

As required by
the Administrative Procedure Act
Chapter 34.05 RCW

**CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
CHAPTER 222-24 WAC, Road Construction and Maintenance
WACs 222-24-050 and 222-24-051**

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Introduction

In August 2010, the Adaptive Management Program's Forests and Fish Policy Committee made a recommendation for a rule amendment to the Forest Practices Board (Board) to extend the road maintenance and abandonment plan (RMAP) performance period to July 1, 2021.

The recommendation included:

- A comprehensive approach to responding to forest landowner cash flow challenges resulting from the economic recession;
- Development of a board manual;
- Development of an operational plan; and
- An agreement by all caucuses to collaboratively pursue federal funding to accelerate fish passage barrier repairs through the Family Forest Fish Passage Program (FFFPP) and for county access roads.

The rule changes affect the following sections of the Forest Practices Rules, Title 222 WAC:

WAC 222-24-050 Road maintenance and abandonment.
WAC 222-24-051 Large forest landowner road maintenance schedule.

Adoption date of the rule: August 9, 2011
Effective date of the rule: October 3, 2011

Describe Differences Between Proposed and Final Rule

The proposed rule provides forest landowners with the opportunity to request an extension to the due date that all forest roads must be improved and maintained to the standards of chapter 222-24 WAC.

A summary of the proposed rule changes is as follows:

- Adds language in WAC 222-24-050 that will allow landowners to request DNR approval of extensions of up to five years, or July 1, 2021;
- Adds language in WAC 222-24-051 that:
 - Requires extension requests to be made at least 120 days prior to the anniversary date of the initial submittal of the RMAP in 2014;
 - Requires extension requests to include the requested extension time period and a revised RMAP;
 - Requires DNR to provide up to forty five days for departments of ecology and fish and wildlife, affected tribes and interested parties to review the revised RMAP; and
 - Requires DNR to approve or disapprove the extension request at least thirty days prior to the anniversary date of the initial RMAP submittal.

Summary of Comments

The Board heard from 12 commenters representing private timber companies and landowner organizations, and one commenter from DNR state lands Northwest Region. Most expressed support for extending the RMAPs performance period for landowners that need it. Some said the most important fish habitat has already been opened and protected from sediment delivery from roads because of following the “worst first” principal. Several expressed concerns related to new reporting requirements. Those and other comments are summarized below, along with an explanation of how the final rule reflects the Board’s consideration of the comments.

Comment: Timber harvest revenue is used for RMAP work. The depressed timber market has made it difficult to obtain revenue to continue RMAP work spread out over the remaining time period to meet the current RMAP deadline. The extension will provide the needed economic relief to complete the RMAP work and spread the remaining costs over a broader timeframe.

Response: Your comment is noted. The Board is undertaking this rule amendment to ease the burden on landowners who are unable to meet their RMAP obligation due to the economic recession.

Comment: Requiring new forms for landowners that are not applying for an extension is not consistent with DNR’s statements that costs for these landowners will not be significant. Standardized forms will necessitate significant costs to collect the data and complete new forms. Suggest encouraging, rather than requiring the use of standardized forms.

Response: The Board added a new subsection to the rule proposal at the May 10, 2011 meeting – subsection 10 in WAC 222-24-051. It requires the use of standardized forms for all RMAP accomplishment reporting regardless of the RMAPs performance period.

Standardized forms were a condition of the Adaptive Management Program's Policy committee recommendations for "common, standardized reporting requirements." During the development of the recommendations, members of the Policy committee noticed it was difficult to assess the status of RMAPs, both individually and for the overall program, due to the lack of a standardized reporting system. As a result, the agreement to recommend a rule change was contingent in part on requiring a standardized and compatible system for all RMAP data collection, documentation and reporting.

This condition was met through modifying the current RMAP forms that were initially developed in 2001. The new forms are intended to provide the level of information necessary for DNR and interested stakeholders to verify that the "even flow" and "worst first" requirements are being met regardless of when the performance period ends.

Comment: Providing shapefiles to DNR to upload into the RMAP database would be divulging proprietary information.

Response: GIS shapefiles are not required to be provided to the DNR. Landowners have a choice between three reporting options, GIS shapefile, electronic spreadsheet, and/or paper maps.

Comment: The use of Adaptive Management to address economic issues sends a clear message to forest land investors that the Washington regulatory system provides regulatory certainty without compromising the scientific underpinnings of the rules.

Response: Your comment is noted.

Comment: The extension process has facilitated a broader discussion on how stakeholders can view information and participate in the annual planning processes to help coordinate restoration efforts in local watersheds. It also provided a forum to support funding for the Family Forest Fish Passage Program.

Response: Your comment is noted.

Comment: The RMAP due date in rule language should be adjusted from July 1 to October 31 for years 2016 and 2021 to allow a full operating season to complete RMAP work.

Response: The Forest Practices Board adopted the date modification from July 1 to October 31 for years 2016 and 2021 on August 9, 2011.

Summary of public involvement opportunities

09/15/10	Preproposal Statement of Inquiry (CR-101) published in the Washington State Register.
11/10/10 – 12/13/10	Thirty day review of draft language by counties, WDFW (per RCW 76.09.040(2)), and tribes.
08/10 – 07/11	Forest Practices Division conducted rule and board manual development sessions with interested stakeholders and tribal caucus.
06/01/11	Proposed Rule Making (CR-102) published in Washington State Register.
06/01/11	Notice of Public Hearings
04/26/11 – 06/30/11	SEPA checklist and threshold determination distributed
06/23/11	Public hearing, Sedro Woolley
06/28/11	Public hearing, Port Angeles
06/30/11	Public hearing, Centralia
08/09/11	Forest Practices Board Meeting