

Concise Explanatory Statement
In Compliance with RCW 34.05.325(6)
Forest Practices Board

Small Forest Landowner Long-term Applications
September 2007

PURPOSE AND CONTENT OF THE RULE

The primary purpose of the long-term application rule making is to provide small forest landowners the flexibility to conduct management activities at the most advantageous times for their specific circumstances. It will reduce the frequency of application, which small forest landowners have found to be increasingly complex. The Forest Practices Board anticipates these changes will provide an incentive for small forest landowners to keep their forest lands and continue forest management rather than selling, which often results in conversion to other land uses.

The rule authorizes the Department of Natural Resources (DNR) to grant approvals of small forest landowners' forest practices applications for up to 15 years, rather than the two year permit term (or five years in the case of "multiyear permits"). The approval process is changed to a two step review as described in new language in WAC 222-20-016.

In addition to the longer effective terms of permits, the rule outlines a process for determining whether new conditions should be placed on active approved long-term applications when the Forest Practices Board is considering new rule making. The Board recognizes that new forest practices rules for fish and wildlife species and habitat protection may be necessary during the longer effective terms. Examples are when the forest practices adaptive management process (as described in existing WAC 222-12-045) results in recommendations for new rules, or when there are new listings of threatened or endangered species. DNR, in consultation with the Departments of Ecology, the Department of Fish and Wildlife, and affected Indian tribes, will analyze how the new rule would affect the existing approved long-term applications and report findings to the Board. The Board will then determine whether to direct DNR to condition existing approved long-term applications to protect resources.

The main elements of the published rule proposal are contained in two new sections in Title 222 WAC, Forest Practices:

NEW SECTION

WAC 222-12-035 *Small forest landowner long-term applications. In order to facilitate flexibility for small forest landowners in the timing of their forest practices activities, the department will receive, and approve or disapprove, long-term forest practices applications. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications unless proposing a conversion to a use other than commercial timber production. An approved long-term application will be effective for a term of three to fifteen years at the discretion of the landowner. These applications may contain alternate plans for all or portions of the forest land area included in the long-term application. Alternate plan portions of long-term applications will be reviewed according to the alternate plan process described in

WAC 222-12-0401. The process for small forest landowner long-term applications is described in WAC 222-20-016.

NEW SECTION

WAC 222-20-016 Small forest landowner long-term applications.

- (1) **Application.** A small forest landowner may submit a forest practices application that includes planned forest practices activities on all or part of a landowner's ownership within one of the department's geographic region boundaries. The application can be for terms of three to fifteen years at the discretion of the landowner. The landowner will submit the application to the department in two steps.
- (2) **Review of proposed application.**
 - (a) **Step 1: Resource and roads assessment review.** The landowner will submit the resource and roads assessment portion of the application. As part of the review, the department will determine any additional known resources or threats to public safety and initiate one or more site reviews in consultation with the department of ecology, the department of fish and wildlife, and the affected Indian tribes. The department will notify the landowner and the landowner's representative to attend the site review(s). Within forty-five days of receiving the complete assessment, the department will notify the landowner in writing of its validation or rejection of the assessment. If rejected, the department will provide a written statement to the landowner explaining why the assessment was rejected.
 - (b) **Step 2: Resource protection strategies review.** The department will accept for review the resource protection strategies portion of the long-term application after the department validates Step 1. The required elements of Step 2 will include a description of proposed forest practices activities and strategies for protection of all resources identified in Step 1. The department will approve, condition, or disapprove Step 2 within forty-five days of receiving the complete Step 2 portion. If disapproved, the department will provide a written statement to the landowner explaining why the proposed strategies were disapproved.
- (3) **Activity notice.** At least five business days before a landowner starts an approved forest practices activity the landowner will submit to the department an activity notice in a format acceptable to the department.
- (4) **Amendments to long-term applications.**
 - (a) The department may authorize nonsubstantial amendments as authorized in WAC 222-20-060.
 - (b) If the board considers new or amended rules to achieve resource protection objectives, the department and the board will do the following regarding existing approved long-term applications:
 - (i) The department, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes will review, and if necessary analyze the effects of approved long-term applications on the public resources the proposed rules are intended to protect.

