

Concise Explanatory Statement

In Compliance with RCW 34.05.325(6)

Forest Practices Board

Assistance for Small Forest Landowners with Forest Road Maintenance and Abandonment Planning

May 2006

PURPOSE, CONTENT, AND ADOPTION DATE OF RULE

Second Substitute House Bill 1095 (2003 legislation) amended portions chapter 76.09 RCW, “Forest Practices”, and chapter 76.13 RCW, “Stewardship of Nonindustrial Forests and Woodlands”, to limit the burden of forest road maintenance and abandonment requirements for small forest landowners. The proposed permanent rules pertain to those statutory amendments. The proposed changes also amend the definitions of “road construction” and “road maintenance” for clarification purposes.

The Forest Practices Board adopted the rule on May 10, 2006; the rule will be effective on June 18, 2006.

PROPOSED RULE CHANGES

WAC 222-16-010	Amends and adds definitions of “fish passage barrier”, “forest land”, “forest landowner”, “forest road”, “road construction”, and “road maintenance.”
WAC 222-20-010 (8) and NEW WAC 222-24-0511	Provides an alternative, simplified “checklist” road maintenance and abandonment plan and eliminates annual reporting for small forest landowners.
WAC 222-20-040 (5)	Establishes that small forest landowners’ applications will not be denied based on fish passage barriers if a landowner agrees to participate in the cost share program.
WAC 222-20-055 (4)	Exempts “checklist” plans from the continuing forest land obligations listed in WAC 222-20-055.
WAC 222-24-010, -050, and -051	Specifies small and large forest landowner requirements regarding road maintenance and abandonment. Incorporates a cost share program for removal, replacement or repair of fish passage barriers on small forest landowner forest lands. Specifies that the Forest Practices Board will report to the Legislature in 2008 and 2013 on accomplishments with respect to having road maintenance and fish passage addressed by 2016.
NEW WAC 222-24-0511	Exempts from road maintenance and abandonment planning owners of ≤ 80 acres forest land in Washington who submit forest practices applications or notifications for ≤ 20 contiguous acres.

DIFFERENCES BETWEEN PROPOSED AND FINAL RULE

The final rule is substantially the same as the proposal distributed for public review. The only changes are minor edits to: 1) add clarity to the definitions of small forest landowner, road construction, and road maintenance in WAC 222-16-010, 2) delete a reference to Board Manual Section 3 in WAC 222-24-051, and 3) replace the term “blockage” with “barrier” in WAC 222-24-051.

RULE DEVELOPMENT

As directed by SSHB 1095, the Forest Practices Board adopted emergency rules to reduce the burden of road maintenance and abandonment planning for small forest landowners. The emergency rules became effective on October 31, 2003 and were to remain in effect until the adoption of permanent rules.

The Department of Natural Resources (DNR) began work on a permanent rule in October 2004 and elicited the assistance of stakeholder representatives to assist in permanent rule development. In Fall 2004, DNR invited representatives of the Washington Farm Bureau, Okanogan Farm Bureau, Washington State Grange, Audubon Washington, The Nature Conservancy, Washington Environmental Council, Washington Farm Forestry Association (WFFA), Washington Forest Protection Association (WFPA), the Small Forest Landowner Advisory Committee, Northwest Indian Fisheries Commission, Washington Department of Fish and Wildlife (WDFW), Department of Ecology (DOE), US Fish and Wildlife Service, and NOAA Fisheries.

DNR convened the first stakeholder meeting on October 26, 2004. Representatives of the Okanogan Farm Bureau, Washington Farm Bureau, The Nature Conservancy, and NW Indian Fisheries Commission participated. This group set the priorities for future meeting discussion with the highest priority to be the 2016 deadline (i.e., for small forest landowners’ accomplishment of road maintenance and abandonment). DNR held four subsequent rule development meetings with active participation by the above-mentioned stakeholders, plus WFPA, WFFA, DOE, the Small Forest Landowner Advisory Committee, and WDFW. The Board reviewed the permanent rule draft and approved its distribution for public review at its February 9, 2005 meeting.

