

ECONOMIC ANALYSIS
Forest Practices Rule Making
Small Forest Landowner Long-term Applications
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April 9, 2007

INTRODUCTION

This is an analysis of the economic impacts of a Forest Practices Board rule proposal. If adopted, the proposed rule would authorize the Department of Natural Resources (DNR) to approve small forest landowners' forest practices applications for terms of up to 15 years. Included are the cost-benefit analysis required by the Administrative Procedure Act (chapter 34.05 RCW) and the small business economic impact statement required by the Regulatory Fairness Act (chapter 19.85).

The purpose of the cost-benefit analysis (CBA) is to:

- . . . (d) 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;*
- (e) Determine, after considering alternative versions of the rule . . . that the rule being adopted is the least burdensome alternative for those required to comply with it . . .*

A preliminary CBA must be completed before the rule is distributed for public review, and a final CBA must be available when the rule is adopted.

The purpose of the small business economic impact statement (SBEIS) is to reduce ". . . the disproportionate impact of state administrative rules on small business . . ." An agency must complete an SBEIS prior to distributing a rule proposal for public comment.

RULE PROPOSAL

Need for Proposed New Rule

Under existing forest practices rules, approved applications are effective for two years, or up to five years if the activities are within an area of an approved watershed analysis (WACs 222-20-015 and -080). Small forest landowners have expressed that these short effective terms do not give them adequate flexibility to adjust the timing of forest practices based on unforeseen changes in market, personal or other conditions.

In order to facilitate flexibility in the timing of their forest practices activities, the Forest Practices Board is considering forest practices application effective terms of up to 15 years for small forest landowners as defined in WAC 222-21-010(13).

Summary of Proposal Relevant to Economic Analysis¹

WAC 222-12-035 is a new WAC that authorizes the Department of Natural Resources (DNR) to receive, and approve or disapprove long-term forest practices applications from small forest landowners for activities on any portion of their ownerships. Landowners who intend to convert land use to anything other than commercial timber production would not be eligible for this option. An approved long-term application would be effective for a term of three to fifteen years at the discretion of the landowner. As is true for applications with two to five year effective terms, long-term applications may include alternate plans. (A description of the alternate plan process can be seen in WAC 222-12-0401. The proposed rule making does not change the alternate plan process.)

WAC 222-20-016 is a new WAC that describes a two-step application process, stipulates a five-day notice requirement prior to conducting approved activities, and describes circumstances under which approved long-term applications may be amended. When the Forest Practices Board considers new or amended forest practices rules to achieve resource protection objectives, DNR, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes, will review and analyze the effects of existing approved long-term applications on the public resources the proposed rules are intended to protect. DNR will report the results to the Board prior to rule adoption. The proposed rule is explicit that the Board may (or may not) condition existing approved long-term applications to protect said resources. This is not a change from the Board's current authority for approved applications with shorter terms.

All other rule amendments in the proposal either support the new application option for small forest landowners or are included to provide clarity in existing rules and processes.

ECONOMIC ANALYSIS

Economic analysis of the effects of the proposal focuses entirely on direct effects. Secondary and subsequent effects, for example, changes in the demand for goods and services resulting from the direct effects, may be positive or negative and are highly speculative, and therefore have not been included in the analysis.

This analysis evaluates the expected economic change from existing rules to the proposed rule. The proposal provides an alternative or option to small forest landowners not currently available. It does not place a new requirement on landowners, and does not impose additional costs on them.

Preliminary Cost-Benefit Analysis

Costs for the user community, i.e., small forest landowners and agencies, are described separately below.

¹ This summary is provided for the convenience of the reader and should not be relied upon as a complete list of all changes.

Costs for Small Forest Landowners

There are two types of potential costs that should be considered for landowners who will utilize long-term application opportunity: Changes in cost of the application process and lost sales or revenue.

Changes in Costs of Application Process

It is expected that landowners will include more lands in 15-year applications than they would in two to five year applications. More lands and longer-term planning will require more extensive and complex resource assessments and prescriptions for conducting activities. It is likely that these landowners will feel a greater need to hire one or more consultants for long-term planning. These additional costs, however, cannot be quantified or estimated for this analysis because of a variety of variables. Depending on a landowner's level of expertise and the natural resources involved in the application, the landowner may feel it's necessary to have expert opinions on, for example, water typing, appropriate riparian zone delineation, or slope stability. Landowners not willing to pay such costs will have the option to operate under the existing short term rules if they determine that to do so is in their own best interest.

The cost of submitting long-term applications should be no more than the sum of the costs of submitting individual applications under existing rule. Furthermore, there may be economies of scale, i.e., net savings, to submitting forest practices applications under one rather than multiple short-term applications. Regardless, any additional costs landowners incur under the long-term application option are not mandatory requirements.

Lost sales or Revenue

The proposed new rule does not modify or restrict a landowner's ability to harvest and therefore is not expected to have a negative impact on sales or revenues. Furthermore, income potential may be greater because of the additional flexibility afforded to landowners in the timing of conducting activities. This should allow the landowner to take advantage of changes in market conditions.

Costs for Agencies

DNR, the Department of Ecology (DOE) and the Department of Fish and Wildlife (DFW) will have additional program development and training costs in the startup phases of this program. The Legislature has appropriated approximately \$2 million for fiscal years 2007-2009 for program development, coordination, outreach, and training activities targeting regulatory staff and landowners.

For routine application review there may initially be higher costs in staff time and travel. The application review process is divided into two steps: Review of the resource assessment and review of the management strategies proposed by the landowner. While reviewing the resource assessment, DNR, in consultation with DOE, DFW and affected tribes, will ensure all resources are appropriately identified. Also, some applications may include alternate plans which require interdisciplinary (ID) team review including representatives from these entities. While an influx of long-term applications is expected initially after the rule is adopted, it is unknown how many and for how long. Regardless, any higher costs for regulatory and reviewing agencies in the

short-term probably won't, in the long-term, exceed the sum of the costs of reviewing individual short-term applications and alternate plans under existing rule.

