



File: 280-30

Cliff 122539

NOV 25 2009

To: Regional Executive Directors
District Managers

From: T.P. (Phil) Zacharatos
A/Assistant Deputy Minister
Operations Division



Re: *Forest and Range Practices Act (FRPA) Sec. 108 Applications for
2009 Wildfires Update*

The purpose of this memo is to provide district managers with an update on procedures for processing FRPA Sec. 108 applications and specific actions that must be taken with respect to approval of applications arising from the 2009 wildfire season.

If an eligible event, as described under Forest Planning and Practices Regulation (FPPR) Sec. 96 (1.1), causes damage to a stand prior to the achievement of free growing status, the minister, under authority of FRPA Sec. 108 (2), must grant relief or provide funding to an obligation holder if the obligation on the area cannot be met without significant extra expense than would have been the case if the damage had not occurred. Any holder of a free growing obligation is eligible to apply. This includes licensees, BCTS, district managers and any "third party" obligation holders via FRPA Sec. 29.1 free growing transfers. The relief or funding will only be granted if:

- i) the person did not cause or contribute to the cause of the damage;
- ii) the person exercised due diligence in relation to the cause of the damage; or,
- iii) the person contributed to the cause of the damage but only as a result of an officially induced error.

As per FPPR Sec. 96 (1.1), a damaging event is defined as:

- a) a wildfire;
- b) an outbreak of *Dothistroma* in a lodgepole pine plantation, if the plantation was established before July 31, 2006; or,

- c) a landslide, or a flood, that makes it impossible to establish within 20 years of the commencement date a free growing stand on the area affected by the flood or landslide.

In FPPR Sec. 96, the DDM has up to one year to make a decision. The decision making process occurs at the district level.

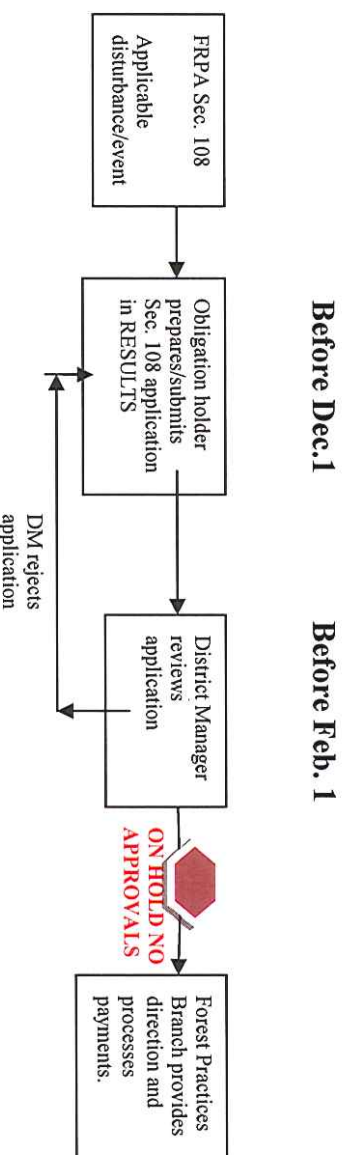
Process Considerations

In order for FRPA Sec. 108 applications to be processed in a timely manner, all applications must be submitted through RESULTS prior to consideration by the DDM.

Applications for FRPA Sec. 108 are submitted on an opening by opening basis. The application process is explained at the following web site: http://forestsfortomorrow.ca/FRPA108/Documents/RESULTSFPA108APPLICATION_v2.pdf and in the [RESULTS Information Submission Specifications for Government Funded Silviculture Activities](#); Chapter 9, page 52.

The timeline shown in the diagram below is suggested for processing FRPA Sec. 108 applications. This year due to the large wildfires, DDMs are directed to not approve any applications until confirmation from Forest Practices Branch.

Forest Practices Branch is monitoring the total application of funding requests initially prior to formally approving funding. In December, and ongoing through the next year, the total amounts will be tallied and further direction will be forthcoming:



While each application has to be assessed in respect to all relevant circumstances, in terms of determining what constitutes “significant extra expense”, as a general rule, the ministry’s current position is that this should be based on the actual costs to-date for returning the stand to its pre-damage condition plus potential activities required due to the impacts on the site from the event. Eligible activities must represent the actual costs to return the stand, to the best knowledge of the applicant.

The Forest Practices Branch has a RESULTS data set for historical costs by activity (see link), however local BCTS offices may have more current data for basic silviculture costs. <http://www.for.gov.bc.ca/hfp/fft/costs/newcosts.xls>

The Compliance and Enforcement DDM Advice Bulletin #14 https://icw.for.gov.bc.ca/hen/templates/index_template.html?https://icw.for.gov.bc.ca/hen/bulletin/ provides critical information on due diligence and provides a rough framework for the due diligence required by all parties when submitting and assessing application.

Attached is a summary of the applicable Legislation outlining the eligibility and requirements for applications, along with a copy of the current memo regarding Sec. 108 application approvals. Please contact Kelly Osbourne (250) 387-3223 if you require further information regarding FRPA Sec. 108 applications.



