

Update: Alternative to Pilot Rule Making: Scientific Research as a Forest Practice

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Recap

- The Board approves pilot rules allowing landowners to selectively deviate from specific rules (relying on APA (RCW 34.05.313))
- Exclusively used for Adaptive Management Projects
- Board seeks alternatives to pilot rule making (February 2023)
- Staff reported the following options in May 2023:
 - Amend WAC 222-16-050(5) and add scientific research as an activity under Class III forest practices requiring an application
 - Staff also recommended negotiated rulemaking



Option Feasibility

- Forest Practices Act authorizes the Board add activities to classes of forest practices
- The Board can amend WAC 222-16-050(5) (administrative; negotiated rulemaking)
- To have the desired effect, amendment should also allow selective deviations from existing rules
- The authority to suspend rules does not exist in Forest Practices Act (unlike experimental use permits in other statutes)
- Currently, the Board can only rely on APA to suspend its own rules



Option Feasibility

- RCW 76.09.350 has a now expired pilot rule exception for “ for long-term landscape management plans” projects
- Allowed DNR, WDFW and DoE to select up to seven pilot projects by December 31, 2000
- Other examples include pesticide Experimental Use Permits (WAC 16-228-1460 with corresponding authority in Pesticide Management Act – RCW 17.21.129)



Summary

- The Board can amend WAC 222-16-050(5) through negotiated rulemaking
- Without the authority to suspend its own rules and not relying on APA, this option is unlikely to produce the desired outcome
- For this option to work, legislative authority to suspend rules would be needed

Next Steps

- Seek further guidance from the Board
- Continue research and consultation