



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Forest Practices Board

- | | |
|---|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 10-18-045; or | <input checked="" type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: (Describe Subject)

Road Maintenance and Abandonment Plans: extending the performance period to July 1, 2021.

Hearing location(s):

Sedro Wolleey

Department of Natural Resources Region Office
919 N. Township, NW Conference Center
Date: June 23, 2011 Time: 6 p.m.

Port Angeles

North Olympic Library
2210 South Peabody Street, Raymond Carver Meeting Room
Date: June 28, 2011 Time: 6 p.m.

Centralia

Centralia Community College
420 W. Walnut, Hanson Board Room
Date: June 30, 2011 Time: 6 p.m.

Submit written comments to:

Name: Patricia Anderson, DNR Forest Practices Division
Address: 1111 Washington Street SE
PO Box 47012
Olympia, WA 98504-7012
e-mail forest.practicesboard@dnr.wa.gov
fax (360) 902-1428 by (date) 5 p.m. on July 1, 2011

Assistance for persons with disabilities: Contact

Forest Practices Division at (360) 902-1400 by June 13, 2011
TTY (360) 902-1125

Date of intended adoption: August 9, 2011

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Forest Practices Board is considering amendments to WACs 222-24-050 and 222-24-051 to give forest landowners the opportunity to extend the performance period for road maintenance and abandonment plans (RMAPs) up to five years, until 2021. RMAPs are forest landowner plans that specify and schedule the work necessary to improve and maintain forest roads to standards detailed in chapter 222-24 WAC and prevent damage to public resources.

Reasons supporting proposal:

The proposed rule change is the result of a recommendation to the Board on August 10, 2010 from the Forest Practices Adaptive Management Program's Policy Committee. The original completion date (July 1, 2016, which is 15 years from the effective date of the 2001 Forests and Fish rule package) was based on an estimate of the time landowners would reasonably need to fund and accomplish their road improvements. The Board is considering this rule change because of the financial hardship forest landowners have experienced since the 2008 economic downturn and its effect on home construction and timber prices.

Statutory authority for adoption:

RCW 76.09.040

Statute being implemented:

N/A

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **May 13, 2011**

TIME: **12:20 PM**

WSR 11-11-048

DATE

May 13, 2011

NAME (type or print)

Peter Goldmark

SIGNATURE

TITLE

Chair

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization)

Forest Practices Board

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Donelle Mahan	1111 Washington Street SE, Olympia	(360) 902-1396
Implementation....Julie Sackett	1111 Washington Street SE, Olympia	(360) 902-1405
Enforcement.....Julie Sackett	1111 Washington Street SE, Olympia	(360) 902-1405

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Gretchen Robinson

Address: 1111 Washington Street SE

PO Box 47012

Olympia, WA 98504-7012

phone (360) 902-1705

fax (360)902-1428

e-mail gretchen.robinson@dnr.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Gretchen Robinson

Address: 1111 Washington Street SE

PO Box 47012

Olympia, WA 98504-7012

phone (360) 902-1705

fax (360)902-1428

e-mail gretchen.robinson@dnr.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-24-050 *Road maintenance and abandonment. The goals for road maintenance are established in WAC 222-24-010. Guidelines for how to meet these goals and standards are in ~~((the))~~ board manual section 3. Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification and are capable of passing fish, until the end of the culvert's functional life.

The goals for road maintenance outlined in this chapter are expected to be achieved by July 1, 2016. The strategies for achieving the goals are different for large forest landowners and small forest landowners.

For large forest landowners, all forest roads must be improved and maintained to the standards of this chapter prior to July 1, 2016; however, large or small forest landowners may request an extension of up to five years, or July 1, 2021, as outlined in WAC 222-24-051(8). Work performed toward meeting the standards must generally be even flow over the ~~((fifteen-year))~~ performance period with priorities for achieving the most benefit to the public resources early in the period. These goals will be achieved through the road maintenance and abandonment plan process outlined in WAC ~~((22-24-051 [222-24-051]))~~ 222-24-051.

For small forest landowners, the goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 222-24-0511, by participation in the state-led family forest fish passage program, and by compliance with the Forest Practices Act and rules. The purpose of the family forest fish passage program is to assist small forest landowners in providing fish passage by offering cost-share funding and prioritizing projects on a watershed basis, fixing the worst fish passage barriers first. The department, in consultation with the departments of ecology and fish and wildlife, will monitor the extent, effectiveness, and progress of checklist road maintenance and abandonment plan implementation and report to the legislature and the board by December 31, 2008, and December 31, 2013.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-24-051 *Large forest landowner road maintenance

schedule. All forest roads must be included in an approved road maintenance and abandonment plan by July 1, 2006. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

*(1) Landowners must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

*(2) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by July 1, 2016 or by the extension deadline approved by the department under subsection (8) of this section.

