

COST-BENEFIT ANALYSIS
Pursuant to RCW 34.05.328
Forest Practices Board

Unstable Slopes Information in Forest Practices Applications
Department of Natural Resources
January 2015

Introduction

The Forest Practices Board is proposing rule amendments related to information in forest practices applications (FPAs). The Administrative Procedure Act (chapter 34.05 RCW) requires agencies to make certain determinations before adopting rules. This document is structured generally to fulfill agency requirements listed in [RCW 34.05.328\(1\)\(a\) through \(e\)](#), and small business impact per [chapter 19.85 RCW](#). In addition, parenthetical information that may interest readers is provided in endnotes at the end of the document.

Goal and Need

Before adopting rules, agencies are required to determine that rules are needed to achieve the general goals and specific objectives of the statute the rules implement.¹ In this case, the statute being implemented is RCW 76.09.060(1): *The department shall prescribe the form and contents of the notification and application. ...The information required may include, but is not limited to...Soil, geological, and hydrological data with respect to forest practices.* This statute establishes DNR’s authority to receive sufficient information to make regulatory decisions (approvals, disapprovals, and classification decisions) on FPAs.

The Board’s *Preproposal Statement of Inquiry* (CR-101) indicates that the proposed rule may be needed to clarify applicant expectations that DNR may require additional geotechnical information where unstable slopes and landforms exist in and around the areas of the FPA.² The subsequent CR-102 states the reason supporting the proposal is to ensure that applicants understand DNR may require geologic information prepared by a qualified expert if the information initially provided in an FPA is not enough information for DNR to determine the appropriate classification of the FPA.³ The goal of the rule proposal, then, is to clarify applicant expectations related to the possibility of DNR requiring additional geologic information if needed for its classification decision.

Although both statute and rule (RCW 76.09.060(1) and WAC 222-20-010(2)) state that DNR “...shall prescribe the form and contents of the notification and application...”, the Board determined there is a need to include specific language in rule to clarify that DNR may require additional geologic information related to unstable slopes and landforms prepared by a qualified expert¹, if DNR determines such information is needed to appropriately classify an FPA.

Rule Proposal

The rule proposal amends WAC 222-10-030 and WAC 222-20-010. The substantive content is in a new subsection (9) in WAC 222-20-010; the remaining amendments are minor editorial language clarifications which are not analyzed in this document. New subsection (9) explains that DNR may

¹ RCW 34.05.328(1)(b).

² CR-101 *Preproposal Statement of Inquiry*, filed May 21, 2014 and published in WSR 14-11-103.

³ CR-102 *Proposed Rulemaking*, filed November 14, 2014 and published in WSR 14-23-047.

require additional information, including information prepared by a qualified expert if necessary to appropriately classify an FPA:

- (9) **Where potentially unstable slopes or landforms are in or around the area of an application**, the department may require the landowner to provide additional information in order to classify the application appropriately. If necessary, the department may require additional geologic information prepared by a qualified expert. The department may request that the qualified expert explain the methods the qualified expert used to evaluate the proposed harvest or construction activities with respect to the potentially unstable slopes or landforms. Nothing in this subsection is intended to require a geotechnical report if the geologic information provided is sufficient to appropriately classify the application.
- (a) “Qualified expert” is defined in WAC 222-10-030.
- (b) “Potentially unstable slopes or landforms” are those listed in WAC 222-16-050(1)(d)(i)(A) through (E).

Alternatives to Rule Making, Consequences of Not Adopting a Rule, and Least Burdensome Alternative

Agencies must analyze alternatives to rule making and the consequences of not adopting a rule⁴, and must determine, after considering alternatives, that the rule being adopted is the least burdensome alternative for those required to comply with it.⁵ The Board is not considering alternative versions of the proposed rule, but there may be alternative ways to accomplish the Board’s goal, “clarifying applicants’ expectations.” Alternatives that may be considered are as follows:

Alternative 1: Adopt the proposed rule.

Alternative 2: Do not adopt the proposed rule.

Alternative 3: Do not adopt the proposed rule but accomplish the goal using another method.

Alternative 4: Adopt the proposed rule and accomplish the goal by another method.

- Alternative 1 would accomplish the goal.
- Alternative 2 would not accomplish the goal.
- Alternative 3 could accomplish the goal to some extent without adopting a rule because clarification language could be added to the FPA instructionsⁱⁱ to target affected applicants.
- Alternative 4 covers both modes of communication and would accomplish the goal to a greater extent than either Alternatives 1 or Alternative 3.

Alternative 4 may be the most effective method because it would reach prospective applicants who rely on the rules for their information, and also applicants who rely on the FPA instructions for their information.