SUMMARY OF PUBLIC INVOLVEMENT OPPORTUNITIES FOR PERMANENT RULE

6/28/03	Preproposal Statement of Inquiry (CR-101) published in the Washington State Register.
10/26/04-1/18/05	Six rule development stakeholder meetings, Natural Resources Building (as described above).
2/25/05- 4/5/06	Thirty-day review of draft language by counties, WDFW (per RCW 76.09.040(2)), and tribes.
3/23/05	SEPA Scoping meeting, Chewelah
3/30/05	SEPA Scoping meeting, Olympia
9/7/05	Proposed Rule Making (CR-102) published in Washington State Register.
11/01/05	News release RE: public hearings
11/1/05	Distribution and notice of the availability of the Draft EIS
11/17/05	Public hearing, Omak
11/29/05	Public hearing, Colville
12/1/05	Public hearing, Kelso
12/13/05	Public hearing, Walla Walla
12/15/05	Public hearing, Everett
12/16/05	Due date for public comment on rule proposal, preliminary economic analysis and draft EIS
4/26/06	Distribution and notice of availability of Final EIS

PUBLIC COMMENT

The Board received 12 oral and written comments, one of which did not pertain to the rule proposal. The comments are summarized below with responses.

John Stuhmiller, Washington Farm Bureau

COMMENT Supported adoption of the rule proposal as written, emphasizing that SSHB 1095 established goals intended to be met by the year 2016, but 2016 was not intended to apply to small forest landowners.

RESPONSE The goals for road maintenance are expected to be achieved by 2016, but the strategies for achieving the goals are now different for large forest landowners and small forest landowners. The effects of Second Substitute House Bill (SSHB) 1095 include a simplified road maintenance and abandonment plan process, and it shifted some of the costs of rule compliance to the state, e.g., the cost-share provision for small forest landowners' fish barrier removals.

Given the Forests and Fish goal of forest roads meeting forest practices standards by 2016 and the change in context and procedure by SSHB 1095, the state is increasing efforts to provide education and outreach for small forest landowners, to assess whether landowners are meeting road standards, and to continue to request funding levels that will meet small forest landowners' needs for assistance. The state will also develop and present comprehensive assessments to the Legislature in 2008 and 2013 of the effectiveness of the new rules resulting from SSHB 1095. This will provide insights regarding the Forests and Fish goal of road maintenance standards being met by 2016.

Wesley McCart, Stevens County Farm Bureau and member of Washington State Farm Bureau

COMMENT Supported adoption of rule proposal language with no changes.

RESPONSE Comment noted.

Maurice Williamson, Small Forest Landowner Advisory Committee

COMMENT Support rule as written, appreciated the effort by the agencies in relieving the small landowners in this onerous responsibility.

RESPONSE Comment noted.

Bob Playfair, Rafter-7 Ranch, Chewelah and Past President WFFA

COMMENT Expressed thanks to the Board for completing this rule making process.

RESPONSE Comment noted.

Ken Miller, WFFA

COMMENT Recommended approval of the rule as drafted. Commented that the process of culvert replacement is user friendly, the "worst-first" approach makes sense, and the checklist is easy to do without having to hire a biologist. Cautioned that culverts installed (under the Family Forest Fish Passage Program) may be over designed, but people are generally appreciative and happy with the new culverts.

RESPONSE Comment noted.

Tom Wynne

COMMENT Supported rule as written; commented that the pipe installed on his property (through the Family Forest Fish Passage Program) seemed to be over engineered, and two could possibly have been installed for the price of that one.

RESPONSE Comment noted.

Steve Pedersen, Lewis County Chapter of WFFA

COMMENT Supported adoption of rule proposal. Small forest landowners need the educational and cost-share components. Education and incentives are the best ways to maintain small forest ownerships as working forests; this provides for environmental benefit in the long term.

RESPONSE Small forest landowners may take advantage of several educational materials and opportunities:

- *Technical assistance in the alternate planning process.*
- *“Forest Practices Illustrated” (Once completed this will be a user-friendly publication on how to protect public resources).*
- *“Road Maintenance and Abandonment for Small Forest Landowners” (brochure).*
- *Road maintenance and abandonment workshops.*
- *Annual workshops given by the DNR Small Forest Landowner Office (SFLO), the DNR Stewardship Program, WSU Extension to give information to small forest landowners about regulation, financial and technical assistance programs, and silvicultural practices in riparian areas.*
- *Bi-monthly e-mail newsletter containing the latest information of potential interest to small forest landowners.*
- *Comprehensive website that provides educational information and important links to useful information (<http://www.dnr.wa.gov/sflo/>).*
- *Presentations at Washington Contract Loggers Association trainings.*
- *SFLO presentations at Washington Farm Forestry Association meetings.*
- *Updated Forest Practices Board Manual, Section 3, “Guidelines for Forest Roads” (planned for Forest Practices Board approval in 2006).*

