



# General Bulletin

Number 39

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## Free Growing Declaration and Acknowledgement

### *Introduction*

The purpose of this bulletin is to provide information and guidance regarding the administration of free growing declarations. This bulletin does not apply to areas that are under a silviculture prescription held by the district manager. For information on declaring areas free growing where the district manager is the holder of the silviculture prescription (SBFEP, backlog or current fire and pest) please reference the document entitled "Free Growing Procedures for the Small Business Forest Enterprise Program".

### *Applicable Legislation*

The *Forest Practices Code* requires 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* (FPC70)].

Under FPC70 a holder of a silviculture prescription, where the commencement date has occurred, must establish a free growing stand on the net area to be reforested.

- A free growing stand must be established within the free growing assessment period. For intermediate cuttings without regeneration objectives, the post harvest stand conditions described in the SP applicable to the area must be achieved following harvest. For intermediate cuttings without regeneration objectives the survey of the post harvest stand conditions must be completed no earlier than 12 months after the completion of harvesting. Intermediate cuttings may include preparatory cuts and other harvesting where there are no regeneration objectives.
- The stand must be surveyed after the early free growing date and prior to the late free growing date. Under some circumstances the free growing survey may be carried out prior to the early free growing date. When a survey is carried out prior to the early free growing date an amendment (to the early free growing date) must be submitted and may be included with the declaration. The district manager has the flexibility to approve an amendment to the early free growing date specified in the prescription. The district manager must be satisfied that the amendment for an earlier free growing date is appropriate for the area and considers the risk of forest health factors or

vegetation competition to the stand. This option is available as an incentive to encourage prompt reforestation in return for an earlier free growing assessment date.

- A report of the free growing survey must be submitted to the district manager upon request (minimum requirements for the report are listed under Section 25 of the *Silviculture Practices Regulation* (SPR25)).

The SPR requires Licensees to submit a signed and sealed declaration when a stand is free growing (this requirement does not apply to holders of woodlot licences or community forest agreements). The declaration should be done prior to the latest free growing date specified in the SP. The free growing declaration must follow and reflect the results of the survey required under SPR23(1)(c) or 23(3). The forest cover information on form C must be submitted on or before May 31 each year (SPR28(1)(c)). Form C information and the map required under section SPR28(1)(c) should be submitted before or with the free growing declaration. A report on the survey may also be required and must be submitted if requested by the district manager.

Note: There is no legislated mandatory determination process that the district manager must carry out upon receiving a free growing declaration.

### ***Scope of the Free Growing Declaration***

The free growing declaration must state that a free growing stand has been achieved in accordance with SPR28(1)(d). The declaration should not state that other obligations have been fulfilled. Other (non-silviculture) obligations are a separate issue, which will be monitored through standard compliance inspections.

### ***Declaration by Standards Unit***

See FPC General Bulletin No. 40, Submission of Free Growing Reports by Standards Unit, for information on declaring areas free growing by standards unit.

### ***Minimum Stratum Size***

Before an area [block, or where appropriate standards unit (SU)] is declared free growing the holder of the license must ensure that the area has been properly stratified. An SU may contain more than one stratum, for example, a not satisfactorily restocked (NSR) stratum and a satisfactorily restocked (SR) stratum. FPC70 requires that a free growing stand be established “on those portions of the area under the prescription that are within the net area to be reforested” (NAR). Therefore, the stand must exist on that whole area. However, a degree of discretion must be applied to this provision.

District managers should state their expectations for minimum stratum size in their districts. Consideration should be given to district operating procedures that were used to assess stocking at regeneration delay. 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 if appropriate. In accordance with the *Establishment to Free growing Guidebook*, the district manager should consider the amendment if it is supported by a sound rationale.

A strict interpretation of 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.

Stratum size becomes relevant when deciding whether or not to take enforcement action after compliance has been assessed. 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.

### ***Making a Free Growing Declaration***

The following is a suggested Ministry of Forests procedure.

#### **1. For Major Licensees**

The free growing declaration submitted to the district manager should consist of:

a) Declaration letter

The package should be submitted with a declaration letter stating that the Licensee has achieved free growing on the applicable area(s). The declaration itself is required under SPR28(d) and must be signed and sealed by a professional forester. Free growing declarations should be made before the latest 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. For this or any other type of amendment, the cover letter can serve as the formal request for the amendment. The cover letter, if used for this purpose, should also include a clear rationale supporting the request.

b) A report of the free growing survey as required under SPR25

A report of the survey with the content requirements of SPR25 must be submitted if the report has been requested by the district manager [SPR24(c)]. The Major Licence Silviculture Information System (MLSIS) form C should meet this requirement. This report should be attached to the declaration.

c) Written Record

Survey field cards, survey confidence limits and maps including location of seedlots (written record) must be submitted if requested by the district manager [SPR24(c)].

d) Other supporting documentation

Other supporting documentation may be submitted voluntarily.

