

Administrative Procedures – Final Proposed Rule Coversheet**Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont

W Marti, on 8/23/16
(signature) (date)

Printed Name and Title:

Deb Markowitz, Secretary
Agency of Natural Resources

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

15P-063

3. ADOPTING AGENCY:

Agency of Natural Resources; Department of Forests, Parks and Recreation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Meghan Purvee

Agency: Agency of Natural Resources; Department of Forests, Parks and Recreation

Mailing Address: 1 National Life Drive, Davis 2
Montpelier, VT 05620-3801

Telephone: 802 272 - 7870 Fax: 802 828 - 1399

E-Mail: meghan.purvee@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://anr.vermont.gov/forests-parks-rec>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Steve Sinclair

Agency: Agency of Natural Resources; Department of Forests, Parks and Recreation

Mailing Address: 1 National Life Drive, Davis 2
Montpelier, VT 05620-3801

Telephone: 802 233 - 7541 Fax: 802 828 - 1399

E-Mail: Steve.Sinclair@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. 2622 (a) and (b) and 10 V.S.A 1259 and 3 V.S.A. 2853(5).

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

13. CONCISE SUMMARY (150 WORDS OR LESS):

This is a proposed amendment to state rule 87-038; "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont." Effective Date: August 15, 1987; C.V.R. 12-020-010. The proposed amendment establishes practices for loggers and forest landowners to follow to protect water quality just prior to, during and immediately after logging. AMPs are intended to prevent discharges of sediment, hazardous materials such as petroleum products, logging slash and logging debris from entering streams and other waters. There are specific AMPs for truck roads, skid trails, stream crossings, stream buffers and log landings.

14. EXPLANATION OF WHY THE RULE IS NECESSARY:

Act 64 of 2015: An act relating to improving the quality of State waters, requires the Commissioner of Forests, Parks and Recreation to amend the rule. The

amended rule will provide for a higher level of forest water quality protection by enhancing standards for improving stream crossing practices and controlling runoff from forest roads and trails. These are areas needing improvement as documented through the AMP Monitoring Program and the 2012 Vermont Timber Harvesting Assessment. These enhanced protective measures will be incorporated into the EPA Lake Champlain TMDL Plan to meet required phosphorus load reductions attributed by forestland.

15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

VT Agency of Natural Resources, Department of Forests, Parks and Recreation, loggers, forest landowners, consulting foresters, and others associated with timber harvesting.

16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):

There will be minimal additional economic impact to small business over the existing rule. Forest landowners and loggers are responsible for implementing AMPs on logging operations to protect water quality. Thus, both parties are responsible for costs associated with AMP implementation and maintenance. Loggers generally bear the cost of implementing AMPs just prior to, during and immediately after logging. Landowners are responsible for maintaining AMPs and bear the cost associated with those efforts after a logging operation is completed. The final proposed rule rule includes enhancements to existing AMPs that may result in a minimal economic impact associated with minimal increase in cost. Revisions in the final proposed rule have addressed some minor economic concerns expressed by the public. The economic impact over the initial proposed rule has been reduced and remains minimal.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 1/26/2016

Time: 05:00 PM

Street Address: Lyndon State College - Burke Mountain Room
1001 College Road, Lyndon, VT

Zip Code: 05851

Date: 1/28/2016

Time: 05:00 PM

Street Address: University of Vermont Extension Office
327 US Route 302, Berlin, VT

Zip Code: 05641

Date: 2/2/2016

Time: 05:00 PM

Street Address: Howe Center - Rail Room
1 Scale Avenue, Rutland, VT

Zip Code: 05701

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

2/16/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Acceptable Management Practices

Logging

Water Quality

Logging Jobs

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont .

2. ADOPTING AGENCY:

Agency of Natural Resources; Department of Forests, Parks and Recreation

3. AGENCY REFERENCE NUMBER, IF ANY:

87-038; C.V.R. 12-020-010

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

87-038 Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont. Effective date: August 15, 1987

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont

W. Markowitz, on 9/23/16
(signature) (date)

Printed Name and Title:

Deb Markowitz, Secretary
Agency of Natural Resources

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont

2. ADOPTING AGENCY:

Agency of Natural Resources; Department of Forests, Parks & Recreation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

VT Agency of Natural Resources and Department of Forests, Parks & Recreation, loggers, forest landowners, foresters and others associated with timber harvesting.

The adoption of this final proposed rule over the existing rule will provide greater clarity for when rules apply, how to implement the practices, and the intent of various practices. The outcomes of the practice implementation was stressed in the final proposed rule as a measure of implementation, while offering greater flexibility in the specifics of practice implementation that are independent of outcomes. For example, the requirement that "waterbars shall be correctly installed to divert the surface water runoff into a filter area" identifies the purpose and function of a waterbar to divert water into a filter area to avoid discharges without prescribing specific details of implementation such as depth, width or angle degree of the waterbar. The costs associated with AMP implementation required by this final proposed rule are justified by the discharges to waters that they prevent and water quality they maintain.

Changes made to the initial proposed rule provide further clarity and flexibility while increasing the accountability to outcomes that will reduce discharges of sediment to water.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

There should be no impact on public education or schools from the changes to the regulations.

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The economic impact of the existing rule is comparable for both the initial proposed rule and final proposed rule. If the existing Rule was repealed, landowners and loggers would be required to obtain a discharge permit and/or a stormwater permit to comply with the Federal Clean Water Act, the Vermont Water Pollution Control statute, Chapter 47 of the Vermont Statutes Annotated and Vermont's Water Quality Standards. The Federal Clean Water Act, as amended in 1977, specified under Section 208, that States must reduce silvicultural non-point source (NPS) pollution. As a result, states developed management practices to follow for protecting forest water quality when conducting logging operations. State programs for protecting forest water quality fall under two general categories - voluntary or regulatory. Vermont's program is considered regulatory since the AMPs and the Vermont Water Quality Standards have been adopted as Rules.

