Chapter 222-12 WAC

POLICY AND ORGANIZATION

WACs in this chapter were in effect 7/2001 except some have been amended since 7/2001. The effective dates of the amended WACs are shown after the WAC headings.

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Note: Rules marked with an asterisk (*) pertain to water quality protection and have been adopted or amended by the Forest Practices Board with agreement from the Department of Ecology per WAC 222-12-010.

WAC 222-12-010 Authority. *[Effective 12/30/13]*

These forest practices rules are adopted pursuant to chapter 76.09 RCW, and RCW 76.13.100 through 76.13.130. Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in the act. These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administrative provisions, establish procedures for the collection and administration of forest practices fees, allow for the development of watershed analyses, foster cooperative relationships and agreements with affected tribes, and establish the rivers and habitat open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.370, and 76.13.120(10).

Promulgation of all forest practices rules shall be accomplished so that compliance with such forest practices rules will achieve compliance with the water quality laws.
Those rules marked with an asterisk (*) pertain to water quality protection; pursuant to RCW 76.09.040 they can be amended only by agreement between the board and the department of ecology.

Forest practices rules shall be administered and enforced by the department except as otherwise provided in the act. Such rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

WAC 222-12-020 Rule sections. These rules are organized as follows:

Chapter 222-08 WAC Practices and procedures.
Chapter 222-10 WAC State Environmental Policy Act Guidelines.
Chapter 222-12 WAC Policy and organization.
Chapter 222-16 WAC Definitions.
Chapter 222-20 WAC Application and notification procedures.
Chapter 222-21 WAC Small forest landowner forestry riparian easement program.
Chapter 222-22 WAC Watershed analysis.
Chapter 222-23 WAC Riparian open space program.
Chapter 222-24 WAC Road construction and maintenance.
Chapter 222-30 WAC Timber harvesting.
Chapter 222-34 WAC Reforestation.
Chapter 222-38 WAC Forest chemicals.
Chapter 222-42 WAC Supplemental directives.
Chapter 222-46 WAC Consultation and enforcement.
Chapter 222-50 WAC Relationship to other laws and rules.

WAC 222-12-030 Application information and classes of forest practices. *[Effective 12/30/13]*
Forest practices are divided into four classes as specified by RCW 76.09.050 and described in WAC 222-16-050. Review periods and application and notification requirements differ as follows:

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin five calendar days (or such lesser time as the department may determine) after receipt of a complete notification by the department.

(3) **Class III forest practices** must be approved or disapproved within thirty or fewer calendar days of receipt of a complete application by the department. The department is directed to approve or disapprove within fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within forty-five days of receipt of a complete application by the department.

(b) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(c) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(4) **Class IV forest practices** are divided into "Class IV-special," and "Class IV-general," and must be approved or disapproved within thirty calendar days of receipt of a complete application by the department. Exceptions are:

(a) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.
(b) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.
(c) If a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(5) In certain emergencies as defined in RCW 76.09.060(7), the application or notification may be submitted within forty-eight hours after commencement of the practice.

WAC 222-12-035 *Small forest landowner long-term applications. *[Effective 1/5/13]*
In order to facilitate flexibility for small forest landowners in the timing of their forest practices activities, the department will receive, and approve or disapprove, long-term forest practices applications. Small forest landowners are eligible to submit long-term applications unless proposing a conversion to a use other than commercial timber production. An approved long-term application will be effective for a term of four to fifteen years at the discretion of the landowner. These applications may contain alternate plans for all or portions of the forest land area included in the long-term application. Alternate plan portions of long-term applications will be reviewed according to the alternate plan process described in WAC 222-12-0401. The process for small forest landowner long-term applications is described in WAC 222-20-016.

