

Free Growing Declarations July 2004

Introduction

The purpose of this bulletin is to provide information and guidance regarding the administration of free growing declarations¹ by licensees and BC Timber Sales (BCTS) managers.

Electronic submissions to the Ministry of Forests (MOF) are part of a province-wide initiative of the BC government to improve service delivery through the use of electronic business mediums. The MOF, within its e-Forest Management (e-FM) initiative, identified electronic submissions of regulated information (e-Submissions) as a means of streamlining business with government in order to decrease costs to industry as well as government.

The Land Information BC Electronic Submission Website provides licensees and BCTS managers with the ability to submit free growing declarations to the district manager. Free growing declarations are uploaded into the Reporting Silviculture Submission and Landstatus Tracking System (RESULTS). Declarations can also be entered directly into RESULTS by using the milestone function. Electronic declaration submissions (e-declarations) will replace the previous paper-bound method.

Applicable Legislation

Declarations

Free growing declarations will be made pursuant to Section 107 of the *Forest and Range Practices Act* (FRPA 107) Licensees or Timber Sales Managers are not required to submit a declaration after establishing a free growing stand. Declarations are optional; they are not a legislated requirement. However, to conclusively have one's free growing obligations deemed met, a declaration must be submitted.

A free growing declaration must be signed by the licensee or an individual authorized to sign on behalf of the licensee.

If within 15 months of receiving the declaration and after giving the licensee an opportunity to be heard, the district manager determines by order that a free growing stand was not established in accordance with the regulations and standards, then the holder remains responsible for meeting that obligation. Or, if the person making the declaration made a material misrepresentation, or misstatement of fact in the declaration in relation to the obligation, or omitted information from the declaration that the person knew or ought to have known was material to determining whether the obligation had been fulfilled, then the holder remains responsible for meeting that obligation. [FRPA 107]

¹ These procedures also apply to regeneration date declarations.

The *Forest and Range Practices Act* does not require a declaration to be signed and sealed by a professional. The *Foresters Act* and bylaws govern the signing and sealing of professional papers and documents containing professional opinion or work product that verify the results of activities involving the practice of professional forestry. This is outside the requirements of the *Forest and Range Practices Act*.

FRPA 107 allows the minister to reject a declaration if a stand is unlikely to remain free growing, if at the time the declaration was made the stand was under threat from competing plants, shrubs or other trees established on the area. This is similar to the THSPR requirement but eliminates the mandatory waiting period and allows professional judgment to determine the future end result. The 2 or 3 year post brushing waiting period will remain as a guideline used when interpreting competing vegetation and crop tree responses to brushing and when assessing the risk that a stand will not remain free growing.

Cut blocks under the Forest Practices Code (FPC)

The free growing obligations specified in the FPC, as it was immediately before the FRPA effective date, will apply to areas harvested under a cutting permit issued under a valid Forest Development Plan. Free growing stocking standards in corresponding silviculture prescriptions and site plans will remain in effect until a free growing stand is established [Sections 191 and 197 of the *Forest and Range Practices Act*].

Note: Cut blocks under the Forest and Range Practices Act will be added to this document at a later date

Establishing a free growing stand

The Forest Practices Code requires:

- the holder of a major license, the district manager or the holder of a timber sale license who is required to prepare a site plan (and the commencement date has occurred) to establish in accordance with the regulations and standards a free growing stand on the net area to be reforested. [Section 69.1 of the *Forest Practices Code of British Columbia Act*].
- the holder of a silviculture prescription (where the commencement date has occurred) to establish a free growing stand within the free growing assessment period and in accordance with the stocking standards specified in the regulations and the prescription [Section 70 of the *Forest Practices Code of British Columbia Act*].
- the holder of a woodlot license to establish a free growing stand on the net area to be reforested. [Section 76 of the Woodlot License Forest Management Regulation]

Reporting Requirements

Major licensees are required to report:

- for intermediate cuttings without regeneration objectives the post harvest stand conditions must be reported and a post harvest declaration made during the period between 12 months and 24 months after the completion of harvesting. [Section 45 of the Timber Harvesting and Silviculture Practices Regulation (THSPR 45)].

- on or before May 31 each year, a report in Form C (forest cover) and a map must be submitted to the district manager for areas which have met free growing stocking requirements during the preceding year ending March 31, [Section 46 of the Timber Harvesting and Silviculture Practices Regulation (THSPR 46)].

For areas which have met free growing stocking requirements, a Form C forest cover report and the map required under section THSPR 46(d) must be submitted to the district manager. This forest cover report is generally submitted as part of the free growing declaration.

