

**SYNOPSIS**  
**Proposed Amendments to the Rules for Erosion and Sedimentation Control,**  
**Chapter 391-3-7**

The proposed amendments to the Rules for Erosion and Sedimentation Control would amend **Rules 391-3-7-.01 and 391-3-7-.05**, and adopt new **Rule 391-3-7-.11**, for consistency with the 2015 amendments to the Erosion and Sedimentation Act of 1975 (SB 101).

**Purpose:** The 2015 amendments to the Erosion and Sedimentation Act of 1975 (SB 101) established a 25 foot coastal marshland buffer, provided specific exemptions, specified a variance process to be administered by the Director of EPD, and directed the Board of Natural Resources to promulgate rules and regulations. These proposed rule amendments amend two rules under the Rules for Erosion and Sedimentation Control, and add one new rule, to ensure consistency with SB 101.

**Main Features:** As called for in SB 101, these proposed amendments incorporate specific updates to the definitions and coastal marshland buffer variance procedures and criteria of the Rules for Erosion and Sedimentation Control. Two proposed rule amendments incorporate specific updates to definitions and add clarifying language, and one new rule is proposed to address coastal marshland buffer variance procedures for variance issuance, to provide for exceptions to the buffer requirements, and to establish review procedure for variances by rule.

**RULES FOR EROSION AND SEDIMENTATION CONTROL, CHAPTER 391-3-7**

**391-3-7-.01, “Definitions”** is being amended to include the following terms: “Coastal Marshlands,” “Maintenance,” and “Serviceable.” The definitions were adopted into the statute by Senate Bill 101 and are being put into the rule exactly as they are in the statute.

**391-3-7-.05, “Buffer Variance Procedures and Criteria”** is being amended to make it clear in paragraph (1) that this rule does not apply to coastal marshlands, to correct a grammatical error in subparagraph (2)(a), to add a clarifying statement in subparagraph (2)(d), to be more specific regarding required elements of the buffer variance application in subparagraph (4)(a), and to streamline and modernize the public notice process in paragraph (6).

**391-3-7-.11, “Coastal Marshlands Buffer Variance Procedures and Criteria”** is proposed as a new rule to address the requirements of SB 101 to provide for a buffer for coastal marshlands within which certain land-disturbing activities are prohibited. The new rule provides criteria and procedures for the issuance of coastal marshland buffer variances and provides for certain exceptions to the buffer variance requirements. The rule also contains procedures and exceptions for a variance by rule.

**STATEMENT OF RATIONALE**  
**Proposed Amendments to the Rules for Erosion and Sedimentation Control,**  
**Chapter 391-3-7**

The Rules for Erosion and Sedimentation Control, Chapter 391-3-7, are proposed for amendment to ensure consistency between these rules and the 2015 amendments to the Erosion and Sedimentation Act of 1975 (SB 101).

Senate Bill 101 established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, as determined in accordance with the Coastal Marshlands Protection Act. The statute further states that no land-disturbing activity shall be conducted within the buffer and the buffer shall remain in its undisturbed state of vegetation except as otherwise provided by the statute. The statute also provides a list and description of certain buffer exceptions and exemptions. These exceptions and exemptions are carried over into the proposed rule amendments.

One category of exceptions is where the EPD Director determines to allow a variance that is at least as protective of natural resources and the environment. The statute specifically directs the agency to promulgate rules and regulations that contain criteria for the grant or denial by the EPD Director of variance requests, including where an alteration within the buffer area has been authorized pursuant to certain permits issued by the United States Army Corps of Engineers. It further directs the agency to provide for variances by rule, subject to specified conditions, for certain categories of activities within the buffer that will have minimal impact on the water quality or aquatic habitat of the adjacent marsh, including where the area within the buffer is not more than 500 square feet.

The proposed rule amendments satisfy all the requirements of Senate Bill 101.