WAC 222-12-037 *Applications that include forest practices hydraulic projects. *[Effective 12/30/13]*

(1) The review process for applications that include forest practices hydraulic projects is described in WAC 222-20-017.
(2) Each forest practices hydraulic project included in an application will be reviewed on an individual basis and will be subject to rules and applicable conditions to the forest practices application or notification. Common general provisions applicable to a specific project may be modified or deleted by the department where any of the following is demonstrated by the landowner:
(a) The provision has no logical application to the project.
(b) The applicant provides an alternate plan to the provision and demonstrates that it provides equal or greater protection for fish life.
(c) The modification or deletion of the provision will not contribute to net loss of fish life.
(3) Projects may be subject to additional conditions to address project- or site-specific considerations not adequately addressed by the forest practices application or notification.
(4) 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. The department and the applicant will consult with the department of fish and wildlife for appropriate work windows for the protection of fish life.
(5) If site conditions change over the course of an approved application, the department may approve a landowner request for an amendment to the application.

WAC 222-12-040 *Alternate plans--Policy. *[Effective 7/1/05]*
All forest practice operations must comply with both the act and the rules promulgated pursuant to the act, unless an alternate plan has been approved by the department.

(1) The alternate plan process can be used as a tool to deal with a variety of situations, including where the cumulative impacts of regulations disproportionately impact a landowner. In some instances an alternate plan may be used to make minor on-the-ground modifications, which

result in significant operation efficiencies. The alternate plan process may be used to address circumstances where a landowner has an economically inaccessible unit. The alternate plan process may also be used to facilitate voluntary landscape, riparian or stream restoration. In all cases, the alternate planning process will result in a plan that provides protection to public resources at least equal in overall effectiveness as provided by the act and rules while seeking to minimize constraints to the management of the affected lands.

(2) The legislature has found in RCW 76.13.100(2) that small forest landowners should also have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. These alternate plans are intended to provide flexibility to small forest landowners that will still provide protection of riparian functions based on specific field conditions or stream conditions on the landowner's property.

(3) Alternate plans do not replace other rules that recognize different types of landowner plans. For examples, see WAC 222-08-160(3), 222-12-041, 222-16-080(6), 222-16-100(1), and 222-16-105.

(4) Landowners are encouraged to communicate with the departments of ecology, fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service and other interested parties prior to submission of an application accompanied by an alternate plan.

WAC 222-12-0401 *Alternate plans--Process. *[Effective 1/5/13]*

(1) **Application.** A landowner may submit an alternate plan that departs from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application. Alternate plans must be submitted with a three-year, multiyear, or small forest landowner long-term application. Alternate plans may support a single forest practices application or multiple applications if the sites included in the plan have sufficient common physical characteristics and elements to justify being considered together. See board manual section 21.

(2) **Plan preparation.** The landowner is responsible for preparing and submitting an alternate plan. Small forest landowners may wish to seek the assistance of the small forest landowner office. See WAC 222-12-0402.

(3) **Contents of alternate plans.** Alternate plans must contain all of the following:

(a) A map of the area covered, at a scale acceptable to the department showing the location of any affected streams and other waters, wetlands, unstable slopes, and existing roads. The map must also show the location of proposed road construction, timber harvest, and other forest practices;

(b) A description of how the alternate plan provides public resource protection to meet the approval standard, including a description of the proposed alternate management strategy, prescriptions, and where applicable, aquatic resource enhancements;

(c) A list of the forest practices rules that the alternate management plan is intended to replace;

(d) Where applicable, descriptions of monitoring and adaptive management strategies, including landowner plans for annual performance reviews;

(e) Where applicable, descriptions of an implementation schedule; and

(f) When multiple forest practices applications are submitted with the same alternate plan or when an alternate plan has been used for previous applications, justification that the sites included in the plan share sufficient common physical characteristics and elements to be considered together.

(4) **Review of proposed plan.** Upon receipt of a forest practices application together with an alternate plan, the department will do all of the following:

(a) Appoint an interdisciplinary team;

(b) Establish a deadline for completion of the interdisciplinary team review that is consistent with the requirements of subsection (5) of this rule; and

(c) Within five business days of receipt of an application with an alternate plan, provide copies of the application and alternate plan to the departments of ecology and fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other parties that have expressed an interest in alternate plans in the area of the application. If the landowner is a small forest landowner, copies should also be provided to the small forest landowner office.

