

# FRPA Training Note #13-01

## APPLICABILITY OF FRPA TO BIOMASS OPERATIONS IN REMOTE AREAS

Nov. 2013

**Question from DOF:** Does FRPA apply to private timber operations that pay harvesters, but don't sell the wood before using it in heating facilities for a mix of private, public, and Native corp. buildings?

**Background:** Use of wood biomass for energy is increasing in rural Alaska villages, especially in interior Alaska. For some villages, large harvests are anticipated on village corporation land, and a high proportion of the harvesting could occur in riparian areas. The people harvesting the wood would be paid for their work. However, the wood may be used directly by the village for heat production without a "sale" or "purchase" of wood products.

AS 41.17.900(c) authorizes DNR to adopt regulations exempting minor, small-scale, or incidental commercial operations from FRPA. The regulations that implement this statute are in 11 AAC 95.190. An operation must meet all three of the following standards for FRPA to apply:

- 1) It must be "forest land" under the AS 41.17.950(7) definition (*it meets this standard*)
- 2) It must include one or more activities such as harvesting (*it meets this standard*)
- 3) In Region III, it must be a "commercial operation" either
  - a. Of any size in a riparian area, or
  - b. >40 acres for owners of >160 acres.

*The anticipated operations would meet the size/location requirements, but it is unclear if they meet the definition for "commercial operation/commercial timber harvest" in 11 AAC 95.900 (9) and (10). The definition for Region III requires that an operation have "an annual production of >30MBF of **wood products for sale.**" The "for sale" clause is the one that raises questions since the corporation may not sell the timber to itself.*

### **Response from J. Anne Nelson, Senior Assistant Attorney General, Natural Resources Section, Alaska Department of Law**

If the harvested biomass is not "for sale" then the plain language of the regulation excludes it from FRPA coverage. I think "for sale" would include any kind of quid-pro-quo exchange or other consideration besides money, but "for sale" does mean that imply that it's being bartered for something, if not cash. I haven't fully investigated the statutory authorities, but it appears the commissioner has authority to amend the regulation to bring this scenario within FRPA coverage if that's the objective. Another approach would be to develop a regulation specifically addressing standards for biomass harvest for community use.