

Title 420 WAC

SALMON RECOVERY FUNDING BOARD

Chapters

420-04
420-12

General.
Grant assistance rules.

Chapter 420-04 WAC

GENERAL

WAC

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WAC 420-04-010 Definitions. For purposes of Title 420 WAC, the definitions in RCW 77.85.010 apply. In addition, unless the context clearly indicates otherwise, the following definitions also apply:

"Acquisition" means the gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property, and related interests such as water or mineral claims and use rights.

"Applicant" means any agency, person or organization that meets qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the board. Generally, eligible applicants for SRFB funds include a state, local, tribal or special purpose government, a non-profit organization, a combination of such governments, or a landowner for projects on its land.

"Application" means the form(s) developed and implemented for use by applicants in soliciting project funds administered by the board.

"Board" means the Salmon Recovery Funding Board (SRFB) created by chapter 13, Laws of 1999 1st sp. sess. (2E2SSB 5595), now codified as chapter 77.85 RCW.

"Chair" means the chair of the board.

"Development" means the construction or alteration of facilities, the placement or removal of materials, or other physical activity to restore or enhance salmon habitat resources.

"Director" means the director of the IAC or that person's designee, responsible for implementation of board activities under chapters 79A.25 and 77.85 RCW.

"IAC" means the interagency committee for outdoor recreation (IAC), an executive state agency established under chapter 79A.25 RCW.

"Lead entity" means the local organization or group designated under RCW 77.85.050.

"Manual(s)" means a compilation of state and federal policies, procedures, rules, forms, and instructions that have been assembled in manual form and which have been approved by the board for dissemination by paper, electronic or other formats to all who may wish to participate in the board's grant program(s).

"Preliminary expense" means project costs incurred prior to board approval, other than site preparation/development costs, necessary for the preparation of a development project.

"Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the IAC on behalf of the board.

"Project agreement" means a project agreement, supplemental agreement, intergovernmental agreement, or project contract between the IAC acting on behalf of the board, and a project sponsor.

"Project sponsor" means an applicant under RCW 77.85.010(6) who has been awarded a grant of funds, and has a signed project agreement.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-010, filed 2/2/01, effective 3/5/01.]

WAC 420-04-015 Address. All communications with the board shall be directed to the IAC offices at the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 40917, Olympia, Washington 98504-0917. Telephone (360) 902-3000. Web site: www.wa.gov/iac/salmonmain.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-015, filed 2/2/01, effective 3/5/01.]

WAC 420-04-020 Organization and operations. The board:

(1) Is an unsalaried body of ten members. Five members are citizens appointed by the governor from the public-at-large, with the consent of the senate, for a term of three years each. The other members are the:

- (a) Commissioner of public lands;
- (b) Director of the department of fish and wildlife;
- (c) Director of the state conservation commission;
- (d) Director of the department of ecology; and
- (e) Secretary of transportation (or the designees of these individuals).

The five citizen members, including the chair, are voting members. The chair of the board is appointed by the governor from among the five citizen members.

(2) Is authorized and obligated to administer grant programs for salmon recovery, and related programs and policies.

(3) Performs and accomplishes work by a staff under the supervision of the IAC director appointed by the governor.

(4)(a) Conducts regular meetings, pursuant to RCW 42.30.075, according to a schedule it adopts in an open public meeting.

(b) May conduct special meetings at any time, pursuant to RCW 42.30.080, if called by the chair.

(c) Maintains an official record of its meetings in a recorded audio format, unless written minutes are otherwise indicated for logistical reasons.

(5) Defines a quorum as three of its voting members, with a preference that at least two of the agency members shall also be present.

(6) Adopts parliamentary meeting procedure generally as described in *Robert's Rules of Order*. Only voting members may make motions or formal amendments, but agency members may request the chair for leave to present a proposal for board consideration.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-020, filed 2/2/01, effective 3/5/01.]

WAC 420-04-030 Manuals and waivers—Guidance.