[Note: FPPR 97 (4) stipulates that a forest cover inventory must be included with a free growing declaration. The THSPR does not have this provision, however, a Form C report will generally be submitted with the free growing declaration]

A holder of a woodlot license must submit an annual report, which includes a map describing of all areas being declared free growing. [Section 89 of the Woodlot License Forest Management Regulation (WLFMR89)]

The THSPR does not include a requirement for BC Timber Sales Managers (TSM) to submit reports similar to those that were required under the old Silviculture Practices Regulation. Nevertheless, BC Timber Sales will continue to keep accurate records of silviculture treatments and submit compliance reports to the regional managers.

Making Free Growing Declarations

A formal declaration letter is not required. An opening submission containing a declaration submitted to the [Electronic Submission Framework](#) (ESF) or a declaration submitted on-line directly into the [RESULTS](#) application will replace the letter. The FRPA 107 stipulates that declarations submitted to the district manager are in writing and signed by the licensee or an authorized representative. An e- declaration is considered a written submission. In the *Interpretations Act* writing, written or a term of similar import includes words printed, typewritten, or represented or reproduced by any mode representing or reproducing words in visible form.

RESULTS will track the declaration date, submission date and electronic signature (BCeID) of the submitter. In order for the declaration to be valid, the name of the person associated with the BCeID must be listed on the licensee's signing matrix.

Free growing declarations can be made any time after the early free growing date. If the declaration is being made prior to the early free growing date, an amendment proposing a change to the date is required. An amendment request can be submitted to, and approved by the district manager using the RESULTS stocking standards function. RESULTS will not accept an e-declaration until the amendment is approved and the milestone date in RESULTS is updated to reflect the amended date.

Free Growing Declaration Business Process under FRPA and the THSPR

Note: the following describes the process under the THSPR reporting requirements. The reporting requirements under the FPPR 86 will be added to this document at a later date.

For Major Licensees

1. Licensee submits a report of the forest cover with a map as required under THSPR46(d).

A RESULTS forest cover submission will fulfil this requirement. The THSPR does not require the submission of additional supporting free growing survey information (e.g. field cards).

2. Licensee forester declares that a free growing stand is established

Verifying the results of activities involving the practice of professional forestry and the attainment of goals and objectives identified in or under professional documents falls under the definition of professional forestry. As such, a professional forester must sign and seal the decision to call an area free growing. The date the professional forester signs the declaration is the declaration date in the RESULTS submission.

The ministry will not require a copy of a signed and sealed document.

3. Declaration submitted by licensee

The declaration submission is made electronically through the ESF or on-line into the RESULTS application. The e-declaration will include the declaration date and the submission date is automatically generated by RESULTS.

The district manager will not be notified that a declaration was submitted. Customized free growing reports will provide summary and detailed information about:

- Areas that have been declared free growing, and
- Areas that have free growing due but have not been declared free growing.

Running these milestone reports on a routine basis is recommended. Free growing reports are available to ministry staff and licensees from the [Corporate Reporting System](#), the Ministry of Forests web-based corporate reporting tool.

4. Licensee receives notification acknowledging receipt of declaration

RESULTS will track all free growing declaration submissions and a formal letter acknowledging receipt of a declaration is no longer necessary. The licensee will receive electronic notification when their free growing declaration submission is accepted by the ESF and successfully entered into RESULTS.

5. Ministry reviews free growing declarations

It is not a legislated requirement for the district manager to formally accept a free growing declaration. The obligation is a deemed met when the licensee submits the declaration.

The submission date in RESULTS will also be the date that the declaration is received. Some areas will be selected for an inspection. All areas will be risk rated, resulting in some area being selected for inspection. All office reviews, field inspections, and the opportunity to be heard must be completed to allow sufficient time for the district manager to determine that an obligation has not been met. The district manager has 15 months from the date the declaration is received to make this determination.

6. Opportunity to be Heard

There is continued liability resulting from the district manager's decision to reject a declaration. Therefore, there must be an opportunity to be heard before the district manager makes that decision. If the district manager is going to reject a declaration, the opportunity to be heard must take place before the end of the 15 month prescribed period.

However, the formality of an opportunity to be heard for the rejection of a declaration will not necessarily be the same as that for a determination of a contravention. Rather the opportunity to be heard may consist of the submitted annual report and declaration information, review by ministry staff, consultation between the holder and the ministry, debate and disagreement or agreement as the case may be, and finally, all sides put before the decision-maker. There is no requirement for an oral hearing.

7. Rejecting a Declaration

If a declaration is rejected, (following an inspection and opportunity to be heard) the district manager must give written notice of the determination, including reasons, to the licensee. This may or may not be a notice of suspected contravention of failing to produce a free growing stand depending on whether or not the late free growing date has lapsed. Depending on the circumstances it may be appropriate to communicate with the forester and/or the Association of B.C. Forest Professionals.

When a free growing declaration is rejected, the declaration date will be removed from RESULTS.

