

April 4, 2001

OLYMPIA, WASHINGTON

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CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

REPUBLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of April 2001 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

John G. Schultz
Chair, Statute Law Committee

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Joyce Matzen
Subscription Clerk

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **EXPEDITED REPEAL**-includes the Preproposal Statement of Inquiry that lists rules being repealed using the expedited repeal process. Expedited repeals are not consistently filed and may not appear in every issue of the Register.
- (c) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (d) **PERMANENT**-includes the full text of permanently adopted rules.
- (e) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (f) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (g) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (h) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
 - (i) underlined material is new material;
 - (ii) ~~deleted material is ((lined out between double parentheses))~~;
- (b) Complete new sections are prefaced by the heading NEW SECTION;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading REPEALER.

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

2000 - 2001

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates ¹			Distribution Date	First Agency Hearing Date ³	Expedited Adoption ⁴
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS ² or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
00 - 13	May 24, 00	Jun 7, 00	Jun 21, 00	Jul 5, 00	Jul 25, 00	Aug 22, 00
00 - 14	Jun 7, 00	Jun 21, 00	Jul 5, 00	Jul 19, 00	Aug 8, 00	Sep 5, 00
00 - 15	Jun 21, 00	Jul 5, 00	Jul 19, 00	Aug 2, 00	Aug 22, 00	Sep 19, 00
00 - 16	Jul 5, 00	Jul 19, 00	Aug 2, 00	Aug 16, 00	Sep 5, 00	Oct 3, 00
00 - 17	Jul 26, 00	Aug 9, 00	Aug 23, 00	Sep 6, 00	Sep 26, 00	Oct 24, 00
00 - 18	Aug 9, 00	Aug 23, 00	Sep 6, 00	Sep 20, 00	Oct 10, 00	Nov 7, 00
00 - 19	Aug 23, 00	Sep 6, 00	Sep 20, 00	Oct 4, 00	Oct 24, 00	Nov 21, 00
00 - 20	Sep 6, 00	Sep 20, 00	Oct 4, 00	Oct 18, 00	Nov 7, 00	Dec 5, 00
00 - 21	Sep 20, 00	Oct 4, 00	Oct 18, 00	Nov 1, 00	Nov 21, 00	Dec 19, 00
00 - 22	Oct 4, 00	Oct 18, 00	Nov 1, 00	Nov 15, 00	Dec 5, 00	N/A
00 - 23	Oct 25, 00	Nov 8, 00	Nov 22, 00	Dec 6, 00	Dec 26, 00	N/A
00 - 24	Nov 8, 00	Nov 22, 00	Dec 6, 00	Dec 20, 00	Jan 9, 01	N/A
01 - 01	Nov 22, 00	Dec 6, 00	Dec 20, 00	Jan 3, 01	Jan 23, 01	N/A
01 - 02	Dec 6, 00	Dec 20, 00	Jan 3, 01	Jan 17, 01	Feb 6, 01	N/A
01 - 03	Dec 27, 00	Jan 10, 01	Jan 24, 01	Feb 7, 01	Feb 27, 01	N/A
01 - 04	Jan 10, 01	Jan 24, 01	Feb 7, 01	Feb 21, 01	Mar 13, 01	N/A
01 - 05	Jan 24, 01	Feb 7, 01	Feb 21, 01	Mar 7, 01	Mar 27, 01	N/A
01 - 06	Feb 7, 01	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 10, 01	N/A
01 - 07	Feb 21, 01	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 24, 01	N/A
01 - 08	Mar 7, 01	Mar 21, 01	Apr 4, 01	Apr 18, 01	May 8, 01	N/A
01 - 09	Mar 21, 01	Apr 4, 01	Apr 18, 01	May 2, 01	May 22, 01	N/A
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01 - 13	May 23, 01	Jun 6, 01	Jun 20, 01	Jul 5, 01	Jul 25, 01	N/A
01 - 14	Jun 7, 01	Jun 21, 01	Jul 5, 01	Jul 19, 01	Aug 8, 01	N/A
01 - 15	Jun 20, 01	Jul 5, 01	Jul 18, 01	Aug 1, 01	Aug 21, 01	N/A
01 - 16	Jul 5, 01	Jul 18, 01	Aug 1, 01	Aug 15, 01	Sep 4, 01	N/A
01 - 17	Jul 25, 01	Aug 8, 01	Aug 22, 01	Sep 5, 01	Sep 25, 01	N/A
01 - 18	Aug 8, 01	Aug 22, 01	Sep 5, 01	Sep 19, 01	Oct 9, 01	N/A
01 - 19	Aug 22, 01	Sep 5, 01	Sep 19, 01	Oct 3, 01	Oct 23, 01	N/A
01 - 20	Sep 5, 01	Sep 19, 01	Oct 3, 01	Oct 17, 01	Nov 6, 01	N/A
01 - 21	Sep 26, 01	Oct 10, 01	Oct 24, 01	Nov 7, 01	Nov 27, 01	N/A
01 - 22	Oct 10, 01	Oct 24, 01	Nov 7, 01	Nov 21, 01	Dec 11, 01	N/A
01 - 23	Oct 24, 01	Nov 7, 01	Nov 21, 01	Dec 5, 01	Dec 25, 01	N/A
01 - 24	Nov 7, 01	Nov 21, 01	Dec 5, 01	Dec 19, 01	Jan 8, 02	N/A

¹ All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

² A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³ At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

⁴ A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

REGULATORY FAIRNESS ACT

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

Small Business Economic Impact Statements (SBEIS)

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

Mitigation

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

When is an SBEIS Required?

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

When is an SBEIS Not Required?

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

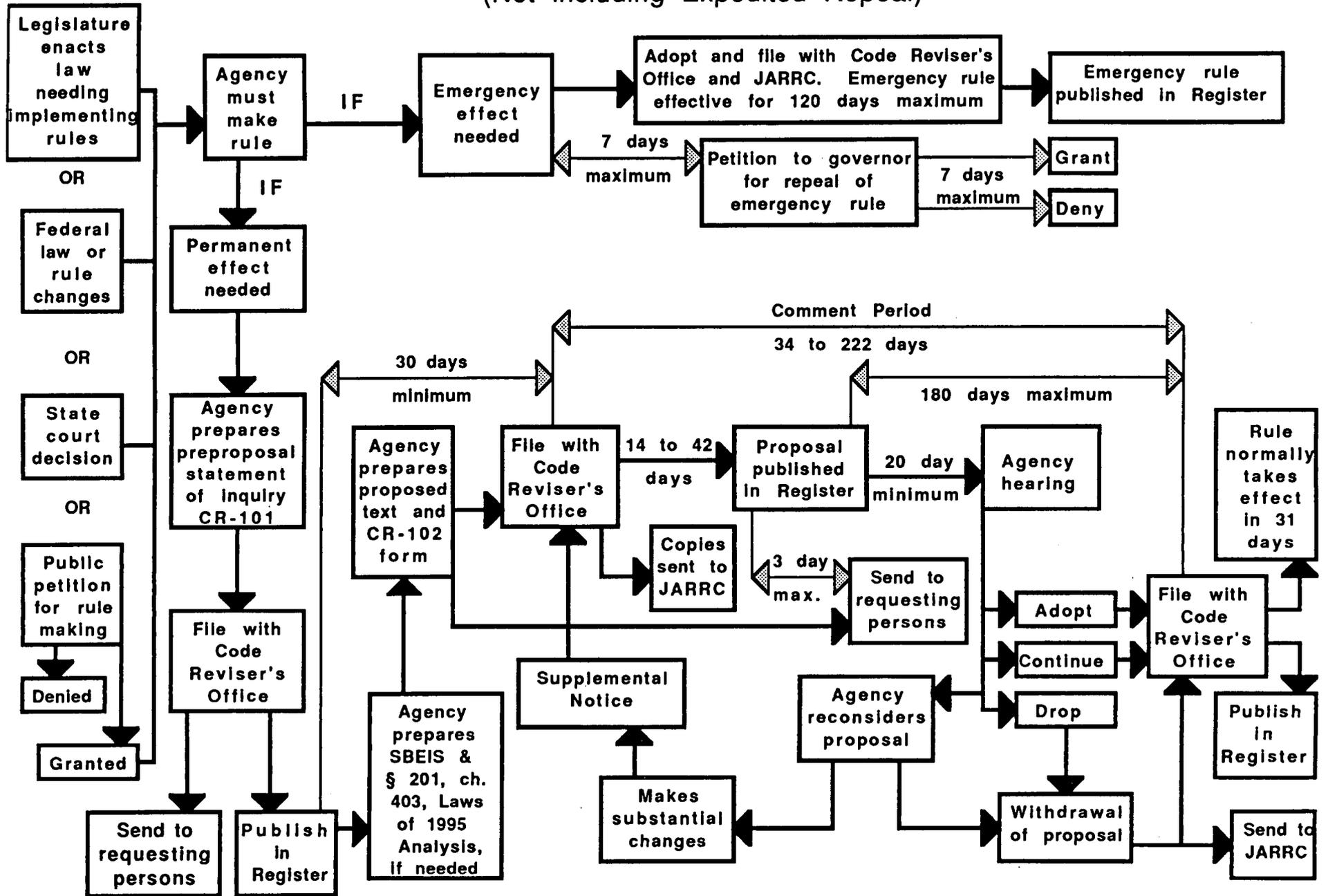
The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.

RULE-MAKING PROCESS

(Not including Expedited Repeal)



WSR 01-07-004**PREPROPOSAL STATEMENT OF INQUIRY
LOTTERY COMMISSION**

[Filed March 8, 2001, 10:48 a.m.]

Subject of Possible Rule Making: Lucky for Life rules, chapter 315-36 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.70.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The lottery is considering changes to the Lucky for Life game rules, including changes in the prize levels and odds of winning.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary Jane Ferguson, Rules Coordinator, at (360) 664-4833, fax (360) 586-6586, P.O. Box 43025, Olympia, WA 98504-3025, with any comments or questions regarding this statement of intent.

March 7, 2001

Mary Jane Ferguson
Rules Coordinator

WSR 01-07-008**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed March 9, 2001, 11:56 a.m.]

Subject of Possible Rule Making: Chapter 388-538 WAC, Managed care.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.510, and 74.09.522.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department plans to review this chapter of rule to address exemptions/disenrollments from healthy options managed care plans, in order to ensure that clients have adequate access to care. While there are no current plans to change existing policy in other areas, the department realizes that the review may identify some areas of the rules that need updating or clarifying, and so gives notice that such may occur.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this WAC. Draft material and information about how to participate are available by contacting the DSHS representative identified below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting L. Mike Freeman, Regulatory

Improvement Program, Mailstop 45533, Olympia, WA 98504-5533, phone (360) 725-1350, fax (360) 586-9727, e-mail freemlm@dshs.wa.gov.

March 8, 2001

Bonita H. Jacques, Manager
Rules and Policies Assistance Unit

WSR 01-07-013**PREPROPOSAL STATEMENT OF INQUIRY
LOTTERY COMMISSION**

[Filed March 13, 2001, 9:35 a.m.]

Subject of Possible Rule Making: Lotto 6 of 49 rules, chapter 315-34 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.70.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The lottery is considering changes to the Lotto rules, to increase consumer interest in the game.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary Jane Ferguson, Rules Coordinator, at (360) 664-4833, fax (360) 586-6586, P.O. Box 43025, Olympia, WA 98504-3025, with any comments or questions regarding this statement of intent.

March 13, 2001

Mary Jane Ferguson
Rules Coordinator

WSR 01-07-018**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed March 13, 2001, 3:37 p.m.]

Subject of Possible Rule Making: Chapter 388-535 WAC, Dental-related services; chapter 388-544 WAC, Vision and hearing aid services; chapter 388-438 WAC, Emergency assistance for medical needs; and possible other related rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.510, 74.09.520, 74.09.530, 74.09.700.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: MAA anticipates the need to reduce or eliminate certain medical program services due to anticipated budget cuts in the 2001-2003 biennial budget. The rules listed above may require amendment or repeal to achieve the necessary reduction.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Health Care Financing Administration (HCFA) administers the Medicaid program on the federal level; any state plan amendments that are necessary to carry out legislative directives will be pursued with it.

Process for Developing New Rule: The department invites the interested public to review and provide input on this action. Draft material and information about how to participate are available by contacting the DSHS representative identified below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication contacting Ann Myers, Regulatory Improvement Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1345, fax (360) 586-9727, e-mail myersea@dshs.wa.gov.

March 13, 2001
Bonita H. Jacques, Chief
Office of Legal Affairs

WSR 01-07-025**PREPROPOSAL STATEMENT OF INQUIRY
GAMBLING COMMISSION**

[Filed March 14, 2001, 10:52 a.m.]

Subject of Possible Rule Making: Gambling service suppliers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To address the duties of gambling service suppliers.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ben Bishop, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 438-7640; Ed Fleisher, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 438-7654 ext. 307; Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 438-7654 ext. 374.

Meetings at The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on April 12 and 13, 2001; at The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 858-1111, on May 10 and 11, 2001; and at the LaConner Country Inn, Meeting at Maple Hall, 108 Commercial Street, LaConner, WA 98257, (360) 466-3101, on June 14 and 15, 2001.

March 9, 2001
Susan Arland
Rules Coordinator

WSR 01-07-030**PREPROPOSAL STATEMENT OF INQUIRY
LOTTERY COMMISSION**

[Filed March 15, 2001, 9:51 a.m.]

Subject of Possible Rule Making: Cautionary language on lottery materials.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 67.70.040(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The lottery is considering amending, repealing and/or adding rules to chapter 315-06 WAC to require cautionary language on lottery materials.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary Jane Ferguson, Rules Coordinator, at (360) 664-4833, fax (360) 586-6586, P.O. Box 43025, Olympia, WA 98504-3025, with any comments or questions regarding this statement of intent.

March 14, 2001
Mary Jane Ferguson
Rules Coordinator

WSR 01-07-050**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Office of the Secretary)
(Legislative Relations)

[Filed March 16, 2001, 3:37 p.m.]

Subject of Possible Rule Making: FBI background checks—120 day provisional hire.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 43.20A RCW, RCW 43.43.842, 72.05.440, 74.15.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are necessary to ensure consistent implementation within divergent DSHS programs. The rules will clarify when an entity, agency, and hiring individual is able to hire employees, contract employees, volunteers, and student interns provisionally for one hundred twenty days while waiting for an FBI result.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Washington State Department of Personnel; Washington State Patrol; and the Washington State Department of Health.

Process for Developing New Rule: The process will involve working directly with internal and external stakeholders.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jackie A. Beery, Policy Manager,

Background Check Centralization Project, DSHS, Division of Legislative Relations, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-7814, beeryja@dshs.wa.gov, (360) 902-7814.

March 16, 2001
 Brian Lindgren
 for Bonita H. Jacques, Chief
 Office of Legal Affairs

Process for Developing New Rule: Agency study.
 Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Dave Brittell, Wildlife Program, Assistant Director, 600 Capitol Way, Olympia, WA 98501-1091, phone (360) 902-2504. Contact by June 19, 2001, expected proposal filing June 20, 2001.

March 19, 2001
 Evan Jacoby
 Rules Coordinator

WSR 01-07-067

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF FISH AND WILDLIFE

[Filed March 19, 2001, 4:04 p.m.]

Subject of Possible Rule Making: Commercial fishing rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is concerned over the use of large mesh gill nets to take swordfish, and the by-catch impacts on thresher shark. The department will consider rules to protect thresher shark.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Phil Anderson, Intergovernmental Program, Special Assistance Director, 600 Capitol Way, Olympia, WA 98501-1091, phone (360) 902-2720. Contact by June 19, 2001, expected proposal filing June 20, 2001.

March 19, 2001
 Evan Jacoby
 Rules Coordinator

WSR 01-07-069

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF FISH AND WILDLIFE

[Filed March 19, 2001, 4:05 p.m.]

Subject of Possible Rule Making: Sea cucumber and sea urchin license buy-back programs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047, 77.70.150, 77.70.190.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The legislature has set up two funds for retirement of sea cucumber and sea urchin licenses. There are sufficient moneys in the funds to begin the license retirement programs, and rules are needed to implement the legislative intent.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lew Atkins, Fish Program, Assistant Director, 600 Capitol Way, Olympia, WA 98501-1091, phone (360) 902-2651. Contact by June 19, 2001, expected proposal filing June 20, 2001.

March 19, 2001
 Evan Jacoby
 Rules Coordinator

WSR 01-07-068

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF FISH AND WILDLIFE

[Filed March 19, 2001, 4:04 p.m.]

Subject of Possible Rule Making: Hunting rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is reviewing a complaint that prohibiting the use of crossbows discriminates against bow hunters who can not use conventional and recurve bows. The department will make recommendations to the commission regarding the use of crossbows.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

WSR 01-07-078

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF RETIREMENT SYSTEMS

[Filed March 21, 2001, 8:06 a.m.]

Subject of Possible Rule Making: WAC 415-111-220 Defined contribution rate election.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050(5), 41.34.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In rule adoption WSR 01-01-059, effective January 12, 2001, the department made an inadvertent omission in the adoption of WAC 415-111-220 affecting the current contribution rates for its teachers retire-

ment system (TRS) Plan 3 retirement plans. The proposed rule will correct the omission, and will add similar provisions for the school employees personnel system (SERS) Plan 3 and the public employees retirement systems (PERS) Plan 3 provided that the employee retirement benefits board (ERBB) approves these proposed changes. The department is also making several changes in grammar and to make the WAC easier to understand. In addition, the amendment would provide an annual window during which time TRS Plan 3 members could change their contribution rate and retain the 5% minimum contribution rate, contingent on the legislature's statutory change to RCW 41.34.040, and the Internal Revenue Service's (IRS) approval as described below.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Internal Revenue Service (IRS) regulates the type of defined contribution plan that TRS Plan 3 provides. Providing an annual window in which to change contribution rate would be contingent on a favorable IRS determination.

Process for Developing New Rule: Department staff will work on the project, with the assistance of the Office of the Attorney General. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The Department of Retirement Systems encourages your active participation in the rule-making process. Anyone interested in participating should contact the rules coordinator, below. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making, and send a copy to everyone currently on the mailing list and anyone else who requests a copy. For more information on how to participate, please contact Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov, fax (360) 753-3166.

March 20, 2001
Merry A. Kogut
Rules Coordinator

WSR 01-07-085

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

[Filed March 21, 2001, 9:16 a.m.]

Subject of Possible Rule Making: To implement legislation related to continuing education requirements for respiratory care practitioners.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.89.050(1), 18.89.140.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The intent of continuing education is to ensure the highest quality of professional work. Continuing education consists of educational activities designed to review existing concepts and techniques and to convey information and knowledge about advances in respi-

ratory care as applied to the work settings. The objectives are to improve and increase the ability of the respiratory care practitioner to deliver the highest possible quality of respiratory care work and to keep the professional respiratory care practitioner abreast of current developments in a rapidly changing field.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tracy Hansen, Program Manager, Respiratory Care Practitioners Program, 1300 S.E. Quince Street, Mailstop 47870, Olympia, WA 98504-7870, phone (360) 236-4940, fax (360) 586-0745.

M. C. Selecky
Secretary

WSR 01-07-093

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF REVENUE

[Filed March 21, 2001, 11:00 a.m.]

Subject of Possible Rule Making: WAC 458-20-178 Use tax and 458-20-17801 Use tax exemptions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.32.300.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is considering a revision of the information now provided in WAC 458-20-178 to provide the information in a more user-friendly format. The department anticipates a revised WAC 458-20-178 providing general use tax-reporting information for consumers, including who is responsible for remitting use tax, and when and how to remit the tax. The rule will also explain how to determine the measure of tax and provide answers to a number of commonly asked questions.

The department also is considering new WAC 458-20-17801 to identify and explain the use tax exemptions provided by chapter 82.12 RCW. When appropriate, this rule will refer the reader to other rules that discuss the use tax exemptions and implications for particular industries or activities.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request. Written comments on and/or requests for copies of the rule may be directed to JoAnne Gordon, Legislation and Policy, P.O. Box 47467,

Olympia, WA 98504-7467, phone (360) 570-6121, fax (360) 664-0693, e-mail joanneg@dor.wa.gov.

Location and Date of Public Meeting: Capital Plaza Building, 4th Floor, Large Conference Room, 1025 East Union Avenue, Olympia, WA, on May 1, 2001, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Barb Vane no later than ten days before the hearing date at TDD 1-800-451-7985 or (360) 570-6182.

March 21, 2001

Claire Hesselholt, Rules Manager
Legislation and Policy Division

WSR 01-07-102

PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed March 21, 2001, 11:25 a.m.]

Subject of Possible Rule Making: Machine guarding.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, [49.17].040, [49.17].050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Review all machine guarding requirements in chapters 296-24, 296-32, 296-36, 296-45, 296-50, 296-52, 296-54, 296-56, 296-59, 296-61, 296-62, 296-78, 296-79, 296-115, 296-155, 296-301, 296-302, 296-303, 296-304 and 296-305 WAC, to identify unnecessary design requirements, outdated terminology, incorporate necessary policies and requirements, rewriting and reorganizing for clarity and consolidate into one rule. The Governor's Executive Order 97-02 identified the need for this rule-making action.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies (other than OSHA) are known that regulate this subject.

Process for Developing New Rule: The department must adopt rules identical to or at least as effective as OSHA rules as required by the OSHA/WISHA state plan agreement. Parties interested in the formulation of these rules for proposal may contact the individuals listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ken Lewis, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-4568, e-mail lewk235@ini.wa.gov, fax (360) 902-5529.

March 21, 2001

Gary Moore
Director

WSR 01-07-104

PREPROPOSAL STATEMENT OF INQUIRY PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:42 a.m.]

Subject of Possible Rule Making: WAC 390-16-120 Abbreviated campaign reporting—Times and place for filing reports C-1, C-1pc and C-4abb.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 390-16-120 outlines the times and place for filing reports under the abbreviated campaign reporting option.

The commission will consider whether to amend the language in WAC 390-16-120 to conform with proposed changes in the abbreviated and mini campaign reporting options in WAC 390-16-105 and 390-16-150.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on April 24, 2001, the commission is expected to discuss amending WAC 390-16-120. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by April 23, 2001, to Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, April 16, 2001, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Public Disclosure Commission, Director of Public Outreach, Doug Ellis, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, or e-mail dellis@pdc.wa.gov. A public hearing on this matter may occur on May 22, 2001.

March 21, 2001

Vicki Rippie
Executive Director

WSR 01-07-111

PREPROPOSAL STATEMENT OF INQUIRY PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:46 a.m.]

Subject of Possible Rule Making: WAC 390-16-041 Forms—Summary of total contributions and expenditures.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370(1);

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 390-16-041 designates the "C-4" and "C-4abb" forms as the official form for reports of contributions and expenditures by candidates and political committees.

The commission will consider whether to eliminate the C-4abb form to conform with proposed changes in the eligi-

bility for abbreviated and mini campaign reporting in WAC 390-16-105 and 390-16-150.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on April 24, 2001, the commission is expected to discuss amending WAC 390-16-041. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by April 23, 2001, to Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, April 16, 2001, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Public Disclosure Commission, Director of Public Outreach, Doug Ellis, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, e-mail dellis@pdc.wa.gov. A public hearing on this matter may occur on May 22, 2001.