- (ii) The department will report the results of its review and/or analysis to the board prior to rule adoption.
- (iii) Upon rule adoption, the board may direct the department to condition existing approved long-term applications to protect resources.
- (iv) The department will notify impacted landowners in writing of the board's decision.

In addition, WACs 222-12-030, -12-0401, -16-010, -16-050, -20-010, -20-020, and -20-080 are edited slightly to support the long-term application concept, and WACs -12-0402, 222-20-030, -20-015, -20-040, -20-050, -20-060, 20-100, and 20-120 contain edits not directly related to long-term applications, but are for general correction or clarification purposes.

DIFFERENCES BETWEEN PROPOSED AND FINAL RULE

There are two differences between the proposed and final rule:

- The final rule includes language to clarify that small forest landowner long-term applications may be classified Class III and Class IV. (However, proposals for land use conversions are ineligible for long-term application consideration as indicated in new WAC 222-12-035.) The clarification language is included in WAC 222-12-030, WAC 222-16-050(5), new WAC 222-20-016(2)(b), and WAC 222-20-020 (1)(d) and (e).
- The final rule does not provide for a new Board manual for small forest landowner long-term applications (WAC 222-12-090(18)). Instead the Small Forest Landowner Office will provide informational brochure. The brochure will be distributed to interested landowners in hard copy as well as on the Small Forest Landowner Office website at <http://www.dnr.wa.gov/sflo/>.

RULE MAKING TIMELINE

9/6/06	Preproposal Statement of Inquiry (CR-101) published in the Washington State Register
7/06-12/06	DNR, Forest Practices Division, conducted rule development sessions with interested stakeholders and tribal caucus
2/16/07- 3/27/07	Thirty day review of draft language by counties, WDFW (per RCW 76.09.040(2)), and tribes
7/18/07	Proposed Rule Making (CR-102) and preliminary economic analysis published in Washington State Register
7/10/07	SEPA checklist and threshold determination distributed
8/7/07	Public hearing, Spokane
8/9/07	Public hearing, Aberdeen
8/14/07	Public hearing, Everett
8/15/07	Due date for public comments
9/11/07	Rule adopted

SUMMARY OF PUBLIC COMMENT

The Board received 38 oral and written communications: 35 commenters expressed support and 3 expressed concern or were opposed to the rule proposal.

Comments in support of the proposal.

Landowners who spoke in support of the rules commented on the following benefits, generally in order of the highest number of times mentioned on top:

- Will allow for greater flexibility to respond to changing markets, respond to natural occurrences such as blow down and forest pest or disease problems, and harvest when needed for income.
- Fewer applications will result in significant savings to landowners, in both time and money, especially those whose harvests are relatively small. Takes away the disincentive to log sooner rather than later.
- Will also result in savings to agencies.
- Will be a good opportunity for inter-generational planning, and incentive for the next generation to continue managing the tree farm.
- Will be an incentive to produce long-term management plans.
- Will be an incentive to keep land in forestry and result in:
 - ownership tenure, which leads to good stewardship;
 - better environmental benefits than non-forest use;
 - greater opportunity to ensure the availability of the best contract loggers.
- Will provide structure and opportunity to use existing stewardship plans more effectively.
- Landowners may be more inclined to accomplish forest health work and other small scale management work.
- Gives the message that the Board cares about ways to keep family forest landowners on the landscape and a willingness to try new thinking when dealing with family forest landowners.
- Resource assessments may help identify potential sensitive sites.

