Chapter 222-21 WAC

SMALL FOREST LANDOWNER FORESTRY RIPARIAN EASEMENT PROGRAM

WAC

WAC 222-21-005 Policy 1
WAC 222-21-010 Definitions. 1
WAC 222-21-030 Documentation and standards 3
WAC 222-21-031 Forestry riparian easement application review and processing 4
WAC 222-21-032 Eligibility criteria 4
WAC 222-21-040 Timber cruises 5
WAC 222-21-045 Valuation 6
WAC 222-21-048 Reimbursement of costs to the small forest landowner 7
WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner 7
WAC 222-21-055 Reimbursement to the department 8
WAC 222-21-070 Blowdown and salvage 8
WAC 222-21-080 Eminent domain 8
WAC 222-21-090 Internal department of natural resources review of small forest landowner office decisions 9

WAC 222-21-005 Policy. *[Effective 6/22/2012]*
The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from qualifying small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.

WAC 222-21-010 Definitions. *[Effective 6/22/2012]*
The following definitions apply to this chapter:
(1) "Completion of harvest" means that the trees within the area under an approved forest practices application have been harvested and further entry into that area by any type of logging or slash treating equipment or method is not expected.
(2) "Easement premises" means the geographic area designated in a forestry riparian easement including areas in which qualifying timber is located.
(3) "Forestry riparian easement" means a conservation easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.
(4) "Forests and fish rules" means the rules adopted by the board in accordance with RCW 76.09.055, 76.09.370, and the amendments to those rules.
(5) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW 70.102.010 and 70.105D.020, and solid waste as defined in RCW 70.95.030.

(6) "Qualifying small forest landowner" means an owner of forest land with qualifying timber meeting all of the criteria in (a)(i) through (iv) of this subsection as of the date the department receives a forest practices application associated with a proposed forestry riparian easement, and the date the department offers compensation for the easement.

(a) A qualifying small forest landowner:

(i) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still be a qualifying small forest landowner under this chapter;

(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office;

(iii) Has no outstanding violations of chapters 76.09 or 76.13 RCW or any associated forest practices rules;

(iv) Has harvested or expects to harvest from his or her forest lands in this state as follows:

(A) No more than the average volume that would qualify the landowner as a "small harvester" under RCW 84.33.035 during the three years prior to the year the department receives a complete forest practices application associated with the easement, and certifies that he or she does not expect to exceed that average timber volume during the ten years following the date of the offer of compensation for the easement; or

(B) If the landowner can establish to the satisfaction of the small forest landowner office that those harvest limits were or will be exceeded to raise funds to pay estate taxes or other equally compelling and unexpected obligations such as court-ordered judgments or extraordinary expenses, the landowner may still be a qualifying small forest landowner.

(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 the application or disapproved it because of forests and fish rule restrictions. See WAC 222-21-032 for more information about easement eligibility.

(7) "Qualifying timber" means forest trees that meet criteria (a) through (c) of this subsection:

(a) Are covered by a forest practices application.

(b) 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 one or more of the following 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 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) of this subsection if they are uneconomic to harvest as determined under WAC 222-21-032(6).

(8) "Small forest landowner office" means an office within the department of natural resources. The office is a resource and focal point for small forest landowner concerns and policies, and has expertise regarding the management of small forest holdings and government programs applicable to such holdings. The office manages the forestry riparian easement program.

WAC 222-21-030 Documentation and standards. *[Effective 6/22/2012]*

(1) Forest practices application. Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.

(2) Forestry riparian easement application. The landowner will provide the following information in a forestry riparian easement application:

(a) County tax parcel numbers of the property in the proposed easement premises;

(b) A list of all forest practices application numbers of approved and/or disapproved forest practices applications;

(c) The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such easements to the state; and

(d) Documentation that qualifying timber is harvested, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these eligibility criteria.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

(3) Baseline documentation. The small forest landowner office will gather baseline documentation that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The documentation will include but not be limited to:

(a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and

(b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement premises.

(4) Forestry riparian easement contract. The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(5) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of fifty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.

(5) Land description standards.

(a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.

(b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the location of the easement conveyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

WAC 222-21-031 Forestry riparian easement application review and processing. *[Effective 6/22/2012]*

After the small forest landowner office makes a preliminary determination of eligibility:

(1) The department will verify the timber harvest associated with the easement is complete.

(2) The department will submit the list of eligible projects to the state legislature for budget approval.

(3) The landowner or the landowner's representative will mark the boundary of the area containing the qualifying timber.

(4) The department will verify eligibility of qualifying timber.

(5) The department will perform a timber cruise on the qualifying timber to establish the compensation value.

(6) The department will inform the landowner in writing of the easement value. All compensation and reimbursement is subject to available funding.

(7) If an application is ineligible, the department will notify the landowner in writing the reasons why. The department will return ineligible applications to landowners.