(5) **Interdisciplinary team.**

(a) The department will determine the members invited to participate on an interdisciplinary team. Teams will include members with the qualifications necessary to evaluate the alternate plan. A representative of any affected Indian tribe, and departments of ecology and fish and wildlife will be invited to participate. Each team will include a representative of the landowner and a professional forester employed by the department and shall be led by a department employee.

(b) The interdisciplinary team will conduct a site visit and submit a recommendation to the department at least three days prior to the expiration of the application time limit in WAC 222-20-020. The interdisciplinary team may submit a recommendation without a site visit if a small forest landowner submitted the alternate plan using a template contained in board manual section 21 and is a low impact alternate plan and the team determines a visit is not necessary to evaluate the site specific application of a template or a low impact alternate plan.

(c) The recommendation of the interdisciplinary team shall indicate whether the alternate plan meets the approval standard, or what revisions are necessary to meet the approval standard. The team is intended to work with the landowner in an attempt to reach consensus on the efficacy of the alternate plan. In the absence of consensus, the team will forward reports reflecting the majority and minority opinions, or the landowner may elect to withdraw or revise the proposal.

(6) **Approval standard.** An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules.

(7) **Approval, conditions, or disapproval.** Upon receipt of the interdisciplinary team's recommendation, the department shall determine whether to approve, disapprove, or condition the application based on the approval standard. The department shall give substantial weight to the recommendations of the interdisciplinary team in cases where a consensus recommendation is forwarded. If the department disapproves or conditions a forest practices application with an alternate plan, the department will provide a written statement to the landowner explaining why the application was conditioned or denied.

WAC 222-12-0402 *Assistance available for small forest landowners. *[Effective 1/5/13]*

(1) The small forest landowner office has been established within the department to be a resource and focal point for small forest landowner concerns and policies. The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest landowners' economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature has directed that office

to assist small forest landowners in preparing alternate plans appropriate to small forest landowners. See RCW 76.13.100 and 76.13.110(3).

(2) Small forest landowners interested in alternate plans are encouraged to contact the small forest landowner office for assistance in preparing an alternate plan. The office may provide technical assistance in understanding and using board manual section 21 for alternate plans, assistance in developing an individualized alternate plan for the small forest landowner and facilitation of small forest landowner interactions with the department, other state agencies, federal agencies, affected Indian tribes and the interdisciplinary team that may review the small forest landowner's alternate plan.

WAC 222-12-0403 *Cooperative development of guidelines for alternate plans.

The department will develop the section for alternate plans (WAC 222-12-090(21)) to submit to the board in cooperation with representatives of the small forest landowner office and advisory committee, the departments of ecology and fish and wildlife, United States Fish and Wildlife Service, National Marine Fisheries Service, and affected Indian tribes. The manual should include:

(1) As required by RCW 76.13.110(3), the small forest landowner office recommendations for alternate plans or alternate harvest restrictions that meet riparian functions while generally requiring less costly regulatory prescriptions;

(2) The effectiveness of strategies for meeting resource objectives and protecting public resources;

(3) Template prescriptions designed to meet resource objectives to address common situations that are repeatedly addressed in alternate plans or strategies to simplify the development of future plans or strategies, including low impact situations and site-specific physical features;

(4) Appropriate recognition or credit for improving the condition of public resources; and

(5) Criteria to assist the department in determining whether a small forest landowner alternate plan qualifies as a low impact alternate plan.

WAC 222-12-0404 *Cooperation for effective alternate planning.

The department will work cooperatively with associations representing the interests of large and small forest landowners to develop more efficient alternate planning guidance and processes. In pursuing greater efficiency and technical assistance, the department will consider:

(1) Successful alternate plans, and small forest landowner alternate management strategies and processes that can be used by other small forest landowners as examples of the plan development and approval process;

(2) Auditing and monitoring results;

(3) Maintaining a list of technical experts available to landowners in preparing such plans; and

(4) Partnerships between the department and organizations supporting forest land stewardship principles.

