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NATURAL  
RESOURCES

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## MEMORANDUM

**Date:** April 26, 2023  
**TO:** Forest Practices Board  
**FROM:** Saboor Jawad, Forest Regulation Division Manager <sup>A-SJ</sup>  
**SUBJECT:** Alternative to Pilot Rule Making: Scientific Research as a Forest Practice

The Board approves pilot rules<sup>1</sup> allowing landowners to selectively deviate from specific elements of forest practices rules – pilot rules have been primarily approved for Adaptive Management Program (AMP) studies. The AMP Administrator develops pilot rule requests and brings them forward for Board review and approval. This process, while regularly used in the AMP, may not be available, known or used by researchers outside the program. When approving a recent AMP request for pilot rules, the Board Chair directed<sup>2</sup> staff to explore alternatives to pilot rules for scientific research. This memo presents one such alternative. If adopted through expedited rule-making, this option may encourage more research in forestry even if the process of pilot rules may not be the only reason for limited forestry research in Washington.

Staff recommends that the Board recognize scientific research as a Class III forest practices activity alongside the nineteen other activities listed under Class III forest practices in [WAC 222-16-050\(5\)](#). RCW [76.09.050](#) establishes four classes of forest practices. The same statute authorizes the Board to include, by rule, specific forest practices in each of the four classes. The Board's intent of promoting more forestry research could be achieved through negotiated rule-making<sup>3</sup> that would add scientific research as a Class III forest practice. An entirely new class of research forest practices or a new experimental harvest rule may not be necessary or may require legislation. To limit risks to public resources and safety, all Class IV triggers would still apply. These triggers, among others, include: forest practices on designated lands (critical habitats); unstable slopes; archaeological sites; likelihood of conversion; aerial application of pesticide. Class IV applications require environmental checklist and, if needed, a detailed environmental statement and/or additional information.

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<sup>1</sup> Administrative Procedures Act ([RCW 34.05.313](#)): Feasibility studies – Pilot projects

<sup>2</sup> The Board passed the following motion at their February 2023 regular meeting: "Meghan Tuttle moved the Forest Practices Board request the Chair to direct staff to research alternatives to pilot rule making for research studies including but not limited to research FPAs"

<sup>3</sup> To encourage agencies to reach agreement among interested parties in the development of rules, the Legislature established the opportunity for negotiated rulemaking (RCW 34.05.310(2)(a))

Researchers would need to submit a Forest Practices Application (FPA) to be reviewed and approved by the Department of Natural Resources (DNR) within thirty days. To be approved by DNR, however, applications must establish research intent and meet a Board approved criteria for scientific research. Staff will bring forward a recommended criteria for scientific research for Board review and approval at the Board's November 2023 regular meeting. In addition to meeting a criteria defining scientific research, the research FPA would also need to:

- Submit a complete study design, preferably independently reviewed, along with a statement of potential impact, and, if applicable, an approval of a research ethics committee
- Proposed mitigation measures especially if resource damage would continue after activity completion
- Clearly identify the forest practices rules from which the project intends to deviate for purpose of conducting scientific research
- List all other FPAs participating in the scientific research – additional information would also be needed to highlight harvest unit acreage; affected stream length by stream type; and etc.
- Landowner agreement allowing DNR and researchers access to harvest site and/or the area of research

To amend [WAC 222-16-050\(5\)](#), staff recommends the following process and timelines– this timeline considers current staff workload which includes two rule makings and numerous Board manual updates through the stakeholder consultation process.

- 1- The Board can rely on [RCW 34.05.310](#) to initiate negotiated rule making and, if successful, file notice of expedited rule-making under [RCW 34.05.353](#)
- 2- The negotiation process will also highlight other WACs that may also need to be amended
- 3- At the November 2023 regular meeting, staff would request Board approval of a criteria for scientific research and request the Board's approval to initiate negotiations with interested and affected parties by forming a stakeholder consultation group
- 4- At the August 2024 regular meeting, staff will bring forward negotiated rule language for expedited rule-making by the Board; or
- 5- Staff will submit a report to the Board if interested parties, at the end of negotiations process, remained unsupportive of the rule amendment. The Board may then consider normal rule making through the filing of CR101, CR102 and CR103.

Amending WAC 222-16-050(5) to include scientific research as a Class III forest practice is a better alternative to the current process of pilot rule requests. To avoid risks and misuse, a clear set of criteria defining scientific research would be needed along with other review and approval conditions. This alternative is very likely to meet the Board's intent of promoting scientific research in forestry by making the process accessible, efficient and timely. Under this option, DNR will continue to monitor this rule for compliance and periodically report to Board on its use by researchers.

Please reach out to me by email ([saboor.jawad@dnr.wa.gov](mailto:saboor.jawad@dnr.wa.gov)) or phone (360-742-7130) if you have any questions or need more information.