WAC 222-21-032 Eligibility criteria. *[Effective 6/22/2012]*

(1) Qualifying small forest landowners must complete a timber harvest to be eligible for a forestry riparian easement, unless a commercially reasonable harvest is not possible according to subsection (5) of this section or the only timber available to harvest meets the criteria of uneconomic to harvest according to subsection (6) of this section.

(2) The easement premises cannot contain unacceptable liabilities as determined by the small forest landowner office. Unacceptable liabilities include, but are not limited to, the presence of hazardous substances on the land or other conditions that may create a liability to the department, any existing uses of the property that may jeopardize the protection of the easement premises and qualifying timber, and situations in which the applicant is unwilling or unable to provide reasonable protection against financial loss to the state.

(3) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises and qualifying timber must execute the easement documents or otherwise subordinate their interest to the easement being acquired by the state. This includes tenants in common, joint tenants, holders of reversionary interests, lien holders, and mortgages.

(4) Commercially reasonable harvest. The small forest landowner office will consider the following criteria to determine if an area covered by a forest practices application involves a commercially reasonable harvest. The proposed harvest must meet all five of the following requirements:

(a) The harvest unit is immediately adjacent to or physically connected to qualifying timber;

(b) The application is for a forest practice involving a timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023;

(d) The value of the timber in the harvest unit, excluding qualifying timber, equals or exceeds one thousand dollars, which is the minimum required by department of revenue for taxing purposes; and

(e) The value of the taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045 unless otherwise approved by the small forest landowner office.

(5) Commercially reasonable harvest is not possible. The small forest landowner office will consider the following criteria to determine if a forest practices application for harvest may qualify for the forestry riparian easement program because it involves an area where a commercially reasonable harvest is not possible. The proposed harvest must meet all four of the following requirements:

(a) The forest practices application has been disapproved because the area covered by the application cannot be harvested due to forests and fish rule restrictions;

(b) The forest practices application involves a proposed timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023; and

(d) The value of the qualifying timber equals or exceeds one thousand dollars, which is the minimum required by the department of revenue for taxing purposes.

(6) Uneconomic to harvest. The small forest landowner office will consider the following criteria to determine whether timber is qualifying timber because the forests and fish rules made it uneconomic to harvest. The proposed harvest must meet all four of the following requirements:

(a) The timber could have been included in a commercially reasonable harvest unit if there were no additional requirements imposed by the forests and fish rules;

(b) The area is not reasonably accessible economically because of requirements imposed by the forests and fish rules;

(c) There is no reasonable unit size alternative which, if used, would make the area economical to harvest; and

(d) The cost to access the harvest unit plus the cost to harvest would equal or exceed thirty-five percent of the stumpage value in the portion of the unit considered uneconomic. The small forest landowner office will determine these costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester tax return method to calculate stumpage values and allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred as part of the cost calculations.

WAC 222-21-040 Timber cruises. *[Effective 6/22/2012]*

(1) This section applies only to timber cruises related to the forestry riparian easement program to establish easement compensation.

(2) A timber cruise is required to determine the volume by species and grade to accurately determine the value of the qualifying timber.

(a) The cruise method will be a one hundred percent inventory of qualifying timber on the proposed easement premises. The inventory will include species, diameter class, grade, and any other information necessary to determine a value for the qualifying timber.

(b) A sampling cruise method may be used under certain circumstances such as where easement premises are greater than ten acres or where the forest trees are homogeneous.

(3) Additional trees left voluntarily by the small forest landowner may be noted but will not be included in the cruise volume.

WAC 222-21-045 Valuation. *[Effective 6/22/2012]*

(1) The small forest landowner office will calculate the compensation amount for forestry riparian easements by determining a value for the qualifying timber. The office will use data gathered from or adjusted to the date the office received the complete forestry riparian easement application. The office will use the stumpage value determination method described in (a) of this subsection for qualifying timber that cannot be harvested because of forests and fish rule restrictions. For qualifying timber approved for harvest, the office will use both the stumpage value determination method and the small harvester tax return method to determine the highest compensation amount for the landowner.

(a) Stumpage value determination method. The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs on the date the office received a complete forestry riparian easement application. The landowner will provide:

(i) The reference for the stumpage value table and any other needed information for use of the table; and

(ii) Any information the landowner would like the office to consider in its cruise and valuation of the qualifying timber.

(b) Small harvester tax return method.

(i) The landowner must provide comprehensive mill or buyer information for each harvest unit associated with the forestry riparian easement including:

(A) The delivered value by species;

(B) The total volume by species; and

(C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be verifiable as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the documentation, the office will determine the qualifying timber value using the stumpage value determination method.

(ii) The office will use a time adjustment index to determine the qualifying timber value based on the date the office received the complete forestry riparian easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.