For Timber Sale Managers

TSMs are required by government policy to provide annual compliance reports, and they have the option to make declarations to demonstrate that they have fulfilled their obligations under the Forest Practices Code.

For Woodlot Licensees

1. Licensee submits an annual report as required under WLFMR 89

A holder of a woodlot licence must submit to the district manager, on or before April 30 each year, an annual report in the form, and with the content, required by the chief forester. For any free growing survey that was reported, a free growing survey summary, and associated map must be submitted with the annual report, unless a copy has previously been submitted to the district manager.

The ministry will use the survey summary information to update forest cover information in RESULTS.

2. Verifying free growing and free growing submissions

Woodlot licensees would follow the same procedures described above for major licensees. The declaration submission is made electronically through the ESF or on-line into the RESULTS application. When the woodlot license holder submits a declaration, it must be supported by a declaration that has been signed by a professional forester.

3. Review of Free Growing Declarations

The district manager will acknowledge, review and if necessary rejects declarations as described above.

For Community Forest Agreements

Holders of community forest agreements must report in accordance with the requirements of their specific agreements.

Interim Procedure during transition to full e-declaration requirements

Section 47 Timber Harvesting and Silviculture Practices Regulation (THSPR47) gives the minister the authority to require declarations to be submitted electronically. The ministry has stated that electronic submissions will be mandatory after March 31, 2005. Until then, the option of paper submissions will be available. However, anyone with access to the Internet who has RESULTS declaration authority can submit a declaration electronically.

Persons using the paper option will submit to the district manager:

- A paper Form C (FS708C) forest cover report with map or a MLSED forest cover report with a map; and
- A free growing declaration letter signed by the licensee or an authorized representative.

However, as with the e-declarations, an RPF signed declaration does not need to be sent to the district manager.

Note: MLSED does not support electronic declarations or spatial forest cover information. If MLSED is used to submit a forest cover report, a map and declaration must be submitted independently.

Unlike the e-declaration process, a formal letter acknowledging receipt of a licensee's declaration letter is a recommended business practice. A letter from the district manager should contain a statement worded as follows: "I acknowledge receipt of the declarations made pursuant to section 107 of the *Forest and Range Practices Act*." The letter of acknowledgement is not a legislated requirement and therefore an authorized employee can sign it. A sample letter is appended to this document.

Declarations by Standard Unit

Free growing declarations are submitted on a standards unit basis. The RESULTS application accepts and tracks declarations by standards unit.

A licensee may choose to make free growing declarations on a cutblock basis and submit the declarations after all standards units (SU) are free growing. However, if the SUs reach free growing in different years ending March 31, the forest cover report and map must be submitted by SU as required by regulation. When a free growing report for a SU is submitted prior to the declaration, the 15-month prescribed period during which the district manager can reject a declaration begins when the declaration is received.

Minimum Stratum Size

Before a SU is declared free growing the holder of the license must ensure that the area has met all of the free growing obligations for the area. FPC69.1 and FPC70 require that a free growing stand be established on the net area to be reforested (NAR). Therefore, the stand must exist on that whole area.

District managers should state their expectations for minimum stratum size in their districts. Where stocking falls below minimum on an area that is large enough to be considered a unique stratum, this should be brought to the attention of the district manager with a rationale for an amendment to the stocking requirements if appropriate. The district managers may consider the amendment if it is supported by a sound rationale.

A strict interpretation of FPC69.1 and FPC70 results in the entire area of the silviculture prescription being the relevant area of assessment, meaning that any portion of the area that is measured must meet the minimum number of well-spaced or free growing stems/ha. However, despite this, discretion must be applied and consideration should be given to the intention of the prescription as a whole and whether or not the actions of the licensee were reasonable in attempting to achieve the required standards. If any area under the prescription has deficiencies, consideration should also be given to the impact, if any, of those deficiencies (similar to those provided under FPC117(4)(b)).

Stratum size becomes relevant when deciding whether or not to take enforcement action after compliance has been assessed. Consideration should be given to district operating procedures that were used to assess stocking at the regeneration date. The Establishment to Free Growing Guidebook [<http://www.for.gov.bc.ca/TASB/LEGSREGS/FPC> - (page 30)] provides guidance on when stratification below the SU level is required.

Contacts

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**Example District Manager Letter Acknowledging
Receipt of A Free Growing Declaration**

File: 18750-20/
18780-20/Licensee

Date

Company Representative
Some Company Forest Products Limited
Address

Dear Company Representative:

The Ministry of Forests has recieved free growing reports submitted by [*Some Company Forest Products Limited*] for the following blocks:

Tenure

Opening No.

Received Date

I acknowledge receipt of the declarations made pursuant to section 107 of the *Forest and Range Practices Act*.

Yours truly,

District Manager