Landowners further commented:

- A burdensome process is a disincentive, sometimes even more so than the physical restrictions.
- Don't make it too complicated. Help to not intimidate the next generation.
- During the review process there needs to be a level of trust and consideration for those who have worked the land. Look at the landowner's track record.
- Need technical assistance to get through the process. For example, geologic reports are expensive and represent loss of income. Stream typing and other resource assistance will be critical to this program's success; please ensure this is well funded.
- Need to make sure we don't abbreviate opportunities for landowners to plan into their second cycle or to reap the benefits of the silvicultural practices they have undertaken during the 15 year period.
- Don't add requirements that would diminish our property rights and flexibility to control our property during the 15 year permit.
- Hopefully the Board will build more incentives into the rules in the future.

- Look both inside and outside the permitting process for innovative and less burdensome ways to implement good forestry practices and public resource protection (e.g., well trained individuals to replace multi-disciplinary teams, stewardship certification for landowners, notification by the landowner when harvest will take place, random audits to establish compliance rates).
- This is a politically acceptable first step. Ultimately landowners should have much longer permits (for example, 65 years) to ensure that the trees planted now may be harvested when ready.
- The time allotted for comment is too short for understanding or meaningful participation by real tree farmers.
- Long-term permits may increase landowner compliance with permit requirements.

Comments indicating concern or opposition to the proposal.

- Step 2 should allow for consultation with affected tribes to ensure resource management strategies are adequate.
- A 15 year term is excessive, in particular for pesticide applications. It is unfair for stakeholders to have to keep track of and schedule for aerial spraying that can occur any time within 15 years.
- The activity notice should be put on the Forest Practices Application Review System (FPARS) as soon as possible to give application reviewers notice that activities are about to happen.
- There should be a more limited definition of “small forest landowner” to prevent medium-large landowners from qualifying.
- The rules and the process for long-term applications need to be simple and less bureaucratic than they appear now.
- The rule should include a way to amend the application if conditions warrant.

RESPONSES TO COMMENTS INDICATING CONCERN OR OPPOSITION

COMMENT Step 2 should allow for consultation with affected tribes to ensure resource management strategies are adequate.

RESPONSE *As is currently available with a two-year application, there will be an opportunity to communicate concerns about the completed Step 2 portion of a long-term application. Interested reviewers will have 45 days to review Step 2, which is longer than the 30-day review for two-year applications.*

In instances that a landowner proposes an alternate plan within the long-term application, consultation will take place through the existing interdisciplinary team process described in WAC 222-12-0401 for the alternate plan portions of the application. This will take place in the Step 2 review.

- COMMENT A 15 year term is excessive, in particular for pesticide applications. It is unfair for stakeholders to have to keep track of and schedule for aerial spraying that can occur any time within 15 years.
- RESPONSE *Aerial applications will not be part of a long-term application. As is currently the process, landowners will submit separate applications for applying forest chemicals aerially which are effective for two years only. DNR does not intend to change this procedure.*
- COMMENT The activity notice should be put on the Forest Practices Application Review System (FPARS) as soon as possible to give application reviewers notice that activities are about to happen.
- RESPONSE *DNR will post activity notices on FPARS as soon as possible after receiving them.*
- COMMENT There should be a more limited definition of “small forest landowner” to prevent medium-large landowners from qualifying.
- RESPONSE *Part of the rationale for using the definition that already exists in the Forest Practices rules is that a lower average volume of timber harvested is a more reasonable measure of potential resource impact than the amount of land owned by a landowner.*
- COMMENT The rules and the process for long-term applications need to be simple and less bureaucratic than they appear now.
- RESPONSE *The rules were developed to provide an optional opportunity for small forest landowners. If landowners choose to use this approach, the application process will be more complex depending on the amount of land and the resources included in the application area.*
- COMMENT The rule should include a way to amend the application if conditions warrant.
- RESPONSE *DNR has a simple process for approving non-substantial deviations (amendments) as authorized by WAC 222-20-060. This process applies to all types of applications.*