AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

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.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-010 Definitions. The following definitions apply to this chapter:

(1) **"Completion of harvest"** means that the trees ((~~within the~~)) 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 ((~~70.102.010 and 70.105D.020~~)) 70A.415.010 and 70A.305.010, and solid waste as defined in RCW ((~~70.95.030~~)) 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 ((~~fifty~~)) 40 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~~)) 10 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 on land owned by a qualifying small forestland owner for which the small forestland owner is willing to grant the state a forestry riparian easement and 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.

AMENDATORY SECTION (Amending WSR 21-06-020, filed 2/22/21, effective 3/25/21)

WAC 222-21-030 Documentation and standards. (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

((~~(d)~~)) (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((~~(5)~~)) (6) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of ((~~fifty~~)) 40 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 con-

veyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

AMENDATORY SECTION (Amending WSR 21-06-020, filed 2/22/21, effective 3/25/21)

WAC 222-21-045 Valuation. (1) **The small forest landowner office will calculate the compensation amount for** forestry riparian easements by determining a stumpage 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~~)) of the completed harvest. For applications that are eligible under WAC 222-21-032 without an associated harvest completion date, the office will use the date the completed forest riparian easement application is received. The office will use the stumpage value determination method described in (a) of this subsection ((~~for~~)) to calculate the stumpage value of the 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~~)). The office will also calculate the stumpage value of the qualifying timber as described in (b) of this subsection if the landowner voluntarily provides harvest records. The office will 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~~)) of the completed harvest. 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)~~)) (iii) The ((~~department~~)) office determines the values of the timber species that exist in the easement premises, not the species in the harvest area. The ((~~department~~)) office determines the ((~~easement~~)) qualifying timber value by multiplying the determined cruise volume of qualified timber in the easement premises 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 or the appropriate stumpage values of those species calculated by the office using the landowner's comprehensive mill or buyer information.

(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 = $(((Vq/(Vq + Vh)) - t) * (Vq + Vh)) + (t * (Vq + Vh)/2)$.~~))

The easement compensation will equal 90 percent of the qualifying timber value determined in subsection (1)(a) or (b) of this section.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner. (1) All compensation and reimbursement to the small forest landowner is subject to available funding and to the extent reasonable possible the small forest landowner office will process forestry riparian easement applications in the order received.

(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~~)) $150,000 during any biennial funding period.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-080 Eminent domain. 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 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;

$C = \underline{O}*P*(CPIc/CPIo)*(1-(1/(1+I)^{R}))/(1-1/(1+I)^{50}))$.