Keith Wyman, Skagit River System Cooperative

COMMENT Judging from the number of fish barrier fixes funded in 2004 and 2005 (Small Forest Landowner Office 2005 Legislative Briefing) and the estimated number of barriers that need fixing on lands owned by small businesses (Economic Analysis, Rule Making for Small Forest Landowner Road Maintenance and Abandonment Planning), it would take about 183 years to finish fixing the fish passage problems on small forest land ownerships. Relying on 2008 and 2013 legislative check-ins and “ongoing compliance monitoring and monitoring for the adaptive management program” for mitigation (draft EIS, p. S-6) is a very poor replacement for the RMAP program developed in the Forests and Fish rules. Will this new information on the scope of small forest landowner exemptions be used in the final economic and environmental analyses?

RESPONSE The draft environmental analysis does take into consideration the scope of the exemptions described in the economic analysis. It concludes that the rule proposal poses a probable increased risk to water quality and aquatic resources from sediment associated with runoff, and also an increased risk that some fish passage barriers on small forest landowner properties will not be resolved by 2016.

In 2003, the Legislature determined that it is in the state's interest to alleviate the disproportionate impact of the rules on small forest landowners and to assist them in complying with rules related to road maintenance planning (SSHB 1095, Sec. 1). The legislation effectively shifted a portion of the cost of rule compliance from the landowner to the state.

Therefore, because adequate funding is key to the rate of fixing fish passage barriers, it will be a major element of the 2008 and 2013 reports to the Legislature. Other elements will be the effectiveness of the checklist approach for small forest landowners and the state's accomplishments in assisting small forest landowners in complying with the rules.

COMMENT The final EIS should provide an analysis for all of the Forests and Fish Report covered lands. Chapter 3 of the draft EIS does a very inadequate job of attempting to quantify the amount of forest lands affected by this proposed rule package (Table 3.1-1, p. 3-5). The four sample counties may or may not be representative to the rest of the state, but it shows that a substantial amount of lands affected by the proposal (roughly estimated at 36%).

RESPONSE As was noted on page 3-3 (section 3.1.2) of the DEIS, this is a non-project, or programmatic EIS. The location and acreage of the lands to which these rules apply will change over time, as owners make decisions to sell land, harvest trees, and grow trees. The best available data were used as an index to compare the relative differences among the alternatives. An explanation of the available data for the analysis can be found in section 3.1.1 and Appendix D of the draft EIS.

COMMENT The final EIS must, at a minimum, address the impacts to the proposed Forest Practices Habitat Conservation Plan's covered species and their habitats.

RESPONSE The proposed Forest Practices Habitat Conservation Plan (HCP) is a programmatic plan covering Washington State's regulation of forest practices. The legislatively mandated change to small forest landowners' road maintenance planning does not change the level to which landowners are regulated for covered species and their habitats and does not change the coverage of the proposed HCP.

COMMENT The final EIS should provide an analysis of the impacts to both listed and soon-to-be listed species.

RESPONSE The forest practices rules require increased protections for certain threatened and endangered species. The rule proposal does not affect those protections. As species affected by forestry become listed, they will be protected accordingly. Please see SEPA guidelines in chapter 222-10 WAC, and specific rules for threatened and

endangered species under the critical habitat definitions in WACs 222-16-080, -085, -086, -110, and -105. Also the riparian rules in chapter 222-20 WAC were developed to protect threatened and endangered species.

Jeannette Barreca, Department of Ecology (DOE)

COMMENT Table 3.2-1 (p. 3-9), Washington State Water Quality Standards for Sediment-related Parameters, should have used more recent information. (Note: DOE provided this information.)

RESPONSE The updated table will replace Table 3.2-1 in the final EIS.

COMMENT In Section 3.3.2.1 Riparian Functions, first paragraph, second sentence: add “significantly”: “Preliminary analysis indicated that road maintenance and road maintenance planning would not significantly affect LWD potential, leaf and needle litter recruitment potential, stream shade, or nutrients because maintenance of existing roads would not change the footprint of the road prism.”