(1) The board shall adopt one or more manuals that describe its general administrative policies, for use by grant applicants, potential applicants, project sponsors, and others. The board shall inform all applicants in any given grant cycle of the specific project application process and methods of review, including current evaluation tests and instruments, by explaining these items in the manuals or other publicly available formats. Manuals may be adopted for each grant cycle, or for a topical issue, and shall contain a clear statement of the applicability of the policies outlined. The board also instructs the director to use applicable IAC administrative manuals for general guidance in the implementation of SRFB grant contracts. These include IAC manuals regarding land acquisition, conservation easements, funded projects, and reimbursement procedures.

(2) Board policies, including those referenced in the manuals, shall be considered and approved by the board in an open public meeting. Notice of such considerations will be given by distribution of the agenda for the meeting, press releases, meeting notice in the *Washington State Register*, or other means.

(3) Project applicants, project sponsors, or other interested parties may petition the director for a waiver or waivers of those items within the manuals dealing with general administrative matters and procedures. Determinations on petitions for such waivers made by the director are subject to review by the board at the request of the petitioner.

(4) Petitions for waivers of subjects regarding board policy, and those petitions that in the judgment of the director require board review, shall be referred to the board for deliberation. Policy waivers may be granted after consideration by the board at an open public meeting.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-030, filed 2/2/01, effective 3/5/01.]

WAC 420-04-040 Project selection. The board shall use an open public selection process to guide it in allocating funds to and among project applicants. The board's priority rating system for evaluating projects and lists shall:

(1) Be adopted by the board in advertised public meetings;

(2) Consider applicant, local, regional, and statewide needs, technical merits, and other criteria;

(3) Be developed through the participation of interested parties and specialists, and include best available science;

(4) Be made widely available to interested parties in published manuals and related electronic materials;

(5) Be designed for use by an independent technical panel or team of evaluators with relevant expertise when selected for this purpose on behalf of the board;

(6) Be in accord with statutes.

The director shall implement the board's criteria, assessment, evaluation and rating systems in preparing funding options or recommendations for board consideration.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-040, filed 2/2/01, effective 3/5/01.]

WAC 420-04-050 Final decision. The board shall review options or recommendations for grant awards at scheduled board meetings announced as funding sessions. It retains the final authority and responsibility to award grant or loan funds, and to accept or depart from any recommendations. Unless otherwise required by law, the board's decision is the final decision concerning the funding of a project.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-050, filed 2/2/01, effective 3/5/01.]

WAC 420-04-060 Delegated authority. Consistent with RCW 79A.25.240 and other applicable laws, the director is delegated the authority and responsibility to carry out policies and administrative functions of the board. This includes, but is not limited to, the authority to:

(1) Administer board programs at the offices of the IAC;

(2) Administer all applicable rules, regulations and requirements established by the board or reflected in the laws of the state;

(3) Implement board decisions; and

(4) Approve certain waiver requests or other administrative matters.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-060, filed 2/2/01, effective 3/5/01.]

WAC 420-04-070 Compliance with Environmental Policy Act guidelines. (1) The board finds that, pursuant to RCW 43.21C.0382, all of its activities and programs are exempt from threshold determinations and environmental impact statement requirements.

(2) To the extent applicable, it is the responsibility of applicants and project sponsors to comply with the provisions of chapter 43.21C RCW, the State Environmental Policy Act rules, the National Environmental Protection Act, and to obtain associated land-use and regulatory permits and reviews.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-070, filed 2/2/01, effective 3/5/01.]

WAC 420-04-080 Declaratory order—Petition requisites—Consideration—Disposition. (1) Any person may submit a petition for a declaratory order pursuant to RCW 34.05.240 in any written form so long as it:

(a) Clearly states the question the declaratory order is to answer; and

(b) Provides a statement of the facts which raise the question.