March 21, 2001
Vicki Rippie
Executive Director

WSR 01-07-112

PREPROPOSAL STATEMENT OF INQUIRY PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:46 a.m.]

Subject of Possible Rule Making: WAC 390-16-155
Mini campaign reporting—Exceeding limitations.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 390-16-155 outlines the process for changing from mini to abbreviated reporting.

The commission will consider whether to repeal the language in WAC 390-16-155 to conform with proposed changes in the abbreviated and mini campaign reporting options in WAC 390-16-105 and 390-16-150.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on April 24, 2001, the commission is expected to discuss repealing WAC 390-16-155. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by April 23, 2001, to Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, April 16, 2001, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Public Disclosure Commission, Director of Public Outreach, Doug Ellis, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free

1-877-601-2828, e-mail dellis@pdc.wa.gov. A public hearing on this matter may occur on May 22, 2001.

March 21, 2001
Vicki Rippie
Executive Director

WSR 01-07-113

PREPROPOSAL STATEMENT OF INQUIRY PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:46 a.m.]

Subject of Possible Rule Making: WAC 390-16-115
Abbreviated campaign reporting—Conditions for granting use.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 390-16-115 outlines the conditions with which a candidate or political committee must comply in order to be eligible for the abbreviated campaign reporting option.

The commission will consider whether to amend the language in WAC 390-16-115 to conform with proposed changes in the abbreviated and mini campaign reporting options in WAC 390-16-105 and 390-16-150.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on April 24, 2001, the commission is expected to discuss amending WAC 390-16-115. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by April 23, 2001, to Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, April 16, 2001, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Public Disclosure Commission, Director of Public Outreach, Doug Ellis, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, e-mail dellis@pdc.wa.gov. A public hearing on this matter may occur on May 22, 2001.

March 21, 2001
Vicki Rippie
Executive Director

WSR 01-07-114

PREPROPOSAL STATEMENT OF INQUIRY PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:46 a.m.]

Subject of Possible Rule Making: WAC 390-16-125
Abbreviated campaign reporting—Exceeding limitations.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 390-16-125 outlines the process for changing from abbreviated to full reporting.

The commission will consider whether to amend the language in WAC 390-16-125 to conform with proposed changes in the abbreviated and mini campaign reporting options in WAC 390-16-105 and 390-16-150.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on April 24, 2001, the commission is expected to discuss amending WAC 390-16-125. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by April 23, 2001, to Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, April 16, 2001, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Public Disclosure Commission, Director of Public Outreach, Doug Ellis, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, e-mail dellis@pdc.wa.gov. A public hearing on this matter may occur on May 22, 2001.

March 21, 2001
Vicki Rippie
Executive Director

Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908. Written comments received by Monday, April 16, 2001, will be provided to commissioners in advance of the meeting.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Public Disclosure Commission, Director of Public Outreach, Doug Ellis, P.O. Box 40908, Olympia, WA 98504-0908, phone (360) 664-2735, toll free 1-877-601-2828, e-mail dellis@pdc.wa.gov. A public hearing on this matter may occur on May 22, 2001.

March 21, 2001
V. Rippie
Executive Director
by Susan Harris

WSR 01-07-115

PREPROPOSAL STATEMENT OF INQUIRY PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:46 a.m.]

Subject of Possible Rule Making: WAC 390-16-190
Electronic filing.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.370(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 390-16-190 requires major political party candidates who are candidates for the office of governor to file campaign finance reports electronically.

The commission will consider whether to amend the language in WAC 390-16-190 to conform with proposed changes in the abbreviated and mini campaign reporting options in WAC 390-16-105 and 390-16-150.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: At its meeting on April 24, 2001, the commission is expected to discuss amending WAC 390-16-190. Public comment will be welcome at this meeting. Interested persons are invited to submit written comments by April 23, 2001, to Doug Ellis, Public



WSR 01-07-019
EXPEDITED REPEAL
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Rehabilitative Services Administration)
 [Filed March 13, 2001, 3:40 p.m.]

The Following Sections are Proposed for Expedited Repeal: Chapter 388-815 WAC, Drug-free workplace programs (formerly chapter 440-26 WAC), including WAC 388-815-005, 388-815-010, 388-815-020, 388-815-030, 388-815-100, 388-815-110, 388-815-120, 388-815-130, 388-815-140, 388-815-160, 388-815-200, 388-815-205, 388-815-210, 388-815-215, 388-815-220, 388-815-230, 388-815-240, and 388-815-250.

Rules Proposed for Expedited Repeal Meet the Following Criteria: Statute on which the rule was based has been repealed and has not been replaced by another statute providing statutory authority for the rule.

Any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after publication of this preproposal statement of inquiry.

Address Your Objection to: DSHS Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98503-5850 [98504-5850], fax (360) 664-6185.

Reason the Expedited Repeal of the Rule is Appropriate: The department is repealing this rule because sections 1 through 16 of chapter 49.82 RCW, Drug-free workplace programs, expired January 1, 2001.

March 13, 2001
 Bonita H. Jacques, Chief
 Office of Legal Affairs

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-815-005	Purpose.
WAC 388-815-010	Definitions.
WAC 388-815-020	Eligible employers.
WAC 388-815-030	Certification of employer to L&I.
WAC 388-815-100	Employer certification procedures.
WAC 388-815-110	Certification maintenance.
WAC 388-815-120	Program oversight.
WAC 388-815-130	Denial of certification.
WAC 388-815-140	Decertification.
WAC 388-815-160	Hearings, appeals.
WAC 388-815-200	Program requirements—Policy statement.

WAC 388-815-205	Program requirements—Notifications.
WAC 388-815-210	Program requirements—Substance abuse testing.
WAC 388-815-215	Program requirements—How employers get certified through a clean card program.
WAC 388-815-220	Program requirements—Employee assistance program.
WAC 388-815-230	Supervisor training.
WAC 388-815-240	Employee education.
WAC 388-815-250	Confidentiality.

WSR 01-07-064
EXPEDITED REPEAL
UNIVERSITY OF WASHINGTON
 [Filed March 19, 2001, 1:58 p.m.]

The Following Sections are Proposed for Expedited Repeal: WAC 478-156-014 Assignment priority.

Rules Proposed for Expedited Repeal Meet the Following Criteria: Rule is no longer necessary because of changed circumstances.

Any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after publication of this preproposal statement of inquiry.

Address Your Objection to: Rebecca Goodwin Dardorff, Director, Administrative Procedures Office, via one of the following routes: U.S. mail 4014 University Way N.E., Seattle, WA 98105-6203; campus mail Box 355509; e-mail adminpro@u.washington.edu; or fax (206) 616-6294.

Reason the Expedited Repeal of the Rule is Appropriate: WAC 478-156-014 sets out university policy regarding assignment priorities for the residence halls. Under the provisions of this section, priority is given to returning residents; all other students are considered by date of application. For the past several years, the university has faced growing demand for residence hall space. In response to this increase - which is due to freshman class enrollment increases, high retention rates among residents, and private market factors - the office of housing and food services has maximized its capacity by converting double rooms to triple occupancy, returning office space to student rooms, designating Stevens Court for returning residence hall students, and planning the construction of additional undergraduate single-student housing. Still, student housing remains a scarce resource and decisions regarding its allocation are best made annually with careful consideration of current circumstances. For example, at times when housing is in high demand, it may be beneficial to emphasize housing for incoming freshmen, as a means of fostering their successful transition to university life.

The university proposes replacing the WAC rule with an annual plan for residence hall assignments. The director of

EXPEDITED REPEAL

the office of housing and food services would submit to the vice-president for student affairs a residence hall assignment plan, which would present residence hall capacity, expected demand, and a complete description of the priority system to be used for the upcoming autumn quarter assignments. The plan would be made available to students and the general public by publication on the university's web site. This change would allow for modifications to residence hall assignment policies to meet the emerging priorities of the University of Washington and its students.

March 15, 2001

Rebecca Goodwin Deardorff, Director
Administrative Procedures Office

WSR 01-07-094

EXPEDITED REPEAL

DEPARTMENT OF REVENUE

[Filed March 21, 2001, 11:01 a.m.]

The Following Sections are Proposed for Expedited Repeal: WAC 458-12-015 Definition—Interstate commerce, 458-12-020 Definition—Foreign commerce—Imports and exports, and 458-12-085 Listing of personalty—Merchants—Personalty—Consignments.

Rules Proposed for Expedited Repeal Meet the Following Criteria: Statute on which the rule was based has been repealed and has not been replaced by another statute providing statutory authority for the rule.

Any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after publication of this preproposal statement of inquiry.

Address Your Objection to: Alan R. Lynn, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail alanl@dor.wa.gov.

Reason the Expedited Repeal of the Rule is Appropriate: These rules were adopted to provide guidance regarding property tax liabilities for certain types of inventory. WAC 458-12-015 and 458-12-020 address inventories being moved in interstate commerce and foreign commerce, respectively. WAC 458-12-085 provides guidance with respect to other inventory, including consigned goods and nursery growing stock.

These rules are no longer needed because subsequent legislation (codified as RCW 84.36.477) provides a property tax exemption for inventory goods.

March 21, 2001

Claire Hesselholt, Rules Manager
Legislation and Policy Division

WSR 01-06-052
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed March 7, 2001, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-03-076.

Title of Rule: Chapter 16-202 WAC, Application of pesticides and plant nutrients through irrigation systems—Chemigation.

Purpose: To clarify rules and address issues and concerns raised since implementation of the original rules in 1998. These rule revisions address the proper operation and system configuration required to protect the environment and human health from chemigation applications.

Other Identifying Information: Chemigation is the distribution of pesticides through irrigation systems.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

Summary: The proposed rules contain significantly more explanatory provisions than the current rule. However, the actual numbers of additional provisions are few, and most of them are addressed in the small business economic impact statement. Intended to be as much of a reference document as a regulation, the proposed chemigation rule and fertigation rule incorporate or reference relevant provisions of chapters 16-200, 16-201, 16-228, 16-229 WAC, WAC 16-202-1000, and 16-202-2000 as well as chapters 15.54 and 17.21 RCW.

Many of the supplementary provisions to current rule are addressed in the small business economic impact statement, and they follow:

1. Manual shutoff valves must be placed on the main outlet of application tanks (WAC 16-202-1009 and 16-202-2005).
2. Application tanks must contain "who to contact" information in a minimum of two-inch lettering on a contrasting background (WAC 16-202-1008 and 16-202-2004).
3. Application tanks containing product must be periodically monitored (WAC 16-202-1010 and 16-202-2006).
4. Chemigation and fertigation applications must be periodically monitored (WAC 16-202-1023 and 16-202-2019).
5. For chemigation, a tank size limitation of 2,500 gallons and a cumulative application tank capacity of 3,000 gallons (with a soil fumigation exception of 6,500 gallons for a fourteen-day period) per injection site (WAC 16-202-1010).
6. For fertigation, a tank size restriction of 6,500 gallons and a cumulative application tank capacity of 10,000 gallons per injection site (WAC 16-202-2006).
7. An inspection port or other access point to assess the integrity and operation of irrigation mainline check valve and the low pressure drain, provided such devices are deemed necessary, must be installed (WAC 16-202-1002, 16-202-1013, 16-202-2002, and 16-202-2009).
8. Department of Health approved backflow prevention devices must be installed on systems that are cross-connected to a public water supply (WAC 16-202-1013, 16-202-1024, 16-202-2009, and 16-202-2020).

Presented below are proposed provisions not specifically addressed in the small business economic impact statement that may require a financial outlay by the system owner, lessee, or renter. However, a potential cost associated with a proposed provision may be nominal due to requirements of correlated rules, to conditions on the pesticide label, or to adherence with accepted industry practice.

1. All system components must be compatible with injected materials, water containing injected materials, or system pressure (WAC 16-202-1003 and 16-202-2003).

2. The application must be continuously observed whenever sensitive areas are at risk of being exposed to drift, runoff, or overspray (WAC 16-202-1003 and 16-202-2003).

3. Overflow from an irrigation pond contaminated with product cannot enter a public waterway, off-farm irrigation supply ditch or conveyance system, or sensitive area (WAC 16-202-1009 and 16-202-2005).

4. Barometric loops can only be used on systems pumping from a surface water source. The barometric pipe loop must be located in the main water line immediately downstream of the irrigation water pump. It must be designed with sufficient elevation differential to compensate for backflow. The bottom of the barometric loop apex must be at least thirty inches above the highest water-emitting device or of any portion of the irrigation application system. The chemical injection port must be located downstream of and at least thirty inches below the bottom of the pipe loop apex (WAC 16-202-1014, 16-202-1020, 16-202-2010, and 16-202-2016).

5. Mixing or loading activities cannot occur within and an application tank cannot be placed closer than twenty feet of a sensitive area, wellhead, public waterway, off-farm irrigation supply ditch or conveyance system, and irrigation water source (WAC 16-202-1009 and 16-202-2005).

6. For a chemigation operation (WAC 16-202-1010):

- Product can remain in an application tank for a period not to exceed fourteen days between chemigation applications;
- An application tank containing product must be inspected at least daily or monitored with remote access volumetric measuring devices; and
- An application tank must be removed at the end of the irrigation or application season, whichever is shorter, but in no event, not to exceed nine months. At the end of this period, the application tank must be emptied, cleaned, visually inspected for integrity, and serviced. The tank must be removed from the site, or the tank must be decommissioned and clearly tagged with the words "Out-of-Service," or the tank must be managed as a permanent storage facility.

7. For a fertigation operation (WAC 16-202-2006):

- Product can remain in an application tank for a period not to exceed nine consecutive months during an irrigation or application season;
- An application tank containing product during the nonapplication or nonirrigation season is subject to the secondary and operational area containment rules; and
- The application tank must be removed at the end of the irrigation or application season, whichever is

PROPOSED

shorter but in no event, not to exceed nine months. At the end of this period, the application tank must be emptied, cleaned, visually inspected for integrity, and serviced. The tank must be removed from the site, or the tank must be decommissioned and clearly tagged with the words "Out-of-Service," or the tank must be managed as a permanent storage facility.

8. For a fertigation operation, a person may function as a metering device with a nonpressurized irrigation delivery system. However, the individual must remain on-site to continuously monitor the application and be immediately available to terminate the application in the event of equipment malfunction (WAC 16-202-2014).

For additional information, contact the WSDA Chemigation and Fertigation Technical Assistance Program at (509) 766-2574, or write Tom Hoffmann or Byron Fitch at WSDA Pesticide Management, 821 East Broadway, Suite 4, Moses Lake, WA 98837.

Reasons Supporting Proposal: The proposal is the result of numerous meetings with a technical advisory committee comprised of representatives of agricultural suppliers, producers, the United States Natural Resources Conservation Service, and the Washington State Department of Ecology. The revisions address a number of issues that have arisen since implementation of the chemigation rule in 1988.

Name of Agency Personnel Responsible for Drafting and Implementation: Ann Wick, 1111 Washington Street, Olympia, WA 98504, (360) 902-2051; and Enforcement: Cliff Weed, 1111 Washington Street, Olympia, WA 98504, (360) 902-2036.

Name of Proponent: Department of Agriculture, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposal contains backflow prevention requirements for the purpose of protecting the environment and ground water from contamination. These rules also address the proper operation and system configuration required to protect the environment and human health from chemigation applications. The rules went through a thorough review by a technical advisory committee described above. In addition, the department received input from the state departments of Health and Ecology during the rule revision process.

Proposal Changes the Following Existing Rules: See Summary above.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

The following analysis was done to determine what impacts to small businesses would incur, if any, as a result of the revised chemigation and fertigation rules. The items below are the requirements that have an associated cost:

1. Labeling requirements under chemigation (WAC 16-202-1008) and fertigation (WAC 16-202-2004) require tank contents and owner information to be visible and securely affixed to each application tank. Lettering that displays the contact name, telephone number, and tank identifier have to

be a minimum of two inches in height and in a color contrasting to the background.

Cost Analysis:

■ *Chemigation:* Current rules require labeling of undiluted product in tanks with the EPA product label. Approximately 20% of all tanks in use for chemigation contain undiluted product and thus currently require labeling. This means approximately 80% of some 12,000 tanks used for chemigation could have a cost associated with the rule change or 9,600 tanks.

Manufacturers usually provide product labels, however the tank owner would still need to affix his or her contact name, telephone number, and tank identifier. The average cost for materials to do this is \$2.00. The cost for labor is estimated at \$10 an hour with installation time taking approximately ten minutes per tank.

The cost then to install needed information per tank is \$3.67. If dealers own two-thirds of the tanks statewide, and 80% of those tanks require this information to be affixed, then their total cost would be 8,000 tanks * 80% = 6,400 tanks * \$3.67 = \$23,488 statewide. These costs would primarily be incurred by large businesses. Growers represent the remaining 4,000 tanks requiring the identifying information to be installed; some of whom would be classified as small businesses. This would equal 4,000 tanks * 80% = 3,200 tanks * \$3.67 = \$11,744 statewide.

If there are sixty dealers, the cost per dealer is \$391.15 per dealer.

If growers have two tanks on average that need to meet this requirement, the cost per grower is \$7.34.

■ *Fertigation:* All tanks would require some work to meet these requirements.

Per dealer this equals 8,000 tanks * \$3.67 = \$29,360/60 dealers = \$489.33.

Per grower this equals \$7.34 for two tanks.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document tanks that require identification and would set up an agreement with growers as to when they would meet this requirement either through a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

2. The proposed rules require system operators to monitor chemigation applications every four hours (WAC 16-202-1023), and fertigation applications daily (WAC 16-202-2019).

Cost Analysis:

■ *Chemigation:* The current chemigation rule requires "frequent monitoring." Agricultural representatives on the Technical Advisory Committee for this rule making indicated that the four-hour requirement is already standard practice. Therefore it is determined that there is no financial impact.

■ *Fertigation:* The current fertigation rule has no requirements for monitoring daily. If the average wage per hour is estimated at \$10 and the inspection takes two hours (including travel time), then the cost per day would be \$20 to inspect each system. Due to the fact that monitoring systems daily is considered standard practice according to the Techni-

cal Advisory Committee, this requirement is considered a minimal impact. In addition, these costs would primarily be incurred by large businesses since they usually have more systems to inspect.

Mitigation Factors: None.

3. The fertigation rule requires secondary containment for all tanks larger than 6,500 gallons that are used during a fertigation operation (WAC 16-202-2006(2)). Currently, the WSDA secondary and operational area containment rules (chapter 16-201 WAC) require secondary containment for all fertilizer tanks 10,000 gallons or greater. The cost analysis is based on the difference between the new gallonage limitation of 6,500 gallons and the secondary containment requirement of 10,000 gallons.

Cost Analysis:

■ *Chemigation:* Not applicable.

■ *Fertigation:* The average cost of a 6,500 gallon tank is \$3,520. It is estimated that there are only a dozen 10,000 gallon tanks that would need to be replaced with smaller tanks and only one tank per dealer. Many of these tanks are typically rented or leased by the grower from dealers. This means the cost would primarily be borne by dealers and their cost is estimated at \$3,520.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document tanks that need replacement and would set up an agreement with growers as to when they would meet this requirement through a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

4. The proposed chemigation rule (WAC 16-202-1009(4)) and the fertigation rule (WAC 16-202-2005(4)) both require tank outlet ports to be fitted with manual shutoff valves. Although the current rules do not have this requirement, the current industry practice provides manual shutoff valves for all newer tanks. This means only the older tanks would need to be retrofitted. Less than 1% of tanks will require this retrofit, equaling about 80 tanks statewide.

Cost Analysis:

■ *Chemigation:* The cost of the valve is \$20. The cost of labor is \$10 per hour. This equals \$30 per tank.

■ *Fertigation:* Same as above.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document tanks that require this retrofit and would set up an agreement with growers as to when they would meet this requirement either through a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

5. Both the chemigation rule (WAC 16-202-1013 (1)(b)) and the fertigation rule (WAC 16-202-2009 (1)(b)) require an inspection port or a direct access point to allow for visual and manual inspection of the check valve and the low pressure drain. The inspection port or access point has to be at least four inches in diameter. If this is not feasible, an alternative access system must be devised.

Cost Analysis:

■ *Chemigation:* The cost of installing an inspection port would be borne by the grower. The parts equal approximately \$30 and the labor \$10, costing the grower \$40 per installation. On average, a grower might have six to eight systems requiring an inspection port to be installed equaling \$320 per grower. These costs would primarily be incurred by large businesses because they may have more systems to retrofit.

■ *Fertigation:* Same as above.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document systems that require inspection ports and would set up an agreement with growers as to when they would meet this requirement through either a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

A copy of the statement may be obtained by writing to Ann Wick, Pesticide Management Division, Washington State Department of Agriculture, P.O. Box 42589, Olympia, WA 98504-2589, phone (360) 902-2051, fax (360) 902-2093.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Natural Resources Building (NRB), 2nd Floor, Room 271, 1111 Washington Street S.E., Olympia, WA 98504-2589, on Tuesday, April 24, 2001, at 1:00 p.m.; at the Washington State Department of Agriculture Yakima, 21 North First Avenue, Conference Room 238, Yakima, WA 98902, on Tuesday, May 1, 2001, at 6:30 p.m.; at Columbia Basin College, Gjerde Multipurpose Center, Sections 1 and 4, 2600 North 20th Avenue, Pasco, WA 99301-3379, on Wednesday, May 2, 2001, at 6:30 p.m.; and at the Big Bend Community College Auditorium, Building 1400, 7662 Chanute Street, Moses Lake, WA 98837, on Thursday, May 3, 2001, at 6:30 p.m.

Assistance for Persons with Disabilities: Contact Laurie Mauerman by April 12, 2001, TDD (360) 902-1996.

Submit Written Comments to: Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2093, by May 4, 2001.

Date of Intended Adoption: May 21, 2001.

March 7, 2001

Bob Arrington

Assistant Director

PART 1

GENERAL PROVISIONS

NEW SECTION

WAC 16-202-1001 What is the purpose of this chapter? The purpose of this chapter is to establish performance standards for chemigation that are protective of existing and future uses of surface water and ground water quality.

NEW SECTION

WAC 16-202-1002 How are specific terms and phrases defined in this chapter? Terms as defined in this section are applied throughout this chapter.

"Air gap" means an unobstructed physical separation between the free-flowing discharge end of a water supply and the overflow rim of an open or nonpressurized receiving vessel. The separation must be at least four times the diameter of the supply pipe measured vertically from the overflow rim of the receiving vessel, and in no case be less than 25 mm, or 1-inch.

"Alternative technology" means any device or concept that meets the performance standards contained in this chapter.

"Antipollution safety device" means any equipment or device effectively designed, constructed, and maintained that is used in the event of malfunction or shutdown to prevent backflow of a chemical or treated water into the water supply, or to reduce human exposure or hazard to the environment. Equipment or devices may include, but are not limited to, the irrigation line check valve, vacuum relief valve, low-pressure drain, inspection port, metering device, chemical injection closure device, and system interlock.

"Application season" means the period during which product is injected into an irrigation system for crop protection, crop growth, or soil preparation.

"Application tank" means a product container and appurtenances used for the storage of product that is dedicated for use with and functionally connected to an irrigation system.

