STATE OF WASHINGTON
FOREST PRACTICES BOARD

PO Box 47012
Olympia, WA 98504-7012

As required by
the Administrative Procedure Act
Chapter 34.05 RCW

DRAFT CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Amendments to chapters 222-12, 222-16, 222-20, 222-24, 222-30, 222-34, and 222-50
Rules Related to Forest Practices Hydraulic Projects and Forest Biomass

Prepared by: Gretchen Robinson
July 19, 2013

TABLE OF CONTENTS

1. Introduction 1
2. Differences Between Proposed and Final Rule 2
3. Responsiveness Summary 4
4. Summary of public involvement actions 13

CONCISE EXPLANATORY STATEMENT

1. Introduction

The Forest Practices Hydraulic Projects and Forest Biomass rulemaking activity carries out:

- 2012 legislative direction to the Forest Practices Board (Board) related to the integration of forest-related hydraulic projects into Title 222 WAC. Second Engrossed Substitute Senate Bill 6406, chapter 1, laws of 2012 (2ESSB 6406) directed the Board to …*incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of this section, that are applicable to activities regulated under the forest practices rules.*[1]

- A 2012 recommendation to the Board by the Forest Practices Biomass Working Group to amend WAC 222-16-010 and WAC 222-30-020 in order to increase awareness that forest biomass harvest is subject to forest practices rules.

The Board adopted the rules on (insert adoption date) which will become effective on December 30, 2013.

[1] RCW 76.09.040(3)(a)

2. Describe Differences Between Proposed and Final Rule

Proposed rules were published in the Washington State Register on June 5, 2013 for public review and comment. Within the published rules were two options for each of two of the definitions in WAC 222-16-010: "bankfull width" and "forest practices hydraulic project." The Board received comments on all of the options.

Differences between the proposed and adopted rules are summarized as follows; additional detail can be found in **Summary of Comments.**

A. "Bankfull width" Option 1 (no-change) was the preferred option. WAC 222-16-010

- The stream width measurement metric, "ordinary high water line", is retained in language imported from chapter 220-110 WAC:
  WAC 222-16-025(4)
  WAC 222-24-040(7)
  WAC 222-24-041(1) and (4)
  WAC 222-24-046 (1)

- "Based on bankfull width" is deleted in WAC 222-24-041(6)(b).

B. "Forest practices hydraulic project" Option 1 (including Type N Waters) was the preferred option. Several rules that do not pertain to all water types are modified:
WAC 222-16-037(4): inserted "associated with Type S and F Waters"
WAC 222-16-025(4): inserted "in Type S and F Waters"
WAC 222-20-017(1): inserted "in Type S and F and associated Np Waters"
WAC 222-30-100(5): inserted "in Type S and F Waters"
WAC 222-30-060(5), (7), and (8): specified "Type S and F Waters" and placed under (1). Subsection (6) is also placed under (1).

C. Classifications. WAC 222-16-050 Class II and Class III are slightly changed to ensure understanding that an FPA including a hydraulic project can be:
- A renewal of a Class III or IV FPA, if the operation <u>or the forest practices hydraulic project design</u> are not modified; and
- Any class depending on its potential to damage public resources.

D. Forest practices hydraulic project general provisions. WAC 222-16-025(4) is modified as explained in Response 6 in **Summary of Comments**.

E. Erosion control. "Or stabilized with other approved erosion control techniques" is added to:
WAC 222-16-025(d)
WAC 222-24-041(4)(c), (5)(h), (6)(d),
WAC 222-24-044(9)
WAC 222-24-046(5)

F. "Fish passage at all life stages", which is the forest practices standard and rule terminology, replaces "free and unimpeded passage for fish" in two rules: WAC 222-24-010(2) and WAC 222-24-020((6)(d).

G. Deposit of wastewater from project activities. "Or above the 100-year flood level if present" is added to WAC 222-24-041(4)(f), (5)(f), and (6)(d) for consistency with forest practices standards.

H. Application reviews for FPA that include forest practices hydraulic projects. WAC 22-20-017 is changed as follows to ensure understanding that the section only applies to FPAs including forest practices hydraulic projects in Type S and F and associated Np Waters:

> ***WAC 222-20-017 *Applications ~~and notifications~~ that include forest practices hydraulic projects.***
>
> ***(1) Review for consistency with fish protection standards.*** *The department review forest practices applications that include forest practices hydraulic projects in Type S and F and associated Np Waters for consistency with fish protection standards.*

I. Clarifications were made in the following rules:

WAC 222-12-037(2) is deleted and references are moved to WAC 222-16-025(1).

