

**PRELIMINARY ECONOMIC ANALYSIS**  
**Forest Practices Board**  
**Rule Making Affecting Forest Biomass Harvest**  
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**OBJECTIVES**

The Forest Practices Board is considering a rule change to make clear and reinforce that harvest of forest biomass is considered to be a forest practice under the Washington forest practices statute, chapter 76.09 RCW, and the forest practices rules in Title 222 WAC.

The Forest Practices Board and the Department of Natural Resources already consider that forest biomass harvest is a forest practice that falls under the authority of the state's forest practices law and regulation. The proposed rule change will ensure that other affected parties will have the same understanding.

The proposed rule change explicitly clarifies that forest biomass harvests are forest practices. It implements RCW 76.09.040 which states, "Where necessary to accomplish the purposes and policies stated in RCW 76.09.010 . . . the board shall adopt forest practices rules . . . that . . . establish minimum standards for forest practices." Among the purposes and policies stated in Chapter 76.09 RCW is "... that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection ...". The intent of the proposed rule change is to ensure that forest biomass harvest is conducted with all the public resource protections (i.e., for soils, water, fish, wildlife, and capital improvements) afforded in chapter 76.09 RCW and Title 222 WAC.

The Board's objective in adding "or forest biomass" to the definition of "forest practice" is to ensure the public's understanding that activities related to forest biomass harvesting and on-site processing are forest practices activities and therefore subject to all of the protections and standards provided through Title 222 WAC.

**CONTEXT**

The Forest Practices Board is considering this rule change because of the greatly increased interest over the last several years in the use of forest biomass as an alternative energy source. The slash composed of residual branches, needles, and treetops left over from timber harvest operations, once regarded as a waste product, is now being considered a renewable resource for energy production and a new economic opportunity. There has been an increase in the removal of biomass from Washington's forests for energy generating projects as well as for pre-commercial thinning, forest health, and wildfire fuel reduction purposes. There are new players in the emerging forest biomass field who are not part of the forestry industry and who may not be well informed on forestry issues and forest practices laws and regulations. There may also be

parties in the forest industry, including landowners, who are not aware that forest biomass removal is considered to be a forest practice like timber harvest and related forest management activities and as such is subject to the same public resource protections.

Department of Natural Resources (DNR) forest practices staff members have observed an increase in forest biomass removed from Washington's forests. Most landowners and operators are identifying and documenting these activities in their forest practices applications (FPAs), mostly in conjunction with other timber harvest activities. However, DNR field staff members are noting that some forest biomass removal activities are going on unreported and without FPA regulatory review and approval, especially stand-alone operations not conducted along with other forest practices activities.

This could be due to the rules not being clear that activities related to forest biomass harvest and removal are forest practices the same as activities related to timber harvest. The risk under the status quo is that forest landowners and operators will not be aware that the same permitting requirements and natural resource protections apply to these activities as they do activities related to timber harvest.

When a landowner or operator proposes forest practices activities, including forest biomass removal, all of the associated activities must be noted on the FPA. This gives DNR the opportunity to condition applications prior to the activities taking place, and ensure that public resources are protected during and after operations.

## **PROPOSED RULE**

The proposal is to add the words "or forest biomass" to the definition of "forest practice" in WAC 222-16-010 as shown below.

*WAC 222-16-010 \*General definitions*

*...*

*"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber or forest biomass, including but not limited to:*

*Road and trail construction;*

*Harvesting, final and intermediate;*

*Precommercial thinning;*

*Reforestation;*

*Fertilization;*

*Prevention and suppression of diseases and insects;*

*Salvage of trees; and*

*Brush control.*

*"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and*

*other products which cannot normally be expected to result in damage to forest soils, timber or public resources.*

...

The proposed rule clarifies that activities associated with forest biomass harvest are forest practices activities and as such are required to be included on FPAs.

## **ASSUMPTIONS**

The following assumptions are made in the cost-benefit analysis and the small business impact analysis:

1. There is some level of forest biomass harvest occurring in Washington's forests that is not being reported on FPAs and is therefore being done without FPA review and approval by DNR.
2. There is an increased likelihood and degree of negative impact on public resources resulting from forest biomass harvest activities that occur without DNR forest practices review and approval.
3. Forest biomass harvest is already subject to forest practices regulation, although some forest landowners and operators may not be aware that it is.
4. To the extent the proposed rule change increases awareness, it will increase the amount of information required in FPAs for timber harvest that also include activities associated with forest biomass harvest, and it is likely to increase the number of FPAs for stand-alone forest biomass harvest projects.