*(3) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential benefits to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

*(4) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

(a) Roads with fish passage barriers;

(b) Roads that deliver sediment to typed water;

(c) Roads with evidence of existing or potential instability that could adversely affect public resources;

(d) Roads or ditchlines that intercept groundwater; and

(e) Roads or ditches that deliver surface water to any typed waters.

*(5) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream

adjacent parallel roads and an inventory of the existing condition;
and

(b) Detailed description of the first years work with a schedule to complete the entire plan within (~~fifteen years~~) the performance period; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

* (6) Priorities for road maintenance work within plans are:

(a) Removing fish passage barriers beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

* (7) Initial plans must be submitted to the department during the year 2001 as scheduled by the department.

* (8) Requests to extend the completion date of road maintenance and abandonment plans may lead to the reapproval of the road maintenance and abandonment plan for up to five years, or July 1, 2021. Requests must be made at least one hundred twenty days prior to the plan's anniversary date by 2014.

(a) Landowner requests for an extension must include:

(i) The length of time for the extension period; and

(ii) A revised road maintenance and abandonment plan according to subsections (3) through (6) of this section.

(b) The department shall provide forty-five days for the departments of ecology and fish and wildlife, affected tribes, and interested parties to review a revised road maintenance and abandonment plan.

(c) The approval or a denial of a road maintenance and abandonment plan's extension request will occur at least thirty days prior to the anniversary date of the initial plan's submittal.

(d) A landowner with an approved extension and revised road maintenance and abandonment plan must report work accomplished in accordance with subsection (9) of this section.

* (9) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the

previous year and submit to the department a detailed description of the upcoming year's work including modifications to the existing work schedule.

The department's review and approval will be conducted in consultation with the departments of ecology (~~(, the department of)~~) and fish and wildlife, affected tribes, and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

*~~((+9))~~ (10) The department shall require the use of standardized forms as referenced in board manual section 3 for landowners requesting extensions under subsection (8) of this section and for annual reporting under subsection (9) of this section.

(11) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the departments of fish and wildlife (~~(, the department of)~~) and ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

*~~((+10))~~ (12) Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

*~~((+11))~~ (13) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

*((~~12~~)) (14) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for review and approval a plan or plans for those drainages or road systems within the area identified by the department.

*(15) The department will notify the departments of ecology and fish and wildlife, affected tribes, and interested parties if actions taken under this section result in a change to an approved road maintenance and abandonment plan.

(16) When the department approves or denies a road maintenance and abandonment plan extension under subsection (8) of this section, that decision may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT
Forest Practices Board
Rule Making Affecting Road Maintenance and Abandonment Plans

By Craig Calhoon, Economist
Department of Natural Resources
April 21, 2011

The Forest Practices Board is considering a rule change to allow forest landowners who have Road Maintenance and Abandonment Plans (RMAPs) to apply for an extension of the deadline for up to five years. The proposed rule change would amend WAC 222-24-050 and -051, changing the completion date for RMAPs from July 1, 2016 to July 1, 2021.

The Board's objective is to be responsive to a request from private forest landowners with RMAPs to adjust the RMAP completion schedule to provide relief from a reduced cash flow situation in Washington's timber industry due to the recent economic recession without reducing the legal commitment to complete forest road improvements necessary to protect and restore water quality and fish habitat.

The economic impacts of the rule change are limited to large private forest landowners, which is the regulated community in this case. There are some small forest landowners who elected to plan under a full RMAP pursuant to WAC 222-24-050; those landowners would be authorized to request an extension just as large forest landowners would under the proposed rule.¹

SMALL BUSINESS IMPACTS

A small business economic impact statement is required by the Regulatory Fairness Act (chapter 19.85 RCW) to consider the impacts on small businesses of administrative rules adopted by state agencies. The statute defines small businesses as those with 50 or fewer employees. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

Small Business Analysis

There are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change since it affords the opportunity for large forest landowners to elect to apply for an extension of the RMAP performance period of up to five years. Choosing whether to extend the RMAP performance period is voluntary on the part of the

¹ The State of Washington has agreed not to seek an RMAP time extension on public lands managed by the Department of Natural Resources and the Department of Fish and Wildlife, even though the proposed rule language would allow it.

business (landowner), whether it is a large business, a small business, or an individual. Therefore there is no disproportionate cost impact on small businesses².

Reducing Costs for Small Businesses

RCWs 19.85.030 and .040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. As stated above, there is no disproportionate impact on small businesses.

Estimated Number of Jobs Created or Lost

RCW 19.85.040 (2)(d) requires that the small business economic impact statement include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

The proposed rule does not result in any jobs being created or lost for the regulated community. However, the number of associated road construction jobs involved in doing RMAP work would be deferred into the future; there would be fewer in 2011-2016, and those jobs lost the first five years would be shifted forward into the last five years when there would have been no RMAP-related jobs.

² "Small businesses" for the purpose of this analysis are those members of the regulated community (large forest landowners) with 50 or fewer employees and is not to be confused with "small forest landowners" which has a distinct statutory definition.