COMMENT In Section 3.3.2.1 Riparian Functions, second paragraph, first sentence: add “shallower warmer streams”: “The delivery of fine and coarse sediment to streams can lead to shallower, warmer stream channel instability, pool filling by coarse sediment, creation of spawning gravels, or introduction of fine sediment to spawning gravels.”

RESPONSE The suggested changes have been incorporated into the final EIS. The sentence has been revised to read as follows: “The delivery of fine and coarse sediment to streams can lead to stream channel instability, pool filling by coarse sediment, decreased stream depth and increased water temperature, creation of spawning gravels, or introduction of fine sediment to spawning gravels.”

Toby Thaler, Washington Forest Law Center

COMMENT DNR has not explored any alternatives that would comply with the intent of SSHB 1095 and also provide the reduced level of risk to aquatic resources intended by the Forests and Fish Report.

RESPONSE Given the prescriptive nature of SSHB 1095, the alternatives analyzed were believed to be within the range of the Forest Practices Board’s decision-making authority.

COMMENT The draft EIS states that it does not reanalyze the alternatives presented in the draft EIS for the Forest Practices HCP, yet none of the alternatives in the draft EIS for the Forest Practices HCP considered different assurances for small landowners as a result of the significantly different levels of risk resulting from the Legislature’s mandates. We suggest that removing the small landowners from the proposed Forest Practices HCP is an alternative that would meet the requirement of SEPA.

RESPONSE Removing small forest landowners from coverage in the Forest Practices HCP would not have been a feasible alternative because the Legislature directed the Board to modify the RMAPs rules for small forest landowners. According to RCW 76.09.370(6), the Forests and Fish rules may be changed only under three scenarios: subsequent legislation, adaptive management, or court order (RCW 76.09.370(6)). In

2003, the Legislature exercised its prerogative to amend the Forests and Fish rules pertaining to small forest landowners' RMAPs when it passed SSHB 1095.

If finalized, the HCP will cover the Forests and Fish rules as they currently exist, and as they are changed in the future per RCW 76.09.370(6).

COMMENT There is no discussion in the draft EIS that the likelihood of "higher risk" of adverse impacts will delay compliance with the Forests and Fish Report's goal of meeting surface water quality standards. A "check-in" with the Legislature in 2008 and 2013 is used as mitigation in the same paragraph as the admission that there is not likely to be sufficient funding to solve the problem (draft EIS, p. 3-36). To give the Forest Practices Board, the Legislature, and the public full disclosure of the consequences of SSHB 1095, DNR should display in the EIS the likelihood that this proposed rule change will reduce the state's ability to meet surface water quality standards.

RESPONSE It would be premature to conclude in the EIS that the state's ability to meet surface water standards will be reduced due to the change in planning requirements mandated by SSHB 1095. The legislation did not change the expectation that water quality standards will be met. It did, however, shift some of the cost burden associated with resource protection to the public (RCW 76.09.410).

DNR's approach to ensure resource protection is to: 1) Exercise enforcement authority on all lands subject to the forest practices rules (i.e., not only lands covered by forest practices applications); 2) produce and distribute a variety of education and outreach materials on forest road maintenance and fixing fish barriers; and 3) obtain adequate funds for technical assistance and cost-share programs.

The information the state obtains through its administrative processes, Forests and Fish Cooperative Monitoring Evaluation and Research committee (i.e., scientific) projects, and reaching landowners through educational and technical assistance will be helpful in producing the 2008 and 2013 reports to the Legislature. The reports will provide evidence as to whether water quality standards are being met in light of the changes mandated by SSHB 1095.

Other comments

Darlene Hajney, Okanogan County Farm Bureau

COMMENT The Upper Columbia Salmon Recovery Plan effort would benefit if DNR would communicate with the group about the conflicting messages about Washington forest practices regulation. The plan indicates forest practices regulations do not adequately protect endangered species, however, press releases from Doug Sutherland and the Governor's office state that Washington has the highest forest practices protection in the U.S.

RESPONSE Thank you. This is not within the scope of the rule making or the associated environmental and economic analyses.

Prepared by Gretchen Robinson, Forest Practices Division, May 2006