining to the FSP.

Amendment Proponent:

FRPA, Section 5 (3), states that FSPs must be signed by the person required to prepare the plan or a person or persons given authority by the corporation to sign the plan. Typically this means amendments can be submitted by one of two means, 1) joint effort between the existing FSP signatories and the proponent, or 2) one or more of the existing FSP signatories taking the lead on development and submission of the amendment under the authority of a business agreement between all of the parties. For additional guidance related to joint administration of FSP's, refer to the two following bulletins:

GENERAL BULLETIN Number 2, *Managing Through Transition – FSP Opportunities*

<http://www.for.gov.bc.ca/ftp/hth/external/!publish/Web/frpa-admin/frpa-implementation/bulletins/frpa-general-no-2-transition-with-dec15-revisions-apr-12-2007.pdf>

GENERAL BULLETIN Number 18, *Promoting Cooperative Planning Under FRPA*

<http://www.for.gov.bc.ca/ftp/hth/external/!publish/Web/frpa-admin/frpa-implementation/bulletins/frpa-general-no-18-promoting-cooperative-planning-under-frpa-jun-6-2008.pdf>

Effective Date of the Change

The changes to FRPA, Section 3 are not considered retroactive so any minor amendment related to the addition of a licensee or BCTS to a FSP completed before June 9, 2011, will not be affected. However, any amendment to add a party to a FSP, completed after June 9, 2011, is affected by the changes and needs to conform to the new legislation. FRPA, Section 16 (2), which grants a 4-month grace period to FSP content does not apply as that section pertains to the actual FSP content.

Adding a Licence to an FSP

FRPA, Section 3 is not triggered by the addition of a licence or agreement (whether existing or new) held by the existing FSP holder. A FSP amendment to add a licence may be completed using existing amendment mechanism consistent with the associated legislative requirements. FRPA, Section 3 is triggered by an amendment that adds a holder of a licence or agreement or a TSM.

Similarly, the expiry and replacement of a non-replaceable forest licence (NRFL), within the term of a FSP that the NRFL holder is already party to, does not automatically trigger a FRPA, Section 3 amendment requiring approval, assuming the expiry and replacement of the tenure agreement is consistent with the FSP obligations and the forest development unit (FDU).

Removing a Party (or a Licence) to an Existing FSP

The new FRPA, Sections 21, 47 and 48, do not specify the type of amendment required to remove a party (or a licence or an agreement) from an FSP. If the amendment meets the requirements of FRPA, Section 20 (1) (minor amendment to FSPs), an approval is not required.

Licence Transfers

If there is a change in the control of a company (e.g. sale of company shares) who is a party to an FSP, but the company remains the same, the FSP would not require an amendment and the new FRPA, Section 3 would not be triggered. It is considered the same entity/company that is a party to the plan and the change pertains to who controls that entity/company.

Similarly, if a company who is a party to an FSP changes its name, but the company itself remains the same, the FSP would not need to be amended and the new FRPA, Section 3 would not be triggered. It is considered the same entity/company that is a party to the plan and the change only pertains to the company name.

However, if a licence/agreement is sold as an asset between two different companies, then a new company (the buyer) becomes the holder of the licence. However, that does not automatically make the buyer the holder of the seller's FSP.

In such a case, three options are available to the buyer:

1. Sign on to an existing FSP (with the newly acquired licence) before commencing harvesting or road building as per the new FRPA, Section 3 (see "adding a party to an existing FSP" section above);
2. Prepare and submit a new FSP for the newly acquired licence;
3. Add the newly acquired licence to an existing FSP for which they are already a plan holder. The new FRPA, Section 3 would not be triggered, but the amendment may still require approval if a change to the FDU is required or amendments to the FSP are required for example (see "adding a licence" section above).

Contacts:

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

Paul Picard
Ian Miller

(250) 387-8328
(250) 387-8398

paul.picard@gov.bc.ca
ian.c.miller@gov.bc.ca