WAC 222-16-010 Definitions.

- "Fish protection standards" was modified to make it clear that the standards are met by certain objectives identified in WAC 222-16-025. Also adds "associated Np Waters" as waters subject to fish protection standards.
- "Forest practice": The language is changed as follows: "…growing, harvesting, ~~or~~ processing timber, or removing forest biomass…"
- "Forest practices hydraulic project": Sentence is added to make it clear that stand-alone proposals involving channel change, dredging, and outfall construction are not forest practices hydraulic projects. Subsection (1) of WAC 222-16-025 "Fish protection standards" is modified accordingly.
- WAC 222-16-025(4) "General conditions" is changed to "general provisions" for consistency with similar uses of that term in WAC 222-24-042(1), (2), and (3).
- WAC 222-24-020(22)(c) is modified to show that *fish passage* projects will require detailed site plans and designs.

WAC 222-24-040(7): Clarification to "established ford."

> *(d) Driving a vehicle or operating equipment on or across an established ford does not require a forest practices application. "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department of fish and wildlife or the department, and has identifiable approaches on the banks.*

WAC 222-24-0511(5): Changed a date from December 30, 2012, to December 29, 2012 because the rules are expected to become effective December 30, 2013.

> *(a) … One hundred percent public funding shall be provided if an existing barrier was installed under an approved forest practices application, or a hydraulic~~s~~ project approval acquired prior to December 29, 2013, and that barrier becomes a high priority for replacement.*

WAC 222-34-040 Site preparation and rehabilitation. It was determined that the proposed changes in subsection (3) Stream channel alignment, were not necessary. Stream channel realignment involving channel change realignment is not a forest practices hydraulic project and remains governed by chapter 77.55 RCW and chapter 220-110 WAC. Therefore, this section is no longer part of the rulemaking.

3. Summary of Comments

The summary of comments is organized in the following order:

I. Proposed rules related to forest practices hydraulic projects.
II. Proposed rules related to forest biomass.

Comment log numbers accompany each comment; the commenters and their assigned log numbers are shown on the table on the next page.

Log # (13-)	Received From	Log # (13-)	Received From
13-01	Norm Schaaf Merrrill & Ring	13-13	Karen Terwilleger WFPA
13-02	Tom Nelson Sierra Pacific Industries	13-14	Miguel Perez-Gibson WEC
13-03	J.D. Marshall Hancock Forest Mgmt	13-15	Scott Rockwell Stillaguamish Tribe
13-04	Peter Heide WFPA	13-16	Sarah Zaniewski Squaxin Island Tribe
13-05	Ken Berg & Steve Landino USFWS/NMFS	13-17	Jeremy Grose SDS Lumber
13-06	Frank Geyer Quileute Tribe	13-18	Martin Fox Muckleshoot Indian Tribe
13-07	Mike Warjone Port Blakely	13-19	Ray Colby Makah Tribe
13-08	Dave Roberts Port Blakely	13-20	Chase C. Davis UCUT
13-09	Mark Teply Washington SAG	13-21	Kevin Godbout Weyerhaeuser
13-10	Stephen Bernath DOE	13-22	Nancy Sturhan NWIFC
13-11	Chris Mendoza Conservation Caucus	13-23	Phil Rigdon/Jim Matthews Yakama Nation
13-12	Adrian Miller Longview Fiber	13-24	Paul Kriegel Goodyear Nelson Hardwood Lumber

I. Proposed rules related to forest practices hydraulic projects.

WAC 222-12-050(5) In emergency action…
Comment 1. If it is truly an emergency action, how can it be improved by seeking consultation which will only delay the prescribed course of action? Log #13-01

> *Response 1: The only process change in this emergency scenario is that DNR will seek consultation from WDFW rather than seek approval from WDFW.*

Comment 2. Neither the current hydraulic code language nor the legislation supports the replacement of the existing language, " bed of the stream", with "bed or flow of the stream." Log #13-12, 13-13, 13-21

> *Response 2. The addition of "or flow" reflects language in WAC 220-110-030. With integration, DNR will assume authority to address obstructions to stream flow with potential to cause environmental degradation or threaten public safety.*

WAC 222-16-010 General definitions

"Bankfull width" Option 1: No change
Nine commenters supported Option 1 (Log #13-03, 13-04, 13-06, 13-08, 13-12, 13-13, 13-17, 13-19, 13-21)
Comment set 3a.

