



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Forest Practices Board

- | | |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 14-11-103 ; or | <input checked="" type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: (Describe Subject)

The rule proposal, "Unstable Slopes Information in Forest Practices Applications", amends WAC 222-10-030 and WAC 222-20-010.

Hearing location(s):
 Natural Resources Building
 1111 Washington Street SE, Room 172
 Olympia, Washington

Date: January 7, 2015 Time: 4:00 p.m.

Date of intended adoption: February 10, 2015
 (Note: This is **NOT** the **effective** date)

Submit written comments to:
 Name: Patricia Anderson, DNR
 Address: P.O. Box 47012
 Olympia, WA 98504-7012
 e-mail forest.practicesboard@dnr.wa.gov
 fax (360) 902-1428 by (date) January 8, 2015

Assistance for persons with disabilities: Contact
 Forest Practices Division at 360-902-1400 by December 31, 2015
 TTY (360) 902-1125

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose is to inform prospective applicants that the Department of Natural Resources (DNR) will require specific geologic information prepared by a qualified expert, if DNR needs it to appropriately classify Forest Practices Applications (FPAs) per WAC 222-16-050. This applies to FPAs that include proposals where potentially unstable slopes or landforms are on or around the area of an FPA.

Reasons supporting proposal:

The Board is considering adding this clarification to chapter 222-20 WAC, Applications and Notifications, to ensure applicants understand that 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.

Statutory authority for adoption: RCW 76.09.040

Statute being implemented: 76.09.060(1)

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

DATE
 November 13, 2014

NAME (type or print)
 Aaron Everett

SIGNATURE

TITLE
 Chair

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: November 14, 2014
TIME: 9:49 AM

WSR 14-23-047

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Forest Practices Board

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Marc Engel	1111 Washington Street SE, Olympia	(360) 902-1390
Implementation.... Donelle Mahan	1111 Washington Street SE, Olympia	(360) 902-1405
Enforcement..... Chris Hanlon-Meyer	1111 Washington Street SE, Olympia	(360) 902-1398

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

The rule proposal is not expected to impose additional costs on businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Gretchen Robinson

Address: 1111 Washington Street SE
Olympia WA 98504-4012

phone (360) 902-1705

fax (360) 902-1428

e-mail gretchen.robinson@dnr.wa.gov

No: Please explain:

WAC 222-10-030 *SEPA policies for potentially unstable slopes and landforms. In addition to SEPA policies established elsewhere in this chapter, the following policies apply to forest practices described in WAC 222-16-050 (1)(d) relating to construction or harvest on potentially unstable slopes or landforms.

(1) In order to determine whether such forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit the following additional information, prepared by a qualified expert as defined in subsection (5) of this section. The qualified expert must describe the potentially unstable landforms in and around the application site and analyze:

(a) The likelihood that the proposed forest practices will cause movement on the potentially unstable slopes or landforms, or contribute to further movement of a potentially unstable slope or landform;

(b) The likelihood of delivery of sediment or debris to any public resources, or in a manner that would threaten public safety; and

(c) Any possible mitigation for the identified hazards and risks.

(2) The department's threshold determination will include an evaluation of whether the proposed forest practices:

(a) Are likely to increase the probability of a mass movement on or near the site;

(b) Would deliver sediment or debris to a public resource or would deliver sediment or debris in a manner that would threaten public safety; and

(c) Such movement and delivery are likely to cause significant adverse impacts.

If the department determines that (a), (b) and (c) of this subsection are likely to occur, then the forest practice is likely to have a probable significant adverse impact.

(3) The department will evaluate the proposal, using appropriate expertise and in consultation with other affected agencies and Indian tribes.

(4) Specific mitigation measures or conditions must be designed to avoid accelerating rates and magnitudes of mass wasting that could deliver sediment or debris to a public resource or could deliver sediment or debris in a manner that would threaten public safety.

(5) Qualified expert for the purposes of this section (~~and for~~), reanalysis of watershed analysis mass wasting prescriptions under WAC 222-22-030, and preparation of requested geologic information under WAC 222-20-010(9), means a person licensed under chapter 18.220 RCW as either an engineering geologist or as a hydrogeologist (if the site warrants hydrologist expertise), with at least three years of field experience in the evaluation of relevant problems in forested lands.

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of ~~((the))~~ notifications and applications ~~((, which))~~. The department shall specify ~~((what))~~ the information ~~((is needed))~~ required for a notification, and the information required for the department to approve or disapprove ~~((the))~~ an application.

(3) **Except as provided in subsection (4) of this section, applications and notifications** shall be signed by the landowner, the timber owner, and the operator ~~((, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3))))~~.

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner ~~((or accompanied by a consent form, as outlined in subsection (3) of this section))~~, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the** approved application or notification to a new landowner, timber owner or operator requires written notice by the former landowner or timber owner to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature, the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any

change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) The landowner or timber owner must provide notice of hiring or change of operator to the department within forty-eight hours of the change. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

(8) **Applications and notifications**, if complete, will be considered officially received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. The department will immediately provide a dated receipt to the applicant. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the Columbia River Gorge National Scenic Area Act (CRGNSA) special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within forty-five days.

(b) A complete environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local governmental entity clearing and/or grading permit is necessary information for all Class IV applications on lands that will be converted to a use other than commercial timber operations if the local governmental entity has jurisdiction and has an ordinance requiring such permit.

(d) A checklist road maintenance and abandonment plan is necessary information for all small forest landowners' applications or notifications for timber harvest (including salvage), unless exempt under WAC 222-24-0511, or unless the application is a small forest landowner long-term application which requires a roads assessment.

~~((8) **An operator's name**, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within forty eight hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.))~~

(9) Where potentially unstable slopes or landforms are on or around the area of an application, the department may require the landowner to provide additional geologic information prepared by a qualified expert in order to classify the application appropriately. The information shall include an explanation of how the qualified expert evaluated the proposed harvest or construction activities with respect to the potentially unstable slopes or landforms. This information is for classification purposes only.

(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).

(10) **Financial assurances** may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.