(2) The director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The director shall present the petition to the board at the first meeting when it is practical to do so and will provide the petitioner with at least five days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The board may issue either a binding or a nonbinding order or decline to issue any order.

(6) The board may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five days notice of such meeting shall be provided to the petitioner.

(7) If an order is to be issued, the petitioner shall be provided a copy of the proposed order and invited to comment.

(8) The declaratory order cannot be a substitute for a compliance action and is intended to be prospective in effect.

(9) The board will decline to consider a petition for a declaratory or to issue an order when:

(a) The petition requests advice regarding a factual situation which has actually taken place; or

(b) When a pending investigation or compliance action involves a similar factual situation.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-080, filed 2/2/01, effective 3/5/01.]

WAC 420-04-085 Petitions for rule making, amendment or repeal—Form—Consideration—Disposition. Any person may submit a petition requesting the adoption, amendment or repeal of any rule by the board, pursuant to RCW 34.05.330 and the uniform rules adopted by the office of financial management that are set forth in chapter 82-05 WAC.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-085, filed 2/2/01, effective 3/5/01.]

WAC 420-04-100 Public records access. (1) The board is committed to public access to its public records. All public records of the board, as defined in RCW 42.17.260 as now or hereafter amended, are available for public inspection and copying pursuant to this regulation, except as otherwise provided by law, including, but not limited to, RCW 42.17.310 and 42.17.255 (Exemptions).

(2) The board's public records shall be available through the public records officer designated by the director. All records access for board records shall be conducted in the same manner as records access for IAC records, including

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office location, hours, copy fee and request forms. The board adopts by reference the records access procedures of the IAC and charges the director to administer for access purposes the board's records in the same manner as records of the IAC are administered, pursuant to chapter 286-06 WAC.

(3) Any person who objects to the denial of a request for a public record of the board may petition the director for review by submitting a written request. The request shall specifically refer to the written statement which constituted or accompanied the denial.

(4) After receiving a written request for review of a decision denying inspection of a public record, the director, or designee, will either affirm or reverse the denial by the end of the second business day following receipt according to RCW 42.17.320. This shall constitute final board action. Whenever possible in such matters, the director or designee shall consult with the board's chair and members.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-04-100, filed 2/2/01, effective 3/5/01.]

Chapter 420-12 WAC GRANT ASSISTANCE RULES

WAC

420-12-010	Scope of chapter.
420-12-020	Application form.
420-12-030	Deadlines—Applications and agreements.
420-12-040	Eligible matching resources.
420-12-050	Project agreement.
420-12-060	Disbursement of funds.
420-12-070	Retroactive expenses and increased costs.
420-12-075	Nonconformance and repayment.
420-12-080	Acquisition projects—Deed of right, conversions, leases and easements.
420-12-085	Development projects—Conversion to other uses.
420-12-090	Condemnation not eligible.

WAC 420-12-010 Scope of chapter. This chapter contains general rules for grant program eligibility, applications, and projects funded with money from or through the board.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-010, filed 2/2/01, effective 3/5/01.]

WAC 420-12-020 Application form. (1) All grant requests must be completed and submitted in the format and manner prescribed by the board.

(2) If the director determines that the applicant is eligible to apply for federal funds administered by the board, the applicant must execute any additional forms necessary for that purpose.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-020, filed 2/2/01, effective 3/5/01.]

WAC 420-12-030 Deadlines—Applications and agreements. (1) Applications. To allow time for review, applications must be submitted by the announced due date. Unless otherwise authorized by the board, the director and staff have no authority to extend the application filing deadlines.

(2) Project agreement. An applicant has three calendar months from the date of the board's mailing of the project

agreement document to execute and return the agreement to the board's office. After this period, the board or director may reject any agreement not completed, signed and returned, and may reallocate the grant funds to another project(s). The director may waive compliance with this deadline for good cause.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-030, filed 2/2/01, effective 3/5/01.]