WAC 222-12-0405 *Auditing and monitoring.

(1) Audits. The department will conduct audits of landowner's compliance with the terms of alternate plans. The department will specifically review and approve each landowners scheduled performance reports, if a performance report is required, by checking the reports themselves or by implementing a more extensive audit involving field verification. The department audit program for alternate plans will be designed to be consistent with the terms of any agreements with the federal government regarding fish and water quality.

(2) The small landowners office is required by RCW 76.13.110(3) to evaluate the cumulative impact of alternate plans for small forest landowners on essential riparian functions at the subbasin or watershed level. The department will provide the result of this evaluation to the board.

WAC 222-12-041 Use of approved state and federal conservation agreements for aquatic resources. *[Effective 12/22/08]*

(1) Forest practices consistent with an agreement described in subsection (3) below are exempt from the forest practices rules in chapters 222-22 through 222-38 WAC if the following criteria are met:

(a) The forest practices rule pertains to a species included within aquatic resources and that species is covered by an agreement listed in subsection (3) below; and

(b) The primary risk(s) to public resources addressed by the forest practices rules (e.g., delivery of sediment to waters from roads, harvest activities, or mass wasting events; chemical contamination of waters; inadequate recruitment of large woody debris; delivery of thermal energy to waters) is addressed in the agreement. The agreement may address the risk using different prescriptions, approaches, or timing than the forest practice rule.

(2) (a) When the landowner submits an application or notification, the landowner must include a proposed list of specific rules replaced.

(b) The department will review and confirm whether the rules identified by the landowner meet the criteria identified in subsection (1) above.

(c) At the request of the department, the landowner will confer in good faith with the department and provide the department and other interested parties with information necessary to assist the department in implementing this section.

(3) This section applies to landowners who are operating consistent with one of the following agreements that covers a species included within aquatic resources provided that the agreement has received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq., the Endangered Species Act, 16 U.S.C. section 1531 et seq., or the State Environmental Policy Act, chapter 43.21C RCW;

(a) A habitat conservation plan and incidental take permit approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. section 1539(a);

(b) An incidental take statement issued by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. 1536(b);

(c) An "unlisted species agreement" approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(d) A candidate conservation agreement or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection.

For any agreement with a formal application date after July 1, 2001, the landowner must have made a good faith effort to involve the department of fish and wildlife, the department of ecology, department of natural resources, and affected Indian tribes in the development of the related plan or management strategy.

WAC 222-12-044 Cooperative opportunities.
The forest practices board recognizes and encourages collaborative efforts to build solutions to pressing forest practices issues. The forest practices board may at any time use this method to assist in assessing and recommending solutions to issues. The benefits of this method lie in the ability of disparate groups to use consensus processes to bring recommendations to the forest practices board. The board will continue to utilize collaborative efforts, such as the Timber, Fish, and Wildlife (TFW) or similar forum. Participants would ideally consist of representation by timber interests, environmental interests, state agencies, local government, federal agencies, tribal governments and other interested parties so long as the collaborative effort utilizes a consensus approach to resolving or addressing issues.

WAC 222-12-045 *Adaptive management program. *[Effective 10/20/13]*
In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based adaptive management program (program), as set forth in WAC 222-08-160(2). Refer to board manual section 22 for program guidance and further information.

(1) **Purpose:** The purpose of the program is to provide science-based recommendations and technical information to assist the board in determining if and when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource goals and objectives. The board may also use this program to adjust other rules and guidance. The goal of the program is to effect change when it is necessary or advisable to adjust rules and guidance to achieve the goals of the forests and fish report or other goals identified by the board. There are three desired outcomes: Certainty of change as needed to protect targeted resources; predictability and stability of the process of change so that landowners, regulators and interested members of the public can anticipate and prepare for change; and application of quality controls to study design and execution and to the interpreted results.