"Applicator" means any certified applicator or anyone who is working under the direct supervision of a certified applicator.

"Approved backflow prevention assembly" means a reduced pressure backflow assembly, reduced pressure detector assembly, double check valve detector assembly, or double check valve assembly of a make and model that is approved by the Department of Health pursuant to WAC 246-290-490.

"Approved reduced pressure backflow assembly or reduced pressure detector assembly" means backflow prevention assemblies of make and model approved by the Department of Health pursuant to WAC 246-290-490.

"Aquaculture" means the cultivation of water-based plants or animals.

"Backflow" means the reversal of fluid flow due to back-pressure or backsiphonage.

"Backflow prevention device" or "backflow safety device" means antipollution safety devices that prevent the flow of water from the water distribution system back to the water source or to the product source.

"Barometric loop" or "gooseneck" means a raised section of pipe where the bottom of the loop is at least two feet above the highest water emitting device or any portion of the irrigation application system which has a vacuum relief valve installed on the top of the loop.

"Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certi-

fied private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide that is classified by the EPA or the director as a pesticide for use in a chemigation application.

"Check valve" means a certified device designed and constructed to provide automatic, quick-acting, and absolute closure that creates and maintains a watertight seal. The device prevents flow in the opposite direction of that desired when operation of the irrigation system or chemical injection unit fails or is shutdown.

"Chemical" or "product" means a pesticide or system maintenance compound.

"Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant, or system maintenance compound applied with irrigation water.

"Chemigation operation" means all activities and equipment associated in preparing for, performing, and concluding a chemigation application, which includes, but is not limited to, calibrating, mixing, loading, starting up, operating, monitoring, or shutting down a chemigation system.

"Chemigation system" means the chemical injection system as well as the water distribution and application system.

"Commercial fertilizer" means a substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It shall not include unmanipulated animal and vegetable manures and other products exempted by the department by rule.

"Contact name" means a person or company responsible for placement and operation of an application tank.

"Decommissioned" means rendering an application tank unusable for product containment.

"Deep percolation" means the movement of water downward through the soil profile below a plant's effective rooting zone.

"Department" means the Washington State Department of Agriculture.

"End gun" means an intermittent, high volume water-emitting device located at or near the end of an irrigation application system.

"Environment" means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington.

"Homemade" means devices not otherwise commercially available for sale or not manufactured for the purpose of commercial sale.

"Hydroponic" means the practice of growing plants in an aqueous solution, moist inert material, or otherwise in the absence of a mineral-based medium.

"Imminent danger" means a threat to human health or the environment that is likely to happen during the current application.

"Injection system" means all components used to supply, deliver, meter, and inject a substance into an irrigation system. This includes devices and components located between

and inclusive of the application tank and the point of product discharge into the irrigation water, including components of the system interlock.

"Inspection port" means an orifice or other viewing device from which the low pressure drain and irrigation line check valve may be assessed for proper operation.

"Irrigation application system" means the physical components of an irrigation system that begins at the first water emitting device and ends with the last water emitting or purging device.

"Irrigation season" means that period of time during which supplemental water is applied to aid in plant development, soil conditioning, temperature modification, or other such purposes.

"Irrigation system" means all components used in diverting, supplying, distributing, and applying irrigation water.

"Irrigation water supply system" means the water conveyance system, which begins at the point of diversion from the irrigation water source and ends with the first water emitting device.

"Metering device" means a positive displacement injection pump, venturi device, or gravity feed device capable of being calibrated and used to gauge chemical placement into the irrigation distribution or application system.

"Non-pressurized water delivery system" means a method of irrigation in which water is distributed over the soil surface by gravity flow, such as rill, border, gated pipe, or spigotted pipe.

"Off-site application" means the application or movement of product from the target site.

"Operator" means the individual who is performing a chemigation operation and who may or may not be the certified applicator.

"Outtake" means an opening that provides a source of untreated water.

"Rinsate" means the liquid produced from the rinsing of any equipment or container that has come in direct contact with any pesticide or system maintenance compound.

"Runoff" means surface water leaving the target site.

"Sensitive area(s)" mean schools, parks, dwellings, occupied buildings or structures, neighboring crops, public roadways, waters of the state, or other areas determined by the department to be vulnerable to environmental degradation or susceptible to injury or impairment.

"Source water" or "water source" means an aquifer or surface water body, including a stream, stream system, lake, reservoir, or off-farm irrigation water ditch or conveyance system, and any spring water or underground water that is part of or tributary to the surface water body or aquifer.

"System interlock" means the arrangement or interconnection of the irrigation pump or a pressure or flow sensing device with the chemical injection unit or other pumps in such a manner that shutdown of the chemigation injection system will occur in the event of any component malfunction or failure that substantially impacts the application rate.

"Vacuum relief valve" means a device that automatically relieves or breaks a vacuum, thereby preventing backsiphoning.

"Washwater" means the liquid produced from the rinsing of the exterior of any equipment or containers that have or

may have come in direct contact with any pesticide or system maintenance compound.

"Waters of the state" means but is not limited to lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, irrigation canals and reservoirs.

PART 2 GENERAL REQUIREMENTS FOR CHEMIGATION OPERATIONS

NEW SECTION

WAC 16-202-1003 What are the general requirements in performing a chemigation operation? The applicator and the chemigation system must comply with the following performance and operational requirements to protect human health and the environment. The certified applicator is responsible for the safe application and for the proper operation of the chemigation equipment.

(1) Only pesticides registered with the Department and labeled for chemigation may be used.

(2) An application system shall be operated in a manner that is consistent with the intent of the pesticide label, state pesticide rules, registrant's recommendations, and of this chapter and its provisions.

(3) Substituted alternative technology not otherwise specified in this chapter must be evaluated by the department to determine if the provisions of this chapter have been fulfilled.

(4) During a chemigation application, an irrigation system and injection system are considered one unit, and the applicator is responsible for their proper operation.

(5) Pesticides shall be used or applied only by certified applicators or persons under the direct supervision of a certified applicator.

(6) All applicable pesticide laws, in addition to those contained in this chapter, pertain to chemigation.

(7) A chemigation system cannot draw water from any water supply unless that supply is protected from contamination. The applicator must verify that backflow cannot occur.

(8) Intentional or unintentional application off site is prohibited. The application must be continuously observed whenever sensitive areas are at risk of being exposed to drift, runoff, or overspray.

(9) Pesticides cannot be applied with an open surface, gravity irrigation system unless allowed by the product label.

(10) All chemigation systems and system components must allow for adequate visual, physical and/or manual inspection.

(11) A chemigation system must be flushed out after application.

(12) All components must be compatible with injected materials, water containing injected materials or system pressure.

(13) Equipment must be calibrated and maintained in a manner to prevent misapplication or off-site application of any product.

(14) Safety devices and injection equipment must be installed, operated, and maintained in accordance with the

manufacturer's specifications, established industry standards, and department rule.

NEW SECTION

WAC 16-202-1004 Who may calibrate, load, start up, operate, monitor, or shutdown a chemigation system? Only an appropriately licensed certified applicator may calibrate, load, start up, operate, monitor, or shutdown a chemigation system.

NEW SECTION

WAC 16-202-1006 What are the site posting requirements for chemigation? (1) The certified applicator must ensure compliance with posting requirements as specified on the product label.

(2) Posting, if required, for a chemigation operation must occur no more than 24 hours before the start of a chemigation operation, unless indicated otherwise in rule or by the pesticide label. Posting must be removed no later than 72 hours at the conclusion of the restricted re-entry interval, unless indicated otherwise in rule or by the pesticide label.

(3) Worker protection posting requirements must also be met (WAC 16-233).

NEW SECTION

WAC 16-202-1007 What are the record keeping requirements for an application? All persons who apply pesticides by means of an irrigation system shall keep a record of each application. In addition to the information required in WAC 16-228-1320, the applicator must be able to provide the total application depth of irrigation water applied during the chemigation operation.

NEW SECTION

WAC 16-202-1008 What are the identification requirements for the in-field placement of application tanks? The purpose of identification requirements is to minimize the potential for human exposure and to facilitate remediation in the event of component malfunction or a contamination event.

(1) An application tank must:

(a) Have the complete pesticide label or labels (including the EPA registration number[s]) affixed to the tank if it contains undiluted product or if it is left unattended;

(b) Display its maximum net capacity;

(c) Display the appropriate EPA establishment number;

(d) Display a contact name and telephone number; and

(e) Display an owner-derived numeric or alphanumeric tank identifier.

(2) This information must be visibly recorded and securely affixed to each application tank. The label and distinguishing information shall be designed to remain intact and legible throughout the active use of the container.

(3) Lettering that displays the contact name, telephone number, and tank identifier shall be a minimum of two inches in height and in a color contrasting to the background.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 16-202-1009 What are the in-field placement requirements for application tanks? Application tanks cannot be located in an area or placed in such a manner to contaminate water or to endanger human health, sensitive areas, or the environment.

(1) Application tanks should be positioned down gradient from wellheads, public waterways, off-farm irrigation supply ditches or conveyance systems, or sensitive areas.

(a) If down gradient placement is not feasible, earthen berms or other structures of sufficient design must be constructed to divert spillage, leakage, or surface flow away from such areas.

(b) An application tank cannot be placed closer than 20 feet from wellheads, public waterways, off-farm irrigation supply ditches or conveyance systems, or sensitive areas.

(c) Mixing or loading activities cannot occur within 20 feet of a sensitive area, wellhead, public waterway, off-farm irrigation supply ditch or conveyance system, and irrigation water source.

(d) Overflow from an irrigation pond contaminated with product cannot enter a public waterway, off-farm irrigation supply ditch or conveyance system, or sensitive area.

(2) Application tanks must be positioned to prevent leaks, spills, or structural damage.

(a) Application tanks must be placed on a rigid, sound understructure or on stable ground to prevent tippage, spillage, puncturing, or breakage.

(b) Application tanks and the injection system must be protected against reasonably foreseeable risks of damage by implements, trucks or other moving vehicles, or objects.

(3) Application tanks should be sited as close as reasonably possible to the injection point.

(4) Tank outlet ports must be fitted with manual shutoff valves.

NEW SECTION

WAC 16-202-1010 Under what conditions is an application tank exempt from secondary and operational area containment rules? Application tanks functionally connected to and dedicated solely for use with a chemigation system may be exempt from the Secondary and Operational Area Containment Rules (WAC 16-229). The following conditions determine whether a tank which is a component of a chemigation system, is subject to the Secondary and Operational Area Containment Rules.

(1) Time-in-place

(a) Product can remain in an application tank for a period not to exceed 14 days between chemigation applications. If the 14-day period is exceeded, the tank is deemed to be a storage facility and is therefore subject to the Secondary and Operational Area Containment Rules.

(b) An application tank containing product during the non-application or non-irrigation season is subject to the Secondary and Area Containment Rules.

(c) The application tank must be removed at the end of the irrigation or application season, whichever is shorter, but in no event, not to exceed nine months. At the end of this period, the application tank must be emptied, cleaned, visually inspected for integrity, and serviced. The tank must be removed from the site, or the tank must be decommissioned and clearly tagged with the words "Out-of-Service," or the tank must be managed as a permanent storage facility (WAC 16-229).

(2) Tank size

(a) Tanks with a rated capacity exceeding 2,500 gallons are deemed a permanent storage facility.

(b) Multiple tanks positioned at an injection site with a cumulative capacity exceeding 3,000 gallons are also deemed a permanent storage facility.

(c) Exception for soil fumigation only: Beginning at the time of tank placement, a tank with a rated capacity of 8,000 gallons or less may be placed at an injection site for 14 days or less. However, during the 14-day period, the cumulative quantity of product at an injection site whether in single or multiple tanks cannot exceed 6,500 gallons. The injection site shall be deemed a permanent storage facility provided, if at anytime during the 14-day time-in-place period, the rated capacity of an individual tank exceeds 8,000 gallons or the cumulative quantity at an injection site exceeds 6,500 gallons.

(3) Monitoring

(a) Tanks containing product must be inspected at least daily or monitored with remote access volumetric measuring devices.

(b) Tanks must be inspected each time a chemigation operation is performed.

NEW SECTION

WAC 16-202-1011 How should rinsate or backflush water from a filtration device be handled? (1) Water used to rinse, flush, or clean equipment or containers is considered rinsate. It must be applied at or below label rate to a target site or disposed of properly in accordance with WAC 173-303.

(2) Contaminated backflush water from a filtration device cannot contaminate ground water or surface water, or adversely impact sensitive areas.

PART 3

SAFETY REQUIREMENTS FOR CHEMIGATION SYSTEMS

NEW SECTION

WAC 16-202-1012 What are the general antipollution safety device requirements for a chemigation system? All systems must have antipollution safety devices that include a backflow prevention system, metering device, injection device, and system interlock as listed on the pesti-

cide label and contained in this rule to prevent backflow into the irrigation water source or chemical supply system.

NEW SECTION

WAC 16-202-1013 What measures must be used to prevent backflow into the irrigation water source? Backflow prevention is a requirement on all irrigation systems used for chemigation, except when alternative technology is applied.

(1) Pressurized irrigation system

(a) At least one irrigation mainline check valve must be correctly installed, properly operated, and adequately maintained to prevent contamination of the water source. The check valve must be located upstream from the injection point. The check valve must be automatic, quick-closing, and capable of forming and maintaining a watertight seal.

(b) An inspection port or a direct access point must be positioned immediately upstream of the check valve to allow visual and manual inspection of the check valve and the low pressure drain. The inspection port or access point must have a minimum diameter of four inches. If a four-inch inspection port or access point is not feasible, an alternative access system must be devised.

(c) An inspection port or access point is not required with an approved backflow prevention assembly.

(d) A vacuum relief valve must be located upstream of the irrigation line check valve, installed at the top of the irrigation pipeline and adequately sized to prevent backsiphoning. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(e) An automatic low pressure drain or similar mechanism must be placed upstream of the irrigation line check valve and at the lowest point in the bottom of the pipeline. The low pressure drain must be of adequate size and properly positioned to intercept and purge leakage away from the water source.

(f) Product-treated water cannot be discharged through a water outtake.

(2) Non-pressurized water delivery system

(a) An open surface water delivery system cannot be used for product application unless allowed by the label.

(b) System design must prevent the introduction of treated water into the water source.

(c) Backflow prevention may be achieved with a hydraulic discontinuity in source water flow or by a sufficient hydraulic gradient.

(d) Backflow devices for non-pressurized systems may include a weir box, drop structure, ASAE approved air gap, batch tank, or similar device that can function to prevent backflow into the source water.

(e) Injection must occur downstream from the water diversion point.

(3) Cross-connection to municipal or public water system

(a) Backflow prevention devices must be approved by the Washington State Department of Health in accordance with WAC 246-290-490.

NEW SECTION

WAC 16-202-1014 What alternative methods may be used to prevent backflow into the irrigation water source? The application of alternative technology in achieving backflow prevention must be accomplished either by a backflow system or by system design to fulfill the provisions of this chapter. The operator must be able to demonstrate that backflow cannot occur. Alternative technology must provide substantially equal or greater protection than the provisions of this chapter.

(1) System design

(a) If a system's configuration will provide substantially equal or greater protection due to the physical laws of gravity and water hydraulics, components of a backflow prevention system may be waived by the department.

(2) Barometric pipe loop

(a) Barometric loops can only be used on systems pumping from a surface water source.

(b) The barometric pipe loop must be located in the main water line immediately downstream of the irrigation water pump.

(c) A barometric pipe loop must be designed with sufficient elevation differential to compensate for backflow.

(d) The bottom of the barometric loop apex must be at least 30 inches above the highest water-emitting device or of any portion of the irrigation application system.

(e) The barometric loop must contain a vacuum relief device at the loop apex that allows air into the pipeline immediately upon loss of pressure. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(f) The chemical injection port must be located downstream of and at least 30 inches below the bottom of the pipe loop apex.

(3) The department will recognize authorized U.S. Environmental Protection Agency (USEPA) alternative backflow devices, providing they are as restrictive as the provisions of this chapter.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 16-202-1015 What are the prevention requirements for backflow into or seepage from application tanks? All irrigation and injection systems used for chemigation must prevent backflow into the application tank. Leakage or siphonage from the application tank through the injection system into the irrigation system must also be prevented.

(1) Injection into a pressurized section of an irrigation system must include:

(a) An automatic, quick-acting injection line check valve must be used to prevent leakage from the application tank into irrigation water and to prevent irrigation water from entering the chemical injection line. The injection line check valve must maintain, at a minimum, 10 psi opening (cracking) pressure or adequate opening pressure to prevent gravity flow due to hydraulic head pressure from the application

tank. The check valve must be located at the point of product injection into the irrigation water; and

(b) Where siphon action induced by an irrigation system could compromise the cracking (opening) pressure of an injection line check valve, a vacuum relief valve must be installed in the irrigation line downstream of the injection point. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(2) Injection into non-pressurized (e.g., open surface, gated pipe, or spigotted pipe) portion of irrigation system must include a hydraulic discontinuity in source water flow or a sufficient hydraulic gradient such that chemicals or treated water cannot contaminate the water source. Backflow devices for non-pressurized systems may include a weir box, drop structure, air gap, batch tank, or similar device whose intended function is to prevent backflow into the application tank.

(3) Venturi or other passive injection systems

(a) If backpressure or backsiphonage can occur, the chemical injection line must contain an automatic, quick-closing check valve. The valve must be located immediately adjacent to the chemical inlet side of the venturi.

(b) If product can potentially siphon or seep into the water supply, the chemical injection line must contain a normally closed solenoid operative valve connected to the system interlock, or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. The valve must be installed adjacent to the product outlet on the application tank.

(c) With a bypass system, as an alternative to (a) and (b) above, the automatic, quick-closing check valve may be installed in the bypass immediately upstream of the venturi water inlet. In addition, either the normally closed solenoid or the hydraulic solenoid may be installed immediately downstream of the venturi water outlet.

(d) Bypass systems with a booster pump must have the normally closed solenoid interlocked with the source pump for the irrigation system.

NEW SECTION

WAC 16-202-1016 What alternative methods may be used to prevent backflow into or seepage from application tanks? Alternative technology used for backflow prevention must be accomplished by system design to fulfill the provisions of this chapter.

(1) In lieu of a normally closed solenoid with the injection system

(a) A normally open valve must be located in the chemical injection line between the application tank and a positive displacement injection pump. The normally open valve must be spring-loaded, and must close upon a vacuum and open at atmospheric pressure. It must be elevated at least 12-inches above the maximum fluid level in the application tank and must be the highest point in the injection line.

(b) The mechanism described in (a) cannot be used in conjunction with a venturi injection system.

(2) In lieu of a 10 psi opening (cracking) pressure check valve

(a) An automatic, quick-acting, spring-loaded check valve must be attached at or positioned immediately adjacent to the injection point to prevent irrigation water from entering the chemical injection line.

(b) A normally closed solenoid must be installed immediately adjacent to the product outlet on the application tank. If electric, it must be interlocked with the injection pump or, if hydraulic, with the irrigation system.

(c) In place of (b), a normally open valve must be located in the chemical injection line between the application tank and a positive displacement injection pump as described in (1)(a). This alternative cannot be used with venturi injection systems.

NEW SECTION

WAC 16-202-1017 What are the requirements for metering devices? Metering devices must be capable of being accurately calibrated. Metering devices must control the rate of product injection into irrigation water and discontinue product delivery when the predetermined application quantity has been dispensed. All metering systems must be functionally interlocked with the source irrigation pump or irrigation water delivery system.

(1) Injecting product with a pressurized metering pump

(a) The metering pump must be of a positive displacement design.

(b) Water-powered injection pumps can only be used when no other power source is available to operate the injection unit.

(c) The metering pump must be interlocked to the irrigation system in the event of an irrigation system malfunction or failure.

(2) Injection into non-pressurized section of an irrigation system

(a) An open surface water delivery system cannot be used for product application unless allowed by the label.

(b) Application rate may be accomplished with an adjustable valve, flow control device, or other metering mechanism as allowed by the pesticide label.

(c) The metering device must also control application quantity by employing a slide metering device or by placing a predetermined quantity into a batch tank.

(3) Venturi system as a metering device

(a) A venturi system may be used as a metering device, except where variable pressure may contribute to a variable injection rate.

(b) The chemical injection line must contain either a normally closed, solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. The valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(c) The chemical injection line between the application tank and the venturi must contain an automatic, quick-closing check valve to prevent the flow of liquid back toward the application tank. This check valve must be placed immediately adjacent to the venturi chemical inlet.

(d) In bypass systems, the check valve may be installed immediately upstream of the venturi water inlet. Either the normally closed solenoid or hydraulically operated valve may be installed immediately downstream of the venturi water outlet.

(e) If a booster or auxiliary pump is used in conjunction with a venturi system, the normally closed solenoid must be electrically interlocked with the source pump for the irrigation system.

NEW SECTION

WAC 16-202-1018 What are alternative methods for metering? Alternative technology used for metering product must fulfill the provisions of this chapter. A person cannot function as a metering device.

NEW SECTION

WAC 16-202-1019 What are the requirements for product injection devices? The irrigation water source and application tank must be protected from backflow and from siphonage.

(1) Pressurized injection or injection into a pressurized portion of an irrigation system

(a) An injection line check valve must be used whenever injection occurs in a pressurized section of an irrigation system or with a pressurized injection system.

(b) The injection line check valve must inject product directly into the irrigation water and must be installed downstream of the irrigation mainline check valve.

(c) The point of injection into an irrigation system cannot be located within 10 feet of a wellhead, public waterway, off-farm irrigation supply ditch or conveyance system, or sensitive area.

(d) The injection line check valve mechanism must prevent leakage due to hydraulic head pressure from the application tank and must prevent backflow from the irrigation water source into the supply tank. The injection line check valve must maintain, at a minimum, 10 psi opening (cracking) pressure or adequate opening pressure to prevent gravity flow from the application tank into irrigation water.

(e) In instances where siphoning action induced by an irrigation system could compromise the opening (cracking) pressure of a injection line check valve, a vacuum relief valve must be installed in the irrigation line downstream of the injection point.

(2) Injection into non-pressurized section of an irrigation system

(a) If injection occurs in a non-pressurized portion of the irrigation system, an air gap or other hydraulic discontinuity must exist between the pressurized or non-pressurized irrigation water source and the point of product injection.

(b) When an air gap is used in conjunction with a public water supply, injection may only occur downstream of the air gap.

(3) Venturi systems

(a) The chemical injection line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated

valve that opens only when the main water line is adequately pressurized. The valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(b) The chemical injection line between the application tank and the metering device must contain an automatic, quick-closing check valve. The check valve must be placed immediately adjacent to the venturi chemical inlet.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 16-202-1020 What alternative methods may be used for product injection? Alternative technology used for injection must fulfill the provisions of this chapter. With a surface supplied water source, the injection point must occur downstream from the point of diversion. With a pressurized water source, the injection point must be located such that product backflow cannot occur.

(1) Injection with barometric loops

(a) Barometric loops can only be used on systems pumping from a surface water source.

(b) The barometric pipe loop must be located in the water line immediately downstream of the irrigation water pump.

(c) A barometric pipe loop must be designed with sufficient elevation differential to compensate for backflow.