WAC 420-12-040 Eligible matching resources. (1) Applicant resources used to match board funds may include: Cash, certain federal funds, the value of privately owned donated real estate, equipment, equipment use, materials, labor, or any combination thereof. The specific eligible matches for any given grant cycle shall be detailed in the published manual. The director shall require documentation of values.

(2) Agencies and organizations may match board funds with other state funds, including IAC funds, so long as the other state funds are not administered by the board and if otherwise allowed by state law. For the purposes of this subsection, grants issued by other agencies under the Jobs for Environment program and the Forests & Fish program are not considered to be administered by the board.

(3) Private donated real property, or the value of that property, must consist of real property (land and facilities) that would otherwise qualify for board grant funding.

(4) The eligibility of federal funds to be used as a match is governed by federal requirements and thus may vary with individual proposals and grant cycles.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-040, filed 2/2/01, effective 3/5/01.]

WAC 420-12-050 Project agreement. For every funded project, an agreement shall be executed within the deadlines in WAC 420-12-030 and as provided in this section.

(1) The project agreement shall be prepared by the director after approval of the project by the board at a public meeting. The director shall execute the agreement on behalf of the board and submit the document to the applicant. After the applicant signs the agreement, the applicant becomes and is referred to as the project sponsor. The parties are then bound by the agreement's terms. The applicant shall not proceed with the project until the agreement has been signed and the project start date listed in the agreement has arrived, unless the applicant has received specific authorization pursuant to WAC 420-12-070.

(2) If the project is approved by the board to receive a grant from federal funds, the director shall not execute an agreement or amendment with the applicant until federal funding has been authorized through execution of a concurrent project agreement with the applicable federal agency, if and as necessary.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-050, filed 2/2/01, effective 3/5/01.]

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WAC 420-12-060 Disbursement of funds. Except as otherwise provided in this rule, the director will authorize disbursement of project funds only on a reimbursable basis, after the project sponsor has spent its own funds and has presented a billing showing satisfactory evidence of property rights acquired and/or compliance with partial or all provisions of the project agreement.

(1) Reimbursement method. Reimbursement shall be requested on voucher forms authorized by the director. Requests must include all documentation as detailed in the manual in effect at the time reimbursement is requested.

(2) Reimbursement level. The amount of reimbursement may never exceed the cash spent on the project by the sponsor.

(3) Partial payment. Partial reimbursements may be made during the course of a project on presentation of billings showing satisfactory evidence of partial acquisition or development by the project sponsor. The director may require written assurance that full project completion is scheduled by a specific date. In the event of appropriation reductions or terminations, the project agreement shall allow the board to suspend or terminate future obligations and payments.

(4) Direct payment. Direct payment to escrow of the board's share of the approved cost of real property may be made following board approval of an acquisition project when the project sponsor indicates a temporary lack of funds to purchase the property. Prior to release of the board's share of escrow funds, the project sponsor must provide the director with a copy of a binding sale agreement between the project sponsor and the seller and evidence of deposit of the project sponsor's share (if any) into an escrow account.

(5) Advance payments may be made in limited circumstances only, pursuant to the policy outlined in the adopted reimbursement manual.

(6) Payment deadline. As required by RCW 77.85.140, sponsors who complete salmon habitat projects approved for funding from habitat project lists will be paid by the board within thirty days of project completion. This means the board will issue a reimbursement within thirty days of the sponsor's completion of the billing requirements described in the board's reimbursement policy manual.

[Statutory Authority: RCW 77.85.120 [(1)](b), 02-05-050, § 420-12-060, filed 2/15/02, effective 3/18/02. Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-060, filed 2/2/01, effective 3/5/01.]

WAC 420-12-070 Retroactive expenses and increased costs. The definitions in WAC 420-04-010 apply to this section.

(1) The board shall not reimburse expenses for activities undertaken, work performed or funds expended before the date on which the agreement was signed. This policy is referred to as the board's prohibition on retroactivity. The only exceptions are as outlined in the adopted reimbursement manual, for certain preliminary expenses.