(2) **Program elements:** By this rule, the board establishes an active, ongoing program composed of the following initial elements, but not to exclude other program elements as needed:

(a) **Key questions and resource objectives:** Upon receiving recommendations from the Timber/Fish/Wildlife (TFW) policy committee, or similar collaborative forum, the board will establish key questions and resource objectives and prioritize them.

(i) Projects designed to address the key questions shall be established in the order and subject to the priorities identified by the board.

(ii) Resource objectives are intended to ensure that forest practices, either singularly or cumulatively, will not significantly impair the capacity of aquatic habitat to:

(A) Support harvestable levels of salmonids;

(B) Support the long-term viability of other covered species; or

(C) Meet or exceed water quality standards (protection of beneficial uses, narrative and numeric criteria, and antidegradation).

(iii) Resource objectives consist of functional objectives and performance targets. Functional objectives are broad statements regarding the major watershed functions potentially affected by forest practices. Performance targets are the measurable criteria defining specific, attainable target forest conditions and processes.

(iv) Resource objectives are intended for use in adaptive management, rather than in the regulatory process. Best management practices, as defined in the rules and manual, apply to all forest practices regardless of whether or not resource objectives are met at a given site.

(b) **Participants:** The board manages the program and empowers the following entities to participate in the program:

- The cooperative monitoring evaluation and research committee (CMER);
- The TFW policy committee (and/or similar collaborative forum);
- The adaptive management program administrator; and
- Other participants as directed to conduct the independent scientific peer review process.

The program will strive to use a consensus-based approach to make decisions at all stages of the process. Specific consensus-decision stages will be established by CMER and approved by the board. Ground rules will follow those established by the TFW process as defined in the board manual.

(i) **CMER.** By this rule, the board establishes a cooperative monitoring evaluation and research (CMER) committee to impose accountability and formality of process, and to conduct research and validation and effectiveness monitoring to facilitate achieving the resource objectives. The purpose of CMER is to advance the science needed to support adaptive management. CMER also has ongoing responsibility to continue research and education in terrestrial resource issues. CMER will be made up of members that have expertise in a scientific discipline that will enable them to be most effective in addressing forestry, fish, wildlife, and landscape process issues. Members will represent timber landowners, environmental interests, state agencies, county governments, federal agencies and tribal governments from a scientific standpoint, not a policy view. CMER members will be approved by the board. This will not preclude others from participating in and contributing to the CMER process or its subcommittees. CMER shall also develop and manage as appropriate:

(A) Scientific advisory groups and subgroups;

(B) Research and monitoring programs;

(C) A set of protocols and standards to define and guide execution of the process including, but not limited to, research and monitoring data, watershed analysis reports, interdisciplinary team evaluations and reports, literature reviews, and quality control/quality assurance processes;

(D) A baseline data set used to monitor change;

(E) A process for policy approval of research, monitoring, and assessment projects and use of external information, including the questions to be answered and the timelines; and

(F) A biennial research, monitoring, and assessment work plan to be presented to the TFW policy committee at their regular April meeting beginning in 2015 and at least every two years thereafter.

(ii) **TFW policy committee (policy committee).** The policy committee is established to consider the findings of CMER research and monitoring and to make recommendations to the board related to forest practices rules, board manual sections, and/or other guidance. Policy committee membership consists of caucus principals or their representatives from the following nine caucuses:

- Industrial private timber land owners;
- Nonindustrial private timber landowners;
- Environmental community;

- Western Washington tribal governments;
- Eastern Washington tribal governments;
- County governments;
- Department of natural resources;
- State departments of fish and wildlife and ecology; and
  Federal agencies (including National Marine Fisheries Service, Fish and Wildlife Service, and U.S. Environmental Protection Agency.

