

As required by the
Administrative Procedure Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapters 222-08, 222-12, 222-16, and 222-20 WAC
“Conversions and Forest Practices Applications”

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1. Introduction

Several forest practices rules in Title 222 WAC are inconsistent with the Forest Practices Act (chapter 76.09 RCW) due to changes in law that occurred in 2007, 2011, and 2012. The proposed rules eliminate those inconsistencies, and make additional corrections and clarifications to certain WACs.

Eliminating inconsistencies with the Forest Practices Act

- Affected rules: WAC 222-20-050(2) and WAC 222-20-052 (new)
Pertinent laws: RCWs 76.09.060, -.460, and -.470

2SSB 5883 (2007) replaced the mandatory six-year building moratorium with a process involving a **notice of conversion to nonforestry use**. Under the amended law, if a landowner begins conversion activities without an approved forest practices application (FPA), or fails to state in an FPA that the land subject to the application will be converted:

- DNR must send a notice of conversion to nonforestry use to the Department of Ecology and the local governmental entity (LGE) where the land is located; and
- The landowner must follow specific steps to begin the permitting process.

- Affected rule: WAC 222-16-050
Pertinent law: RCW 76.09.240

SHB 1409 (2007) changed RCW 76.09.240. This law relates to the transfer of forest practices regulatory authority within urban growth areas (UGAs) from DNR to LGEs. One of the changes in 2007 was to exclude ownerships of 20 or more contiguous forest land acres from the transfer of regulatory authority to the LGE **if the landowner documents the intent not to convert to a nonforestry use**. DNR maintains regulatory authority in these cases.

The proposed rule changes in “Class IV-general”, “Class II”, and “Class III” show that classifications of FPAs on this category of forest land are not Class IV-general, and can be Class II, III, or IV-special.

- Affected rules: WAC 222-16-050 and WACs 222-20-010, -020, and -040
Pertinent law: RCW 76.09.050

HB 1582 (2011) eliminated “lands platted after January 1, 1960” as a criterion for Class IV FPA classification.

- Affected rules: WACs 222-12-035 and -0401; WAC 222-16-010; WACs 222-20-015, -016, and -080
Pertinent law: RCW 76.09.060

2ESSB 6406 (2012) added a year to FPA effective terms.

Corrections and clarifications

In addition to the rules amended for consistency with the Forest Practices Act, corrections and clarifications are proposed in the following rules: WAC 222-08-032; WACs 222-12-035, -0401, and -0402; WACs 222-16-010 and -050; WACs 222-20-010, -015, -020, -040, -050, and -051 (new).

2. Differences between proposed and final rule

- a. The language in WAC 222-16-050(4) “Class II” and (5) “Class III” is simplified. In the proposed rule, language was inserted to explain that certain FPAs for forest lands within UGAs should not be classified Class IV-general. The final rule language in those subsections serves the same purpose as the proposed rule language, except:
 - It is made more succinct by using cross references (i.e., eliminating unnecessary language repetition) and using an acronym for urban growth areas (UGAs) where practical.; and
 - It now includes “involving timber harvest or road construction” in the opening sentences of (4)(f) and (5)(q) for consistency with RCW 76.09.050(1) Class IV(c).
- b. A definition of “large forest landowner” is added to WAC 222-16-010: “Large forest landowner is a forest landowner who is not a small forest landowner.” In the proposal, this language was deleted; however since the term is still used in chapter 222-24 WAC, it should be defined.
- c. The final rule also contains some additional corrections to existing language in WACs 222-12-0401 and -0402, WAC 222-16-050, and WACs 222-20-010, -015, and -020.

3. Summary of Comments

One verbal comment was received at the October 10, 2012 hearing and subsequently withdrawn. No other comments were received.

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

- 2/14/12 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101) for conversion-related forest practices rules. There was a public comment opportunity at the meeting prior to the Board action.
- 3/7/12 CR-101 published in the Washington State Register (WSR 12-05-084 filed 02/17/12).
- 5/8/12 Forest Practices Board approved filing *Preproposal Statement of Inquiry* (form CR-101) for rule making related to hydraulic projects and forest practices within urban growth areas. 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 05/22/12).
- 8/14/12 Forest Practices Board approved filing *Proposed Rule Making* (form CR-102) and the draft rule language for public review and comment. There was a public comment opportunity at the meeting prior to the Board action.
- 9/5/12 CR-102 published in the Washington State Register (WSR 12-17-152 filed 8/22/12). Public comment period was from September 5, 2012 through October 10, 2012, including one hearing on October 10, 2012 in Olympia.
- 9/5/12 Notice of Rule Making Activity #12-03 distributed via the Board's list of interested parties, GovDelivery notice, and website at <http://www.dnr.wa.gov/BusinessPermits/ForestPractices/Pages/Home.aspx>
- 9/10/12 Hearing notice distributed via GovDelivery notice and website at <http://www.dnr.wa.gov/BusinessPermits/ForestPractices/Pages/Home.aspx>
- 10/10/12 Public hearing in Olympia.
- 11/13/12 Forest Practices Board meeting; rules adopted.