(d) The bottom of the barometric loop apex must be at least 30 inches above the highest water-emitting device or of any portion of the irrigation application system.

(e) The barometric loop must contain a vacuum relief device at the loop apex that allows air into the pipeline immediately upon loss of pressure. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(f) The injection point on a barometric loop must be located downstream of and at least 30 inches below the bottom of the barometric pipe loop apex.

(2) Solenoid and check valve

(a) The chemical injection line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. A normally closed, solenoid-operated valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(b) The chemical injection line between the application tank and the metering device must contain an automatic, quick-closing check valve to prevent the flow of liquid back toward the application tank. The check valve must be placed immediately adjacent to the venturi chemical inlet.

NEW SECTION

WAC 16-202-1021 What are the requirements for a system interlock? A system interlock must automatically shutoff the injection system if the irrigation pump stops operating or if variation in water flow adversely affects product

injection rate or product distribution uniformity. The operator must be able to demonstrate that backflow cannot occur.

(1) Pressurized injection systems or injection into a pressurized portion of the irrigation system requires either an electrical, hydraulic, or mechanical system interlock device.

(2) When the injection point is at a non-pressurized section of any type of irrigation application system, a slide metering scale or batch tank may function as the system interlock.

(3) With venturi systems

(a) Booster or auxiliary water pumps must be connected with the system interlock such that when pressure in the mainline changes to the point where product distribution is adversely affected automatic shutoff of product supply will occur.

(b) The supply line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. If a booster or auxiliary pump is used in conjunction with a venturi system, the normally closed solenoid must be electrically interlocked with the source pump for the irrigation system.

NEW SECTION

WAC 16-202-1022 What alternative methods can be used as a system interlock? Alternative technology used for injection must fulfill the provisions of this chapter.

(1) A person may not serve as a human interlock.

(2) Solenoid and check valve

(a) The chemical injection line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. A normally closed, solenoid-operated valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(b) The chemical injection line between the application tank and the metering device must contain an automatic, quick-closing check valve to prevent the flow of liquid back toward the application tank. The check valve must be placed immediately adjacent to the venturi chemical inlet.

NEW SECTION

WAC 16-202-1023 What is an appropriate monitoring schedule? (a) A chemigation application must be visually inspected by the certified applicator or someone under his direct supervision at least once during each four-hour period, unless the pesticide label requires a more frequent interval. Specific applications due to location or product characteristics may require more frequent monitoring.

(b) The certified applicator is considered principally responsible to ensure that the chemigation system functions properly and conforms with the provisions of this chapter.

NEW SECTION

WAC 16-202-1024 Public water system cross-connections or connections to a potable water supply

intended for human use. If the irrigation system is cross-connected to a public water system, Washington State Department of Health (DOH) rules (WAC 246-290-490) apply to backflow prevention. Cross-connections of a chemigation system to any potable water system intended for human use must have either a Department of Health-approved reduced pressure backflow assembly or reduced pressure detector assembly installed for backflow prevention. Otherwise, a physical separation in the form of an air gap may be used to protect the water source.

PART 4

PENALTIES AND PENALTY ASSIGNMENT SCHEDULE

NEW SECTION

WAC 16-202-1025 Penalties (1) Any person who fails to comply with any provision of this chapter shall be subject to denial, suspension, or revocation of any license, registration, or permit provided for in Chapters 15.58.260, 15.58.235, 15.58.245 and 17.21.300 and 17.21.315 RCW and/or imposition of a civil penalty as provided therein.

(2) The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-202-1000 Chemigation.

WSR 01-06-053

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 7, 2001, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-03-076.

Title of Rule: Chapter 16-202 WAC, Application of pesticides and plant nutrients through irrigation systems—Fertigation.

Purpose: To clarify rules and address issues and concerns raised since implementation of the original rules in 1998. These rule revisions address the proper operation and system configuration required to protect the environment and human health from chemigation applications.

Other Identifying Information: Fertigation is the distribution of pesticides through irrigation systems.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

Summary: The proposed rules contain significantly more explanatory provisions than the current rule. However, the actual numbers of additional provisions are few, and most of them are addressed in the small business economic impact statement. Intended to be as much of a reference document as a regulation, the proposed chemigation rule and fertigation rule incorporate or reference relevant provisions of chapters 16-200, 16-201, 16-228, 16-229 WAC, WAC 16-202-1000, and 16-202-2000 as well as chapters 15.54 and 17.21 RCW.

Many of the supplementary provisions to current rule are addressed in the small business economic impact statement, and they follow:

1. Manual shutoff valves must be placed on the main outlet of application tanks (WAC 16-202-1009 and 16-202-2005).

2. Application tanks must contain "who to contact" information in a minimum of two-inch lettering on a contrasting background (WAC 16-202-1008 and 16-202-2004).

3. Application tanks containing product must be periodically monitored (WAC 16-202-1010 and 16-202-2006).

4. Chemigation and fertigation applications must be periodically monitored (WAC 16-202-1023 and 16-202-2019).

5. For chemigation, a tank size limitation of 2,500 gallons and a cumulative application tank capacity of 3,000 gallons (with a soil fumigation exception of 6,500 gallons for a fourteen-day period) per injection site (WAC 16-202-1010).

6. For fertigation, a tank size restriction of 6,500 gallons and a cumulative application tank capacity of 10,000 gallons per injection site (WAC 16-202-2006).

7. An inspection port or other access point to assess the integrity and operation of irrigation mainline check valve and the low pressure drain, provided such devices are deemed necessary, must be installed (WAC 16-202-1002, 16-202-1013, 16-202-2002, and 16-202-2009).

8. Department of Health approved backflow prevention devices must be installed on systems that are cross-connected to a public water supply (WAC 16-202-1013, 16-202-1024, 16-202-2009, and 16-202-2020).

Presented below are proposed provisions not specifically addressed in the small business economic impact statement that may require a financial outlay by the system owner, lessee, or renter. However, a potential cost associated with a proposed provision may be nominal due to requirements of correlated rules, to conditions on the pesticide label, or to adherence with accepted industry practice.

1. All system components must be compatible with injected materials, water containing injected materials, or system pressure (WAC 16-202-1003 and 16-202-2003).

2. The application must be continuously observed whenever sensitive areas are at risk of being exposed to drift, runoff, or overspray (WAC 16-202-1003 and 16-202-2003).

3. Overflow from an irrigation pond contaminated with product cannot enter a public waterway, off-farm irrigation supply ditch or conveyance system, or sensitive area (WAC 16-202-1009 and 16-202-2005).

4. Barometric loops can only be used on systems pumping from a surface water source. The barometric pipe loop must be located in the main water line immediately downstream of the irrigation water pump. It must be designed with sufficient elevation differential to compensate for backflow.

PROPOSED

The bottom of the barometric loop apex must be at least thirty inches above the highest water-emitting device or of any portion of the irrigation application system. The chemical injection port must be located downstream of and at least thirty inches below the bottom of the pipe loop apex (WAC 16-202-1014, 16-202-1020, 16-202-2010, and 16-202-2016).

5. Mixing or loading activities cannot occur within and an application tank cannot be placed closer than twenty feet of a sensitive area, wellhead, public waterway, off-farm irrigation supply ditch or conveyance system, and irrigation water source (WAC 16-202-1009 and 16-202-2005).

6. For a chemigation operation (WAC 16-202-1010):

- Product can remain in an application tank for a period not to exceed fourteen days between chemigation applications;
- An application tank containing product must be inspected at least daily or monitored with remote access volumetric measuring devices; and
- An application tank must be removed at the end of the irrigation or application season, whichever is shorter, but in no event, not to exceed nine months. At the end of this period, the application tank must be emptied, cleaned, visually inspected for integrity, and serviced. The tank must be removed from the site, or the tank must be decommissioned and clearly tagged with the words "Out-of-Service," or the tank must be managed as a permanent storage facility.

7. For a fertigation operation (WAC 16-202-2006):

- Product can remain in an application tank for a period not to exceed nine consecutive months during an irrigation or application season;
- An application tank containing product during the nonapplication or nonirrigation season is subject to the secondary and operational area containment rules; and
- The application tank must be removed at the end of the irrigation or application season, whichever is shorter but in no event, not to exceed nine months. At the end of this period, the application tank must be emptied, cleaned, visually inspected for integrity, and serviced. The tank must be removed from the site, or the tank must be decommissioned and clearly tagged with the words "Out-of-Service," or the tank must be managed as a permanent storage facility.

8. For a fertigation operation, a person may function as a metering device with a nonpressurized irrigation delivery system. However, the individual must remain on-site to continuously monitor the application and be immediately available to terminate the application in the event of equipment malfunction (WAC 16-202-2014).

For additional information, contact the WSDA Chemigation and Fertigation Technical Assistance Program at (509) 766-2574, or write Tom Hoffmann or Byron Fitch at WSDA Pesticide Management, 821 East Broadway, Suite 4, Moses Lake, WA 98837.

Reasons Supporting Proposal: The proposal is the result of numerous meetings with a technical advisory committee comprised of representatives of agricultural suppliers, pro-

ducers, the United States Natural Resources Conservation Service, and the Washington State Department of Ecology. The revisions address a number of issues that have arisen since implementation of the chemigation rule in 1988.

Name of Agency Personnel Responsible for Drafting and Implementation: Ann Wick, 1111 Washington Street, Olympia, WA 98504, (360) 902-2051; and Enforcement: Cliff Weed, 1111 Washington Street, Olympia, WA 98504, (360) 902-2036.

Name of Proponent: Department of Agriculture, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposal contains backflow prevention requirements for the purpose of protecting the environment and ground water from contamination. These rules also address the proper operation and system configuration required to protect the environment and human health from chemigation applications. The rules went through a thorough review by a technical advisory committee described above. In addition, the department received input from the state departments of Health and Ecology during the rule revision process.

Proposal Changes the Following Existing Rules: See Summary above.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

The following analysis was done to determine what impacts to small businesses would incur, if any, as a result of the revised chemigation and fertigation rules. The items below are the requirements that have an associated cost:

1. Labeling requirements under chemigation (WAC 16-202-1008) and fertigation (WAC 16-202-2004) require tank contents and owner information to be visible and securely affixed to each application tank. Lettering that displays the contact name, telephone number, and tank identifier have to be a minimum of two inches in height and in a color contrasting to the background.

Cost Analysis:

■ *Chemigation:* Current rules require labeling of undiluted product in tanks with the EPA product label. Approximately 20% of all tanks in use for chemigation contain undiluted product and thus currently require labeling. This means approximately 80% of some 12,000 tanks used for chemigation could have a cost associated with the rule change or 9,600 tanks.

Manufacturers usually provide product labels, however the tank owner would still need to affix his or her contact name, telephone number, and tank identifier. The average cost for materials to do this is \$2.00. The cost for labor is estimated at \$10 an hour with installation time taking approximately ten minutes per tank.

The cost then to install needed information per tank is \$3.67. If dealers own two-thirds of the tanks statewide, and 80% of those tanks require this information to be affixed, then their total cost would be 8,000 tanks * 80% = 6,400 tanks * \$3.67 = \$23,488 statewide. These costs would primarily be

incurred by large businesses. Growers represent the remaining 4,000 tanks requiring the identifying information to be installed; some of whom would be classified as small businesses. This would equal 4,000 tanks *80% = 3,200 tanks *\$3.67 = \$11,744 statewide.

If there are sixty dealers, the cost per dealer is \$391.15 per dealer.

If growers have two tanks on average that need to meet this requirement, the cost per grower is \$7.34.

■ **Fertigation:** All tanks would require some work to meet these requirements.

Per dealer this equals 8,000 tanks *\$3.67 = \$29,360/60 dealers = \$489.33.

Per grower this equals \$7.34 for two tanks.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document tanks that require identification and would set up an agreement with growers as to when they would meet this requirement either through a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

2. The proposed rules require system operators to monitor chemigation applications every four hours (WAC 16-202-1023), and fertigation applications daily (WAC 16-202-2019).

Cost Analysis:

■ **Chemigation:** The current chemigation rule requires "frequent monitoring." Agricultural representatives on the Technical Advisory Committee for this rule making indicated that the four-hour requirement is already standard practice. Therefore it is determined that there is no financial impact.

■ **Fertigation:** The current fertigation rule has no requirements for monitoring daily. If the average wage per hour is estimated at \$10 and the inspection takes two hours (including travel time), then the cost per day would be \$20 to inspect each system. Due to the fact that monitoring systems daily is considered standard practice according to the Technical Advisory Committee, this requirement is considered a minimal impact. In addition, these costs would primarily be incurred by large businesses since they usually have more systems to inspect.

Mitigation Factors: None.

3. The fertigation rule requires secondary containment for all tanks larger than 6,500 gallons that are used during a fertigation operation (WAC 16-202-2006(2)). Currently, the WSDA secondary and operational area containment rules (chapter 16-201 WAC) require secondary containment for all fertilizer tanks 10,000 gallons or greater. The cost analysis is based on the difference between the new gallonage limitation of 6,500 gallons and the secondary containment requirement of 10,000 gallons.

Cost Analysis:

■ **Chemigation:** Not applicable.

■ **Fertigation:** The average cost of a 6,500 gallon tank is \$3,520. It is estimated that there are only a dozen 10,000 gallon tanks that would need to be replaced with smaller tanks and only one tank per dealer. Many of these tanks are typically rented or leased by the grower from dealers. This

means the cost would primarily be borne by dealers and their cost is estimated at \$3,520.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document tanks that need replacement and would set up an agreement with growers as to when they would meet this requirement through a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

4. The proposed chemigation rule (WAC 16-202-1009(4)) and the fertigation rule (WAC 16-202-2005(4)) both require tank outlet ports to be fitted with manual shutoff valves. Although the current rules do not have this requirement, the current industry practice provides manual shutoff valves for all newer tanks. This means only the older tanks would need to be retrofitted. Less than 1% of tanks will require this retrofit, equaling about 80 tanks statewide.

Cost Analysis:

■ **Chemigation:** The cost of the valve is \$20. The cost of labor is \$10 per hour. This equals \$30 per tank.

■ **Fertigation:** Same as above.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document tanks that require this retrofit and would set up an agreement with growers as to when they would meet this requirement either through a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

5. Both the chemigation rule (WAC 16-202-1013 (1)(b)) and the fertigation rule (WAC 16-202-2009 (1)(b)) require an inspection port or a direct access point to allow for visual and manual inspection of the check valve and the low pressure drain. The inspection port or access point has to be at least four inches in diameter. If this is not feasible, an alternative access system must be devised.

Cost Analysis:

■ **Chemigation:** The cost of installing an inspection port would be borne by the grower. The parts equal approximately \$30 and the labor \$10, costing the grower \$40 per installation. On average, a grower might have six to eight systems requiring an inspection port to be installed equaling \$320 per grower. These costs would primarily be incurred by large businesses because they may have more systems to retrofit.

■ **Fertigation:** Same as above.

Mitigation Factors: The Washington State Chemigation and Fertigation Technical Assistance Program staff based in Moses Lake would document systems that require inspection ports and would set up an agreement with growers as to when they would meet this requirement through either a solicited technical assistance audit or through the notice of correction process. If this requirement was not met after the agreed upon timeframe, then the grower could be cited.

A copy of the statement may be obtained by writing to Ann Wick, Pesticide Management Division, Washington State Department of Agriculture, P.O. Box 42589, Olympia,

WA 98504-2589, phone (360) 902-2051, fax (360) 902-2093.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Natural Resources Building (NRB), 2nd Floor, Room 271, 1111 Washington Street S.E., Olympia, WA 98504-2589, on Tuesday, April 24, 2001, at 1:00 p.m.; at the Washington State Department of Agriculture Yakima, 21 North First Avenue, Conference Room 238, Yakima, WA 98902, on Tuesday, May 1, 2001, at 6:30 p.m.; at Columbia Basin College, Gjerde Multipurpose Center, Sections 1 and 4, 2600 North 20th Avenue, Pasco, WA 99301-3379, on Wednesday, May 2, 2001, at 6:30 p.m.; and at the Big Bend Community College Auditorium, Building 1400, 7662 Chanute Street, Moses Lake, WA 98837, on Thursday, May 3, 2001, at 6:30 p.m.

Assistance for Persons with Disabilities: Contact Laurie Mauerman by April 12, 2001, TDD (360) 902-1996.

Submit Written Comments to: Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2093, by May 4, 2001.

Date of Intended Adoption: May 21, 2001.

March 7, 2001

Bob Arrington

Assistant Director

PART 1

GENERAL PROVISIONS

NEW SECTION

WAC 16-202-2001 What is the purpose of this chapter? The purpose of this chapter is to establish performance standards for fertigation that are protective of existing and future uses of surface water and ground water quality.

NEW SECTION

WAC 16-202-2002 How are specific terms and phrases defined in this chapter? Terms as defined in this section are applied throughout this chapter.

"Air gap" means an unobstructed physical separation between the free-flowing discharge end of a supply pipe and the overflow rim of an open or nonpressurized receiving vessel. The separation must be at least four times the diameter of the supply pipe measured vertically from the overflow rim of the receiving vessel, and in no case be less than 25 mm, or 1-inch.

"Alternative technology" means any device or concept that meets the performance standards contained in this chapter.

"Antipollution safety device" means any equipment or device effectively designed, constructed, and maintained that is used in the event of malfunction or shutdown to prevent backflow of a chemical or treated water into the water supply, or to reduce human exposure or hazard to the environment. Equipment or devices may include, but are not limited to, the

irrigation line check valve, vacuum relief valve, low-pressure drain, inspection port, metering device, chemical injection closure device, and system interlock.

"Application season" means the period during which product is injected into an irrigation system for crop protection, crop growth, or soil preparation.

"Application tank" means a product container and appurtenances used for the storage of product that is dedicated for use with and functionally connected to an irrigation system.

"Applicator" or "operator" means any individual who has assumed responsibility or is considered principally responsible to ensure that the fertigation system functions properly and conforms with the provisions of this chapter.

"Approved backflow prevention assembly" means a reduced pressure backflow assembly, reduced pressure detector assembly, double check valve detector assembly, or double check valve assembly of a make and model that is approved by the Department of Health pursuant to WAC 246-290-490.

"Approved reduced pressure backflow assembly or reduced pressure detector assembly" means backflow prevention assemblies of make and model approved by the Department of Health pursuant to WAC 246-290-490.

"Aquaculture" means the cultivation of water-based plants or animals.

"Backflow" means the reversal of fluid flow due to backpressure or backsiphonage.

"Backflow prevention device" or "backflow safety device" means antipollution safety devices that prevent the flow of water from the water distribution system back to the water source or to the product source.

"Barometric loop" or "gooseneck" means a raised section of pipe where the bottom of the loop is at least two feet above the highest water emitting device or any portion of the irrigation application system which has a vacuum relief valve installed on the top of the loop.

"Check valve" means a certified device designed and constructed to provide automatic, quick-acting, and absolute closure that creates and maintains a watertight seal. The device prevents flow in the opposite direction of that desired when operation of the irrigation system or chemical injection unit fails or is shutdown.

"Chemical" or "product" means a commercial fertilizer, soil amendment, system maintenance compound, or other materials such as reclaimed water or animal effluent.

"Commercial fertilizer" means a substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It shall not include unmanipulated animal and vegetable manures and other products exempted by the department by rule.

"Contact name" means a person or company responsible for placement and operation of an application tank.

"Decommissioned" means rendering an application tank unusable for product containment.

"Deep percolation" means the movement of water downward through the soil profile below a plant's effective rooting zone.

"Department" means the Washington State Department of Agriculture.

"End gun" means an intermittent, high volume water-emitting device located at or near the end of an irrigation application system.

"Environment" means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Washington or under the jurisdiction of the state of Washington.

"Fertigation" means the application of any commercial fertilizer, nutrient, soil amendment, or reclaimed water with irrigation water intended for plant or soil biota growth and development or for soil conditioning or reclamation.

"Fertigation operation" means all activities and equipment associated in preparing for, performing, and concluding a fertigation application, which includes, but is not limited to, calibrating, mixing, loading, starting up, operating, monitoring, or shutting down a fertigation system.

"Fertigation system" means the chemical injection system as well as the water distribution and application system.

"Homemade" means devices not otherwise commercially available for sale or not manufactured for the purpose of commercial sale.

"Hydroponic" means the practice of growing plants in an aqueous solution, moist inert material, or otherwise in the absence of a mineral-based medium.

"Imminent danger" means a threat to human health or the environment that is likely to happen during the current application.

"Injection system" means all components used to supply, deliver, meter, and inject a substance into an irrigation system. This includes devices and components located between and inclusive of the application tank and the point of product discharge into the irrigation water, including components of the system interlock.

"Inspection port" means an orifice or other viewing device from which the low pressure drain and irrigation line check valve may be assessed for proper operation.

"Irrigation application system" means the physical components of an irrigation system that begins at the first water emitting device and ends with the last water emitting or purging device.

"Irrigation season" means that period of time during which supplemental water is applied to aid in plant development, soil conditioning, temperature modification, or other such purposes.

"Irrigation system" means all components used in diverting, supplying, distributing, and applying irrigation water.

"Irrigation water supply system" means the water conveyance system, which begins at the point of diversion from the irrigation water source and ends with the first water emitting device.

"Metering device" means a positive displacement injection pump, venturi device, or gravity feed device capable of being calibrated and used to gauge chemical placement into the irrigation distribution or application system.

"Non-pressurized water delivery system" means a method of irrigation in which water is distributed over the

soil surface by gravity flow, such as rill, border, gated pipe, or spigotted pipe.

"Off-site application" means the application or movement of product from the target site.

"Operator" means the individual who is performing a fertigation operation.

"Outtake" means an opening that provides a source of untreated water.

"Rinsate" means the liquid produced from the rinsing of any equipment or container that has come in direct contact with any fertilizer or soil amendment.

"Runoff" means surface water leaving the target site.

"Sensitive area(s)" mean schools, parks, dwellings, occupied buildings or structures, neighboring crops, public roadways, waters of the state, or other areas determined by the department to be vulnerable to environmental degradation or susceptible to injury or impairment.

"Source water" or "water source" means an aquifer or surface water body, including a stream, stream system, lake, reservoir, or off-farm irrigation water ditch or conveyance system, and any spring water or underground water that is part of or tributary to the surface water body or aquifer.

"System interlock" means the arrangement or interconnection of the irrigation pump or a pressure or flow sensing device with the chemical injection unit or other pumps in such a manner that shutdown of the fertigation injection system will occur in the event of any component malfunction or failure that substantially impacts the application rate.

"Vacuum relief valve" means a device that automatically relieves or breaks a vacuum, thereby preventing backsiphoning.

"Washwater" means the liquid produced from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any fertilizer or soil amendment.

"Waters of the state" means but is not limited to lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, irrigation canals and reservoirs.

PART 2

GENERAL REQUIREMENTS FOR FERTIGATION OPERATIONS

[NEW SECTION]

WAC 16-202-2003 What are the general requirements in performing a fertigation operation? The applicator and fertigation system must comply with the following performance requirements to protect human health, source water, and the environment. The fertigation operator is responsible for safe application and for the proper operation of the fertigation equipment.

(1) A fertigation system shall be operated in a manner that is consistent with the intent of this chapter and its provisions.

