

As required by
the Administrative Procedure Act
Chapter 34.05 RCW

**CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY**

**ADOPTION OF AMENDMENT TO THE FORST PRACTICES RULES
WAC 222-20-120 *Notice of Forest Practices to Affected Indian Tribes*
and
WAC 222-30-021 (1)(c)(ii) western Washington riparian zone clumping strategy**

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TABLE OF CONTENTS

1. Introduction	pg. 1
2. Content of the Rule Amendment and Reasons to Adopt	pg. 2
3. Comments – Summary, Commenters, and Responses	pg. 2-4
4. Differences between Proposed and Final Rule	pg. 4
5. Adoption Date	pg. 4
6. Rule Making Timeline and Opportunities to Participate	pg. 4-5

Introduction

Washington state agencies are required to provide a concise explanatory statement to any person upon request or from whom the agency receives comments during a rule making (RCW 34.05.325(6)). Before an agency adopts a rule, the agency:

...shall prepare a concise explanatory statement of the rule:

- (i) Identifying the agency's reasons for adopting the rule;*
- (ii) Describing differences between the text of the proposed rule, as published in the register and the text of the rule as adopted, other than editing changes, stating the reason for the differences; and*
- (iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.*

Content of Rule Amendments and Reasons to Adopt

The Forest Practices Board's rule making titled Notice of Forest Practices to Affected Indian Tribes amends the following two rules:

- WAC 222-20-120 *Notice of forest practices to affected Indian tribes*
- WAC 222-30-021 (1)(c)(ii) western Washington riparian zone clumping strategies

WAC 222-20-120

The amendments to Notice of Forest Practices to Affected Indian Tribes are designed to accomplish the following:

- Call attention to the fact that this rule includes applications that may involve cultural resources.
- Clearly state that the department is to send applications to a tribe for review based on the tribe's designated areas of interest, rather than only the applications the tribe has a concern with.
- Resolve ongoing issues with the requirement that the landowner and tribe "shall meet" when the landowner's application involves a cultural resource.
- Remove the requirement that the tribe must determine whether an agreed to landowner-tribe plan will or will not be forwarded by the department to the Department of Archaeology and Historic Preservation.

The main issue with this rule is the landowner-tribe meeting requirement. When an application involves a cultural resource, the landowner and the tribe are required to meet with the objective of agreeing on a plan to protect the cultural resource. Therefore the rule requires the tribe to meet with the landowner, even when the tribe has no concern about the particular forest practice. The result of not meeting is a disapproved application. The amendments to the rule specify the meeting is at the discretion of the tribe and provide criteria by which documented good faith efforts by the landowner to talk with the tribe can suffice for the meeting requirement when there is no response from the tribe.

WAC 222-30-021 (1)(c)(ii)

The amendments to the western Washington riparian zone clumping strategies simply replace old Class IV-special language with the new Class IV-special language the Board adopted in its 2008 Historic Sites rule making.

Comments – Summary, Commenters, and Responses

Comments Received During the Public Comment Period

The Board received a total of eight comments on its proposed amendments to WAC 222-20-120 *Notice of Forest Practices to Affected Indian Tribes*. Comments varied from supporting the amended language as proposed to suggesting changes to the proposed language.

The Board did not receive any comments on its proposed amendments to the western Washington riparian zone clumping strategies in WAC 222-30-021 (1)(c)(ii).

Commenters

1. At the January 3, 2012 Olympia hearing and the January 5, 2012 Ellensburg hearing, comments were received from the following:

- Longview Timber Corporation (oral and written comments #12-01)
 - Cowlitz Indian Tribe (oral comment #12-02)
 - Washington Forest Protection Association (oral and written comments #12-03)
 - Hancock Timber Resource Group (oral comment #12-04)
 - Puyallup Tribe of Indians (oral comment #12-05)
 - Confederated Tribes and Bands of the Yakama Nation (oral and written comments # 12-06)
2. Separate from the hearings, the Board also received comments from the following:
- Muckleshoot Indian Tribe (written comment #12-07)
 - Rayonier (written comment # 12-08)
 - Washington Forest Protection Association (additional written comments also #12-03)