Policy committee members or their representatives are the primary participants for discussion and decisions at policy committee meetings. Technical or scientific staff may attend policy committee meetings for consultation and staff member or visitors may attend policy committee meetings, but refrain from decision making. The policy committee will base consensus on one vote from each of the nine caucuses. The policy committee will act as a consensus-based body. Beginning in April 2014, the policy committee shall, among other responsibilities, and in cooperation with CMER, prepare for presentation to the board at their regular May meeting:

(A) A CMER master project schedule prioritizing all CMER research and monitoring projects through 2031;

(B) Assurances that the CMER work plan projects are scheduled according to the CMER master project schedule;

(C) A review and update of the CMER master project schedule at least every four years; and

(D) Assurances that all of the projects on the master project schedule, as amended by the board, will be completed by 2040.

(iii) Adaptive management program administrator (program admini**strator).** The department will employ a full-time independent program administrator to oversee the program and support CMER. The program administrator will have credentials as a program manager, scientist, and researcher. The program administrator will:

(A) Make reports to the board and have other responsibilities as defined in the board manual.

(B) Work with the policy committee and CMER to develop the CMER master project schedule and present it to the board at their regular May 2014 meeting;

(C) Report to the board every two years, beginning at their regular May 2015 meeting on:

(I) Progress made to implement the CMER master project schedule and recommended revisions;

(II) The status of ongoing projects including adherence to scheduled timelines; and

(III) Policy committee's responses to all final CMER reports.

(iv) **Forest practices board (board).** The board, among other responsibilities, shall:

(A) Require the program to complete work according to the CMER master project schedule as amended by the board;

(B) Determine whether the program is in substantial compliance with the CMER master project schedule every two years, beginning at the

regular August 2014 meeting; and

(C) Notify the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by letter within thirty days after the regular August meeting if the board determines the program is not in substantial compliance with the CMER master project schedule.

(c) **Independent scientific peer review process.** By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address program issues are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a CMER-approved, peer-reviewed journal. Other products that may require review include, but are not limited to, external information, work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports.

(d) **Process:** The following stages will be used to effect change for managing adaptive management proposals and approved projects. If consensus cannot be reached by participants at any stage, the issue will be addressed within the dispute resolution process as defined in (h) of this subsection.

(i) **Proposal initiation:** Adaptive management proposals can be initiated at this stage by any of the participants listed in (b) of this subsection to the program administrator, or initiation may be proposed by the general public at board meetings. Proposals must provide the minimum information as outlined in the board manual and demonstrate how results of the proposal will address key questions and resource objectives or other program rule and/or guidance issues. The board may initiate proposals or research questions in the course of fulfilling their duties according to statute.

(ii) **Proposal approval and prioritization:** The program administrator will manage the proposal approval and prioritization process at this stage and consult with CMER on the program workplan. CMER proposals will be forwarded by the program administrator to policy and then to the board. The board will make the final determination regarding proposal approvals and prioritization. The board will act on proposal approval and prioritization in a timely manner.

(iii) **CMER implementation of proposal:** Board approved proposals are systematically implemented through CMER at this stage by the program administrator.

(iv) **Independent scientific peer review:** An independent scientific peer review process will be used at identified points within this stage of implementation depending upon the study and will be used on specified final studies or at the direction of the board.

(v) **CMER committee technical recommendations:** Upon completion, final CMER reports and information will be forwarded at this stage by the program administrator to policy in the form of a report that includes technical recommendations and a discussion of rule and/or guidance implications.

(vi) **Policy committee petitions and recommendations to the board:** Upon receipt of a CMER report or a board requested action, the policy committee will prepare a report for the board outlining recommended actions including

additional research, rule petitions, and/or guidance recommendations. When completed, the recommendations including rule petitions and the original CMER report and/or other information as applicable will be forwarded by the program administrator to the board for review and action. Policy committee recommendations for rule amendments to the board will be accompanied by formal petitions for rulemaking (as described in WAC 222-08-100 and RCW 34.05.330). The policy committee will use the CMER results to make specific recommendations to the board on:

(A) The regulatory scheme of forest practices management (Title 222 WAC rules and board manual);

(B) Voluntary, incentive-based, and training programs affecting forestry;

(C) The resource objectives; and CMER itself, adaptive management procedures, or other mechanisms implementing the recommendations contained in the most current forests and fish report.