## **2. For Woodlot Licences**

A declaration letter should be submitted by the woodlot license holder for areas where a free growing survey is carried out in order to allow timely field inspection. There is no legal requirement for this letter to be signed by an RPF. Free growing survey results must be reported in the annual report for the woodlot licence in accordance with Section 89 of the *Woodlot Licence Forest Management Regulation*.

## **3. For Community Forest Agreements**

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

### ***Acknowledgement by the District Manager***

It is not a legislated requirement for the district manager to formally accept a free growing declaration. However, a formal letter of acknowledgement is a recommended business practice. A letter from the district manager should contain a statement worded as follows: “I acknowledge that the statement(s), signed and sealed by a professional forester, indicate that the area(s) under the silviculture prescription(s) has achieved free growing in accordance with the standards contained in the silviculture prescription(s)”. The letter of acknowledgement is not a legislated requirement and therefore an authorized employee can sign it. A sample letter is appended to this bulletin.

### ***Review of Free Growing Declarations***

If a detailed office review is planned, the district manager should carry out the review as soon as possible after receipt of the free growing declaration. Some areas will be selected for field inspection. In most cases a district manager office review and field inspection should be completed less than 1 year (sooner if possible) from the receipt of the declaration. It is highly recommended that districts and licensees jointly prepare free growing declaration submission schedules in order to expedite the review and inspection of free growing areas. The schedule may recommend joint field inspections for marginal areas or for areas requiring amendments and may recommend time frames for declaration and acknowledgement of those areas.

The following procedures are a general outline of the steps to be taken by the district manager and may be replaced by district standard operating procedures where such procedures exist:

1. The district manager should acknowledge receipt of a free growing declaration (see attached letter).
2. All free growing declarations should be reviewed in the office.
3. If the latest free growing date has lapsed and the area is not free growing the area is in non-compliance. At this stage, a district manager can not bring an area into compliance by approving an amendment to the free growing standards. If an amendment is proposed that modifies the standards in the silviculture prescription it

must be submitted by the licensee and approved by the district manager before the late free growing date. Where there is an urgent need for immediate consideration of an amendment the licensee should submit that area as a separate high priority package.

4. A portion of the free growing declarations should be field inspected based on a risk assessment. Where a field inspection is planned it should be carried out within 1 year of the declaration.
5. The acknowledgement of free growing and the approval of any amendments will usually be two separate documents.
6. If a survey or declaration is rejected, (following an office review or field inspection), this should be communicated to the licensee with the reasons for the decision. This may or may not be a notice of suspected contravention depending on whether or not the late free growing date has lapsed. Where a free growing declaration is rejected the professional accountability of the professional forester who made the declaration should be considered. Depending on the circumstances it may be advisable to communicate with the forester and/or the Association of B.C. Professional Foresters.

### ***Free growing stand destroyed by causes out of the control of the licensee***

If a free growing stand is destroyed by causes out of the control of the licensee, before the district manager has had a chance to field check the area, the plantation should be considered to have met free growing status as long as:

1. an acceptable free growing survey was already done
2. it is declared by an RPF, that to the best of his or her knowledge, based on available information, that the area was free growing prior to the damage, and
3. the district manager can not prove that the area was not free growing.

If the above is the case then the date of the survey is the date free growing is considered to have been achieved. The early free growing date cannot be amended if an area has been destroyed. i.e. An area destroyed prior to the early free growing date is not eligible to be amended and declared free growing.

### ***Contact***

For any questions regarding this bulletin, please contact:

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**Example District Manager Letter Acknowledging  
Acceptance 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 completed a review of the free growing reports submitted by Some Company Forest Products Limited for the following blocks:

<u>Tenure</u>	<u>Opening No.</u>	<u>Survey date</u>
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This confirms that you have fulfilled your obligation to conduct a free growing survey in accordance with Section 23 (1)(c) of the Silviculture Practices Regulation and have submitted reports as required by Section 28 (1)(c) of the Silviculture Practices Regulation.

I acknowledge that the statements, signed and sealed by a professional forester, indicate that the areas under the silviculture prescriptions have achieved free growing in accordance with the standards contained in the silviculture prescriptions.

Yours truly,

District Manager