

As required by
the Administrative Procedure Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 222-21 WAC, Forestry Riparian Easement Program

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1. Introduction

The Forestry Riparian Easement Program (FREP) was originally established in 1999 in the Salmon Recovery Act.¹ It was created to help compensate small forest landowners for the disproportionate impact imposed on them by the new, more stringent timber harvest requirements in the forest practices rules for riparian areas. Eligible landowners receive at least half of the value of the harvestable timber as compensation for voluntary 50-year easements. Funding is dependent on biennial appropriations from the state legislature.

In 2011 the legislature made changes to chapter 76.13 RCW to reform the program (HB 1509). Two of the major reforms included eliminating eligibility for “non-profit” legal entities and limiting compensation for qualifying timber located on potentially unstable slopes or landforms to \$50,000 for any biennial funding period. This forest practices rule making adopts changes to chapter 222-21 WAC to implement the legislation and make language clarifications.

2. Differences between proposed and final rule

Two definitions were changed after the proposed rule was published in the Washington State Register.

Difference #1: Definition of “Qualifying small forest landowner”

WAC 222-21-010(6)(b) is changed to clarify that the landowner’s disapproved application must have been disapproved because of the forests and fish rule restrictions in riparian areas, and not for

¹ Section 504, chapter 4, Laws of 1999 sp. sess.

other reasons. The underline/strike-out text below shows the differences between the proposed rule and the final rule:

- (6) “Qualifying small forest landowner” means ...
- (b) To be eligible for a forestry riparian easement, a qualifying small forest landowner must have submitted a forest practices application covering qualifying timber to the appropriate region office, and the department must have approved ~~or disapproved~~ the application or disapproved it because of forests and fish rule restrictions. See WAC 222-21-032 for more information about easement eligibility.

Difference #2: Definition of “Qualifying timber”

WAC 222-21-010(7) is changed to clarify the criteria for “qualifying timber.” The underline/strike-out text below shows the differences between the proposed rule and the final rule:

- (7) “Qualifying timber” means forest trees that ~~are~~meet criteria (a) through (c) of this subsection:
- (a) ~~Are~~ Covered by a forest practices application, ~~and required to be left unharvested because of forests and fish rule restrictions, or are made uneconomic to harvest because of forests and fish rule restrictions;~~
- (b) ~~Within, immediately adjacent to, or physically connected to a commercially reasonable harvest unit, or included in an approved forest practices application for a timber harvest that cannot be obtained because of forests and fish rule restrictions; and~~Fit one of the following situations:
- (i) The timber is required to be left unharvested because of forests and fish rule restrictions and is within, immediately adjacent to, or physically connected to a commercially reasonable harvest unit under an approved forest practices application; or
- (ii) The timber cannot be approved for harvest under a forest practices application because of forests and fish rule restrictions.
- (c) ~~Are~~ Located within ~~any~~ one or more of the following ~~categories~~areas:
- (i) Riparian or other sensitive aquatic areas;
- (ii) Channel migration zones; or
- (iii) Areas of potentially unstable slopes or landforms, verified by the department, that have the potential to deliver sediment or debris to a public resource or threaten public safety and ~~is~~are immediately adjacent to or physically connected to other qualifying timber that is located within riparian or other sensitive aquatic areas.
- Qualifying timber may also mean forest trees that do not meet criteria (b) or (c) in this subsection if they are uneconomic to harvest as determined under WAC 222-21-032(6).

3. Summary of Comments

The Board received one comment on the proposed rule during the public review period from March 7, 2012 through March 30, 2012. Ken Miller testified at the March 29 hearing in Centralia that he supported the proposed rule changes.

Another comment was received via email during the comment period from Jim Murphy, whose message was related to the legislature's under-funding of the Forestry Riparian Easement Program. He also suggested that the impact of inadequate funding could be partially addressed if the state agencies would develop a workable (alternate plan) template (for riparian area operation).

4. Rule Making Timeline, Notices, and Opportunities to Participate

- 8/9/11 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101). There was a public comment opportunity at the meeting prior to the Board action.
- 9/7/11 CR-101 published in the Washington State Register (WSR 11-17-095 filed 08/22/11).
- 10/8/11 Forest Practices Board approved draft rule language for 30-day review pursuant to Forest Practices Act (RCW 76.09.040(2)). There was a public comment opportunity at the meeting prior to the Board action.

30-day review by Washington Department of Fish and Wildlife, counties, and tribes took place November 14 through December 15.
- 2/14/12 Forest Practices Board approved filing *Proposed Rule Making* (form CR-102) and the draft rule language for public review and comment. There was a public comment opportunity at the meeting prior to the Board action.
- 3/7/12 CR-102 published in the Washington State Register (WSR 12-05-094 filed 02/17/12). Public comment period was from 03/7/12 through 03/30/12, including hearings on March 27 and March 29 in Spokane and Centralia.
- 3/7/12 Notice of Rule Making Activity #12-01 distributed via the Board's list of interested parties, GovDelivery notice, and website at <http://www.dnr.wa.gov/BusinessPermits/ForestPractices/Pages/Home.aspx>
- 3/15/12 Hearings notice distributed via GovDelivery notice and website at <http://www.dnr.wa.gov/BusinessPermits/ForestPractices/Pages/Home.aspx>
- 3/27/12 Public hearing in Spokane.
- 3/29/12 Public hearing in Centralia.
- 5/8/12 Forest Practices Board meeting; rules adopted.