(2) Substituted alternative technology not otherwise identified in this chapter must be evaluated by the department to determine if the provisions of this chapter have been fulfilled.

(3) All fertilizers used for fertigation must be registered with the department and meet Washington's fertilizer standards. This does not prohibit fertigation systems from being used to apply other products such as reclaimed water, animal effluent or similar substances.

(4) During a fertigation application, an irrigation system and injection system are considered one unit, and the applicator is responsible for their proper operation.

(5) All applicable fertilizer laws, in addition to those contained in this chapter, pertain to fertigation.

(6) A fertigation system cannot draw water from any water supply unless that supply is protected from contamination. The fertigation operator must verify that backflow cannot occur.

(7) The application must be continuously monitored whenever sensitive areas are at risk of being exposed to drift, runoff, or overspray.

(8) All fertigation systems and system components must allow for adequate visual, physical, and manual inspection.

(9) A fertigation system must be flushed out and rinsed off after application.

(10) All components must be chemically compatible with injected materials or water containing injected materials.

(11) Equipment must be calibrated and maintained in a manner to prevent misapplication or off-site application of any product.

(12) Safety devices and injection equipment must be installed, operated, and maintained in accordance with the manufacturer's specifications, established industry standards, and department rule.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

NEW SECTION

WAC 16-202-2004 What are the identification requirements for the in-field placement of fertilizer application tanks? The purpose of identification requirements is to minimize the potential for human exposure and to facilitate remediation in the event of component malfunction or a contamination event.

(1) An application tank must:

- (a) Display a record of tank contents;
- (b) Display its maximum net capacity;
- (c) Display a contact name and telephone number; and
- (d) Display an owner-derived numeric or alphanumeric tank identifier.

(2) This information must be visibly recorded and securely affixed to each application tank. The distinguishing information shall be designed to remain intact and legible throughout the active use of the container.

(3) Lettering that displays the contact name, telephone number, and tank identifier shall be a minimum of two inches in height and in a color contrasting to the background.

NEW SECTION

WAC 16-202-2005 What are the in-field placement requirements for application tanks? Application tanks

cannot be located in an area or placed in such a manner to contaminate water or to endanger human health, sensitive areas, or the environment.

(1) Application tanks should be positioned down gradient from wellheads, public waterways, off-farm irrigation supply ditches or conveyance systems, or sensitive areas.

(a) If down gradient placement is not feasible, earthen berms or other structures of sufficient design must be constructed to divert spillage, leakage, or surface flow away from such areas.

(b) An application tank cannot be placed closer than 20 feet from wellheads, public waterways, off-farm irrigation supply ditches or conveyance systems, or sensitive areas.

(c) Mixing or loading activities cannot occur within 20 feet of a sensitive area, wellhead, public waterway, off-farm irrigation supply ditch or conveyance system, and irrigation water source.

(d) Overflow from an irrigation pond contaminated with product cannot enter a public waterway, off-farm irrigation supply ditch or conveyance system, or sensitive area.

(2) Application tanks must be positioned to prevent leaks, spills, or structural damage.

(a) Application tanks must be placed on a rigid, sound understructure or on stable ground to prevent tipping, spillage, puncturing, or breakage.

(b) Application tanks and the injection system must be protected against reasonably foreseeable risks of damage by implements, trucks or other moving vehicles, or objects.

(3) Application tanks should be sited as close as reasonably possible to the injection point.

(4) Tank outlet ports must be fitted with manual shutoff valves.

NEW SECTION

WAC 16-202-2006 Under what conditions is an application tank exempt from the secondary and operational area containment rules? Application tanks functionally connected to and dedicated solely for use with a fertigation operation may be exempt from the Secondary and Operational Area Containment Rules (WAC 16-201). The following conditions determine whether a tank which is a component of a fertigation system, is subject to the Secondary and Operational Area Containment Rules.

(1) Time-in-place

(a) Product can remain in an application tank for a period not to exceed nine consecutive months during an irrigation or application season. If the nine month period is exceeded, the tank is deemed a storage facility and is therefore subject to the Secondary and Operational Area Containment Rules.

(b) An application tank containing product during the non-application or non-irrigation season is subject to the Secondary and Operational Area Containment Rules.

(c) The application tank must be removed at the end of the irrigation or application season, whichever is shorter but in no event, not to exceed nine months. At the end of this period, the application tank must be emptied, cleaned, visually inspected for integrity, and serviced. The tank must be removed from the site, or the tank must be decommissioned

and clearly tagged with the words "Out-of-Service," or the tank must be managed as a permanent storage facility (WAC 16-201).

(2) Tank size

(a) An application tank must have a rated capacity of 6,500 gallons or less.

(b) An application tank with a rated capacity exceeding 6,500 gallons is deemed a permanent storage facility.

(c) Multiple tanks positioned at an injection site with a cumulative capacity exceeding 10,000 gallons are also deemed a permanent fertilizer storage facility.

(d) Cumulative tank capacity cannot exceed 10,000 gallons per application system.

(3) Monitoring

(a) Tanks containing product must be inspected at least every seven days.

(b) Tanks must be inspected each time a fertigation operation is performed.

NEW SECTION

WAC 16-202-2007 How should rinsate from equipment or backflush water from a filtration device be handled? (1) Water used to rinse, flush, or clean equipment or containers is considered rinsate. It must be applied onto a target site or disposed of properly.

(2) Contaminated backflush water from a filtration device cannot contaminate ground water or surface water, or adversely impact sensitive areas.

PART 3

SAFETY REQUIREMENTS FOR FERTIGATION SYSTEMS

NEW SECTION

WAC 16-202-2008 What are the general antipollution safety device requirements for a fertigation system? All systems must have antipollution safety devices that include a backflow prevention system, a metering device, injection device, and system interlock to prevent backflow into the irrigation water source or chemical supply system.

NEW SECTION

WAC 16-202-2009 What measures must be used to prevent backflow into the irrigation water source? Backflow prevention is a requirement on all irrigation systems used for fertigation except when alternative technology is applied.

(1) Pressurized irrigation system

(a) At least one irrigation mainline check valve must be correctly installed, properly operated, and adequately maintained to prevent contamination of the water source. The check valve must be located upstream from the injection point. The check valve must be automatic, quick-closing, and capable of forming and maintaining a watertight seal.

(b) An inspection port or a direct access point must be positioned immediately upstream of the check valve to allow

visual and manual inspection of the check valve and the low pressure drain. The inspection port or access point must have a minimum diameter of four inches. If a four-inch inspection port or access point is not feasible, an alternative system must be devised.

(c) An inspection port or access point is not required with an approved backflow prevention assembly.

(d) A vacuum relief valve must be located upstream of the irrigation line check valve, installed at the top of the irrigation pipeline and adequately sized to prevent backsiphoning. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(e) An automatic low pressure drain or similar mechanism must be placed upstream of the irrigation line check valve and at the lowest point in the bottom of the pipeline. The low pressure drain must be of adequate size and properly positioned to intercept and purge leakage away from the water source.

(f) Product-treated water cannot be discharged through a water outtake.

(2) Non-pressurized water delivery system

(a) System design must prevent the introduction of treated water into the water source.

(b) Backflow prevention may be achieved with a hydraulic discontinuity in source water flow or by a sufficient hydraulic gradient.

(c) Backflow devices for non-pressurized systems may include a weir box, drop structure, ASAE approved air gap, batch tank, or similar device that can function to prevent backflow into the source water.

(d) Injection must occur downstream from the water diversion point.

(3) Cross-connection to municipal or public water system

(a) Backflow prevention devices must be approved by the Washington State Department of Health in accordance with WAC 246-290-490.

NEW SECTION

WAC 16-202-2010 What alternative methods may be used to prevent backflow into the irrigation water source? The application of alternative technology in achieving backflow prevention must be accomplished either by a backflow system or by system design to fulfill the provisions of this chapter. The operator must be able to demonstrate that backflow cannot occur. Alternative technology must provide substantially equal or greater protection than the provisions of this chapter.

(1) System design

(a) If a system's configuration will provide substantially equal or greater protection due to the physical laws of gravity and water hydraulics, components of a backflow prevention system may be waived by the department.

(2) Barometric pipe loop

(a) Barometric loops can only be used on systems pumping from a surface water source.

(b) The barometric pipe loop must be located in the main water line immediately downstream of the irrigation water pump.

(c) A barometric pipe loop must be designed with sufficient elevation differential to compensate for backflow.

(d) The bottom of the barometric loop apex must be at least 30 inches above the highest water-emitting device or of any portion of the irrigation application system.

(e) The barometric loop must contain a vacuum relief device at the loop apex that allows air into the pipeline immediately upon loss of pressure. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(f) The chemical injection port must be located downstream of and a least 30 inches below the bottom of the pipe loop apex.

(3) The department will recognize alternative backflow devices, providing they are as restrictive as the provisions of this chapter.

NEW SECTION

WAC 16-202-2011 What are the prevention requirements for backflow into or seepage from application tanks? All irrigation and injection systems used for fertigation must prevent backflow into the application tank. Leakage or siphonage from the application tank through the injection system into the irrigation system must also be prevented.

(1) Injection into a pressurized section of an irrigation system must include:

(a) An automatic, quick-acting injection line check valve must be used to prevent leakage from the application tank into irrigation water and to prevent irrigation water from entering the chemical injection line. The injection line check valve must maintain, at a minimum, 10 psi opening (cracking) pressure or adequate opening pressure to prevent gravity flow due to hydraulic head pressure from the application tank. The check valve must be located at the point of product injection into the irrigation water; and

(b) Where siphon action induced by an irrigation system could compromise the cracking (opening) pressure of an injection line check valve, a vacuum relief valve must be installed in the irrigation line downstream of the injection point. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(2) Injection into non-pressurized (e.g. open surface, gated pipe, or spigotted pipe) portion of irrigation system must include a hydraulic discontinuity in source water flow or a sufficient hydraulic gradient such that chemicals or treated water cannot contaminate the water source. Backflow devices for non-pressurized systems may include a weir box, drop structure, air gap, batch tank, or similar device whose intended function is to prevent backflow into the application tank.

(3) Venturi or other passive injection systems

(a) If backpressure or backsiphonage can occur, the chemical injection line must contain an automatic, quick-closing check valve. The valve must be located immediately adjacent to the chemical inlet side of the venturi.

(b) If product can potentially siphon or seep into the water supply, the chemical injection line must contain a normally closed solenoid operative valve connected to the system interlock, or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. The valve must be installed adjacent to the product outlet on the application tank.

(c) With a bypass system, as an alternative to (a) and (b) above, the automatic, quick-closing check valve may be installed in the bypass immediately upstream of the venturi water inlet. In addition, either the normally closed solenoid or the hydraulic solenoid may be installed immediately downstream of the venturi water outlet.

(d) Bypass systems with a booster pump must have the normally closed solenoid interlocked with the source pump for the irrigation system.

NEW SECTION

WAC 16-202-2012 What alternative methods may be used to prevent backflow into or seepage from application tanks? Alternative technology used for backflow prevention must be accomplished by system design to fulfill the provisions of this chapter.

(1) In lieu of a normally closed solenoid with the injection system

(a) A normally open valve must be located in the chemical injection line between the application tank and a positive displacement injection pump. The normally open valve must be spring-loaded, and must close upon a vacuum and open at atmospheric pressure. It must be elevated at least 12-inches above the maximum fluid level in the application tank and must be the highest point in the injection line.

(b) The mechanism described in (a) cannot be used in conjunction with a venturi injection system.

(2) In lieu of a 10 psi opening (cracking) pressure check valve

(a) An automatic, quick-acting, spring-loaded check valve must be attached at or positioned immediately adjacent to the injection point to prevent irrigation water from entering the chemical injection line.

(b) A normally closed solenoid must be installed immediately adjacent to the product outlet on the application tank. If electric, it must be interlocked with the injection pump or, if hydraulic, with the irrigation system.

(c) In place of (b), a normally open valve must be located in the chemical injection line between the application tank and a positive displacement injection pump as described in (1)(a). This alternative cannot be used with venturi injection systems.

NEW SECTION

WAC 16-202-2013 What are the requirements for metering devices? Metering devices must be capable of being accurately calibrated. Metering devices must control the rate of product injection into irrigation water and discontinue product delivery when the predetermined application quantity has been dispensed. All metering systems must be

functionally interlocked with the source irrigation pump or irrigation water delivery system.

(1) Injecting product with a pressurized metering pump

(a) The metering pump must be of a positive displacement design.

(b) Water-powered injection pumps can only be used when no other power source is available to operate the injection unit.

(c) The metering pump must be interlocked to the irrigation system in the event of an irrigation system malfunction or failure.

(2) Injection into non-pressurized section of an irrigation system

(a) Application rate may be accomplished with an adjustable valve, flow control device, or other metering mechanism.

(b) The metering device must also control application quantity by employing a slide metering device or by placing a predetermined quantity into a batch tank.

(3) Venturi system as a metering device

(a) A venturi system may be used as a metering device, except where variable pressure may contribute to a variable injection rate.

(b) The chemical injection line must contain either a normally closed, solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. The valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(c) The chemical injection line between the application tank and the venturi must contain an automatic, quick-closing check valve to prevent the flow of liquid back toward the application tank. The check valve must be placed immediately adjacent to the venturi chemical inlet.

(d) In bypass systems, the check valve may be installed immediately upstream of the venturi water inlet. Either the normally closed solenoid or hydraulically operated valve may be installed immediately downstream of the venturi water outlet.

(e) If a booster or auxiliary pump is used in conjunction with a venturi system, the normally closed solenoid must be electrically interlocked with the source pump for the irrigation system.

NEW SECTION

WAC 16-202-2014 What are alternative methods for metering? Alternative technology used for metering product must fulfill the provisions of this chapter.

A person may function as a metering device with a non-pressurized irrigation delivery system. However, the individual must remain on-site to continuously monitor the application and be immediately available to terminate the application in the event of equipment malfunction. The person must be knowledgeable about the operation of the irrigation and injection systems.

NEW SECTION

WAC 16-202-2015 What are the requirements for product injection devices? The irrigation water source and application tank must be protected from backflow and from siphonage.

(1) Pressurized injection or injection into pressurized irrigation system

(a) An injection line check valve must be used whenever injection occurs in a pressurized section of an irrigation system or with a pressurized injection system.

(b) The injection line check valve must inject product directly into the irrigation water and must be installed downstream of the irrigation mainline check valve.

(c) The point of injection into an irrigation system cannot be located within 10 feet of a wellhead, public waterway, off-farm irrigation supply ditch or conveyance system, or sensitive area.

(d) The injection line check valve mechanism must prevent leakage due to hydraulic head pressure from the application tank and must prevent backflow from the irrigation water source into the supply tank. The injection line check valve must maintain, at a minimum, 10 psi opening (cracking) pressure or adequate opening pressure to prevent gravity flow from the application tank.

(e) In instances where siphoning action induced by an irrigation system could compromise the opening (cracking) pressure of a injection line check valve, a vacuum relief valve must be installed in the irrigation line downstream of the injection point.

(2) Injection into non-pressurized section of irrigation system

(a) If injection occurs in a non-pressurized portion of the irrigation system, an air gap or other hydraulic discontinuity must exist between the pressurized or non-pressurized irrigation water source and the point of product injection.

(b) When an air gap is used in conjunction with a public water supply, injection may only occur downstream of the air gap.

(3) Venturi systems

(a) The chemical injection line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. The valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(b) The chemical injection line between the application tank and the metering device must contain an automatic, quick-closing check valve. The check valve must be placed immediately adjacent to the venturi chemical inlet.

NEW SECTION

WAC 16-202-2016 What alternative methods may be used for product injection? Alternative technology used for injection must fulfill the provisions of this chapter. With a surface supplied water source, the injection point must occur downstream from the point of diversion. With a pressurized

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water source, the injection point must be located such that product backflow cannot occur.

(1) Injection with barometric loops

(a) Barometric loops can only be used on systems pumping from a surface water source.

(b) The barometric loop must be located in the water line immediately downstream of the irrigation water pump.

(c) A barometric pipe loop must be designed with sufficient elevation differential to compensate for backflow.

(d) The bottom of the barometric loop apex must be at least 30 inches above the highest water-emitting device or of any portion of the irrigation application system.

(e) The barometric loop must contain a vacuum relief device at the loop apex that allows air into the pipeline immediately upon loss of pressure. The orifice size must comply with current American Society of Agricultural Engineers (ASAE) standards.

(f) The injection point on a barometric loop must be located downstream of and at least 30 inches below the bottom of the barometric pipe loop apex.

(2) Solenoid and check valve

(a) The chemical injection line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. A normally closed, solenoid-operated valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(b) The chemical injection line between the application tank and the metering device and the injection point must contain an automatic, quick-closing check valve to prevent the flow of liquid back toward the application tank. The check valve must be placed immediately adjacent to the venturi chemical inlet.

NEW SECTION

WAC 16-202-2017 What are the requirements for a system interlock? A system interlock must automatically shutoff the injection system if the irrigation pump stops operating or if variation in water flow adversely affects product injection rate or product distribution uniformity. The operator must be able to demonstrate that backflow cannot occur.

(1) Pressurized injection systems or injection into a pressurized portion of the irrigation system requires either an electrical, hydraulic, or mechanical system interlock device.

(2) When the injection point is at a non-pressurized section of the irrigation application system, a slide metering scale or batch tank may function as the system interlock.

(3) With venturi systems

(a) Booster or auxiliary water pumps must be connected with the system interlock such that when pressure in the mainline changes to the point where product distribution is adversely affected automatic shutoff of product supply will occur.

(b) The supply line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. If a booster or auxiliary pump is used in conjunction with a ven-

turi system, the normally closed solenoid must be electrically interlocked with the source pump for the irrigation system.

NEW SECTION

WAC 16-202-2018 What alternative methods can be used as a system interlock? Alternative technology used for injection must fulfill the provisions of this chapter.

(1) Human interlock

(a) In lieu of an automatic interlock, a person may serve as a system interlock. The individual must continuously monitor the application, be alert throughout the application process, be immediately available to terminate the application in the event of equipment malfunction, and be knowledgeable about the operation of the irrigation and injection systems.

(2) Solenoid and check valve

(a) The chemical injection line must contain either a normally closed solenoid-operated valve connected to the system interlock or a normally closed hydraulically operated valve that opens only when the main water line is adequately pressurized. A normally closed, solenoid-operated valve must be placed on the intake side of the injection pump, immediately adjacent to the application tank.

(b) The chemical injection line between the application tank and the metering device must contain an automatic, quick-closing check valve to prevent the flow of liquid back toward the application tank. The check valve must be placed immediately adjacent to the venturi chemical inlet.

NEW SECTION

WAC 16-202-2019 What is an appropriate monitoring schedule? A fertigation application must be visually inspected at least daily to ensure that system components are functioning properly. Specific applications due to location or product characteristics may require more frequent monitoring.

NEW SECTION

WAC 16-202-2020 Public water system cross-connections or connection to a potable water supply intended for human use. If the irrigation system is cross-connected to a public water system, Washington State Department of Health (DOH) rules (WAC 246-290-490) apply to backflow prevention.

Cross-connections of a fertigation system to any potable water system intended for human use must have either a Department of Health-approved reduced pressure backflow assembly or reduced pressure detector assembly installed for backflow prevention. Otherwise, a physical separation in the form of an air gap may be used to protect the water source.

PART 4
PENALTIES AND PENALTY
ASSIGNMENT SCHEDULE

NEW SECTION

WAC 16-202-2021 Penalties (1) Any person who fails to comply with any provision of this chapter shall be subject to imposition of a civil penalty as provided in Chapter 15.54.474 RCW.

(2) The director may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule made pursuant to this chapter in a court of competent jurisdiction of the county in which such violation occurs or is about to occur.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-202-2000 Fertilization.

WSR 01-07-012
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)
[Filed March 12, 2001, 3:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-20-047.

Title of Rule: WAC 388-505-0210 Children's medical eligibility and 388-505-0220 Family medical eligibility.

Purpose: The proposed amendment is necessary to exclude from medical eligibility the client population receiving state family assistance (SFA) cash benefits when the only child in the household is nineteen or twenty years old.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, 74.04.055, and 74.04.057.

Statute Being Implemented: RCW 74.08.090, 74.04.050, 74.04.055, and 74.04.057.

Summary: Medical benefits are not tied to receipt of SFA cash benefits when the only child in the household is nineteen or twenty years old.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, Mailstop 45534, 925 Plum Street, Olympia, WA 98504-5534, (360) 725-1330.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule will not impact small businesses. It affects eligibility for medical assistance programs.

RCW 34.05.328 does not apply to this rule adoption. RCW 34.05.328 (5)(b)(vii) exempts DSHS rules that apply to eligibility.

Hearing Location: Office Building 2 Auditorium, 14th Avenue and Jefferson Street, Olympia, Washington 98504, on April 24, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper by April 17, 2001, phone (360) 664-6094, e-mail coopekd@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Kelly Cooper, P.O. Box 45850, Olympia, WA 98504, fax (360) 664-6178, by April 24, 2001.

Date of Intended Adoption: No sooner than April 25, 2001.

March 8, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-17-023, filed 8/10/99, effective 9/10/99)

WAC 388-505-0210 Children's medical eligibility.

(1) A child under the age of one is eligible for categorically needy (CN) medical assistance as defined in chapter 388-500 WAC when:

(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:

(a) Citizenship or U.S. national status as described in WAC 388-424-0005(1) or immigrant status as described in WAC 388-424-0010 (1) or (2);

(b) State residence as described in chapter 388-468 WAC;

(c) A social security number as described in chapter 388-476 WAC; and

(d) Family income levels as described in WAC 388-478-0075 (1)(c).

(3) ~~((Upon implementation of the children's health insurance program (CHIP) as described in chapter 388-542, WAC,))~~ Children under the age of nineteen are eligible for ((CHIP)) the children's health insurance program (CHIP), as described in chapter 388-542 WAC, when:

(a) They meet the requirements of subsection (2)(a) and (b) of this section;

(b) They do not have other creditable health insurance coverage; and

(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075 (1)(c) and (d).

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(4) Children under the age of nineteen who first physically entered the U.S. after August 21, 1996 are eligible for state-funded CN scope of care when they meet the:

(a) Eligibility requirements in subsection (2)(b), (c), and (d) of this section; and

(b) Qualified alien requirements for lawful permanent residents, parolees, conditional entrants, or domestic violence victims as described in WAC 388-424-0005 (3)(a), (c), (f), or (i).

(5) Children under the age of twenty-one are eligible for CN medical assistance when they meet:

(a) ~~(Meet)~~ Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) ~~(Meet)~~ Income levels described in WAC 388-478-0075 when income is counted according to WAC 388-408-0055 (1)(c); and

(c) ~~(Meet)~~ One of the following criteria:

(i) Reside in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for more than thirty days;

(ii) Reside in a psychiatric or chemical dependency facility;

(iii) Are in foster care; or

(iv) Receive subsidized adoption services.

(6) Children are eligible for CN medical assistance if they:

(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or

(b) Received SSI ~~(payments)~~ cash assistance for August 1996, and except for the August 1996 passage of amendments to federal disability definitions, would be eligible for SSI ~~(payments)~~ cash assistance.