There should be minimal economic impact to small businesses as a result of this amended rule. The initial proposed rule included changes that enhanced standards for improving stream crossing practices and controlling runoff from forest roads and trails. Implementing these practices would result in minor additional costs to loggers and landowners. Following public input, the initial proposed rule was changed in the following ways:

Introduction and Applicability sections are revised

Definitions revised: AMP, Broad-based dip, Drainage ditch, Drainage structure, Gully erosion, Check dam, Logging equipment, Logging slash, Rut, Silt fence, Temporary stream crossing structure, top-of-bank, Turn-up, Waterbar.

AMPs revised: 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.2.1, 6.3.1, 6.3.2, 6.4.1, 6.4.2, 6.5.2, 6.5.4, 6.5.6, 6.5.7, 6.5.8, 6.6.1, 6.6.2, 6.7.1, 6.7.2, 6.7.3, 6.8.1, 6.9.1, 6.9.2, 6.10.1, 6.11, 6.126.14

These changes from the initial proposed rule provide more flexibility in road and trail placement where ground conditions

are limiting, clarify acceptable activities in the buffer, broaden definitions to allow for more flexibility in practice implementation while in some cases, narrowing or clarifying the measure of successful outcomes. The amendment of the existing rule would have minor economic impacts on small businesses, and the changes in the final proposed rule further reduce the impacts.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

The burden of the proposed rule over "no rule" are associated with costs (planning time, usually labor and equipment time and minor materials costs) borne by loggers, landowners and foresters. These costs are necessary to conduct harvests in such a way as to disperse water from roads and landings and prevent discharge to streams and other waters. Where burdens do exist they are justified by the protection afforded to water quality. The burden imposed on small businesses by the final proposed rule over the existing rule is minimal. The revisions made to the initial proposed rule have been made in response to concerns expressed by the public and the changes further reduce the burdens to small businesses by creating reasonable exceptions or altering condition requirements of certain practices without changing the required outcomes of protection of water quality by preventing or reducing discharges associated with logging operations.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

a. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):

No impact.

b. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND /OR AGRICULTURAL LAND."):

The rule supports Vermont's goals of sustaining a working forest landscape.

c. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., “THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS.” OR “THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION.”):

No impact.

d. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., “THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS.” OR “AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A ‘METHANE TO ENERGY PROJECT’.”):

No impact.

e. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

No impact.

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont

2. ADOPTING AGENCY:

Department of Forests, Parks and Recreation, Agency of Natural Resources

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Input was solicited within ANR and FP&R through the establishment of a technical advisory group as well as seeking comments and review of early drafts of the proposed rule amendment. Also, a series of four private stakeholder meetings were conducted to solicit public input prior to finalizing the proposed amendment and initiating state rule-making. Input was received and incorporated into the initial proposed rule. The initial proposed rule and rulemaking forms were posted on the FP&R and ANR websites. Three public meetings were held around the state. There was an expanded public comment period for 30 days after the last public hearing. The final proposed rule, responsiveness summary and rulemaking forms will be posted on the ANR and FPR websites.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Input was incorporated into the initial proposed rule from FP&R, DEC, F&W, Vermont Agency of Natural Resources, Vermont Forest Products Association, Associated Industries of Vermont, Vermont Woodland Owners Association, Vermont Natural Resources Council, Vermont Forest Roundtable, Green Mountain National Forest, USDA Forest Service Northeastern Area State & Private Forestry, Vermont Natural Resource Conservation Service, Vermont Family Forests, Windham County Regional Planning.

Administrative Procedures – Scientific Information Statement

Instructions:

In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

This form is only required when a rule relies on scientific information for its validity.

1. TITLE OF RULE FILING:

Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont

2. ADOPTING AGENCY:

Agency of Natural Resources; Department of Forests, Parks and Recreation

3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

Vermont's water quality management practices are largely based on research conducted by the eastern U.S. Forest Service Research Stations. Research started in the late 1950's and is presently being continued on the Fernow Experimental Forest in West Virginia, Coweeta Hydrologic Laboratory in North Carolina and Hubbard Brook Experimental Forest in New Hampshire. Guidance and recommendations that have resulted from this research can be found in the current water quality regulations of many state agencies, including Vermont. They address principles of water resource protection including 1) planning the operation, 2) controlling water flow, 3) stabilizing disturbed soil, 4) managing chemical pollutants and 5) minimizing biological impacts.

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

Selected citations include but are not limited to the following:

Hausman, R.F. and Pruett, E.W. Permanent Logging Roads for Better Woodlot Management, 1973, USDA Forest Service, State and Private Forestry, Upper Darby, Pennsylvania.

Kochenderfer, J.N., Erosion Control on Logging Roads in the Appalachians, Research Paper NE-158, 1970, USDA Northeastern Forest Experiment Station, Upper Darby, Pennsylvania.

Landowner's Guide to Building Forest Access Roads; Richard L. Wiest; USDA Forest Service, Northeastern Area State and Private Forestry; NA - TP - 06 - 98, Radnor PA July 1998

Filter Strip Widths for Forest Roads in the Southern Appalachians, 1986, Lloyd W. Swift, Jr., USDA Forest Service,

Southeastern Forest Experiment Station, Coweeta Hydrologic
Laboratory, Otto, NC 28763.

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE
SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

Contact Vermont Department of Forests, Parks and Recreation,
Forestry Division: (802) 828-1531