- The use of OWHL is a useful option in the landowner's tool kit; in many cases using this measure is less expensive to meet the same objective. Log #13-03
- The difference between OHWL and BFW seems to average nearly two feet in streams wider than five feet, which can be a huge difference in cost if the project is elevated from spiral pipe to multi-plate arch or bridge. Log #13-08
- This option will result in higher than current costs for landowners, which was not reflected in the preliminary economic analysis. Log #13-12, 13-13, 13-17, 13-21
- Within the hydraulic code rules, OHWL is fundamental in determining whether an activity is a hydraulic project. Log #13-21
- Neither option meets the requirements of 2ESSB 6406, or the intent of the Board according to its CR-102. In each place "bankfull width" has been inserted to replace "ordinary high water line" in language copied from hydraulic code rules, it must be removed and "ordinary high water line" inserted. Log #13-12, 13-13, 13-17, 13-21

"Bankfull width" Option 2: Differentiate bankfull width for establishing RMZs and bankfull width for conducting forest practices hydraulic projects
Eight commenters supported Option 2 (Log #13-06, 13-10, 13-11, 13-15, 13-16, 13-18, 13-19, 13- 20)
Comment set 3b.

- "Bankfull width" is consistent with the current WDFW definition of boundaries of stream beds. Log #13-06
- "Bankfull width" is a geomorphic term decided upon under Forests and Fish and is the channel indicator evaluated in the Forest Practices Habitat Conservation Plan. Log #13-10, 13-11
- "Bankfull width" was agreed to by the involved caucuses during original rulemaking process in which science was consulted, and should remain until scientifically proven otherwise. Log #13-16
- The governing characteristic that will determine whether a culvert is large enough is based on its ability to pass the 100-year flow plus anticipated debris for that drainage, not a term derived by law. Log #13-10, 13-11
- Not using the bankfull width metric could lead to confusion and interpretations among regulators, the regulated community, and TFW cooperators; resource protection could suffer. Log #13-15, 13-16, 13-19

- 2ESSB 6406 directed integration, not complete replication. There should be some accommodation for utilizing currently applied regulatory language in technical definitions of the forest practices rules. Log #13-15
- Using the existing field standard and protocol, i.e. "bankfull width", makes the most sense for integration and streamlining regulation. Log #13-20
- State agencies should be working towards a common goal for the best land stewardship; utilize collaborative work products, manual, and reports. DOE has created a manual for determining OHWM, which is a valuable tool. It addresses the difference between BFW and OHWM; however DNR is not utilizing this. Why not? Do they have a better alternative for educating the public?
  Log #13-19

  Response to Comment sets 3a and 3b. The proposed rules were not intended to impose any additional costs on forest landowners. According to Section 216 of the legislation, no rules, processes, or procedures in effect in 2012 for projects in nonfish-bearing waters are to be affected by this program integration (paraphrased). In some situations the "bankfull width" and "ordinary high water line" metrics result in slightly different measurements. This may result in additional costs for landowners. For that reason, we have changed "bankfull width" to "ordinary high water line" in the rules imported from the hydraulic code rules. Rules related to Type N Waters are unchanged, i.e., "bankfull width" is not changed to "ordinary high water line."

  The stream measurement metric will be an important subject when the Board conducts subsequent rulemaking on FPHPs upon upcoming changes to the hydraulic code.

"Forest practices hydraulic project" Option 1: **Type S, F, or N Waters**
Seven commenters preferred Option 1 over Option 2 (Log #13-05, 13-06, 13-10, 13-11, 13-19, 13-22, 13-23)
Comment set #4:

- To maintain full consistency with the HCP, we recommend that FPHP jurisdiction include all "typed waters." The HCP's conservation measures are not limited to fish-bearing waters and ideally FPHP coverage would marry with the HCP. Log #13-05
- Type N Waters have always been subject to the potential of an HPA, particularly those that can influence use, diversion, obstruction or change the natural flow or bed of Type S and F Waters. Log #13-10
- Not all Type N Waters need a permit/condition within an FPA but there are circumstances where activities that "use, divert, obstruct or change the natural flow or bed" of a Type N Water would have significant impacts on downstream fish-bearing waters. Log #13-16
- A definition that conditions when the use of an FPHP is necessary when conducting activities within Type N Waters would be more appropriate than the two options currently provided. Log #13-16, 13-18
- A better definition would include Type N locations that have a large influence on Type S and F Waters (examples given in comment Log #13-22).
- Permits should be considered for circumstances where impacts to water quality, human health, and fish may be an issue. Log #13-06
- To confidently remove Type N Waters from hydraulic permitting would be a step backward for the protection of water quality and downstream fish life, habitat, and activities. Log #13-19

