



**DEPARTMENT OF
NATURAL RESOURCES**

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MEMORANDUM

DATE: July 29, 2024
TO: Forest Practices Board
FROM: Maggie Franquemont, Forest Regulation Policy Program Manager
SUBJECT: Forestry Riparian Easement Program (FREP) Rulemaking

On August 14, 2024, I will request the Board adopt the amended Forestry Riparian Easement Program (FREP) rules; WAC 222-21-005, WAC 222-21-010, WAC 222-21-030, WAC 222-21-045, WAC 222-21-050, and WAC 222-21-080 (attached). I will also ask the Board request staff to file the CR-103 Rule-Making Order with the Office of the Code Revisor.

In March of 2024 the Washington State Legislature passed Substitute Senate Bill (SSB) 5667 which amended RCW 76.13.120 and RCW 76.13.140. This bill was signed on March 18th and became effective on June 6th. The overall purpose of SSB 5667 was to modify FREP to better serve the small forest landowner community. DNR staff began the expedited rulemaking process to address the changes necessary to comply with SSB 5667.

The rulemaking encompasses two different criteria for expedited rule adoption. The changes to rule were either “explicitly and specifically dictated by statute” or “correcting typographical errors, make address or name changes, or clarifying language of a rule without changing its meaning.” DNR staff drafted the amended rule language and stakeholders were consulted to ensure that everything within SSB 5667 was sufficiently addressed. Stakeholders also looked at the changes being made for clarification and typographical errors to ensure that the changes made did not change the rule’s meaning.

On May 7, 2024, the Board approved the draft language and directed DNR staff to file the CR-105 to initiate expedited rulemaking. The CR-105 was filed on May 21, 2024 and required a 45 day comment period, which ended July 25, 2024. No comments were received during the comment period. The language has not changed from what the Board saw at the May meeting.

The Board can now direct staff to file the CR-103 to finalize the rule. The rule will become effective 30 days after the CR-103 is filed. At that time the rule will be posted to the website and will be distributed via GovDelivery to interested parties.

If you have any questions feel free to contact me at maggie.franquemont@dnr.wa.gov.

MF/

Attachment:

Draft FREP Rulemaking Language

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WAC 222-21-005 Policy.

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. At least semiannually, the department shall consult with the small forest landowner advisory committee established in RCW 76.13.110(4) to review landowner complaints, administrative processes, rule recommendations, and related issues where the department is actively seeking the small forest landowner advisory committee's advice on potential improved efficiencies and effectiveness.

WAC 222-21-010 Definitions.

The following definitions apply to this chapter:

- (1) "Completion of harvest" means that the trees from an area under an approved forest practices application have been commercially 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 10A.415.101 and 70A.305.010, and solid waste as defined in RCW 70A.205.015.
- (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 forty 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:

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

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

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

18 (7) "Qualifying timber" means forest trees **on land owned by a qualifying small forestland owner**
19 **for which the small forestland owner is willing to grant the state a forestry riparian easement and** that
20 meet criteria (a) through (c) of this subsection:

21 (a) Are covered by a forest practices application.

22 (b) Fit one of the following situations:

23 (i) The timber is required to be left unharvested because of forests and fish rule
24 restrictions and is within, immediately adjacent to, or physically connected to a
25 commercially reasonable harvest unit under an approved forest practices
26 application; or

27 (ii) The timber cannot be approved for harvest under a forest practices application
28 because of forests and fish rule restrictions.

29 (c) Are located within one or more of the following areas:

30 (i) Riparian or other sensitive aquatic areas;

31 (ii) Channel migration zones; or

32 (iii) Areas of potentially unstable slopes or landforms, verified by the department,
33 that have the potential to deliver sediment or debris to a public resource or
34 threaten public safety and are immediately adjacent to or physically connected
35 to other qualifying timber that is located within riparian or other sensitive
36 aquatic areas.

37 Qualifying timber may also mean forest trees that do not meet criteria (b) or (c) of this
38 subsection if they are uneconomic to harvest as determined under WAC 222-21-032(6).