Comment Summaries and Responses

- Comment #12-04 and comment #12-06: We support the proposed language, and we support the language, oppose any further amendments, and support development of a rule specific to tribes concerns with natural resources applications.
Response: Comment noted as supporting the language that was proposed by the Timber/Fish/Wildlife Cultural Resources Roundtable for public review.
- Comment #12-05: We are generally supportive of the intent of the proposal and its existing content but we are also interested in broader issues work on forest practices WACs including how the change in the WAC title affects the broader program.
Response: Comment noted as in support of proposed language and requesting follow-up work to determine how this amended WAC now relates to the other forest practices WACs.
- Comments #12-02 and #12-07: The amendment to the WAC title infers there is a new WAC for applications that do not contain any cultural resources and implies that notice to affected tribes is predicated solely on the potential presence of cultural resources.
Response: The WAC title amendment identifies the full scope of the WA. That is, it not only requires notice to tribes of forest practices applications, it also sets the process for addresses cultural resources issues with applications.
- Comments #12-01, #12-03, and #12-08: The proposed language is not sufficiently clear in identifying the cultural resources targeted by the rule and overly general interpretations or boiler plate letters of concern may trigger unnecessary meeting requirements so, we recommend additional language that specifies who identifies the cultural resource.
Response: The cultural resources targeted by the rule are defined in the Board's definition of "cultural resources" in WAC 222-16-010. The department relies on various experts to identify these cultural resources and listing the experts in rule precludes the opportunity to recognize a different expert than listed.
- Comment # 12-08: The amendments do not allow the landowner to take advantage of the Class IV-special.
Response: The standards for the Class IV-special exemption for cultural resources in WAC 222-16-050 are not affected by and not the subject of this rule making.

Comments Received After Close of Public Comment Period

The public comment period closed on January 6, 2012. The Board received three written comments and two oral comments after this date on its proposed amendments to WAC 222-20-120 *Notice of forest practices to affected Indian tribes*. No comments were received on the proposed amendments to the western Washington riparian zone clumping strategies in WAC 222-30-021 (1)(c)(ii).

Commenters

1. On January 12, 2012, written comments were received from the Puyallup Tribe of Indians (additional to comment #12-05).
2. At the Board's February 14, 2012 meeting, comments were received from the following:
 - Confederated Tribes and Bands of the Yakama Nation (additional to comment #12-06)
 - Puyallup Tribe of Indians (additional to comment #12-05)

Comment Summaries

- Comment from the Puyallup Tribe of Indians: We are concerned about the lack of government-to-government interaction, insufficient notice to tribes, "a general passover to the Committee (TFW Cultural Resources Roundtable) by the Board", and no meaningful review of comments.

- Comment from the Confederated Tribes and Bands of the Yakama Nation: We are in favor of the proposed language but do not oppose leaving the WAC title unchanged.

Differences between Proposed and Final Rule

There is no difference between the proposed rule and the final rule.

Adoption Date

The Forest Practices Board adopted the rule on February 14, 2012. The rule becomes effective on March 18, 2012.

Rule Making Timeline and Opportunities to Participate

05/11/2010	Forest Practices Board meeting: Consider approval of notice to public of rule making intent on Notice of Forest Practices to Affected Indian Tribes. Opportunity was given for public to comment at the meeting prior to Board action.
05/2010-11/2011	Forest Practices Board's TFW Cultural Resources Roundtable develops rule amendments
06/28/2010	<i>Preproposal Statement of Inquiry</i> (CR-101) published in the Washington State Register (WSR 10-14-038 filed 06/28/2010)
06/28/2010	Forest Practices Rule Making Activity update about rule making intent on Notice of Forest Practices to Affected Indian Tribes sent to interested parties.

05/10/2011 Forest Practices Board meeting: Consider approval of draft rule language, for 30-day review pursuant to Forest Practices Act. Opportunity was given for public to comment at the meeting prior to Board action.

05/12-06/12/2011 30-day review period of draft rule language provided to Washington Department of Fish and Wildlife and counties (RCW 76.09.040(2)) and affected Indian tribes.

08/09/2011 Forest Practices Board meeting: Consider approval of draft rule language for public review and comment. Opportunity was given for public to comment at the meeting prior to Board action.

10/04/2011 Forest Practices Rule Making Activity updates offering public review and comment on the rule making sent to interested parties.

10/05/2011 *Proposed Rule Making (CR-102)* with hearings information, proposed rule language, and preliminary economic analysis published in Washington State Register (WSR 11-19-009 filed 09/07/2011). Public review and comment period open through January 6, 2012.

11/08/2011 Forest Practices Board meeting: Response from TFW Cultural Resources Roundtable on Notice of Forest Practices to Affected Indian Tribes rule making. Opportunity was given for public to comment at the meeting prior to Board action.

12/13/2011 Forest Practices Rule Making Activity update about rule making hearings information sent to interested parties.

12/16/2011 DNR Media Advisory on rule making hearings for Notice of Forest Practices to Affected Indian Tribes.

01/03/2012 Rule making hearing in Olympia

01/05/2012 Rule making hearing in Ellensburg

01/06/2012 Due date for comments on Notice of Forest Practices to Affected Tribes rule proposal