(7) Children under the age of nineteen are eligible for Medically Needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income ~~(at or)~~ above the income levels described in WAC 388-478-0075 (1)(c).

(8) Children described in subsection (4)(a) and (b) whose countable income exceeds the standard in WAC 388-478-0075 (1)(c) are eligible for state-funded MN scope of care.

(9) A child is eligible for SSI-related MN when the child:

(a) ~~(Meets the conditions in subsection (6)(a);~~

~~(b)) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (6)(b); and~~

~~((c) Has family))~~

(b) Has countable income above the level described in WAC 388-478-0070(1).

~~((9) Nonimmigrant))~~

(10) Noncitizen children, including visitors or students from another country and undocumented children, under the age of eighteen are eligible for the state-funded children's health program, if:

(a) The department determines the child ineligible for any CN or MN scope of care medical program;

(b) They meet family income levels described in WAC 388-478-0075 (1)(a); and

(c) They meet state residency requirements as described in chapter 388-468 WAC.

~~((10)) (11) There are no resource ((standards for the))~~
limits for children((s)) under:

(a) CN or ((the)) MN coverage;

(b) State-funded CN or MN scope of care((s)); or

(c) The children's health programs.

~~((11)) (12) Children may also be eligible for:~~

~~(a) ((Temporary assistance for needy families (TANF) or state)) Family ((assistance (SFA)-related))~~ medical as described in WAC 388-505-0220; ~~((and)) or~~

~~(b) ((TANF/SFA-related))~~ Medical extensions as described in WAC 388-523-0100.

~~((12)) (13) Except for a client described in subsection ((4)(e)) (5)(c)(i) and ((4)) (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.~~

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-505-0220 Family medical eligibility. (1) A person is eligible for categorically needy (CN) medical ~~((coverage))~~ assistance when they are:

(a) Receiving temporary assistance for needy families (TANF) cash benefits; ~~((or))~~

(b) Receiving cash diversion assistance described in chapter 388-222 WAC; ~~((or))~~

(c) Eligible for TANF cash benefits but choose~~((s))~~ not to receive ~~((cash benefits));~~ or

(d) Not eligible for or receiving TANF cash assistance, but meet~~((s))~~ the eligibility criteria for aid to families with dependent children (AFDC) ~~((that were))~~ in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0050 and 388-470-0026 for recipients.

(2) A person is eligible for CN family medical coverage when ~~((they are))~~ the person is not eligible for or receiving cash benefits solely ~~((for one of the following reasons))~~ because the person:

(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits; ~~((or))~~

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC; ~~((or))~~

(c) Is an unmarried minor parent who is not in a department-approved living situation; ~~((or))~~

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed ninety days; ~~((or))~~

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or a probation and parole violator; ~~((or))~~

(f) Was convicted of a drug related felony; ~~((or))~~

(g) Was convicted of receiving benefits unlawfully; ~~((or))~~

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states; ~~((or))~~

(i) Has gross earnings exceeding the TANF gross income level; or

~~(j) ((Does not meet work quarter requirements; or
(k) Does not meet the unemployment requirement; or
(l))~~ Is not cooperating with WorkFirst requirements.

(3) A person is eligible for ~~((SFA))~~ state-funded CN scope of care family medical when the person:

(a) Is eligible for or receiving SFA cash benefits; ~~((or))~~

(b) Is receiving SFA cash diversion assistance described in chapter 388-222 WAC; ~~((or))~~

(c) Is not eligible for or receiving SFA solely due to factors described in subsection (2)(a) through (j) of this section; or

(d) Meets the criteria of (1)(d) of this section.

(4) An adult receiving TANF or SFA cash benefits is not eligible for a medical program when that adult is in noncooperation status with the division of child support.

(5) When the only eligible child in an SFA cash assistance unit is a nineteen or twenty year old student, none of the family members are eligible for a medical program.

(6) A person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

WSR 01-07-014

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed March 13, 2001, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-20-060.

Purpose: Chapters 478-250 and 478-276 WAC, governing the indexing and access to the University of Washington's public records.

Statutory Authority for Adoption: RCW 28B.20.130, chapter 34.05 RCW, RCW 42.17.260, 42.17.290, and 42.17.300.

Statute Being Implemented: RCW 28B.20.130, chapter 34.05 RCW, RCW 42.17.260, 42.17.290, and 42.17.300.

Summary: Amendments to WAC 478-250-050, 478-250-070, 478-276-060, and 478-276-140 propose changes to office names and personnel titles as well as the removal of an obsolete phone number. Amendments to WAC 478-276-070, 478-276-080, 478-276-100, and 478-276-120 propose changes to office and personnel titles as well as clarifications to language in existing rules that reflect current practices. Amendments to WAC 478-276-020 propose changes to language so that the rule reflects current definitions from Washington state statute.

Reasons Supporting Proposal: To accurately reflect the University of Washington's practices regarding indexing and accessing of public records.

Name of Agency Personnel Responsible for Drafting and Implementation: Norman G. Arkans, Associate Vice-President and Executive Director of University Relations, 400 Gerberding Hall, University of Washington, (206) 543-2560; and Enforcement: Rebecca Goodwin Deardorff,

Director, Administrative Procedures, 7 Visitors, Information Center, University of Washington, (206) 543-9199 and Eliza Saunders, Director, Public Records and Open Public Meetings, 4 Visitors, Information Center, University of Washington, (206) 543-9180.

Name of Proponent: University of Washington, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: These rules govern the indexing of and access to public records at the University of Washington and the proposed changes bring these rules up-to-date and continue guiding the public accurately.

Proposal Changes the Following Existing Rules: The following sections are amended: WAC 478-250-050, 478-250-070, 478-276-020, 478-276-060, 478-276-080, 478-276-100, 478-276-120, and 478-276-140.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapters 478-250 and 478-276 WAC do not regulate or have a disproportionate impact on small businesses.

RCW 34.05.328 does not apply to this rule adoption. Chapters 478-250 and 478-276 WAC do not regulate or have a disproportionate impact on small businesses.

Hearing Location: Room 309, Husky Union Building (HUB), University of Washington, Seattle, Washington, on April 30, 2001, at 12:00 noon.

Assistance for Persons with Disabilities: Contact UW Disability Services Office by April 20, 2001, TDD (206) 543-6452, or (206) 543-6450.

Submit Written Comments to: Rebecca Goodwin Deardorff, Director, Administrative Procedures Office via one of the following routes: U.S. mail University of Washington, 4014 University Way N.E., Seattle, WA 98105-6203; campus mail Box 355509; e-mail adminpro@u.washington.edu; or fax (206) 616-6294, by April 30, 2001.

Date of Intended Adoption: May 18, 2001.

February 9, 2001

Rebecca Goodwin Deardorff, Director
Administrative Procedures Office

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-250-050 University rules coordination. (1)

University rules coordination shall be conducted by the administrative procedures office ~~((under the direction of the administrative procedures officer who))~~, which reports to the office of the vice-president for university relations.

(2) The director of the administrative procedures ~~((officer))~~ office shall have knowledge of the subjects of rules being proposed or prepared within the university, maintain the records of any such action, and respond to public inquiries about possible, proposed, or existing rules and the identity of university personnel developing, reviewing, or commenting on them.

AMENDATORY SECTION (Amending WSR 91-10-031, filed 4/24/91, effective 5/25/91)

WAC 478-250-070 Requests for access to indexes.

Information regarding public inspection of indexes, their location, and a schedule for revising and updating these indexes can be obtained by contacting the director of the public records ((~~office~~)) and open public meetings office, in accordance with WAC 478-276-060.

AMENDATORY SECTION (Amending Order 73-5, filed 5/29/73)

WAC 478-276-020 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-276-060 Public records officer. For purposes of compliance with chapter 42.17 RCW, the person designated as public records officer for the University of Washington is the director of public records and open public meetings. Duties ((~~of the public records officer~~)) for this individual shall include but not be limited to: The implementation of the university's rules and regulations regarding release of public records, coordinating the staff of the public records and open public meetings office in this regard, and generally coordinating compliance by the university with the public records disclosure requirements of chapter 42.17 RCW. The person so designated shall be at the following location:

University of Washington
Public Records and Open Public Meetings Office
Visitors Information Center
4014 University Way N.E.
Seattle, WA 98105-6203

(for internal campus mail use: Box 355502).

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-276-070 Times for inspection and copying.

Public records of the University of Washington shall be available for inspection and copying by appointment during

the regular office hours of the public records and open public meetings office: Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays.

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-276-080 Requests for public records. In accordance with requirements of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records required to be disclosed by chapter 42.17 RCW, may be inspected ((~~or copied~~)) or copies of such records may be obtained, by members of the public upon compliance with the following procedures: All requests shall be directed to the director of public records ((~~office~~)) and open public meetings at the address set forth in WAC 478-276-140. The request shall include the following information:

- (1) The name and address of the person requesting the records;
- (2) The ((~~time of day and calendar~~)) date on which the request was made; and
- (3) The public record(s) requested.

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-276-100 Inspection of public records—Copying—Costs. (1) Public records of the University of Washington required to be disclosed by chapter 42.17 RCW, shall be made available for inspection and copying ((~~at~~)) by the public records and open public meetings office staff under the supervision of the director of public records ((~~office~~)) and open public meetings. Arrangements for photocopying of documents in accordance with RCW 42.17.300 shall be made by the university in such a way as to protect the records from damage or disorganization and to prevent excessive interference with other essential functions of the agency.

(2) No fee shall be charged for the inspection of public records. The university imposes a charge for providing copies of public records ((~~and for the costs of envelopes~~)) whether the copies are on paper or on other media such as, but not limited to, CDs, diskettes, audio or videotape; the university also charges for packaging, postage, and other charges as allowed by statute. Such charges shall not exceed the amount necessary to reimburse the university for actual costs as allowed by law.

(3) No person shall be provided a copy of a public record which has been copied by the university at the request of such person until and unless such person has tendered payment for the charge for providing such copying.

AMENDATORY SECTION (Amending Order 81-2, filed 10/2/81)

WAC 478-276-120 Review of denials of public records requests. (1) ((~~The~~)) A person who has been denied

access to public records may submit to the director of public records ~~((office))~~ and open public meetings a petition for prompt review of such decision. The written request shall specifically refer to the written statement by the director of public records ~~((office))~~ and open public meetings or staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the director of public records ~~((office))~~ and open public meetings or other staff member denying the request shall refer it to the office of the president of the University of Washington. The petition shall be reviewed promptly and the action of the public records ~~((office))~~ and open public meetings office staff shall be approved or disapproved. Such approval or disapproval shall constitute final university action for purposes of judicial review.

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-276-140 Public records and open public meetings office—Address. All requests for public records to the University of Washington shall be addressed as follows:

University of Washington
~~((Public Records Officer))~~
 Public Records and Open Public Meetings Office
 4014 University Way N.E.
 Seattle, WA 98105-6203

(for internal campus mail use: Box 355502). The telephone number of the public records and open public meetings office is (206) 543-9180(~~FAX: 543-0786~~).

WSR 01-07-028

PROPOSED RULES

HOUSING FINANCE COMMISSION

[Filed March 14, 2001, 1:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03 [01-03-144].

Title of Rule: Tax credit program.

Purpose: The rules provide procedures pursuant to which the commission will allocate or award tax credits.

Statutory Authority for Adoption: RCW 43.180.040(3).

Statute Being Implemented: RCW 43.180.050.

Summary: The existing rules establish the framework of the commission's tax credit program. The proposed changes to these rules reflect changes in Section 42 of the Internal Revenue Code of 1986, as amended ("code"), which authorizes tax credits for the construction, acquisition and rehabilitation of residential rental projects meeting the requirements of the code.

Reasons Supporting Proposal: The existing rules provide applicants to the commission's tax credit program with clear direction regarding the fundamental principles under which tax credits will be allocated or awarded by the com-

mission. The proposed rules will modify these rules to reflect the recent changes to the code.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Margaret Sevy, 1000 Second Avenue, Suite 2700, Seattle, WA, (206) 464-7139.

Name of Proponent: Washington State Housing Finance Commission, governmental.

Rule is necessary because of federal law, 26 USC § 42, *as amended by 114 stat. 2763 (2000)*.

Explanation of Rule, its Purpose, and Anticipated Effects: The Washington State Housing Finance Commission has been designated as the state agency in Washington responsible for implementing the tax credit program authorized under Section 42 of the code. The commission's plan for allocating or awarding tax credits has been approved by the governor of the state of Washington. The existing rule establishes the framework for the commission's tax credit program and provides applicants to the tax credit program with clear direction regarding the principles by which the commission will allocate or award tax credits. The proposed rules will modify the existing rules to reflect the recent changes to the code.

Proposal Changes the Following Existing Rules: The only changes that have been made are those necessary to reflect modifications to Section 42 of the code.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.061, because the proposed rule implements the requirements of Section 42 of the code, the proposed rule does not in and of itself impose any burden on small businesses in an industry and a small business economic impact statement is not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Under RCW 34.05.328 (5)(b)(iii), because these rules would be "rules of other Washington state agencies" not listed in section (5)(a)(i), section 201, chapter 403, Laws of 1995 does not apply.

Hearing Location: 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1046, on April 26, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Margaret Sevy by April 18, 2001, (206) 464-7139.

Submit Written Comments to: 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1046, fax (206) 587-5113, by April 25, 2001.

Date of Intended Adoption: April 26, 2001.

January 25, 2001

Margaret Sevy, Director
 Tax Credit Division

AMENDATORY SECTION (Amending WSR 93-01-122, filed 12/21/92, effective 1/21/93)

WAC 262-01-110 Contents of the qualified allocation plan. (1) The commission shall adopt a qualified allocation plan as required under section 42 of the code (the "plan"), which shall:

(a) Set forth selection criteria to be used to determine housing priorities of the commission which are appropriate to local conditions;

(b) Give preference in allocating housing credit dollar amounts among projects that:

- (i) ~~((Serving))~~ Serve the lowest income tenants; ~~((and))~~
- (ii) Are obligated to serve qualified tenants for the longest periods; and
- (iii) Are located in qualified census tracts and the development of which will contribute to a concerted community revitalization plan; and

(c) Provide a procedure which the commission shall follow in monitoring projects for ~~((compliance with section 42 of the code))~~ noncompliance and for notifying the Internal Revenue Service of such noncompliance ~~((which the commission shall become aware of))~~ and in monitoring for non-compliance with habitability standards through regular site visits.

(2) The plan shall include the following selection criteria among others, for allocating housing credit dollar amounts: Project location, housing needs characteristics, project characteristics (including whether the project includes the use of existing housing as part of a community revitalization plan), sponsor characteristics, ~~((participation of local tax exempt organizations;))~~ tenant populations with special needs, use of public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, project feasibility, and viability as a low-income housing project.

AMENDATORY SECTION (Amending WSR 97-20-086, filed 9/29/97, effective 10/30/97)

WAC 262-01-130 Tax credit program. (1) Applicants for tax credit shall submit a completed application in the form prescribed by the commission and the required application fee by the deadline set by the commission each year. The commission will not accept additional information or material changes to an application except as allowed during a prescribed correction period.

(2) As part of its application, each applicant shall submit, among other things:

- (a) Its federal identification number or, if the applicant is an individual, its Social Security number;
- (b) Evidence that it has control of all land necessary for completion of the project;
- (c) A comprehensive market study of the housing needs of low-income individuals in the area to be served by the project;
- (d) If applicable, a relocation plan for residents approved by the appropriate governmental authority;
- ~~((d))~~ (e) Evidence that the project is consistent with the applicable state or local consolidated plan;
- ~~((e))~~ (f) A written commitment to notify the relevant local public housing authority of the availability of units in the project;
- ~~((f))~~ (g) Evidence of the financial capacity and experience of the development team; and
- ~~((g))~~ (h) Evidence of the experience of the property management team.

(3)(a) The commission will rank projects proposed by tax credit applicants based upon the degree to which they meet the criteria set forth by the commission in subsection (5)

of this section. The commission may decline to consider a project that fails to meet minimum standards established by the commission for such an evaluation.

(b) Notwithstanding applicant characterization, the commission may determine the scope of or otherwise define a "project" or "projects" for purposes of ranking applications and reserving and allocating tax credit.

(4) In order to qualify to receive tax credit, a project shall meet all of the requirements of section 42 of the code. ~~((At a minimum, a project shall:~~

- ~~(a) Be rent restricted;~~
- ~~(b) Have:~~
 - ~~(i) Twenty percent of the units set aside for individuals whose income is fifty percent or less of area median gross income; or~~
 - ~~(ii) Forty percent of the units set aside for individuals whose income is sixty percent or less of area median gross income;~~
 - ~~(c) Be constructed for use by the general public;~~
 - ~~(d) Be used on other than a transient basis; and~~
 - ~~(e) Include separate and complete facilities for living, sleeping, eating, cooking and sanitation.)~~

(5) For the purposes of ranking projects and allocating credit dollar amounts, the commission will give preference to projects ~~((serving))~~ that serve the lowest income tenants ~~((and to projects)), that are obligated to serve low-income tenants for the longest periods, and that are located in qualified census tracts and the development of which will contribute to a concerted community revitalization plan. In determining housing priorities, the commission will consider sponsor and project characteristics. The commission will give weight to those projects which, among other things:~~

- (a) Are located in areas of special need as demonstrated by location, population, income levels, availability of affordable housing and public housing waiting lists;
- (b) Set aside units for special needs populations, such as large households, the elderly, the homeless and/or the disabled;
- (c) Preserve federally assisted projects as low-income housing units;
- (d) Rehabilitate buildings for residential use;
- (e) Include the use of existing housing as part of a community revitalization plan;
- (f) Are smaller projects;
- ~~((f))~~ (g) Have received written authorization to proceed as a United States Department of Agriculture - Rural Housing Service multifamily new construction project approved by the commission;
- ~~((g))~~ (h) Are historic properties; ~~((h) Are sponsored by local nonprofit organizations;))~~
- (i) Are located in targeted areas;
- (j) Leverage public resources;
- (k) Maximize the use of credits; ~~((and))~~
- (l) Demonstrate a readiness to proceed;
- (m) Serve tenant populations of individuals with children; and
- (n) Are intended for eventual tenant ownership.

(6)(a) The commission will reserve at least ten percent of the state housing credit ceiling for a calendar year for projects in which qualified nonprofit organizations have an ownership

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interest and materially participate in the development and operation of the projects throughout the compliance period, all as described in the code. A qualified nonprofit organization is an organization described in section 501 (c)(3) or (4) of the code, which is determined by the commission not to be affiliated with or controlled by a for-profit organization and one of whose exempt purposes includes the fostering of low-income housing.

(b) The commission may also reserve a portion or portions of its state housing credit ceiling for other types of projects or sponsors.

(7) The commission will determine the amount of tax credit necessary for the project's financial feasibility and viability as a qualified low-income housing project. The commission will not allocate or award to a project more than the minimum amount of tax credit required to ensure a project's financial feasibility and viability.

(8) The commission may:

(a) Restrict the maximum amount of development costs on a per unit basis;

(b) Limit the maximum rehabilitation contingency and the maximum construction contingency;

(c) Restrict the maximum annual amount of tax credit for each low-income housing unit;

~~(d) ((Prohibit funding project reserves with equity derived from tax credit;~~

~~(e))~~ Establish a maximum amount of credit an applicant may receive;

~~((f))~~ (e) Establish a maximum amount of tax credit a project may receive;

~~((g))~~ (f) Establish maximum developer fees and consultant fees; and

~~((h))~~ (g) Limit the amount of contractor's profit and overhead.

The commission may also limit the amount of credit received or establish other limits for other reasons.

(9)(a) As a condition of receiving tax credit, an applicant shall enter into agreements with the commission, in forms acceptable to the commission, which contain the terms under which the commission reserves credit for a project and, if applicable, provides a carryover allocation for a project.

(b) As a condition to receiving tax credit, an owner shall enter into an extended use agreement with the commission, in a form acceptable to the commission, which restricts the use of the project for a minimum of thirty years and which describes the applicable commitments and covenants made by the owner. The extended use agreement shall be recorded in a first lien position as a restrictive covenant running with the land.

(10) In order to qualify for a carryover allocation, an applicant shall demonstrate, among other things, that:

(a) The applicant has either acquired the land or has a long term lease on the land;

(b) The applicant's basis in the project ~~((as of the close of the calendar year of the tax credit allocation))~~ is more than ten percent of the applicant's reasonably expected basis in the project; and

(c) The applicant has received a conditional commitment for financing.

(11) An applicant that has received a carryover allocation of tax credit shall demonstrate to the commission's satisfaction that the applicant has made substantial progress towards completion of the project.

(12) An applicant shall demonstrate to the commission's satisfaction substantial compliance with all contractual obligations to the commission before the commission issues an Internal Revenue Service low-income housing credit certificate.

(13) Unless the commission makes an exception, a transfer of an interest in a project shall require the prior approval of the commission. A transfer or assignment without the commission's prior approval may result in a cancellation of tax credit for a project.

(14) To participate in the tax credit program, an applicant shall pay all required commission fees and comply with all applicable requirements and deadlines. Failure to do so may result in disqualification or cancellation of the project, application or tax credit reservation, allocation or award.

(15) For purposes of awarding tax credit, certain rules in this section do not apply to tax credit projects financed with tax-exempt bonds.

(16)(a) The commission may perform on-site inspections of projects, interview residents, review residents' applications and financial information, and review an applicant's or an owner's books and records. The applicant or owner shall provide the commission with all requested documentation, including periodic reports and certificates; shall provide the commission access to the project; and shall retain records as required by the code and the extended use agreement.

(b) The commission will monitor compliance of the projects receiving credit with the code and with contractual commitments to the commission. The commission will notify the Internal Revenue Service when instances of noncompliance come to its attention.

WSR 01-07-029

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LICENSING

[Filed March 14, 2001, 2:02 p.m.]

The Department of Licensing hereby withdraws WSR 01-05-106 filed with your office on February 21, 2001.

Deborah McCurley, Administrator
Title and Registration Services

WSR 01-07-033

PROPOSED RULES BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-410 Definitions.

Purpose: To define terms used throughout the board's rules, chapter 4-25 WAC.

Statutory Authority for Adoption: RCW 18.04.055(11).

Statute Being Implemented: RCW 18.05.055(11) [18.04.055(11)].

Summary: This amendment adds the definition of terms "commissions," "referral fees," and "contingent fees" as it applies to Washington state regulations.

Reasons Supporting Proposal: The existing rule, WAC 4-25-410, excludes the definition of "commissions," "referral fees," and "contingent fees." These terms are used by the accounting profession and throughout the board rules. In January 2001 the board amended WAC 4-25-626 What restrictions govern commissions, referral, and contingent fees? Amending WAC 4-25-410 will clearly define the use of the terms as they apply to Washington state regulations. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of board rules; promote efficiencies through minimizing gray areas; and address the need to protect the public through regulation of the practice of the public accountancy and enhancing the reliability of information.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule defines terms used throughout the board's rules to provide clarity for users. The amendment of the rule will: (1) Present the rule in a clear concise format; (2) present the rule in simplified, easier to understand, language; and (3) add definitions for terms that are not currently defined.