The proposal also includes an analysis prior to the Board adopting new or amended rules. It directs DNR, in consultation with DOE, DFW and affected tribes, to review and analyze the effects of existing approved long-term applications on the public resources the proposed new forest practices rules are designed to protect. This analysis will result in additional staff time during the rule making process. If the Board determines that approved long-term applications must be conditioned to protect resources, additional DNR staff time will be required to notify landowners in writing of those conditions.

Expected Benefit of Proposal

The primary benefit from this proposal is the increased flexibility available to landowners by allowing more time for responses to favorable market or other conditions. This flexibility should result in reduced cost and increased benefit to landowners.

The proposed new rule does not reduce the protection to public resources and therefore is not expected to impact the public benefits provided by those resources.

Least Burdensome Alternative

RCW 34.05.328(e) instructs agencies to determine in a cost-benefit analysis, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it and that it will achieve the general goals and specific objectives of the statute that the rule implements. In addition, the Forest Practices Act states that the forest practices rules must "promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies (in the rules) . . ." [RCW 76.09.010(2)(d)].

The purpose of the proposed rule is to reduce a small forest landowner's burden by reducing frequency of paper work, and increasing flexibility to conduct activities when market or other conditions are favorable. Alternatives to this approach could be to not provide longer application terms, or to restrict the terms to fewer than 15 years.

The small forest landowner user group has identified the shorter application terms of the existing rules as one of many disincentives to continuing forest management rather than selling their forest lands for other uses. The Forest Practices Board decided to provide this opportunity as an incentive to this group. The small forest landowners have expressed that 15 years is desirable for long-term planning. The Board has agreed to the 15-year term for the rule proposal.

As stated above, this rule would result in additional short term costs to the state for program development, coordination and training, of which the Legislature will have provided approximately \$2 million by 2009. The initial increased costs to landowners for long-term planning, and to regulatory and reviewing agencies for application review are unknown. However, over time these costs should not exceed the sum of the costs of planning for or reviewing individual short-term applications under existing rule.

The proposed rules were developed in collaborative discussions which included affected landowners, regulatory agencies, and tribes. Based on the nature of the collaborative rule development process, and the Board's intent to achieve the goal of decreasing the regulatory burden for small forest landowners, it is reasonable to conclude that the proposal is the desired, and "least burdensome" alternative for those required to comply with the new rule, that will achieve the general goals and specific objectives set by the Forest Practices Board.

Small Business Economic Impact Statement

The legislative intent of the Regulatory Fairness Act is to reduce "the disproportionate impact of state administrative rules on small business" (RCW 19.85.011). The concern is that rules that require reporting or other fixed compliance costs will have a disproportionate impact on small firms.

In this case, the cost to the business is related to the land ownership rather than the business size. The law defines "small business" as one having less than 50 employees, but there is no readily available information on the ownership of forest lands potentially impacted by the proposed rule. One useful designation for which information on ownership patterns is known is "small forest landowner", defined in the forest practices rules as one who harvests from their land an average of less than two million board feet per year.³ Although there are small businesses that own large acreages of forest land in Washington State, it is believed that there is a high correlation between small businesses and small forest landowners.

The possible costs to small business, i.e., small forest landowners, have been described above in the cost-benefit analysis. It is reasonable to conclude that the rule proposal does not adversely impact small businesses because it provides added flexibility to small landowners when it is in their self-interest, and it does not impose a mandatory requirement on small landowners.

CONCLUSIONS

The following conclusions can be drawn from this analysis:

1. **Costs of Proposal:** The proposed rule requires program development, coordination, training and additional analysis by DNR, other state agencies, and affected tribes. The cost of program development, coordination, and training will be approximately \$2 million. No attempt was made to determine the specific magnitude of the cost of additional analysis, but it is not believed to be significant. It is also reasonable to conclude that the rule proposal does not adversely impact landowners because it provides added flexibility to small landowners when it is in their self-interest, and it does not impose a mandatory requirement on landowners.
2. **Benefits of Proposal:** The primary benefit of the proposal is the increased flexibility for small forest landowners. It is anticipated that this flexibility should reduce costs to

³ For a full definition, see WAC222-21-0010(13).

landowners and has the potential to increase revenues, although no attempt was made to analyze the magnitude these benefits.

3. **Comparison of Benefits and Cost of Proposal:** While the probable benefits associated with the proposed rules are not quantifiable, the impact on landowners is expected to be positive. The rule adds an alternative for small forest landowners which they will only exercise when it is in their own best interest.

Most of the identified new cost, approximately \$2 million, would be in program development, coordination and training. Most other costs are in added staff time and travel for regulatory and reviewing agencies due to a possible increase in application review. However, any higher costs in the short-term probably will not exceed the sum of the costs for these activities in the long-term.

Based on this analysis it is reasonable to conclude that the expected benefits of the proposed rules are greater than the expected costs.

4. **Least Burdensome Alternative:** Based on the nature of the collaborative rule development process, and the Forest Practices Board's intent to achieve the goal of decreasing the regulatory burden for small forest landowners, it is reasonable to conclude that the proposal is the desired, "least burdensome" alternative for those required to comply with the new rule, and that will achieve the general goals and specific objectives set by the Forest Practices Board.
5. **Small Businesses Impact:** Small businesses are not expected to be disproportionately impacted as a result of the proposal than are businesses as a whole. The impact is expected to be positive because it provides added flexibility to small forest landowners when it is in their self-interest, and it does not impose a mandatory requirement on landowners.