## **COST-BENEFIT ANALYSIS**

According to the Administrative Procedure Act (RCW 34.05.328), before adopting rules agencies must complete a cost-benefit analysis to:

- Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented; and
- Determine, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute that the rule implements.

### **Benefits**

The intent of the proposed rule is to ensure understanding by the regulated community that activities related to forest biomass harvest are forest practices activities. To the extent the rule increases awareness, it will increase the likelihood that the standards and resource protections provided through forest practices regulation are applied when biomass harvest activities are conducted in the forest environment.

It is not possible to quantify how much biomass harvest is occurring in Washington's forests without approved FPAs. If it is near zero, then the proposed rule change will have little benefit. If it is a significant amount, the rule change will increase resource protection proportionately.

### **Costs**

The subset of the rule-complying community affected by the proposed rule is composed of those parties who are removing forest biomass from Washington's forests without approved FPAs covering this activity. The affected parties do not incur any new costs and are not impacted negatively by the rule change because they are already required to go through FPA approval; they just may not be aware of the legal requirement.

The affected parties may realize a benefit of reduced costs by avoiding enforcement actions and penalties DNR may impose on unreported and unpermitted forest biomass harvest projects.

### **Comparison of Benefits and Costs**

To the extent that there are a significant number of forest biomass harvest operations that are not going through the approval process, and because there are no new costs to the affected parties, there can only be a net benefit from the proposed rule as these activities will now be more likely to come under forest practices review and approval and be afforded the resource protections provided in Washington forest practices laws and rules.

### **Alternatives to Rule Making and Consequences of Not Adopting the Rule.**

The only alternative considered to this rule making is not adopting the rule. Not adopting the proposed rule change could perpetuate any misunderstanding that activities associated with forest biomass harvest are not forest practices and therefore not subject to the protections and standards provided under Title 222 WAC. This could result in harm to forest soils and public resources protected by the Forest Practices Act and rules.

The Board recognizes that there may be a need to further define forest biomass in the forest practices rules and to set standards for what activities related to biomass harvest are acceptable in the forest environment. The Board is considering a subsequent stage of rule making to more specifically address forest biomass harvest, but this is beyond the scope of the proposed rule change.

### **Least Burdensome Alternative**

The Administrative Procedure Act states that agencies shall determine after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute that the rule implements (RCW 34.05.328(1)(e)).

The Forest Practices Act indicates that, coincident with maintenance of a viable forest products industry, it is important to afford protection to a variety of public resources (RCW 76.09.010).

Not adopting the proposed rule change is not a viable alternative because that would not achieve the general goals and specific objectives of the statute that the rule implements (i.e., public resource protection). Because of its limited scope and because it imposes no new costs on affected parties, it is less burdensome than other potential alternatives, such as creating a new subset of forest practices rules that more specifically address forest biomass harvest.

## **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**

Since there are no new or additional requirements or costs imposed on any members of the regulated community by the proposed rule change, there is no disproportionate cost impact on small businesses.

### **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. Since there is no impact on costs for any businesses, large or small, there is no disproportionate impact on small businesses.

### **Estimated Number of Jobs Created or Lost**

RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule." There is no change in the number of jobs resulting from adopting the proposed rule change because it doesn't affect the level of forest biomass harvest activity.

## **CONCLUSIONS**

The expected benefit of this rule is additional protection for public resources in Washington's forests. There is no cost impact on those who are required to comply with the rule. Therefore it is reasonable to conclude that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative benefits and costs of the proposed rule.

Not adopting the rule is not a viable alternative because that would not achieve the general goals and specific objectives of the statute that the rule implements (i.e., protecting public resources in the forest environment).

The proposed rule is the only alternative considered by the Board. Because of its limited scope and because it imposes no new costs on affected parties, it is less burdensome than other potential alternatives, such as creating a new subset of forest practices rules that more specifically address forest biomass harvest.

A comparison of the estimated potential impact to small businesses and the ten percent of the largest businesses that are required to comply with the rule shows that there is no impact on any businesses and therefore the rule would not disproportionately impact small businesses.

The analysis concludes that the rule will have no impact on overall employment.