January 18, 2011

MEMORANDUM

To: Forest Practices Board

From: Marc Engel, Assistant Division Manager – Policy and Services

Subject: Review of 2011 Work Plan

On November 17th the Governor signed Executive Order 10-06 (attached) requiring all cabinet agencies and boards, commissions and other agencies that report to the Governor to review all ongoing and proposed rule makings to identify those that could be suspended until after December 31, 2011. The Governor invited all other elected officials, agencies, and boards with rule making authority to follow the requirements of the Executive Order.

Three of the Governors findings directly apply to the Forest Practices program. Rule making efforts may continue for the:

- Protection of the health, safety, welfare and quality of life for the people of the state of Washington;
- Reduction of economic stress caused by the current recession for small businesses and governments; and
- Creation of a stable and predictable regulatory and policy environment that will conserve resources for small businesses and local governments and promote economic recovery.

Guidelines (attached) from the Office of Financial Management were provided to agencies to identify circumstances in which rule making may proceed. The Forest Practices Program has reviewed the rule makings identified on the Board's 2011 Work Plan (attached) to determine which, if any, can be suspended until after December 31, 2011. Guideline 3 states that a rule making is considered non-critical unless the rule meets any of the following criteria:

3a. required by federal or state law or required to maintain federally delegated or authorized programs;
3b. required by court order;
3c. necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities;
3d. necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources; or
3e. beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects.

Evaluation of the Board's 2011 Rule making

Riparian Open Space Program (ROSP) - This rule making implements Substitute Senate Bill (SSB) 5401 which expands the program to include the acquisition of conservation easements on forest land that contains critical habitat for threatened or endangered species as designated by the Board. The legislation also changed the type of channel migration lands eligible for acquisition from "unconfined avulsing channel migration zones" to simply "unconfined channel migration zones." This rule making is beneficial to the regulated entities, local government and small businesses by broadening the scope of eligible recipients to receive conservation easements. This rule making has considerable support and participation by state agencies, large and small forest landowners, tribes and other interested parties.

This rule making meets criteria 3e.

Forest Biomass – This rule making amends WAC 222-16-010 to ensure the public understands that this activity is a forest practice and subject to the resource protection measures required in Title 222 WAC and chapter 76.09 RCW. This rule making is necessary to protect public health by ensuring clean water (restricting what takes place in riparian management zones and wetland management zones); and natural resources by making it a regulated forest practices activity.

This rule making meets criteria 3d.

Watershed Analysis – This rule making amends rules relating to the use and review of approved watershed analyses. Watershed analysis rule making is necessary to protect natural resources and public health and safety by ensuring clean water and protection of capital improvements of the state. This rule making is requested and supported by the Board, state agencies and regulated business entities.

This rule making meets criterias 3d and 3e.

Road Maintenance and Abandonment Plans (RMAP) – This rule making amends WAC 222-24-050 and 051 to allow landowners to apply for an extension of the RMAP deadline for up to five years. The RMAP rule making is necessary to protect:

- public health by ensuring clean water (decreased road sediment);
- public safety by protection of capital improvements of the state (county roads – failed bridges and culverts that perpetuate landslides that come across county roads); and
- natural resources.

This rule making is beneficial to and supported by the regulated entities, local governments, and large landowners. It is also the result of negotiated rule making that involved substantial participation by interested parties before the development of the proposed rule.

This rule making meets criteria 3c, 3d, and 3e.

Notice of Forest Practice to Affected Indian Tribes – This rule making amends rules that will require landowners to meet with tribes when an application involves a cultural resource. This rule making is supported by state agencies, tribes and large and small landowners.

This rule making meets criteria 3d and 3e.

There are a number of potential rule makings on the 2011 Work Plan that could be initiated as a result of legislation. Each of these will be evaluated accordingly prior to presenting to the Board for action.

I look forward to our discussion on February 8, 2011.

MDE:paa
Attachments

CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 · Olympia, Washington 98504- 0002 · (360) 753- 6780 · www.governor.wa.gov

EXECUTIVE ORDER 10-06

SUSPENDING NON-CRITICAL RULE DEVELOPMENT AND ADOPTION

WHEREAS, state regulations are essential to protecting the health, safety, welfare and quality of life for the people of the state of Washington; and

WHEREAS, we are called upon in these unprecedented economic times to both conserve resources and continue to meet our responsibilities; and

WHEREAS, the current recession is causing severe economic stress for small businesses and governments; and

WHEREAS, in a time of severe budget constraints, small businesses and governments find it more difficult to monitor and respond to proposed changes in rules and policies; and

WHEREAS, a stable and predictable regulatory and policy environment will conserve resources for small businesses and local governments and promote economic recovery; and

WHEREAS, suspending non-critical rule making will allow agencies to focus staff resources on direct service delivery; and

NOW, THEREFORE, I, Christine O. Gregoire, Governor of the state of Washington, by virtue of the power vested in me by the Constitution and statutes of the state of Washington, do hereby order and direct:

(1) The suspension of non-critical rule development and adoption from the date of this Executive Order through December 31, 2011.

(2) The Office of Financial Management to publish guidelines identifying circumstances in which rule making may proceed.

This Order applies to all cabinet agencies and boards, commissions and other agencies that report to the Governor. I invite all other elected officials, institutions of higher education, agencies, boards, commissions and other entities with rule making authority to follow the requirements of this Order.