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

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WAC 222-21-030 Documentation and standards. *[Effective 3/24/21]*

- (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) Date of completed harvest;
 - (d) 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
 - (e) Documentation that qualifying timber within or immediately adjacent to, or physically connected to a commercially reasonable harvest area, 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(6) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of forty 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 222-21-045 Valuation. *[Effective 3/24/21]*

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- 1 (1) The small forest landowner office will calculate the compensation amount for forestry riparian
2 easements by determining a stumpage value for the qualifying timber. The office will use data
3 gathered from the date of the completed harvest. For applications that are eligible under WAC
4 222-21-032 without an associated harvest completion date, the office will use the date the
5 completed forest riparian easement application is received. The office will use the stumpage
6 value determination method described in (a) of this subsection to calculate the stumpage value
7 of the qualifying timber. The office will also calculate the stumpage value of the qualifying
8 timber as described in (b) of this subsection if the landowner voluntarily provides harvest
9 records. The office will determine the highest compensation amount for the landowner.
- 10 (a) Stumpage value determination method. The small forest landowner office will create
11 and maintain value tables to determine stumpage value of the qualifying timber. These
12 tables will be created using a method coordinated with the department of revenue. The
13 values will closely approximate the stumpage value for logs on the date of the
14 completed harvest. The landowner will provide:
- 15 (i) The reference for the stumpage value table and any other needed information for
16 use of the table; and
- 17 (ii) Any information the landowner would like the office to consider in its cruise
18 and valuation of the qualifying timber.
- 19 (b) Small harvester tax return method.
- 20 (i) The landowner must provide comprehensive mill or buyer information for each
21 harvest unit associated with the forestry riparian easement including:
- 22 (A) The delivered value by species;
- 23 (B) The total volume by species; and
- 24 (C) The actual harvesting and marketing costs as defined in the department
25 of revenue small harvester instructions.
- 26 This information must be verifiable as proceeds from the timber harvests from
27 documents such as mill receipts and/or forest excise tax returns. If the small
28 forest landowner office does not receive a comprehensive packet of mill or
29 buyer information or is not satisfied with the source of the documentation, the
30 office will determine the qualifying timber value using the stumpage value
31 determination method.
- 32
- 33 (ii) The office will determine the stumpage value by subtracting the average logging
34 and hauling cost per thousand board feet (MBF) from the value of the mill or
35 buyer information. The office will then determine the value of the qualifying
36 timber by multiplying the stumpage value of each species in the harvest unit by
37 the net volume for each corresponding species in the inventory of qualifying
38 timber.
- 39 (iii) The office determines the values of the timber species that exist in the easement
40 premises, not the species in the harvest area. The department determines the
41 qualifying timber value by multiplying the determined cruise volume of
42 qualified timber in the easement premises by the appropriate stumpage value of
43 those species shown on the appropriate table used for timber harvest excise tax
44 purposes per RCW 84.33.091 or the appropriate stumpage values of those

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1 species calculated by the office using the landowner's comprehensive mill or
2 buyer information.

3 (2) Determining the forestry riparian easement compensation. The easement compensation will
4 equal 90 percent of the qualifying timber value determined in subsections 1(a) or (b) of this rule.

5 **WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner.**

6 (1) All compensation and reimbursement to the small forest landowner is subject to available
7 funding and to the extent reasonable possible the small forest landowner office will process
8 forestry riparian easement applications in the order received.

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

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

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

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

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

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

28 (5) Compensation for any qualifying timber located on potentially unstable slopes or landforms
29 will not exceed a total of one hundred fifty thousand dollars during any biennial funding period.
30

31 **WAC 222-21-080 Eminent domain.**

32 If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent
33 domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its
34 remaining interest in the easement based upon the following formula:

35 Where:

36 C = the compensation to the department for the state's remaining interest in the easement;

37 O = the original compensation for the easement paid to the small forest landowner by the state;

38 P = the proportion of the forestry riparian easement extinguished or terminated;

39 CPIo = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor
40 Statistics for the month in which the original compensation was determined;

41 CPIc = the U.S. Consumer Price Index for all Urban Consumers as published by the Bureau of Labor
42 Statistics for the most recent month available at the time the easement is terminated or extinguished;

43 I = the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release

44 H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the
45 U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;

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- 1 R = the number of years remaining on the easement at the time of extinguishment or termination;
- 2 $C = O * P * (CPI_c / CPI_o) * (1 - (1 / (1 + I)^R)) / (1 - 1 / (1 + I)^{50})$.
- 3