  Response 4. Type N Water is included in the definition of "forest practices hydraulic project" so that hydraulic projects in any water type share a common umbrella term throughout the forest practices rules.

  The suggestion to include (within the definition of "bankfull width") Type N locations that have a large influence on Type S and F Waters may be considered in subsequent rule making pursuant to RCW 76.09.040(3)(b).

"Forest practices hydraulic project" Option 2: **Type S or F Waters**
Eight commenters supported Option 2 (Log #13-01, 13-03, 13-04, 13-08, 13-12, 13-13, 13-17, 13-21)

Comment 5. Including Type N Waters in the definition would result in requirements beyond current law, rule, and intent of the 2ESSB 6406. If Type N is included in the definition the following rules would inappropriately apply to non-fish bearing waters: Log #13-12, 13-13, 13-17, 13-21

- WAC 222-12-037(3) and (4) would require demonstrating general provisions to protect fish life, and make non-fish waters subject to additional conditions beyond current rules.

  Response 5a. DNR's review and conditioning of FPAs that include hydraulic projects in Type N Waters will not change. To ensure understanding that time limitations for projects in fish bearing waters do not apply to Type N Waters, subsection (5) is modified: "The department will place specific time limitations on project activities in forest practices hydraulic projects associated with Type S and F Waters in order to protect fish life ..."

- WAC 222-16-025 would subject all water types to fish protection standards, mitigation, and stream bank protection that exceed current equipment limitation zones.

  Response 5b. The first sentence of subsection (4) is modified to show the provisions for fish bearing waters only apply to Type S and F Waters.

- WAC 222-16-050: No hydraulic projects would be Class II, including those currently classified Class II and those that are renewals of Class III and Class IV forest practices.

  Response 5c. Projects that meet criteria in Class II will continue to be Class II. WAC 222-16-050 Class II was modified by removing the statement that a Class II activity could not occur if it involved a forest practice hydraulic project and (b)(i) was modified to ensure understanding that FPAs that include hydraulic projects are Class II renewals if there has been no change to the project design.

- WAC 222-20-040(1): Landowners could be subject to the two business day notification for projects on any water type.

  Response 5d. Yes, this is the case with any forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource as determined by DNR. An FPA that includes a forest practices hydraulic project will not automatically receive this condition.

- WACs 222-20-090(2), -24-038, -30-020: Pre-application consultation would be encouraged for a project on any water type, even Type N. This could unnecessarily increase workload for landowners and WDFW.

  Response 5e. Pre-application consultation is encouraged, not required, for any forest practices hydraulic project, regardless of water type.

- WAC 222-24-020(22) would require detailed plans beyond those required where fish passage is a concern.

  Response 5f. Subsection (22)(c) has been modified to specify fish passage projects.

NEW WAC 222-16-025 Fish protection standards

Comment 6. The "general conditions" listed in WAC 222-16-025(4) are taken from hydraulic code rules. The legislation stated that the fish protection standards "that are **applicable to activities regulated under the forest practices rules**" are to be incorporated into forest practices rules *RCW 76.09.040(3)(a)*. Therefore, several are not appropriate for including in the forest practices rules:

(4)(b) If at any time fish are observed in distress …
(4)(e) Equipment shall be inspected …
(4)(i) Excess spoils …
(4)(j) Wood or other materials treated with preservatives …

Log #13-12, 13-13, 13-21

Response 6: A literal interpretation of the legislation would conclude that you are correct. However, except for (4)(b), it is important that these provisions are somehow captured in the forest practices rules to ensure public resource protection in forest practices activity. Therefore, the subsections specified in the comment are modified as follows:

- *(4)(b) is deleted because it is not a circumstance that relates to any forest practices hydraulic project;*
- *(4)(e) remains on the list because the maintenance of equipment that enters water must be addressed to ensure resource protection and is not covered elsewhere in the forest practices rules;*
- *(4)(i) is deleted because WAC 222-24-030(9) covers the disposal of spoils from road construction; and*
- *(4)(j) is moved to WAC 222-24-041 under (4) Bridge construction, which is a logical placement for a provision for treated wood.*

Comment 7. Language in (4)(h) should be updated: wastewater from a project construction should be discharged above the 100-year flood level rather than "landward of bankfull width." Log#13-10

Response 7. The subsection is deleted because WAC 222-24-041(4)(f) under bridge construction, and WAC 222-24-041(6)(i) under permanent culvert installation, cover wastewater disposal from work areas. Furthermore, language related to the 100-year flood level is inserted into those WACs for consistency with forest practices standards.

NEW WAC 222-20-017 Applications that include forest practices hydraulic projects.

Comment 8. WAC 222-20-017(2) **Pre-application consultation**. The proposed rules appear to move far beyond the intent of the authorizing legislation by mandating "consultation" from WDFW on even the most routine hydraulic issues, and even expands WDFW's role beyond current requirements. Log#13-02

Response 8. Pre-application consultation is encouraged, not mandated, to give landowners the opportunity to consult with hydraulic project experts.

Comment 9. WAC 222-20-017(4)(b) **Concurrence review**. Log #13-02
Previously, all Class III FPAs were required to be approved within 30 days, and under the new proposal the review period would be doubled. How does that meet the intended objective of the authorizing legislation to increase efficiency?

Response 9. The legislation was specific about the 30-day concurrence review by WDFW for certain types of hydraulic projects. Efficiency is realized in the form of a single permit issued from a single agency in a shorter timeframe.

Comment 10. WAC 222-20-017(4)(b) **Concurrence review** Log #13-11
The compressed 30-day concurrence review timeline is likely to impair the ability of WDFW to effectively participate in review of forest practices hydraulic applications, resulting in a higher-than-previous number of non-concurrences from WDFW leading to disapproval of applications that could have been approved with additional time to develop permit conditions, conduct site visits, etc.

Response 10. DNR and WDFW will be working closely to ensure the new timelines are accomplished and public resources are protected.

Comment 11. WAC 222-20-017(4)(b) **Concurrence review**. Log #13-02
There is no provision for procedures when the landowner or DNR do not agree with the "nonconcurrence" decision from the Department of Fish and Wildlife.

Response 11. DNR will make the final determination. As stated in subsection (iii), DNR approves, conditions, or disapproves applications.

Comment 12. WAC 222-20-017(4)(b) **Concurrence review**. Log #13-02
The standard for WDFW to concur is consistency with fish protection standards. The standard by which DNR will disapprove an application is whether it will result in direct or indirect harm to fish life. If WDFW does not concur, does this mean that the DNR would deny the FPA, since the "nonconcurrence" is the same as a determination of "direct or indirect harm to fish life"?

Response 12. The two criteria are not in conflict; preventing harm to fish life is a fish protection standard.

<u>Chapter 222-24 WAC</u> Road Construction and Maintenance

Comment 13. The term **"free and unimpeded passage for fish"** is not used appropriately in WAC 222-24-010(2) first bullet and WAC 222-24-020(6)(d). In the hydraulic code rules "free and unimpeded passage for fish" is a description of what can be achieved with the use of a bridge as a water crossing structure, not as a regulatory requirement. Log #13-02, 13-12, 13-13, 13-21

Response 13. We have modified these WACs to maintain the forest practices standard and rule terminology, "fish passage at all life stages."

Comment 14. WAC 222-24-020(22)(c) regarding the **information DNR will require for FPA that include water crossing structures**. The proposed rule deleted "large" as a modifier for culverts. Detailed plans should only be required for culverts where fish passage is an issue. Log #13-01, 13-02

Response 14. Subsection (22)(c) has been modified to specify fish passage projects.

Comment 15. Regarding WAC 222-24-040(7) **Fords**. Department of Ecology comment, Log #13-10. When the updated hydraulic code rules come before the Board, Ecology will strongly encourage that the guidance currently drafted in the Board Manual be placed into the rules; that is, fords should only be used when there is a dry stream channel during the term of use, or on an exceptional basis when it can be shown to be the best practice for protecting public resources. Ecology expects DNR to implement and perform compliance on fords as they do for other BMPs involving sediment.

Response 15. Ecology's concerns are noted and will be considered in subsequent rule making pursuant to RCW 76.09.040(3)(b).