In regard to the consequence of not adopting the rule, the rule is not needed to allow DNR to require information from landowners. DNR is currently authorized to require additional information per RCW 76.09.060(1) and WAC 222-20-010(2). However, the goal of the rule is not to establish authority but to clarify applicants’ expectations. If the Board were not to adopt the rule (Alternative

⁴ RCW 34.05.328(1)(b).

⁵ RCW 34.05.328(1)(e).

2), the goal to clarify expectations could still be accomplished by adding the clarifying language to the FPA instructions.

Regarding a “least burdensome alternative”, none of the listed alternatives would be more burdensome for applicants than DNR’s current FPA review process.

Benefit and Cost of the Rule

Before adopting rules, agencies must 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.⁶

For this rule, neither the benefits nor the costs can be evaluated quantitatively because it is a clarification of DNR’s FPA review process and does not change requirements for those required to comply with it.

Benefit: WAC 222-20-010(2) states generally that, “The department shall prescribe the form and contents of the notification and application...” The rule proposal points out that for certain types of applications, those that contain activities where potentially unstable slopes or landforms are in or around the area of an application, DNR may require information prepared by a qualified expert. This specificity is expected to benefit prospective applicants because it will put them on notice that if DNR cannot conclusively determine the class of an FPA with the information initially provided in and attached to the FPA, DNR will require additional information, including geologic information if necessary, prepared by a qualified expert to make the classification decision. It is important that applicants understand this possibility because of the potential cost to produce the information.ⁱⁱⁱ

Cost: Because DNR already requires information needed to appropriately classify an FPA, it is not expected that landowners will bear any additional costs due to the rule clarification itself.

Small Business Impacts

The Regulatory Fairness Act (chapter 19.85 RCW) requires state agencies to prepare a small business economic impact statement (SBEIS) for proposed rules if the rules will impose more than minor costs on businesses in an industry.⁷ The purpose of the SBEIS is to look at how a rule might impact small businesses. When cost impacts are identified the agency must try to find ways to reduce those impacts.

As stated under “Costs”, the rule is not expected to impose additional costs on forest landowners because it is a clarification of existing rule and does not change DNR’s FPA review process. Therefore, the proposed rule does not meet the threshold of imposing more than minor costs on businesses, and an SBEIS is not required.

Summary

Goal of the rule proposal

The Board’s goal in adopting the rule proposal is to clarify applicant expectations related to the possibility of DNR requiring additional geologic information if needed for its classification decision. The proposed rule language supplements the existing language in WAC 222-20-010(2) by

⁶ RCW 34.05.328(1)(d).

⁷ RCW 19.85.030.

specifying that DNR may require additional geologic information prepared by a qualified expert in order to classify the FPA appropriately.

Alternatives to rule making and consequence of not adopting a rule

An alternative method to accomplish the Board's goal could be to add similar clarification language to FPA instructions and perhaps also on forest practices web pages. This would direct the information to the subset of applicants it would most likely affect. However, some prospective applicants may rely more on the rules for their information than on FPA instructions. For that reason, the consequence of not adopting the rule may be that this subset of prospective applicants will not be adequately informed. The most effective way to reach the targeted audience, therefore, may be to both adopt the proposed rule and to add the information to the FPA instructions to assure that as many applicants as possible receive the information.

Benefit and cost of the rule proposal

It is expected that adding specific clarifying language to WAC 222-20-010 regarding geologic information will be beneficial for prospective applicants. It would put landowners on notice that they may be required to supply additional geologic information prepared by a qualified expert if DNR cannot conclusively determine the class of an FPA with the information initially provided in and attached to the FPA.

It is not expected that landowners will bear additional costs due to the rule clarification itself because DNR's application review process already allows for requiring additional information, including the geologic information needed to appropriately classify an FPA.

ⁱ "Qualified expert" is defined in WAC 222-10-030(5): *Qualified expert...means a person licensed under chapter 18.220 RCW as either an engineering geologist or as a hydrogeologist (if the site warrants hydrogeologist expertise), with at least three years of field expertise in the evaluation of relevant problems in forest lands.*

ⁱⁱ Current Forest Practices Application and Notification Instructions can be found on DNR's website at http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesApplications/Pages/fp_forms.aspx

ⁱⁱⁱ According to DNR staff, the cost of information prepared by a qualified expert ranges from \$500 to \$1000 for memoranda or letters (in which the qualified expert explains how the proposal avoids impacts), to \$2000 to \$5000 for full geotechnical analyses. WFPA estimates the average cost for a geotechnical report is closer to \$10,000 (see comment letter 15-05). DNR estimates that it requires such additional information on less than three percent of FPAs that include timber harvest and construction where potentially unstable slopes exist, and that are not initially submitted with geologic information prepared by a qualified expert.