



Forestry Riparian Easement Program (FREP) Expedited Rulemaking

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FREP Overview

Small Forest Landowner Program

- Forest Practice Rules disproportionately impact small forest landowners
- Voluntary program
- Reimburses landowners the value of trees they are required to leave to protect fish habitat
 - Trees in the RMZ and on potentially unstable slopes

Created by the legislature in 1999

- Modified several times
- Modified in the 2024 legislative session
 - SSB 5667



SSB 5667

Passed in March 2024, signed into law on March 18th

- Effective date: June 6, 2024

Modified:

- RCW 76.13.120 - *Findings—Definitions—Forestry riparian easement program.*
- RCW 76.13.140 - *Small forestland owners—Value of buffer trees.*



SSB 5667 Changes

- Clarification on the definitions of “qualifying timber” and “completion of harvest”,
- Shorting the easement term from 50 years to 40 years,
- Changing the date used for easement valuation from the date the small forest landowner office receives the forest riparian easement application to the date of completion of harvest,
- Increasing compensation from 50-90% of the value of the trees left in the buffer to 90% of the value,
- Eliminate the high impact regulatory threshold determination, and
- Increase the funding available for landowners with qualifying timber on potentially unstable slopes from \$50,000 to \$150,000 per biennium.



Expedited Rulemaking

- Rulemaking allowed under the APA
- RCW 34.05.353
 - (1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:
 - ...(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
 - (d) The content of the proposed rules is explicitly and specifically dictated by statute; ...



WAC 222-21-005

“...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

“(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.”

“(5) "Hazardous substances" includes, but is not limited to, hazardous substances as defined in RCW ~~70.102.010~~ 70A.415.101 and ~~70.105D.020~~ 70A.305.010, and solid waste as defined in RCW ~~70.95.030~~ 70A.205.015.”



WAC 222-21-010 cont.

“(6)...(a)...(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 forty** years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office;...”

“(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:...”



WAC 222-21-030

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

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

(c) Date of completed harvest;

(~~e~~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~~e)Documentation ...”



WAC 222-21-030 cont.

“(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(~~56~~) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of ~~fifty~~forty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.”



WAC 222-21-045

“(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 determine the highest compensation amount for the landowner.~~ 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.”



WAC 222-21-045 cont.

“(1)...(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:...”



WAC 222-21-045 cont.

~~“(1)(b)(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 ...

~~(iviii)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 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.”~~



WAC 222-21-045 cont.

“(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 ... 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 subsections 1(a) or (b) of this rule.”~~



WAC 222-21-050

“(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.”

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



WAC 222-21-080

“...C = Q*P*(CPI_c/CPI_o)*(1-(1/(1+I)^R))/(1-1/(1+I)⁵⁰)).”



Board Manual Updates

- Board Manual Section 17 : Guidelines for the Small Forest Landowner Forestry Riparian Easement Program
- Has been listed as “under development” since 2013
- DNR staff is taking the opportunity with the updated RCW and proposed expedited rulemaking to actively develop this section
- November 2024



Questions?