Proposal Changes the Following Existing Rules: Amendment of the rule: (1) Lists the specific generally accepted auditing standards, standards for attestation engagements and standards for accounting and review services to the definition of "attest"; (2) deletes the explanation of a "valid certificate"; (3) adds CPA firm and organization to the definition for "client"; (4) adds a definition for "commissions and referral fees"; (5) adds a definition for "contingent fees"; and (6) adds a definition for "CPA" and "certified public accountant."

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 7, 2001

Dana M. McInturff, CPA

Executive Director

AMENDATORY SECTION (Amending WSR 98-12-020, filed 5/27/98, effective 6/27/98)

WAC 4-25-410 Definitions. For purposes of these rules the following terms have the meanings indicated:

(1) "**Act**" means the Public Accountancy Act codified as chapter 18.04 RCW.

(2) ~~((a))~~ "**Attest services**" are services performed by a licensee in accordance with:

(a) Statements on Auditing Standards and related Auditing Interpretations issued by the American Institute of Certified Public Accountants (AICPA) including subsequent amendments;

(b) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA including subsequent amendments; and

(c) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by the AICPA including subsequent amendments.

(3) "**Audit**," "**review**," and "**compilation**" are terms reserved ~~((by the public accountancy profession to identify forms of reports on financial statements that express differing levels of assurance. Professional standards setting bodies, such as the American Institute of Certified Public Accountants (AICPA), specify form and content of these reports.~~

~~((b) "Attest services" include services performed by a certified public accountant in accordance with generally accepted auditing standards, standards for attestation engagements and standards for accounting and review services))~~ for use by licensees under the act.

~~((3))~~ (4) "**Board**" means the board of accountancy created by RCW 18.04.035.

~~((4))~~ (5) "**Certificate**" means a certificate as a certified public accountant issued under ~~((this chapter))~~ the act, or a corresponding certificate issued by another state or foreign jurisdiction that is recognized in accordance with the reciprocity provisions of ~~((RCW 18.04.180 and 18.04.183. "Valid CPA certificate" means the holder has fully complied with continuing professional education requirements or the board has granted specific exemption from continuing professional education requirements, with or without restricting use of the CPA title))~~ the act.

~~((5))~~ (6) "**Client**" means the person or entity that retains a ~~((CPA))~~ certified public accountant (CPA), or the CPA's firm or organization, through other than an employer/employee relationship ~~((, for the performance of professional services)).~~

~~((6))~~ (7) "**Commissions and referral fees**" are compensation arrangements where:

(a) The primary contractual relationship for the product or service is not between the client and the CPA;

(b) The CPA is not primarily responsible to the client for the performance or reliability of the product or service;

(c) The CPA adds no significant value to the product or service; or

(d) A third party instead of the client pays the CPA for the products or services.

(8) "Contingent fees" are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

(9) "CPA" or "certified public accountant" means a person holding a certificate under this act.

(10) "CPE" means continuing professional education (see also "Interactive CPE").

(11) "Enterprise" means any person or entity, whether organized for profit or not, with respect to which a CPA performs professional services.

(12) "Firm" means (a sole proprietorship, a corporation, a limited liability company, or a partnership) an entity licensed under the provisions of this chapter.

(13) "Generally accepted accounting principles" (GAAP) is (a technical) an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

(14) "Generally accepted auditing standards" (GAAS) are (broad conceptual) guidelines and procedures, promulgated by the (American Institute of Certified Public Accountants) AICPA, for conducting individual audits of historical financial statements. (They include general standards, standards of field work, and reporting standards.

(15) "Holding out" means any representation to the public by the use of restricted titles as set forth in (RCW 18.04.345) the act by a person or firm that the person or firm is a certified public accountant and that the person or firm offers to perform any professional services to the public as a certified public accountant. "Holding out" shall not affect or limit a person not required to hold a certificate under this chapter or a person or firm not required to hold a license under this chapter from engaging in practices identified in (RCW 18.04.350(6)) the act.

(16) "Interactive self-study program" means a CPE program designed to use (interactive) learning methodologies that simulate a classroom learning process by employing software or administrative systems that provide significant ongoing interactive feedback to learners regarding their learning progress.

(17) "Licensee" means the holder of a valid license issued under (chapter 18.04 RCW) the provisions of this act.

(18) "Public practice" or the "practice of public accounting" means performing or offering to perform by a person or firm holding (itself) out to the public as a licensee, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports,"

"compilation reports," or "attestation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters.

(19) "Quality assurance review" (QAR) (means a) is the process, established by and conducted at the direction of the board, of study, appraisal, or review of one or more aspects of the professional work of a (person) licensee or firm (in the practice of public accountancy), by a ((person or persons) licensee(s) who ((hold certificates and who are) is not affiliated with the ((person) licensee or firm being reviewed.

(20) "Quality review" means a study, appraisal, or review of one or more aspects of the professional work of a (person) licensee or firm (in the practice of public accountancy), by a ((person or persons) licensee(s) who ((hold certificates and who are) is not affiliated with the ((person) licensee or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures but not including a "quality assurance review."

(21) "Reciprocity" means board recognition of licenses, certificates or other professional accounting credentials that the board will rely upon in full or partial satisfaction of CPA certification or licensing requirements. (This board may grant reciprocity, by rule, to CPAs from other states or to certain professional accountants from countries whose credentials are recognized by this board. Board recognition of professional credentials issued by other state accountancy boards or foreign credentialing bodies is conditioned on those bodies' agreements to grant reciprocity to this board's licensees.

(22) "Referral fees" see definition of "commissions and referral fees" in subsection (7) of this section.

(23) "Reports on financial statements" means any reports or opinions prepared by (certified public accountants) licensees, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services, as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental, conforms with generally accepted accounting principles or other comprehensive bases of accounting. The term does not include incidental financial data included in management advisory services reports to support recommendations to a client.

(24) "Rules of professional conduct" means principles and rules adopted by the board to govern ((CPAs') the conduct of CPAs while representing themselves to others as CPAs. The rules apply to ((CPAs whether engaged in public practice or otherwise engaged in providing professional services while) all persons using the CPA title.

(25) "Statements on standards for accounting and review services" (SSARS) are standards, promulgated by the (American Institute of Certified Public Accountants) AICPA, to give guidance to ((CPAs) licensees who

are associated with the financial statements of nonpublic companies and issue compilation or review reports.

~~((21))~~ **(26) "Statements on standards for attestation engagements"** are guidelines, promulgated by the ~~((American Institute of Certified Public Accountants-))~~ AICPA~~((s))~~, for use by ~~((CPAs))~~ licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

WSR 01-07-034

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-520 What public records does the board maintain?

Purpose: To comply with the requirements of RCW 42.17.260 that each agency, for informational purposes, publish a listing of records that are available for public inspection and copying.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 42.17.260.

Summary: Lists the records maintained by the agency that are available for public inspection or copying and describes the requirement for organizations to obtain board recognition in order to purchase a list of individuals.

Reasons Supporting Proposal: To comply with legislative directive by clarifying what data and documents are maintained by the board.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Notifies the public of the records available for inspection and copying for informational purposes in a clear rule-writing style. The existing rule notifies the public of records (lists of individuals for commercial purposes) which are exempt from access. Alternatively the amendment describes the requirement for organizations to obtain board recognition in order to purchase a list of individuals. Amendment of the rule will provide clarification to the public.

Proposal Changes the Following Existing Rules: The amendment: (1) Deletes the listing of contents in the board's database of Washington state CPAs, CPA examination candidates, and CPA firms. The listing in the existing rule is not complete and may mislead the public to believe that only the listed information is available and may limit the board's flexibility to add or delete the type of information collected; (2) deletes a database of final orders, declaratory rulings, interpretations, and policy statements abstracted from board meeting minutes. The board no longer collects this information in

a database; (3) deletes CPA's continuing professional education (CPE) reports and CPE sponsor agreements. These items are no longer collected. The board amended its CPE rules effective January 2000 eliminating the requirement for CPAs to submit CPE reports and repealed its rule regarding registration of CPE sponsors; and (4) describes the requirement for organizations to obtain board recognition in order to purchase a list of individuals.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 8, 2001

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 98-12-021, filed 5/27/98, effective 6/27/98)

WAC 4-25-520 What public records does the board maintain? The board maintains the following public records:

(1) A data base of ~~((every))~~ Washington CPAs~~((This file contains: Each CPA's name and address, and their certificate type, number, issue date, and status));~~

(2) A data base of CPA examination candidates~~((This file contains: Each candidate's name, address, and identification numbers));~~

(3) A data base of CPA firms~~((This file contains each firm's name, ownership, address, license status, and license number));~~

(4) ~~((A data base of final orders, declaratory rulings, interpretations, and policy statements abstracted from board meeting minutes;~~

~~((5) Formal disciplinary))~~ Board orders ~~((of the board));~~

~~((6))~~ (5) Board meeting minutes;

~~((7))~~ (6) Board ~~((policy manual))~~ policies;

~~((8))~~ (7) Board rules files; and

~~((9) CPA's continuing education reports and continuing education sponsor agreements; and~~

~~((10))~~ (8) Documents dealing with the regulatory, supervisory, and enforcement responsibilities of the board.

~~((The board may not give, sell, or provide access to lists of individuals requested for commercial purposes. The board provides lists of CPAs and/or CPA examination candidates to bona fide educational and professional organizations.))~~ In order to obtain a list of individuals under the provisions of RCW 42.17.260(9), educational and professional organiza-

tions must use the form provided by the board and apply for and receive recognition by the board. Fees for lists must be paid in advance.

WSR 01-07-035
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-23-052.

Title of Rule: WAC 4-25-521 Description of central and field organization of the board.

Purpose: To comply with the requirement of RCW 42.17.250 that each agency shall publish in the WAC descriptions of its central and field organization whereby the public may obtain public information.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 42.17.250.

Summary: Provides the public with detailed contact information for the board.

Reasons Supporting Proposal: To comply with legislative directive by clarifying how the public may contact the board.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The amendment provides the public with the necessary mailing address, telephone numbers, fax number, e-mail address, and website address needed to contact the board. The rule is presented in a clear rule-writing format to promote clarity and ensure effective communication.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "How can I contact the board?"; and (2) adds the board's mailing address, e-mail address, fax and telephone number, telebraille number, TT service number and website.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98504-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 8, 2001

Dana M. McInturff, CPA
 Executive Director

AMENDATORY SECTION (Amending WSR 94-02-068, filed 1/4/94, effective 2/4/94)

WAC 4-25-521 (~~(Description of central and field organization of the board.)~~) How can I contact the board? (~~(The board of accountancy is the professional licensing and disciplinary agency for certified public accountants.)~~) The board's administrative office (~~(of the board and its)~~), executive director and staff are located in Olympia, Washington. You may utilize the following numbers or addresses to contact the board:

- P.O. Box 9131, Olympia, Washington 98507-9131 (mailing address);
- 360/753-2586 (telephone);
- 360/664-9190 (fax);
- 800/833-6388 (TT service);
- 800/833-6385 (Telebraille services);
- webmaster@cpaboard.wa.gov (e-mail address); and
- www.cpaboard.wa.gov (website address).

WSR 01-07-036
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-600 Rules of professional conduct—Preamble.

Purpose: To establish and maintain high standards of competence and ethics of Washington CPAs.

Statutory Authority for Adoption: RCW 18.04.055(2).

Statute Being Implemented: RCW 18.04.055(2).

Summary: Notifies Washington CPAs in a clear rule-writing format that when they accept the right and responsibility to use the CPA title they must accept the duty to comply with rules of professional conduct.

Reasons Supporting Proposal: Rules of professional conduct provide Washington CPAs with guidance in the performance of their professional responsibilities and therefore protect the public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule advises Washington CPAs (including CPAs practicing outside the United States) of the rules of professional conduct and of their responsibility to comply.

PROPOSED

These rules are needed to establish and maintain high standards of competence and ethics to address the need to protect the public.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "What are the rules of professional conduct and what must I do to comply with these rules?"; (2) clarifies with which specific rules CPAs must comply; and (3) eliminates the out-of-country exception to the requirement to comply with the rules of conduct.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 8, 2001

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 93-22-046, filed 10/28/93, effective 11/28/93)

WAC 4-25-600 (~~Rules of professional conduct—~~
~~Preamble~~.) What are the rules of professional conduct and what must I do to comply with these rules? ((The rules of professional conduct are intended to provide guidance to all persons using the CPA title in the performance of their professional responsibilities. Compliance with the rules of professional conduct is the responsibility of all CPAs. This responsibility is met by understanding and voluntary actions, reinforcement by peers and public opinion, and ultimately through disciplinary proceedings, when necessary, against CPAs who fail to comply with the rules.

~~Acceptance of the right and responsibility to use the CPA title includes acceptance of a duty to comply with the rules of professional conduct.~~

~~The rules of professional conduct consist of both principles and specific rules. Principles are set forth in WAC 4-25-610 and comprise the framework for the rules of professional conduct. Specific rules are set forth in WAC 4-25-620 through 4-25-699. In the interpretation and enforcement of the rules of professional conduct consideration will be given to codes of other regulatory bodies, where applicable, and codes, interpretations and rulings of appropriate bodies within the profession, standards established by the profession and to any other information which is deemed pertinent to achieving compliance with the rules of professional conduct.~~

~~The rules of professional conduct apply to all persons using the CPA title and, specifically, to CPAs in the practice~~

~~of public accounting as defined in RCW 18.04.025(5), except that a CPA who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from the rules of professional conduct, so long as the CPA's conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA is practicing. However, even in such a case, if a CPA's name is associated with financial statements under circumstances that would entitle the reader to assume that United States practices are followed, the CPA will be expected to comply with the rules of professional conduct.)~~ All CPAs using the title CPA must comply with:

• The rules of professional conduct established in WAC 4-25-610 through 4-25-699;

• The Professional Code of Conduct issued by the AICPA including interpretations and ethics rulings; and

• Applicable Security and Exchange Commission rules, concept releases, interpretative releases, and policy statements.

When you accept the right and responsibility to use the CPA title you accept the duty to comply with these rules of professional conduct.

These rules of professional conduct consist of both principles and specific rules. When the board interprets and enforces the rules of professional conduct, the board may consider:

• Codes of other regulatory bodies, where applicable;

• Codes, interpretations and rulings of appropriate bodies within the profession;

• Standards established by the profession; and

• Other information which is deemed pertinent to achieving compliance with the rules of professional conduct.

If professional standards differ from board rule, board rule prevails.

WSR 01-07-037

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-610 Principles of conduct; and repealing WAC 4-25-620 When must I comply with the rules of conduct requiring integrity and objectivity? and 4-25-630 Competence.

Purpose: To identify the standards of conduct with which and when a Washington CPA using the CPA title must comply. To repeal WAC 4-25-620 and 4-25-630 that are being consolidated into WAC 4-25-610.

Statutory Authority for Adoption: RCW 18.04.055(2).

Statute Being Implemented: RCW 18.04.055(2).

Summary: Lists the principles of conduct in a clear rule-writing style with which and when a Washington CPA using

the CPA title must abide. Repeals WAC 4-25-620 and 4-25-630 that are being consolidated into WAC 4-25-610.

Reasons Supporting Proposal: Clearly identifying the standards for Washington CPAs addresses the legislative directive to protect the public. The consolidation and subsequent repeal of WAC 4-25-620 and 4-25-630 promotes clarity. There is no need for short concise rules like WAC 4-25-620 and 4-25-630 to be restated in separate rules.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule advises Washington CPAs of the standards of conduct and when they must comply with these standards. These standards are needed to establish and maintain high standards of competence and ethics to address the need to protect the public. The board proposes to consolidate WAC 4-25-620 and 4-25-630 into this rule and repeal WAC 4-25-620 and 4-25-630. WAC 4-25-620 and 4-25-630 are very short concise rules that are better included in this listing of standards. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of the rule; and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "What are the principles of conduct and when must I comply?"; (2) incorporates the provisions of WAC 4-25-620 When must I comply with the rules of conduct requiring integrity and objectivity and repeals WAC 4-25-620; (3) incorporates the provision of WAC 4-25-630 Competence and repeals WAC 4-25-620 [4-25-630]; and (4) is written in a clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 9, 2001

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 93-22-046, filed 10/28/93, effective 11/28/93)

WAC 4-25-610 ((Principles of conduct.)) What are the principles of conduct and when must I comply with the principles? ((The principles of conduct are as follows:

~~**Professional demeanor**—In carrying out their responsibilities, professional persons using the CPA title shall exercise professional judgment in all their activities.~~

~~**The public interest**—Persons using the CPA title shall accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism.~~

~~**Integrity**—To maintain and broaden public confidence persons using the CPA title shall perform all professional responsibilities with the highest sense of honesty.~~

~~**Objectivity**—Objectivity is to be maintained by persons using the CPA title. Specifically, persons using the CPA title shall:~~

~~(1) Avoid rendering professional services where actual or perceived conflicts of interest exist;~~

~~(2) Be independent in fact and appearance when providing auditing or other attestation services.~~

~~**Due care**—Persons using the CPA title shall comply with state law and the profession's technical and ethical standards, maintain competence and strive to improve the quality of services, and discharge professional responsibility to the best of the CPA's ability.)) If you use the title CPA, you must comply with the following principles of conduct. You must:~~

~~(1) Act in a way that will serve the public interest, maintain and honor the public's trust and demonstrate a commitment to professionalism;~~

~~(2) Maintain and broaden public confidence by performing all professional responsibilities with the highest sense of integrity and honesty;~~

~~(3) Not misrepresent facts or subordinate your professional judgment to others;~~

~~(4) Maintain objectivity;~~

~~(5) Avoid rendering professional services where actual or perceived conflicts of interest exist and remain free of conflicts of interest unless such conflicts are specifically permitted by board rule and professional standards; and~~

~~(6) Be independent in fact and appearance when providing attestation services.~~

~~(7) Demonstrate due care by:~~

~~• Complying with all federal and state laws and the profession's technical and ethical standards;~~

~~• Maintaining competence;~~

~~• Striving to improve the quality of services; and~~

~~• Discharging your professional responsibility to the best of your ability.~~

~~(8) Not undertake any endeavor for the performance of services as a CPA unless you reasonably expect to complete those services with professional competence.~~

WSR 01-07-038
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-622 Independence.

Purpose: To identify when a CPA in public practice must be independent.

Statutory Authority for Adoption: RCW 18.04.055(2).

Statute Being Implemented: RCW 18.04.055(2).

Summary: Requires a CPA in public practice to be independent when performing an audit, review, certain compilation, or other attest services and lists specific acts as examples of impairment of independence in a clear format.

Reasons Supporting Proposal: Clearly identifying when a CPA must be independent and examples of specific acts that would impair a CPA's independence ensures fairness in interpretation and application of the rule for CPAs and addresses the legislative directive to protect the public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule requires Washington CPAs to be independent when performing an audit, review, certain compilations, or other attest services and lists specific acts as examples of impairment of independence. This standard is needed to establish and maintain high standard of ethics to address the need to protect the public. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of the rule; and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "When must I be independent?"; (2) changes all references to "CPA" to "licensee"; (3) requires independence when a CPA performs other attest "services" rather than other attest "engagements when required by board rules or other professional standards"; and (4) is written in a clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 15, 2001

Dana M. McInturff, CPA

Executive Director

AMENDATORY SECTION (Amending WSR 98-12-049, filed 5/29/98, effective 6/29/98)

WAC 4-25-622 (~~Independence~~) When must I be independent? (1) If you are a CPA in public practice, you must be independent in the performance of the following:

- (a) An audit or review of a financial statement; or
- (b) A compilation of historical or prospective financial statement when the ~~((CPA's))~~ licensee's report does not disclose a lack of independence; or
- (c) Other attest ~~((engagements when required by board rules or other professional standards such as the statements of standards for attestation engagements))~~ services.

(2) The following specific acts are examples of impairment of independence. The board does not intend this listing to be all inclusive.

(a) During the period of a professional engagement, or at the time of expressing an opinion, a ~~((CPA))~~ licensee or a ~~((CPA's))~~ firm:

- (i) Had or was committed to acquire any direct or material indirect financial interest in the enterprise.
- (ii) Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise.

(iii) Had any joint closely-held business investment with the enterprise or with any officer, director, or principal stockholder thereof which was material in relation to the ~~((CPA's))~~ licensee's net worth or the net worth of the ~~((CPA's))~~ firm.

(iv) Had any loan to or from the enterprise or any officer, director, or principal stockholder of the enterprise except under certain circumstances for home mortgages, other secured loans, loans not material to the ~~((CPA's))~~ licensee's net worth, and various personal loans.

(b) During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion, the ~~((CPA))~~ licensee or ~~((a CPA's))~~ licensee's firm:

- (i) Was connected with the enterprise as a promoter, underwriter, or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee; or
- (ii) Was a trustee for any pension or profit-sharing trust of the enterprise.

PROPOSED

WSR 01-07-039
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-640 Clients' confidential information.

Purpose: To identify a CPA's obligations with respect to clients' confidential information.

Statutory Authority for Adoption: RCW 18.04.055(2).

Statute Being Implemented: RCW 18.04.055(2).

Summary: Prohibits a CPA from disclosing any confidential client information without the consent of the client; clarifies when the rule does not affect a CPA's disclosure of information, and outlines a CPA's obligations with respect to the records of a client.

Reasons Supporting Proposal: Clearly identifying a CPA's obligations with respect to clients' confidential information ensures fairness in interpretation and application of the rule for CPAs and addresses the legislative directive to protect the public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule incorporates parts of statute (RCW 18.04.390 and [18.04.]405) into the board's rules of professional conduct. The rule prohibits Washington CPAs from disclosing any confidential client information without the consent of the client; clarifies when the rule does not affect a CPA's disclosure of client information, and outlines a CPA's obligations with respect to the records of a client in a clear format. This standard of professional conduct is needed to protect the public by ensuring privacy and record accessibility. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of the rule; and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "What are a CPA's obligations with respect to clients' confidential information?"; (2) changes all references to "licensee" to "CPA"; and (3) is written in a clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 15, 2001

Dana M. McInturff, CPA

Executive Director

AMENDATORY SECTION (Amending WSR 93-22-046, filed 10/28/93, effective 11/28/93)

WAC 4-25-640 ~~((Clients' confidential information.))~~
What are a CPA's obligations with respect to clients' confidential information? (1) **Confidential client communication.** The term "client" as used throughout this section shall include a former, current, or prospective client. ~~((A licensee or any))~~ If you are a CPA or a partner, officer, shareholder or employee of a ((licensee shall not without the consent of the client or the heirs, successors or personal representatives of the client)) firm, you must not disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services without the consent of the client or the heirs, successors or personal representative of the client.

This rule does not:

(a) Affect in any way a ~~((licensee's))~~ CPA's obligation to comply with a validly issued subpoena or summons enforceable by order of a court; or

(b) Prohibit disclosures in the course of a quality review of a ~~((licensee's))~~ CPA's professional services; or

(c) Preclude a ~~((licensee))~~ CPA from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board. However, a ~~((licensee))~~ CPA or any partner, officer, shareholder or employee of a ~~((licensee))~~ firm shall not disclose or use to their own advantage any confidential client information that comes to their attention in carrying out their official responsibilities.