Comment 16. Regarding WAC 222-24-040(7) **Fords.** The U.S. Department of Fish and Wildlife and National Marine Fisheries Service comment, Log #13-05. Though the draft Board Manual Section 5 describes construction and maintenance BMPs and situations where fords may be considered, the rules lack enforceable standards to protect fish. To fit within the existing Incidental Take Permits, the Services recommend that rules regarding fords or equipment crossings be modified to establish the (certain) performance standards after adopting the broader package of the forest practices hydraulic project rules (see page 3 of Log #13-5 for the recommended performance standards).

Response 16. The Services' concerns are noted and will be considered in subsequent rule making pursuant to RCW 76.09.040(3)(b).

Comment 17. WAC 222-24-041(2) regarding the requirement to submit an FPA for **bridge maintenance**. The language in (2) is an edited version of the second paragraph in WAC 220-110-070. As edited it does not allow for minor maintenance without an approved FPA. The language should be modified to allow routine bridge maintenance without the need for an approved FPA. Log # 13-01, 13-02, 13-12, 13-13, 13-21

Response 17. We have modified the WAC 222-24-041(2) to include the phrase, "where there is potential for wastage", which is the terminology used in the second paragraph in WAC 220-110-070. The concern that very minor bridge maintenance should not require an FPA is noted, and may be considered in subsequent rule making pursuant to RCW 76.09.040(3)(b).

Comment 18. WAC 222-24-041(4)(c) and (h) regarding **bank disturbance and revegetation**. Protection of erosion should take place immediately after construction, not "within seven days of completion of the project." Log#13-10

Response 18. This concern is noted and may be considered in subsequent rule making pursuant to RCW 76.09.040(3)(b).

Comment 19. WAC 222-24-041(4)(f) and (6)(i) regarding **wastewater discharge**. Language needs to be updated: Wastewater from a project construction should be discharged above the 100-year flood level rather than "to the forest floor in an upland area." Log#13-10

Response 19. We have inserted "or above the 100-year flood level if present" in both WACs for consistency with forest practices standards.

Comment 20. WAC 222-24-041(5)(c) regarding the **structural integrity of temporary culverts at peak flows** June 16 to September 30. This language is an edited version of WAC 220-110-070(2)(c). "…to occur once on 100 years during the season of installation" was changed to "during the entire period the culvert will be in place." Pursuant to the legislation, the language should be the same as hydraulic code language. Log #13-12, 13-13, 13-21

Response 20. This WAC is modified to reflect hydraulic code language in WAC 220-110-070(2)(c).

Comment 21. WAC 222-24-041(6)(b)(ii)(A) regarding **minimum flow water depths for permanent culvert installation:** The minimum flow depths in Table 1 are impossible for many small intermittent fish streams. Table 1 should be deleted or at least modified to accommodate natural site-specific conditions. Log #13-01, 13-12, 13-13, 13-21

Response 21. This concern is noted and will be considered in subsequent rule making pursuant to RCW 76.09.040(3)(b).

Comment 22. WAC 222-24-046(5) regarding **revegetation of banks** with native or other approved woody species. (Also WACs 222-16-025(4), -24-041(4)(c), (5)(h), and (6)(d), -24-044(9)). This language eliminates the ability to use popular and effective erosion control techniques such as hay bales, jute mats, and other bank stabilization materials. This requirement should be replaced with an objective statement that banks must be stabilized to minimize entry of bank material into the stream. Log #13-01

Response 22. These subsections are modified to allow for stabilization "with other erosion control techniques" in order to take advantage of current best management practices for controlling erosion.

Chapter WAC 222-30 WAC Timber Harvesting

Comment 23. WAC 222-30-021 and -022 regarding the **large woody debris placement strategy**. The proposed language indicates a landowner may design a large woody debris (LWD) placement plan but must include an approved plan in a complete forest practices application. This should be reworded to require that a plan be submitted with the FPA in order for the application to be considered complete. Log #13-12, 13-13, 13-21

*Response 23. The proposed language is consistent with the intent that **if** a landowner chooses the LWD in-channel placement strategy for outer zone leave tree management, the LWD placement plan must be included in a complete forest practices application.*

Comment 24. WAC 222-30-060 **Cable yarding**. To ensure understanding that the cable yarding rules incorporated from the hydraulic code rules pertain to Type S and F Waters, subsections (5) through (8) should be placed under the first subsection which is specific to Type S and F Waters and sensitive sites. Also, subsection (6) and (8) language should not have been changed from the language in the hydraulic code rule language:

- Drop the reference to "flowing" water in (6); and
- Replace "100-year flood plain" with "50-year flood plain" in (8).