(vii) **Board action to accept petitions for rule making and/or recommendations from the policy committee:** Upon receiving recommendations from the policy committee for rule petitions and/or recommendations for guidance, the board will take appropriate and timely action. There will be a public review of all petitions as applicable. The board will make the final determination.

(e) **Biennial fiscal and performance audits.** The board shall re quire biennial fiscal and performance audits of the program by the department or other appropriate and accepting independent state agency.

(f) **CMER five-year peer review process.** Every five years the board will establish a peer review process to review all work of CMER and other available, relevant data, including recommendations from the CMER staff. There will be a specified, but limited, period for public review and comment.

(g) **Funding.** Funding is essential to implement the adaptive management program, which is dependent on quality and relevant data. The department shall request biennial budgets to support the program priority projects and basic infrastructure needs including funding to staff the adaptive management program administrator position. A stable, long-term funding source is needed for these activities.

(h) **Formal dispute resolution process for CMER and policy committee.** If consensus cannot be reached through the adaptive management program process, participants will have their issues addressed by this dispute resolution process. Potential failures include, but are not limited to:

- The inability of policy to agree on research priorities, program direction, or recommendations to the board for uses of monitoring and/or research after receiving a report from CMER;
- The inability of CMER to produce a report and recommendation on schedule; and
- The failure of participants to act on policy recommendations on a specified schedule. Key attributes of the dispute resolution process are:

(i) Specific substantive and benchmark (schedule) triggers will be established by the board for each monitoring and research project for invoking dispute resolution;

(ii) The dispute resolution process is available to and can be initiated by both CMER and the pol icy committee to resolve disputes that result in

the course of their respective processes. Formal dispute resolution involves two stages and may be applied at any level of the adaptive management process. Any participating policy committee caucus, board approved CMER member, or the board, may invoke stage two, if agreement is not reached in stage one, within the specified time (or if agreements are not substantially implemented) as follows:

(A) Stage one dispute resolution will be an attempt by CMER or the policy committee, as applicable, to reach consensus. CMER and the policy committee have up to two months to reach consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. Any party may move the process to stage two after an issue has been in dispute resolution before CMER or the policy committee for two months. The time periods commence from the date the dispute resolution process is invoked.

(B) Stage two dispute resolution in CMER or the policy committee will be either mediation or arbitration. Within one month, one or the other will be picked, with the default being mediation unless otherwise agreed. Stage two will be completed within three months (including the one month to select the process) unless otherwise agreed based on substantive progress.

(C) If stage two dispute resolution within CMER does not result in consensus, the program administrator will forward the dispute to the policy committee for a decision, which could include initiation of the dispute resolution process within the policy committee.

(D) If stage two dispute resolution within the policy committee does not result in consensus, the program administrator will report the majority and minority recommendations to the board. The board will make the final determination regarding dispute resolution.

WAC 222-12-046 Cumulative effects. *[Effective 7/1/05]*

The purpose of this section is to identify how the forest practices rules address changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices. This interaction is referred to as "cumulative effects." The following approaches have been taken:

(1) Title 222 WAC establishes minimum standards for all forest practices, regardless of the class of forest practices application.

(2) Forest practices which have a potential for a substantial impact on the environment are classified as Class IV-Special or Class IV-General by WAC 222-16-050 and receive an evaluation as to whether or not a detailed statement must be prepared pursuant to chapter 43.21C RCW.

(3) Certain rules are designed to focus on specific aspects of cumulative effects of forest practices. For example:

(a) WAC 222-08-160 requires continuing review of the forest practices rules and voluntary processes and adopts the concept of adaptive management. WAC 222-12-045 also adopts adaptive management.

