NEW SECTION

WAC 222-20-017 *Applications and notifications that include forest practices hydraulic projects. (1) **Review for consistency with fish protection standards.** The department reviews forest practices applications that include forest practices hydraulic projects for consistency with fish protection standards.

(2) **Preapplication consultation.**

(a) Prospective applicants are encouraged to consult with the department and the department of fish and wildlife, including site visits as needed, prior to submitting a forest practices application to the department.

(b) Preapplication consultation helps to ensure that project design and specifications meet fish protection standards.

(c) Preapplication consultation should take place well before submitting an application to the department and well before the desired work windows.

(3) **Application time limits.** Except for applications involving project types listed in subsection (5)(b) of this section, application time limits for applications that include forest practices hydraulic projects are the same as those listed in WAC 222-20-020.

(4) **Review of forest practices hydraulic projects involving Type S and F Waters by the department of fish and wildlife.** The department of fish and wildlife's review of forest practices hydraulic projects is guided by WAC 220-110-085, and summarized in (a) and (b) of this subsection:

(a) Except for the particular review process for projects listed in (b)(i) of this subsection, the department of fish and wildlife reviews forest practices hydraulic projects involving Type S and F Waters as follows:

(i) The department of fish and wildlife either provides comments to the department or documents that the review has occurred without the need for comments.

(ii) Prior to commenting, or as soon as reasonably practical, the department of fish and wildlife will communicate with the applicant regarding any concerns relating to consistency with fish protection standards.

(iii) The department of fish and wildlife will also strive to maintain communications with the department as concerns arise, and inform the department of its communications with applicants.

(b) Concurrence review.

(i) The following project types involving Type S and F Waters are subject to the department of fish and wildlife conducting a concurrence review according to the process outlined in WAC 220-110-085(3):

- Culvert installation or replacement, and repair at or below

the bankfull width in Type S and F Waters that exceed five percent gradient;

- Bridge construction or replacement, and repair at or below the bankfull width of unconfined streams in Type S and F Waters; or
- Fill within the flood level-100 year of unconfined streams in Type S and F Waters.

(ii) After review of these projects, the department of fish and wildlife must provide written notification of concurrence or nonconcurrence to the department within thirty days of the department officially receiving a complete application, stating whether or not the project is consistent with fish protection standards and including any proposed changes needed to meet fish protection standards.

(iii) As indicated in WAC 222-20-020 (1)(e), the department approves, conditions, or disapproves such applications within sixty days of officially receiving an application. The department of fish and wildlife's review is completed within the first thirty days.

(5) **Disapproval.**

(a) An application will be disapproved if the department determines, after consultation with the department of fish and wildlife, that a forest practices hydraulic project in the application will result in direct or indirect harm to fish life, unless:

(i) Adequate mitigation can be assured by conditioning the application for the project; or

(ii) The project is modified satisfactorily.

(b) If disapproved, the department will provide a statement to the applicant in writing of the specific reason(s) why, and how the proposed project would adversely affect fish life.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

WAC 222-20-020 Application time limits. (1) **When the department officially receives an application**, the department will approve, condition or disapprove it within thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For Class IV applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ten days before promulgation of such an order extending the time, the applicant shall be given written

notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in (c)(i), (ii) or (iii) of this subsection, the applicable time limit shall be no less than fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) Lands that are being converted to another use;

(ii) Lands that will not be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-20-050); or

(iii) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(e) Applications requiring a concurrence review of forest practices hydraulic projects listed in WAC 222-20-017 (4)(b) will be approved, conditioned, or disapproved within sixty days of the department officially receiving an application. The department of fish and wildlife's review will take place within the first thirty days.

(f) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016. The department will review Step 1 and issue a decision within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application, except if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(2) **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided that no damage to a public resource resulted from such operations, and the operations commenced more than five days from receipt by the department of the notification.

(3) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application

involves lands that are being converted to a use other than commercial timber operations where the local governmental entity's right of objection is fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(4) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

WAC 222-20-040 Approval conditions. (1) **Whenever an approved** application includes a forest practices hydraulic project or authorizes a forest practices activity which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when ((~~requested~~)) required as a condition on the approved application, notify the department two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local governmental entity conditions--Class IV-general applications.**

(a) RCW 76.09.240(6) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to applications on lands that are being converted to a use other than commercial timber operations.

(c) After determining that an application is Class IV-general, the department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) The local governmental entity shall file its conditions with the department within twenty-nine days of the department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) **Lead agency mitigation measures.**

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under the State Environmental Policy Act. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within the later of twenty-nine days of the official receipt of the application by the department, fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must disapprove the application or require an environmental impact statement. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall disapprove the application.

(5) **Small forest landowner approval conditions.** The

department shall not disapprove a small forest landowner's application or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

(a) Any barriers on their forest roads located within the boundaries of their application or notification; and

(b) Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application or notification.

(6) **CRGNSA special management area.**

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on conditioning an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-20-090 Options for filing applications and preapplication consultation for forest practices hydraulic projects. (1) Applicants may schedule an early review of a proposed application with the department prior to official filing, or submit an application with a delayed effective date. Such early review or submission will allow the department to review multiple applications and bring other forest practices concerns to the attention of the applicant so that such concerns can be addressed prior to official filing and processing of an application. When submitting an application with a delayed effective date, the applicant shall indicate the date when approval is desired.

(2) **Preapplication consultation for forest practices hydraulic projects.** Landowners are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application involving a forest practices hydraulic project to help ensure that project plans and specifications meet fish protection standards.