This Order is not intended to, and does not confer any legal rights and shall not be used as a basis for legal challenges to rules or other actions or to any inaction of the governmental entity subject to it.

This Order shall expire by its own terms on January 1, 2012.

Signed and sealed with the official seal of the state of Washington on this 17th day of November 2010 at Olympia, Washington.

By:

/s/

Christine O. Gregoire
Governor

BY THE GOVERNOR:

/s/

Secretary of State

November 16, 2010

TO: Agency Directors
Statewide Elected Officials
Presidents of Higher Education Institutions
Boards and Commissions

FROM: Kari Burrell
Director

SUBJECT: IMPLEMENTATION OF EXECUTIVE ORDER 10-06, SUSPENDING NON-CRITICAL RULE DEVELOPMENT AND ADOPTION

Our country and our state are in the worst recession in 80 years. Small businesses are struggling. State and local governments have experienced severe revenue losses which have led to significant budget cuts. Both small businesses and governments benefit from having a stable and predictable regulatory environment in these difficult times.

Governor Chris Gregoire's Executive Order 10-06 directs state agencies to suspend development and adoption of rules for the next 12 months. The Governor is directing agencies to suspend rule making that is not immediately necessary. She recognizes, however, that agencies should not suspend all rule making, as rule making is an essential government operations tool. She has asked the Office of Financial Management to provide guidance as to circumstances in which rule making should proceed.

This Executive Order applies to all cabinet agencies and boards, commissions and other agencies that report to the Governor. All other elected officials, institutions of higher education, agencies, boards, commissions and other entities with rule making authority are invited to follow the requirements of the Executive Order and these guidelines.

This memorandum provides guidelines for agencies to use when determining whether rule making should proceed:

Guidelines

1. Agencies shall review all rules in progress and their proposed rule making agenda for next year and identify those rules that can be suspended until after December 31, 2011.

2. In determining whether a rule should be suspended, agencies shall recognize the benefits of a stable regulatory environment. Where possible, agencies should redirect scarce resources away from rule making to front-line service delivery, including implementing and enforcing existing rules.

3. Rule making proceedings are non-critical unless the rule is:

    a. required by federal or state law or required to maintain federally delegated or authorized programs;

    b. required by court order;

    c. necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities;

    d. necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources; or

    e. beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects.

4. If an agency decides to proceed with a rule that has a small business impact or an impact to local government, the agency must consult with small businesses and/or governments on how the impact can be mitigated.

5. Agencies may continue to adopt rules that have been the subject of negotiated rule making or pilot rule making that involved substantial participation by interested parties before the development of the proposed rule. Agencies can also proceed to finalize permanent rule making that has previously been covered by emergency rules.

6. Agencies may continue to adopt expedited rules under RCW 34.05.353 where the proposed rules relate only to internal governmental operations.

7. Each agency shall report by January 31, 2012 the number of rules eliminated or suspended in response to this order as well as the number of and justification for rules that proceeded through development and/or adoption.

FOREST PRACTICES BOARD
DRAFT 2011 WORK PLAN

TASK	COMPLETION DATE
2012 Work Planning	November
Adaptive Management Program	
• Extensive Riparian Shade and Trend Monitoring Type F/Eastside Temperature Study	August
• Extensive Riparian Type F&N Monitoring/Westside Temperature Study	November
• CMER 2012 Work Plan and Budget	May
• Program Funding	On-going
• Program Review	May
• Post Mortem Study	November
• Roads Sub-basin Study	February
• Solar Radiation Study	November
• Westside Type N Buffer Characteristics, Integrity & Function	August
• Type N Experimental Buffer Treatment-Hard Rock (amphibian genetics)	May
Annual Reports	
• Cultural Resources Committee	August
• Forests and Fish Policy Priorities	August
• Taylor's Checkerspot Butterfly Report	February
• Northern Spotted Owl Conservation Advisory Group	November
Board Manual Development	
• Section 1, Shade	November
• Section 3, Roads	May
• Section 11, Watershed Analysis	May
• Section 18, Riparian Open Space	May
• Section 21, Fixed Width template	November
CMER Membership	As needed
Rule Making	
• Forest Biomass	May
• Notice of Forest Practice to Affected Indian Tribes	August
• Riparian Open Space	May
• Watershed Analysis	May
• Extension of RMAP Forest Road Work Completion Date	2012
• Conversion Activities, implement 2007 legislation and clean-up (depending on legislation)	
• Forestry Riparian Easement Program (depending on legislation)	
• Hydraulic Project Approval (depending on legislation)	
• Lands platted (depending on legislation)	
• Trees & Houses (depending on legislation)	
Upland Wildlife	February

FOREST PRACTICES BOARD
DRAFT 2011 WORK PLAN

TASK	COMPLETION DATE
Quarterly Reports	
Board Manual Development	Each regular meeting
Adaptive Management Program & Strategic Plan Implementation	Each regular meeting
Rule Making Activities	Each regular meeting
Compliance Monitoring	Each regular meeting
Small Forest Landowner Advisory Committee & Office	Each regular meeting
Legislative Update	February & May
Clean Water Act Assurances	Each regular meeting
NSO Implementation Team	Each regular meeting
TFW Cultural Resources Committee	Each regular meeting