(b) WAC 222-12-040 allows alternate plans that provide protection to public resources at least equal in overall effectiveness to the protection provided in the Forest Practices Act and rules.
(c) WAC 222-24-051 allows the department to require road maintenance and abandonment plans.
(d) WAC 222-30-025 addresses harvest unit size and separation requirements.
(e) Chapter 222-22 WAC addresses cumulative effects of forest practices on, at a minimum, the public resources of fish, water, and capital improvements of the state or its political subdivisions.
(f) Chapter 222-46 WAC establishes the enforcement policy for forest practices.

(4) The board shall continue consultation with the departments of ecology, fish and wildlife, natural resources, and archaeology and historic preservation, forest landowners, and affected tribes to further protect cultural resources and wildlife resource issues.

WAC 222-12-050 Notices to comply--Stop work orders. *[Effective 12/30/13]*

*(1) **Violations.** When a forest practice has been completed, the department may issue a notice to comply requiring the operator or landowner to correct or compensate for damage to public resources where there was:
(a) A violation of the act, or these rules; or
(b) A deviation from the approved application; or
(c) A willful or negligent disregard for potential damage to a public resource.

(2) **Other required action.** When a forest practice has not yet been completed, the department may issue either a notice to comply to the operator and/or landowner, or a stop work order to the operator, requiring him/her to prevent potential or continuing damage to a public resource where:
(a) The need for additional actions or restrictions has become evident; and
(b) The department determines that a specific course of action is needed to prevent potential or continuing damage to public resources; and
(c) The damage would result or is resulting from the forest practices activities, whether or not the activities involve any violation, unauthorized deviation or negligence.

(3) **No notice to comply** shall be issued to require a person to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules: Provided, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules pertaining to providing continuing road maintenance.

(4) **No notice to comply** to recover money damages shall be issued more than two years after the date the damage involved occurs.

*(5) **In emergency action,** where the department requires the operator or landowner to do immediate work that could affect the bed or flow of the stream, the department shall first seek consultation from the department of fish and wildlife.

WAC 222-12-060 Supplemental directives.

Supplemental directives are advisory directives and are issued to forest landowners, timber owners and operators conducting forest practices, recommending an alternate preferred course of action or a minor change in the operation, which the department believes would provide greater assurance that the purposes and policies set forth in RCW 76.09.010 will be met.

WAC 222-12-070 Enforcement policy. *[Effective 12/16/10]*
Procedures for enforcement of these rules by the department are provided in chapter 222-46 WAC. Where the department of ecology determines that a person has failed to comply with the forest practices rules relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof in writing. If the department of natural resources fails to take authorized enforcement action within 24 hours, under RCW 76.09.080, 76.09.090, 76.09.120 or 76.09.130, the department of ecology may petition the appeals board, which shall, within 48 hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or a notice to comply or impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

WAC 222-12-080 Administrative and judicial appeals. *[Effective 12/16/10]*
(1) Certain decisions of the department may be appealed to the appeals board under chapter 76.09 RCW except that notices to comply may not be appealed to the appeals board unless first appealed to the department under RCW 76.09.090. Proceedings at the appeals board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 371-08 WAC.
(2) A petition for judicial review of a decision of the appeals boards may be filed in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

WAC 222-12-090 Forest practices board manual. *[Effective 12/30/13]*
When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:
(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.
(2) Standards for identifying channel migration zones and bankfull channel features.
(3) **Guidelines** for forest roads.
(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.
(5) **Guidelines** for forest practices hydraulic projects.
(6) **Guidelines** for determining acceptable stocking levels.
(7) **Guidelines** for riparian management zones.
(8) **Guidelines** for wetland delineation.
(9) **Guidelines** for wetland replacement or substitution.
(10) A list of nonnative wetland plant species.
(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.
(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird Group survey protocol dated January 6, 2003, and formally titled *Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board-recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for rivers and habitat open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.