T.P. (Phil) Zacharatos, R.P.F.
A/Assistant Deputy Minister
Operations Division

Attachments: Appendix A - Applicable Legislation
Appendix B - June 10, 2009 Memo

pc: Archie MacDonald, Council of Forest Industries
Les Kiss, Coast Forest Products Association
Jim Hackett, Interior Lumber Manufacturers Association
Melanie Boyce, A/Deputy Chief Forester
Dianne Medves, Director, Forest Practices Branch

Appendix A Legislation

The legislative references are: Please Review them

FRPA S 108 <http://www.for.gov.bc.ca/lasb/legregs/frpa/frpa/part7.htm#section108>

Government may fund extra expense or waive obligation

108 (1) The minister must grant the relief described in subsection (3) to a person who has an obligation ➡under this Act or an operational plan,➡ other than

(a) an obligation to establish a free growing stand, or

(b) a prescribed obligation, and

who satisfies the minister that

(c) because of an event causing damage, the obligation on the area cannot be met without significant extra expense than would have been the case if the damage had not occurred, and

(d) the person

(i) did not cause or contribute to the cause of the damage,

(ii) exercised due diligence in relation to the cause of the damage, or

(iii) contributed to the cause of the damage but only as a result of an officially induced error.

(2) The minister must grant

(a) the relief described in subsection (3), or

(b) the funding described in subsection (4)

to a person having an obligation to establish a free growing stand if the person satisfies the minister that

(c) because of an event causing damage, the obligation to establish the free growing stand cannot be met without significant extra expense than would have been the case if the damage had not occurred, and

(d) the person

- (i) did not cause or contribute to the cause of the damage,
- (ii) exercised due diligence in relation to the cause of the damage, or
- (iii) contributed to the cause of the damage but only as a result of an officially induced error.

(3) The relief, that must be granted under subsection (1) or that may be granted under subsection (2) (a), from an obligation by the minister to a person is relief from

- (a) the person's obligation to the extent only that the obligation cannot be met without significant extra expense related to the damage referred to in subsection (1) or (2), or
- (b) the person's obligation in full if the minister considers that the remaining obligation, after taking paragraph (a) of this subsection into account, is inconsequential.

(4) The funding for an obligation, that may be granted under subsection (2) (b) by the minister to a person, is funding to the extent only that is required for the purpose of restoring the stand of trees on the area affected by the event referred to in subsection (2)

- (a) to the stage the stand had reached at the time of the damage caused by the event, or
- (b) to the stage that is consistent with an agreement between the person and the minister.

(5) A decision in any proceedings, that a person having an obligation referred to in subsection (1) or (2) did or did not do any of the things referred to in ➡subsection (1) (d) ➡ or (2) (d), is binding on the minister.

(6) The minister may not under this section grant relief or funding in respect of an event causing damage if the event occurred ➡before December 17, 2002. ➡

- (7) The Lieutenant Governor in Council may make regulations for the purposes of this section resolving any doubt as to what constitutes an event or as to when an event occurred.

FPPR S 96

<http://www.for.gov.bc.ca/tasb/legregs/frpa/frparegs/forplanprac/fppr.htm#section96>

Relief or funding

- 96** (1) For the purpose of section 108 (1) (b) the minister must not relieve an agreement holder from the requirements of sections 37 to 40, 46, 46.1 or 74 of this regulation unless satisfied that extraordinary circumstances exist which, due to their nature, would make it unjust if the agreement holder were not relieved.

- (1.1) For the purpose of section 108 (2) and (6) of the Act, "**an event causing damage**", in relation to an area in which a person has an obligation to establish a free growing stand, means

- (a) a wildfire,
- (b) an outbreak of *Dothistroma* in a lodgepole pine plantation, if the plantation was established before July 31, 2006, or
- (c) a landslide, or a flood, that makes it impossible to establish within 20 years of the commencement date a free growing stand on the area affected by the flood or landslide.

- (2) A person claiming, under section 108 of the Act, relief from, or funding for, the obligation to establish a free growing stand, must provide to the minister the following information:

- (a) the nature of the relief sought and why the person is entitled to it;
- (b) if the relief sought is funding under section 108 (4) of the Act, a proposal for returning the stand to the condition referred to in that subsection;
- (c) an estimate of the extra expense involved in carrying out the course of action, as described in section 108 (3) of the Act.

- (3) If the minister is satisfied that relief or funding is required, the minister must, within one year of receiving the information referred to in subsection (2),

- (a) grant the relief,

- (b) determine whether or not to provide the funds necessary for the proposal under subsection (2) (b), or
- (c) provide and fund an alternate course of action to that proposed under subsection (2) (b), if the minister determines that
 - (i) the obligation to establish a free growing stand should continue, and
 - (ii) either
 - (A) the person has not provided a proposed course of action under subsection (2) (b), or
 - (B) the proposed course of action under subsection (2) (b) is unacceptable.
- (4) During the period of one year described in subsection (3), a person who makes a request is not required to meet a requirement of the Act or this regulation that relates to the request.



APPENDIX B

BRITISH
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Ministry of Forests
and Range

Operations Division

MEMORANDUM

File: 22400-01

JUN 10 2009

To: Regional Executive Directors
District Managers


Re: Forest and Range Practices Act Section 108 Approvals

The Forests for Tomorrow budget continues to be the funding source for *Forest and Range Practices Act* section 108 claims. Each year funds are set aside to cover anticipated payments. To ensure that the total expenditure of all approved applications does not exceed the available budget, I am requesting that District Managers confirm with Forest Practices Branch the availability of sufficient funding prior to approving an application.

As the legislation has a commitment to approve an application within one year of its receipt (FPPR s. 96 (3)), Forest Practices Branch will work closely with forest districts to monitor the timelines on the submitted applications and deal with them accordingly.



Please contact Kelly Osbourne at (250) 387-3223 or Kelly.Osbourne@gov.bc.ca for funding confirmation or if you require further information regarding FRPA s. 108 applications.


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A/Assistant Deputy Minister
Operations Division

pc: Archie MacDonald, Council of Forest Industries
Jim Snetsinger, Chief Forester
Diane Medves, Director, Forest Practices Branch