(2) If such exceptions do not apply, a waiver may be issued to avoid the prohibition on retroactivity only under the following circumstances, for retroactive land acquisition cost reimbursements:

The director may grant a waiver of retroactivity when an applicant documents, in writing, that a condition exists which

may jeopardize the project. When evidence warrants, the director may grant the applicant permission to proceed prior to the signing of an agreement by issuing the written waiver. This waiver of retroactivity shall not be construed as an approval of the proposed project. If the project is subsequently approved for board funding, the expenditures described in the waiver incurred shall be eligible for assistance if they otherwise satisfy the reimbursement requirements under WAC 420-12-060.

(3) Cost increases. The board shall reimburse only for allowable expenses under WAC 420-12-070. If costs increase after the agreement is signed, a project sponsor is solely responsible, unless the adopted manual for the relevant grant cycle specifically establishes a cost-increase method for that cycle.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-070, filed 2/2/01, effective 3/5/01.]

WAC 420-12-075 Nonconformance and repayment.

In the event any project sponsor's expenditure of board grant moneys is determined by the board or director to conflict with applicable statutes, rules and/or related manuals, or the project agreement, the board reserves the right to demand repayment to the appropriate state account, by written notice from the director to the project sponsor. Such repayment requests may be made following consideration of an applicable report from the state auditor's office.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-075, filed 2/2/01, effective 3/5/01.]

WAC 420-12-080 Acquisition projects—Deed of right, conversions, leases and easements. For acquisition projects sponsors must execute a binding instrument or instruments which contain:

(1) For fee, less-than-fee, and easement acquisition projects:

- (a) A legal description of the property acquired;
- (b) A conveyance to the state of Washington of the right to use the described real property forever for the designated salmon habitat protection purposes; and
- (c) A restriction on conversion of use of the land.

Without prior approval of the board, a facility or property acquired with money granted by the board shall not be converted to a use other than that for which funds were originally approved. The board shall only approve such a conversion under conditions which assure the substitution of other land of at least equal fair market value at the time of conversion, and of as nearly feasible equivalent usefulness and location.

(2) For lease acquisition projects, a binding agreement which contains a legal description of the property and rights acquired and which meets the following criteria. The interest:

- (a) Must be for at least fifty years unless precluded by state law;
- (b) May not be revocable at will;
- (c) Must have a value supported through standard appraisal techniques;
- (d) Must be paid for in lump sum at initiation;

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(e) May not be converted, during the lease period, to a use other than that for which funds were originally approved, without prior approval of the board.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-080, filed 2/2/01, effective 3/5/01.]

WAC 420-12-085 Development projects—Conversion to other uses. (1) Without prior approval of the board, a facility or site aided or developed with money granted by the board, shall not be converted to a use other than that for which funds were originally approved.

(2) The board shall only approve such a conversion under conditions which assure that:

- (a) All practical alternatives to the conversion have been evaluated and rejected on a sound basis;
- (b) A new project or facility will be provided to serve as a replacement which:
 - (i) Is of reasonably equivalent habitat utility and location;
 - (ii) Will be administered under similar stewardship methods as the converted development;
 - (iii) Will satisfy need(s) identified in the project sponsor's watershed strategy or plan; and
 - (iv) Includes only elements eligible under the board's program from which funds were originally allocated.

(3) The board may condition any conversion approval as needed to protect the public habit investment.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-085, filed 2/2/01, effective 3/5/01.]

WAC 420-12-090 Condemnation not eligible. The board shall not approve any grant for proposals where the title to property is acquired through or as a direct result of condemnation proceedings. All acquisitions must be on a willing-seller basis.

[Statutory Authority: RCW 42.17.250, [42.17].260(5), [42.17.]290, 43.21C.120(1), chapters 34.05, 42.30, 77.85 RCW. 01-04-052, § 420-12-090, filed 2/2/01, effective 3/5/01.]