



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: September 16, 2019

TIME: 9:53 AM

WSR 19-19-056

Agency: Washington Department of Fish and Wildlife (WDFW)

Subject of possible rule making: Amendments to Hydraulic Code Rules, chapter 220-660 WAC, necessary to implement 2SHB 1579 (Laws of 2019, chapter 290), which becomes effective on July 28, 2019. Rule sections requiring amendment include WAC 220-660-050 (Procedures—Hydraulic project approvals), WAC 220-660-370 (Bank protection in saltwater areas), WAC 220-660-460 (Informal appeal of administrative actions), WAC 220-660-370 (Formal appeal of administrative actions), and WAC 220-660-480 (Compliance with HPA provisions).

Statutes authorizing the agency to adopt rules on this subject: RCWs 77.04.012, 77.12.047, and 77.55.021; 2SHB 1579 (Laws of 2019, chapter 290).

Reasons why rules on this subject may be needed and what they might accomplish: Rule amendments are needed to implement elements in sections 4 through 11 of 2SHB 1579 to add a mechanism for preapplication determination, implement enhanced civil compliance tools, remove references to repealed statutes, and clarify administrative actions that are subject to informal and formal appeal.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: WDFW is the sole authority regulating hydraulic projects under Chapter 77.55 RCW, and the only state agency that regulates hydraulic projects solely for the protection of all fish life. The U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Natural Resources, Washington State Parks, and local governments also regulate certain aspects of hydraulic projects under their own authorities. National Marine Fisheries Service and U.S. Fish and Wildlife Service regulate the “take” of threatened or endangered species listed under the federal Endangered Species Act. Tribes regulate fisheries and certain aspects of construction projects on tribal lands. State, federal, and local government entities will be invited to comment on draft rules during the rulemaking process. WDFW will conduct government-to-government consultation with tribes.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Changes to chapter 77.55 RCW made in 2SHB 1579 compel associated changes to the implementing Hydraulic Code Rules in chapter 220-660 WAC.

WDFW determined that the standard process for the adoption of administrative rules under the Administrative Procedures Act (Chapter 34.05 RCW) and the provisions for Significant Legislative Rules (RCW 34.05.328) is the appropriate process for this Hydraulic Code rule making. Negotiated rule making is not practicable because rule language will mirror statute language, which reflects collaboration during the legislative session, and because negotiated rule making would increase the time needed and the cost of rule-making without added benefit. Pilot rule making is not applicable because the statutory changes, and therefore the proposed amendments, apply statewide.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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(If necessary)

Name:
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 Email:
 Web site:
 Other:

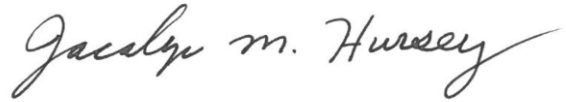
Additional comments: WDFW's HPA rule making web page at <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking> will provide background for the proposed rules, the time line for the rule making process, and related documents as they become available. Official rule making files are located at <https://wdfw.wa.gov/about/regulations/development> ,

Date: September 16, 2019

Name: Jacalyn M Hursey

Title: Rules Coordinator

Signature:

A handwritten signature in black ink that reads "Jacalyn M. Hursey". The signature is written in a cursive style with a large, sweeping 'J' and 'H'.