Log #13-12, 13-13, 13-21

Response 24. Subsection (6) is modified as suggested, (8) is modified for debris to be placed "on stable locations outside the stream's influence".

Additional Comments

Relationship of proposed rules to road maintenance and abandonment plans (RMAPs)

Comment 25. The proposed rules for road construction and maintenance are not consistent with the past 12 years of **RMAP work** and nullify much of the certainty and stability on which the Forests and Fish agreement was founded. Do the new standards mean millions of dollars already spent on RMAP projects will need to be re-examined for compliance? Log #13-02

Response 25. Nothing in the proposed rules changes existing road maintenance and abandonment plans (RMAPs) or completion of the road work within the plans. If hydraulic project approvals were required for any completion of road work, the standards for completing the work will not change.

Asterisks needed in several new and amended sections

Comment 26. Several new and amended rules have a nexus with water quality and Ecology will need to determine whether future rule changes will meet water quality requirements. Therefore, asterisks should be added to: WACs 222-16-025; -12-050; -12-090; -16-050(2), (5)(a), (5)(s); -20-040; -20-090; -24-038; -30-070(1); -50-020. Log #13-10

Response 26. Asterisks are added as requested.

Changing numerals to spelled-out words

Comment 27. Changing numerals to spelled-out words in WAC 222-16-022 makes reading technical rules difficult; the numbers are more useable in numeral form. Log #13-10

Response 27. This is a Washington Administrative Code standard. According to the Instructions on Style for the Washington Administrative Code (2009), "Quantities and amounts should be written in words, not figures."

Rulemaking and Board Manual review process

Comment 28. To avoid confusion, Board Manual Section 5 which was drafted to implement the proposed rule package, should be circulated for comments only after the rules are fully discussed and subsequently passed by the Forest Practices Board. Log #13-02

Response 28. Due to the tight timeframe prescribed in the legislation for the development of both the rules and the board manual, and because it allowed little discretion on how rule integration would be implemented, the largest share of the work necessarily went toward the development of guidance and had to be completed concurrent with the rule development.

Comment 29. Titling the CR-102 "Biomass" caused several people to overlook the FPHP rule proposal and miss some of the time allowed for public review. Please be careful to title the CR-102 and the announcement with the rules it affects. #13-22

Response 29. Thank you for the feedback. It was necessary to batch the two rule proposals into one CR-102 because both required changes in a WAC – specifically WAC 222-16-010. Necessarily, both rulemaking subjects were entered in the title and purpose on the CR-102. In addition, the June 5, 2013 "govdelivery" email message from DNR to website subscribers stated that the CR-102 was available for both subjects on the Board's rulemaking. Every effort will be made in the future to avoid any confusion.

II. Proposed rules related to forest biomass.

The Board received five comments on biomass-related rule changes. Four were in support (Log #13-02, 13-09, 13-11, 13-12, and 13-14). One commenter Log #13-02 suggested a clarification as follows:

Comment 30. "Growing AND removal" should probably be "growing OR removal" since several of the listed activities do not ordinarily remove material through harvesting.

Response 30. Thank you. The language is changed as follows: "…growing, harvesting, processing timber, or removing forest biomass…"

4. Summary of public involvement opportunities

5/8/12 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101) for **Forest Practices Hydraulic Project** rules. There was a public comment opportunity at the meeting prior to the Board action.

6/6/12 CR-101 published in the Washington State Register (WSR 12-11-112 filed 5-22-12).

2/12/13 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101) for **Biomass** rules. There was a public comment opportunity at the meeting prior to the Board action.

3/20/13 CR-101 published in the Washington State Register (WSR 13-06-013 filed 2-25-13).

5/14/13 **Both Forest Practices Hydraulic Project and Biomass rules**: 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.

6/5/13 CR-102 published in the Washington State Register (WSR 13-11-133 filed 05/22/13). Public comment period was from 06/5/13 through 06/28/13.

6/25/13 Public hearing in Ellensburg.

6/27/13 Public hearing in Olympia.

8/13/13 Forest Practices Board meeting *(remainder to be completed after rule adoption)*