(iii) The office will determine the adjusted stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) from the value of the time adjusted mill or buyer information. The office will then determine the value of the qualifying timber by multiplying the time adjusted stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber.

(iv) The timber species that exist in the easement premises will be valued, not the species in the harvest area. The timber species in the easement premises will be valued by multiplying the determined cruise volume by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091.

(2) Determining the forestry riparian easement compensation. The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered

under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.

(a) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.

(b) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:

Where:

Vq = the value of qualifying timber;

Vh = the value of harvested timber; and

t = the high impact of regulatory threshold 19.1 percent for western Washington, 12.2 percent for eastern Washington);

The compensation for easement = ((Vq/(Vq + Vh)) - t) * (Vq + Vh)) + (t * (Vq + Vh)/2).

WAC 222-21-048 Reimbursement of costs to the small forest landowner. *[Effective 6/22/2012]*

The state of Washington will reimburse landowners for actual costs incurred toward identifying qualifying timber. Costs can include one or more of the following:

(1) Determining and marking streamside buffers;

(2) Marking the qualifying timber; and

(3) The cost of the portion of a geotechnical report that is applicable to the area determined to contain qualifying timber.

WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner. *[Effective 6/22/2012]*

(1) All compensation and reimbursement to the small forest landowner is subject to available funding.

(2) If funding is not available, the small forest landowner office will maintain a priority list for compensation and reimbursement to the landowner. Priority will be based on the date the small forest landowner office received the complete forestry riparian easement application. In instances where two easement applications are received on the same date, priority will be based on the date the department received a complete forest practices application associated with the easement.

(3) The small forest landowner office will offer compensation for the easement in a purchase and sale agreement. The small forest landowner will accept or reject the conditions of the purchase and sale agreement in writing and submit the written acceptance or rejection to the small forest landowner office.

(4) Compensation for the forestry riparian easement and reimbursement of landowner costs will be paid after:

(a) The department has verified that the landowner has no outstanding violations under chapters 76.09 or 76.13 RCW or any associated forest practices rules

(b) Any dispute over the amount of compensation or eligibility or other matter involving the easement has been resolved; and

(c) The small forest landowner office has sent a forestry riparian easement contract to the landowner, the landowner has signed the contract, and the landowner has delivered it to the department.

(5) Compensation for any qualifying timber located on potentially unstable slopes or landforms will not exceed a total of fifty thousand dollars during any biennial funding period.

WAC 222-21-055 Reimbursement to the department. *[Effective 6/22/2012]*
If, within the first ten years after receipt of compensation for a forestry riparian easement, a small forest landowner sells the land on which a forestry riparian easement is located to a landowner that does not meet the criteria for a qualifying small forest landowner, then the selling small forest landowner must reimburse the state for the full compensation received for the easement and the full amount of the costs incurred to identify the qualifying timber.

If the land on which the easement is located consists of multiple land parcels and the selling small forest landowner sells parcels that consist of only a portion of the easement, the small forest landowner office will calculate the reimbursement amount.

The calculation will be based on the ratio of qualifying timber volume within the portion of the easement on the land that is sold to the total volume of qualifying timber. The selling small forest landowner must make full payment for this reimbursement within one year of sale of the land the easement occupies. The department will continue to hold, in the name of the state, the forestry riparian easement for the full term of the easement.

WAC 222-21-070 Blowdown and salvage. *[Effective 6/22/2012]*
After execution of a forestry riparian easement, qualifying timber may not be salvaged without prior written permission from the department. Prior to removal, the small forest landowner office and the landowner must negotiate the terms of removal and reimbursement to the state, if any. Qualifying timber that blows down off the easement premises that presents a nuisance may be moved back onto the easement premises without permission from the department.

WAC 222-21-080 Eminent domain. *[Effective 6/22/2012]*
If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its remaining interest in the easement based upon the following formula:
Where:
C = the compensation to the department for the state's remaining interest in the easement;
O = the original compensation for the easement paid to the small forest landowner by the state;
P = the proportion of the forestry riparian easement extinguished or terminated;
CPIo = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the month in which the original compensation was determined;
CPIc = the U.S. Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the most recent month available at the time the easement is terminated or extinguished;
I = the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;
R = the number of years remaining on the easement at the time of extinguishment or termination((.));
$C = *P*(CPIc/CPIo)*(1-(1/(1+I)^{R}))/(1-1/(1+I)^{50}))$.

WAC 222-21-090 Internal department of natural resources review of small forest landowner office decisions. *[Effective 6/22/2012]*

Any person who wishes to appeal written decisions of the small forest landowner office pertaining to application eligibility, easement valuation, and related decisions may submit a request for review within thirty days after the date of the small forest landowner office's written decision. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor of the department or designee will issue a written response within thirty days of receipt of the request for review and this response will constitute the department's final decision.