



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 12-17-031 on 8/7/12; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 220-110-085, Integration of hydraulic project approvals and forest practices applications

Hearing location(s):

Natural Resources Building, Room 175 A/B
1111 Washington St., SE
Olympia, WA 98504

Date: February 27, 2013 Time: 1:00 p.m.

Submit written comments to:

Name: Lori Preuss
Address: 600 Capitol Way North
Olympia, WA 98501-1091
E-mail: Lori.preuss@dfw.wa.gov
Fax: (360) 902-2155 by (date) February 20, 2013

Assistance for persons with disabilities: Contact

Tami Lininger by February 20, 2013

TTY (360) 902-2207 or (360) 902-2267

Date of intended adoption: March 1, 2013

(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

These rules will identify the procedures that WDFW habitat biologists will use to review and provide concurrence determinations on specific forest practices hydraulic project types identified in Second Engrossed Substitute Senate Bill (2ESSB) 6406 (2012). The rules direct WDFW's internal procedures only and include guidelines for the manner in which WDFW biologists will work with DNR and applicants to help ensure that projects meet fish protection standards. The rules do not provide any legal requirements for outside entities.

These rules will provide a new section within the hydraulic code rules (chapter 220-110 WAC).

Reasons supporting proposal: This rule-making was mandated by 2ESSB 6406 to fulfill one of WDFW's obligations associated with integrating the agency's hydraulic-code fish protection standards into DNR's forest practices rules.

Statutory authority for adoption: 2ESSB 6406, and RCW 77.55.361 and 76.09.490

Statute being implemented: 2ESSB 6406, and RCW 77.55.361 and 76.09.490

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
January 18, 2013

NAME (type or print)
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 18, 2013

TIME: 4:15 PM

WSR 13-03-120

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Terry Jackson	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2609
Implementation.... Terry Jackson	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2609
Enforcement..... Bruce Bjork	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

This rule is a Procedural Rule, which affects only internal agency procedures.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: This proposal only affects internal agency procedures.
It does not affect the business of external entities.

NEW SECTION

WAC 220-110-085 Integration of hydraulic project approvals and forest practices applications. (1) **Description.** In 1999, the *Forests and Fish Report* and Engrossed Substitute House Bill 2091, which amended the Forest Practices Act, chapter 76.09 RCW, envisioned a more integrated approach to permitting hydraulic projects that also require forest practices applications (FPAs). In May 2001, the forest practices board adopted permanent forest practices rules in Title 222 WAC, which incorporated fish protection measures normally included in hydraulic project approvals (HPAs) for projects in nonfish-bearing waters.

In April 2012, the legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires integration of hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, the requirements of the hydraulic code rules will no longer apply to any forest practices hydraulic project as soon as fish protection standards have been integrated into the forest practices rules, and technical guidance has been developed and approved for inclusion in the *Forest Practices Board Manual*. Thereafter, forest practices hydraulic projects will be regulated under forest practices rules. The amended statutes also include a requirement that the department of fish and wildlife (department) adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.

(2) **General review and comment on forest practices hydraulic projects.**

(a) The department may review and provide comments on any FPA.

(b) For FPAs that include a forest practices hydraulic project involving fish-bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments. Prior to commenting, or as soon as reasonably practicable, the department will communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.

(c) The department will encourage forest landowners to consult with department biologists, including site visits as needed, prior to submitting an FPA containing a hydraulic project. This will help ensure that project design plans and specifications meet fish

protection standards. Preapplication collaboration with the department will result in more efficient and successful outcomes for forest landowners and their proposed hydraulic projects.

In addition to the general review and comment process for forest practices hydraulic projects described in this subsection, hydraulic projects meeting the criteria described in subsection (3)(a) of this section will follow the concurrence review process.

(3) Concurrence review process.

(a) The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish-bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish-bearing unconfined streams; or

(iii) Fill within the flood level - 100 year, as that term is defined in WAC 222-16-010 on July 10, 2012, of fish-bearing unconfined streams.

(b) After the department receives notification from DNR that a FPA includes one or more hydraulic projects meeting the criteria in (a) of this subsection, the department has thirty days to review the forest practices hydraulic project(s) for consistency with fish protection standards.

(c) Within five business days following notification from DNR, or as soon as reasonably practicable thereafter, the department will determine whether all information, needed for assessing the hydraulic project's consistency with fish protection standards, is included in the application.

(d) If information is missing, the department will contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating that specific information is missing and that the applicant has been notified. The department may issue a nonconcurrence on a proposed project if the applicant fails to provide missing information in time for the department to perform its thirty-day review.

(e) If, during the thirty-day concurrence review period, the department determines that a forest practices hydraulic project may not be consistent with fish protection standards, the department will attempt to work with the applicant to modify the proposed project. The department will strive to include DNR participation on site visits with the applicant as needed.

(f) The department must provide written notification of concurrence or nonconcurrence to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards. As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant, including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards.

(g) The department will recommend that DNR deny the FPA when

efforts described in (e) of this subsection have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and adequate mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate provisions to the FPA.