(2) **Client records.** ~~((A licensee shall))~~ If you are a CPA, you must furnish ((to his or her)) your client or the client's heirs, successors or personal representatives, upon request and reasonable notice:

(a) A copy of ~~((the licensee's))~~ your working papers, to the extent ~~((that such))~~ the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client, that the licensee removed from the client's premises or received for the client's account; but the licensee may make and retain copies of such documents of the client when they form the basis for the work ((done by the licensee)) you performed.

WSR 01-07-040
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-650 Acts discreditable.

Purpose: To identify in a clear rule-writing format what acts by persons using the title CPA are considered discreditable and subjects the CPA to discipline.

Statutory Authority for Adoption: RCW 18.04.055(2).

Statute Being Implemented: RCW 18.04.055(2).

Summary: Lists acts that the board considers to be discreditable for a person using the CPA title.

Reasons Supporting Proposal: Clearly identifying what acts the board considers discreditable ensures fairness in interpretation and application of the rule for CPAs and addresses the legislative directive to protect the public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule of professional conduct is directed at persons using the title CPA. It clearly discloses what acts the board considers discreditable. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of the rule; and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "What acts are considered discreditable?"; and (2) is written in a clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 15, 2001

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 93-22-090, filed 11/2/93, effective 12/3/93)

~~WAC 4-25-650 ((Acts discreditable.))~~ What acts are considered discreditable? ((A person using the CPA title shall not commit, or allow others to commit in the CPA's name, any act that reflects adversely on the CPA's fitness to represent himself or herself as a CPA.

~~A person using the CPA title shall not seek to obtain clients by the use of coercion, intimidation or harassing conduct.~~

~~A person using the CPA title shall not permit others to carry out on his or her behalf, either with or without compensation, acts which, if carried out by the CPA, would place the CPA in violation of the rules of conduct.))~~ If you use the CPA title you must not:

• Commit, or allow others to commit in your name, any act that reflects adversely on your fitness to represent yourself as a CPA;

• Seek to obtain clients by the use of coercion, intimidation or harassing conduct; or

• Permit others to carry out on your behalf, either with or without compensation, acts which, if carried out by you, would violate the rules of conduct.

WSR 01-07-041

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-720 CPA examination—Application.

Purpose: To identify the requirements to apply for the CPA exam; to establish one application due date; to eliminate the provision allowing candidates to sit for the exam without having met the education requirements.

Statutory Authority for Adoption: RCW 18.04.055(11).

Statute Being Implemented: RCW 18.04.055(11).

Summary: Lists requirements a candidate for the CPA exam must meet to apply for the exam in a clear rule-writing format; establishes one application due date; eliminates the one hundred twenty day provision allowing certain candidates to sit for the exam without having met the board's education requirements.

Reasons Supporting Proposal: Clearly identifying the requirements a candidate for the CPA exam must meet to apply for the CPA exam ensures fairness in interpretation and application of the rule for candidates taking the CPA exam.

The proposal to establish one application due date (a received by date) makes the rule less ambiguous and eliminates the confusion (both for applicants and those processing applications) created by having a postmark due date and a received by due date.

Elimination of the one hundred twenty day provision that allows certain candidates to sit for the exam without having

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met the board's education requirements will affect the requirement for all applicants to demonstrate they meet the board's education requirements will affect the requirement for all applicants to demonstrate they meet the board's education requirements **prior** to being eligible to take the CPA examination. A good portion of the candidates determined ineligible to take the examination results from an improper understanding of the one hundred twenty day provision and/or incomplete documentation that they will complete the education requirements within one hundred twenty days. Elimination of the one hundred twenty day provision will decrease the number of candidates determined to be ineligible and also decrease the number of appeals.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule outlines the requirements for individuals making application for the CPA exam such as how to file an application, the application due date, timing for completion and documentation of the education requirements, when exam admission notices will be mailed, the passing grade, conditional credit, proctoring, and the completion of an ethics exam. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of the rule; and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "What are the requirements to apply for the CPA examination?"; (2) clarifies the application requirements by establishing one application due date - a received by date; (3) eliminates the one hundred twenty day provision that allows certain candidates to sit for the exam without having met the board's education requirements; and (4) is written in a clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 15, 2001

Dana M. McInturff, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 93-12-070, filed 5/27/93, effective 7/1/93)

~~WAC 4-25-720 ((CPA examination—Application.))~~

What are the requirements to apply for the CPA examination? ~~((Applications to take the certified public accountant examination must be made on a form provided by the board and filed with the board on or before March 1 for the May examination and September 1 for the November examination. Applications for the May examination must be postmarked by March 1 (and received by March 10). Applications for the November examination must be postmarked by September 1 (and received by September 10).~~

~~An application will not be considered filed until the examination fee has been received.~~

~~An applicant who fails to appear for examination or reexamination shall forfeit the fees charged for examination and reexamination. The board may, upon showing of good cause, refund a portion of the examination fee.~~

~~Notice of the time and place of the examination shall be mailed at least ten days prior to the date set for the examination to each candidate whose application to sit for the examination has been approved by the board.~~

~~(1) A passing grade for each section shall be seventy-five. The board uses the Advisory Grading Services of the American Institute of Certified Public Accountants.~~

~~An applicant, at each sitting of the examination in which the applicant takes any section of the examination, must take all sections not previously passed.~~

~~(2) Ethics exam. In addition to the uniform CPA examination, candidates shall be required to pass an examination, or alternatively to complete a course of study, prescribed by or acceptable to the board, in professional ethics.~~

~~(3) Proctoring CPA exam candidates. The board may agree to request the assistance of another accountancy board in proctoring Washington's applicants at out-of-state exam sites and may agree to proctor another accountancy board's applicants at a Washington exam site, both subject to space and staffing constraints. The board will not arrange for out-of-state proctoring for applicants domiciled out of state who wish to take the uniform CPA exam as Washington candidates. Such applicants must take the CPA exam in Washington on a space available basis.~~

~~(4) CPA exam—Completion of education requirement. A person who has met the education requirement of WAC 4-25-710, or who expects to meet it within one hundred twenty days following the examination, or with respect to whom it has been waived, is eligible to take the uniform CPA examination provided all other requisites have been satisfied. If a person is admitted to the examination on the expectation that he or she will complete the educational requirement within one hundred twenty days, no certificate may be issued, nor credit for the examination or any section of it be given, unless this requirement is in fact completed within that time or within such time as the board in its discretion may determine upon application.))~~ (1) How to file an application: Your application to take the certified public accountant examination must be made on a form provided by the board and it must be timely filed with the board or its representative. Applications for the May examination must be received by

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March 10 and applications for the November examination must be received by September 10. An application will not be considered filed until all required documentation and the examination fee have been received. If you fail to appear for examination or reexamination, you will forfeit the fees charged for examination or reexamination. The board may, upon showing of good cause, refund a portion of the examination fee.

(2) Completion of education requirement: To be eligible to take the examination, official transcripts or other documentary evidence acceptable to the board of having met the education requirement of WAC 4-25-710 must be received by the board by the filing date identified in subsection (1) of this section.

(3) Admission notice: The board, or its representative, will mail to each candidate whose application has been approved by the board a notice of the time and place of the examination. If your application is approved, this notice will be mailed to you at least ten days prior to the date set for the examination.

(4) Passing grade: A passing grade for each section shall be seventy-five. The board uses the advisory grading services of the AICPA.

(5) Conditional credit: Each time you take the examination you must take all sections you have not previously passed. In order to retain conditional credit for passing a section of the examination, you must pass a minimum of two sections and obtain a grade of fifty on all sections you did not pass.

(6) Proctoring CPA examination candidates: The board may agree to request the assistance of another accountancy board in proctoring Washington's applicants at out-of-state examination sites and may agree to proctor another accountancy board's applicants at a Washington examination site, both subject to space and staffing constraints. The board will not arrange for out-of-state proctoring for applicants domiciled out-of-state who wish to take the examination as Washington candidates.

(7) Ethics examination: In addition to passing the CPA examination, you must pass an ethics examination prescribed by the board.

WSR 01-07-042
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: WAC 4-25-721 CPA examination—Cheating policy.

Purpose: To identify and expand what the board considers as cheating on the CPA exam, what actions the board may take if cheating is suspected, and to clarify what sanctions the board may impose if cheating occurs.

Statutory Authority for Adoption: RCW 18.04.055(11).

Statute Being Implemented: RCW 18.04.055(11).

Summary: Defines and expands what the board considers to be cheating on the CPA exam and clarifies what sanctions the board may impose if cheating occurs.

Reasons Supporting Proposal: Clearly defining what the board considers to be cheating, what the board may do if cheating is suspected, and what sanctions the board may impose if cheating occurs ensures candidates for the CPA exam are sufficiently informed and ensures fairness in interpretation and application of the rule.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule provides CPA exam candidates with a listing of what the board considers to be cheating, what actions the board may take if cheating is suspected, and what sanctions the board may impose if cheating occurs. The goal of the amendment is to promote clarity; ensure effective communication; ensure fairness in interpretation and application of the rule; and promote efficiencies through minimizing gray areas.

Proposal Changes the Following Existing Rules: The amendment: (1) Changes the title of the rule to "What does the board consider to be cheating on the CPA examination, what actions may the board take if cheating is suspected, and what sanctions may the board impose if cheating occurs?"; (2) expands the definition of what actions are considered to be cheating to include copying, transmitting, or taking parts of exam booklets, answer sheets, essay question paper, or notes; (3) clarifies what sanctions the board may order if the board concludes cheating occurred; and (4) is written in a clear rule-writing format.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 15, 2001

Dana M. McInturff, CPA

Executive Director

AMENDATORY SECTION (Amending WSR 93-12-069, filed 5/27/93, effective 7/1/93)

WAC 4-25-721 ((CPA examination—Cheating policy-)) What does the board consider to be cheating on the CPA examination, what actions may the board take if cheating is suspected, and what sanctions may the board impose if cheating occurs? (1) ((Purpose. The purpose of this cheating policy is to define cheating for purposes of the CPA examinations and the penalties the board may impose for cheating-)) Cheating includes, but is not limited to:

(a) Communication between candidates inside or outside of the examination room during the examination((-));

(b) Unauthorized communication with others outside of the examination room during the examination((-));

(c) Substitution by a candidate of another person to write one or more of the examination papers for him/her((-));

(d) ((Reference to)) Referencing crib sheets, text books, or other material inside or outside the examination room during the examination((-);

(e) Copying or attempting to copy another candidate's answers;

(f) Taking, removing, copying, transmitting, attempting to take, attempting to remove, attempting to copy, or attempting to transmit an examination booklet or paper, answer sheet, essay question paper, or notes from the examination site;

(g) Disclosing or attempting to disclose examination questions and/or answers to others;

(h) Bringing unauthorized prohibited items into the examination site; or

(i) Possessing unauthorized prohibited items in the examination site.

(2) ((Policy-)) Cheating on the CPA examination is dishonesty directly related to the professional responsibilities of a CPA. All candidates involved in cheating may be subject to penalties, although not necessarily of the same severity. When determining appropriate sanctions for cheating, the board may impose one or more of the following penalties:

(a) Enter a failing grade for any or all parts of the candidate's examination;

(b) Bar a candidate from writing future examinations;

(c) ((Expel-a)) Impose a fine up to one thousand dollars and recovery of investigative and legal costs;

(d) Notify other jurisdictions of the board's conclusions and order.

(3) If a candidate is suspected of cheating, a board representative may expel the candidate from the examination ((room-

Board representatives may)), move ((a)) the candidate suspected of cheating away from other candidates and/or confiscate unauthorized prohibited items. ((Board representatives may request any candidate suspected of cheating or who may have observed cheating to remain for a reasonable period of time following an examination session for questioning-)) The board representatives may require a candidate suspected of cheating, or a candidate who may have observed cheating, to respond to board inquiry. The board may schedule a hearing to determine the validity of the charge of cheating.

~~((All candidates involved in cheating may be subject to penalties, although not necessarily of the same severity.~~

~~Other jurisdictions to which a candidate may apply for the examination may be notified of the board's conclusions and order-))~~

WSR 01-07-043

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed March 15, 2001, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-19-010.

Title of Rule: Repealing WAC 4-25-722 CPA examination—Content.

Purpose: To repeal WAC 4-25-722 that is too vague to be useful.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055(11).

Summary: Repeals WAC 4-25-722 that is too vague to be useful.

Reasons Supporting Proposal: WAC 4-25-722 is never referenced and is too vague to be useful.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dana M. McInturff, CPA, 711 South Capitol Way, #400, Olympia, (360) 586-0163.

Name of Proponent: Board of Accountancy, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The board proposes repealing WAC 4-25-722. The rule is too vague to be useful and is never referenced. Statute states the board may establish the content of the examination by rule. The board does not believe a rule is mandated by statute.

Proposal Changes the Following Existing Rules: Removes an unnecessary rule thereby reduces regulation.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

RCW 34.05.328 does not apply to this rule adoption. The Board of Accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

Hearing Location: Capitol Court Building, 110 Capitol Way South, 11th and Capitol Way, Room 135, Olympia, WA, on April 27, 2001, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by April 20, 2001, TDD (800) 833-6384, or (360) 664-9194.

Submit Written Comments to: Dana M. McInturff, P.O. Box 9131, Olympia, WA 98507-9131, fax (360) 664-9190, by April 26, 2001.

Date of Intended Adoption: April 27, 2001.

March 9, 2001

Dana M. McInturff, CPA
Executive Director

WSR 01-07-044
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Adult Services Administration)
[Filed March 15, 2001, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-01-165.

Title of Rule: Private duty nursing, new sections WAC 388-71-0900 to 388-71-0965.

Purpose: To develop rules for private duty nursing for persons age eighteen and older. Rules for private duty nursing were formerly included in Medical Assistance Administration (MAA) rules, which now apply only to children.

Other Identifying Information: Aging and Adult Services Administration (AASA) assumed the private duty nursing program for adults from MAA. MAA's rules are now specific to children.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 42 C.F.R. 440.80.

Statute Being Implemented: RCW 74.08.090.

Summary: Describes financial, medical, and program eligibility, who can receive private duty nursing services, who can provide the services and the requirements that must be met, program limitations, and services a person can receive with private duty nursing, if eligible.

Reasons Supporting Proposal: Develops program criteria for the private duty nursing program for adults. AASA is required to develop rules for adults because MAA's rules for private duty nursing now apply only to children.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sue McDonough, 640 Woodland Square Loop, Lacey, WA, (360) 725-2533.

Name of Proponent: Department of Social and Health Services, Aging and Adult Services Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Rules detail private duty nursing for adults. Rules for private duty nursing were formerly part of MAA's rules for private duty nursing. MAA rewrote its rules to apply only to children. AASA requires rules so that private duty nursing for adults is defined and clarified.

Proposal Changes the Following Existing Rules: Adopts rules in chapter 388-71 WAC. Some of this language was in WAC 388-86-071, which was repealed in WSR 01-05-040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because these rules relate to client medical and financial eligibility. Rules incorporate rules formerly found in WAC 388-86-071 and policy.

RCW 34.05.328 does not apply to this rule adoption. Rules do meet the definition of "significant legislative rule," but the department is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: DSHS Office Building 2, Auditorium, 14th Avenue and Jefferson Street, Olympia, WA 98504, on April 24, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact DSHS Rules Coordinator by April 17, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopeKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by April 24, 2001.

Date of Intended Adoption: No sooner than April 25, 2001.

March 14, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

PRIVATE DUTY NURSING

NEW SECTION

WAC 388-71-0900 What is the intent of WAC 388-71-0900 through 388-71-0960? (1) The intent of WAC 388-71-0900 through WAC 388-71-0960 is to:

(a) Describe the eligibility requirements under which an adult age eighteen and older may receive private duty nursing (PDN) services through aging and adult services;

(b) Assist clients and families to support clients in their own homes; and

(c) Describe the requirements applicants/clients families, home health agencies, and privately contracted registered nurses (RNs) and licensed practical nurses (LPNs) must meet in order for services to be authorized for PDN.

NEW SECTION

WAC 388-71-0905 What is private duty nursing (PDN) for adults? Private duty nursing (PDN):

(1) Is an optional community-based Medicaid service for adults eighteen or older with complex medical needs who require at least four continuous hours of skilled nursing care on a day to day basis;

(2) Provides an alternative to institutionalization in a hospital or nursing facility; and

(3) Is a resource of last resort and is not intended to supplant or replace other means of providing the services.

NEW SECTION

WAC 388-71-0910 Am I financially eligible for Medicaid-funded private duty nursing services? In order to be financially eligible for Medicaid-funded PDN, you must:

(1) Meet Medicaid requirements under the:

(a) Categorically needy program; or

(b) Medically needy program.

(2) Use private insurance as first payer, per Medicaid rules. Private insurance benefits which cover hospitalization and in-home services must be ruled out as the first payment source to PDN.

PROPOSED

NEW SECTION

WAC 388-71-0915 Am I medically eligible to receive private duty nursing services? In order to be medically eligible for PDN, the community nurse consultant (CNC) must assess you and determine that you:

(1) Be assessed by a CNC as requiring care in a hospital or meeting nursing facility level of care, as defined in WAC 388-71-0435(4).

(2) Have a complex medical need that requires four or more hours of continuous skilled nursing care which can be safely provided outside a hospital or nursing facility; and

(3) Are technology-dependent daily, which means you require at least one of the following:

(a) A mechanical ventilator or other respiratory support at least part of each day;

(b) Tracheostomy tube care/suctioning;

(c) Intravenous/parenteral administration of medications; and

(d) Intravenous administration of nutritional substances.

(4) Require services that are medically necessary.

NEW SECTION

WAC 388-71-0920 How is my eligibility determined?

In order to be eligible for Medicaid-funded PDN services:

(1) A CNC must use the comprehensive assessment (CA) to assess:

(a) Unmet skilled care needs;

(b) Informal supports; and

(c) Other services paid for by the department.

(2) Your primary care physician must:

(a) Document your medical stability and appropriateness for PDN;

(b) Provide orders for medical services; and

(c) Document approval of the service provider's plan of care.

(3) You must also:

(a) Be able to supervise your care (provider) or your guardian must be available on the premises; and

(b) Have family or other appropriate support who is responsible for assuming a portion of your care.

NEW SECTION

WAC 388-71-0925 Am I required to pay participation toward PDN services? (1) Except as provided in subsection (2) of this section, you are not required to pay any participation toward PDN services.

(2) You may be required to pay participation if you are receiving home and community program services, as described in WAC 388-71-0405 and 388-71-0470.

NEW SECTION

WAC 388-71-0930 Are PDN costs subject to estate recovery? If you are receiving PDN services, the cost of services is subject to estate recovery when you reach the age of fifty-five, per chapter 388-527 WAC.

NEW SECTION

WAC 388-71-0935 Who can provide my PDN services? In addition to a family member(s) or a personal aide providing self-directed care under RCW 74.39.050:

(1) A Washington state licensed and contracted home health provider can provide your PDN services.

(2) With an approved exception to policy (ETP), a private (nonhome health agency) registered nurse (RN) or licensed practical nurse (LPN) under the direction of the physician can provide your PDN services only when:

(a) The geographic location precludes a contracted home health agency from providing services to you; or

(b) No contracted home health agency is willing to provide PDN services to you.

NEW SECTION

WAC 388-71-0940 Are there limitations or other requirements for PDN? The limits to PDN services are:

Your PDN cannot exceed sixteen hours a day. The hours are determined through a CA completed by a CNC.

(1) Trained family must provide for any hours above your assessment determination, or you or your family must pay for these additional hours;

(2) In instances where your family is temporarily absent due to vacations, PDN must be:

(a) Paid for by you or your family; or

(b) Provided by other trained family. If this is not possible, you may need placement in a long-term care setting during their absence.

(3) You may use respite care if you and your unpaid family caregiver meet the eligibility criteria defined in WAC 388-71-1075.

(4) You may receive additional hours, up to thirty days only when:

(a) Your family is being trained in care and procedures;

(b) You have an acute episode that would otherwise require hospitalization;

(c) Your caregiver is ill or temporarily unable to provide care; or

(d) There is a family emergency.

NEW SECTION

WAC 388-71-0945 What requirements must a home health agency meet in order to provide and get paid for my PDN? A home health agency must:

(1) Be licensed and contracted by Washington state. A license is obtained through the department of health. A contract is obtained through aging and adult services administration;

(2) Have physician orders;

(3) Have a detailed service plan, including time sheets, that is reviewed at least every six months by the physician and CNC case manager;

(4) Submit timely and accurate invoices to the social services payment system (SSPS).

NEW SECTION

WAC 388-71-0950 What requirements must a private RN or LPN meet in order to provide and get paid for my PDN services? In order to be paid by the department, a private RN or LPN must:

- (1) Have a license in good standing;
- (2) Complete a contract;
- (3) Provide services according to the service plan under the supervision/direction of a physician;
- (4) Complete a background inquiry application. This will require fingerprinting if the RN or LPN has lived in the state of Washington less than three years;
- (5) Have no conviction for a disqualifying crime, as stated in RCW 43.43.830 and 43.43.842;
- (6) Have no stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry with a finding of guilt for abuse, neglect, abandonment or exploitation;
- (7) Complete time sheets monthly;
- (8) Document notes regarding your services provided per the service plan, which are reviewed at least every six months by the CNC case manager; and
- (9) Submit timely and accurate invoices to SSPS.

NEW SECTION

WAC 388-71-0955 Can I receive PDN in a licensed adult family home (AFH)? You may be eligible to receive PDN in a licensed adult family home (AFH). In order for you to receive these services, the AFH provider must:

- (1) Have an approved exception to policy;
- (2) Possess a WA state registered nurse license;
- (3) Sign a contract amendment stating they will ensure twenty-four-hour personal care and nursing care services pursuant to the Nurse Practice Act;
- (4) Provide the PDN services to you. Your service plan cannot exceed a maximum of eight PDN care hours per day;
- (5) Have a nursing service plan prescribed by your primary physician that allows you to reside in an AFH. The physician is responsible for:
 - (a) Overseeing your plan of care;
 - (b) Monitoring your medical stability; and
 - (c) Supervising the safety of the AFH's nursing care services.
- (6) Keep records and have your service plan reviewed at least every six months.

NEW SECTION

WAC 388-71-0960 Can I receive services in addition to PDN? In addition to PDN services, you may be eligible to receive personal care and other household services through COPES or Medicaid personal care (MPC), from a contracted home care agency or contracted individual provider (IP), for unmet personal care needs not performed by your family/informal support system.

NEW SECTION

WAC 388-71-0965 Can I choose to self-direct my care if I receive PDN? You may choose to self-direct your care, as outlined in RCW 74.39.050.

WSR 01-07-045
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Adult Services Administration)
 [Filed March 15, 2001, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-17-154.

Title of Rule: WAC 388-71-0500 to 388-71-0560, individual provider and home care agency provider qualifications.

Purpose:

- To further define provider qualifications and include home care agencies into these qualifications.
- Adds rules that require fingerprint-based background checks for individual providers and home care agency providers who have lived in the state of Washington less than three years.
- Adds four drug-related crimes to the list of disqualifying crimes.
- Clarifies language by removing reference to "adults," as needed.
- Includes GAU provision for spousal providers, which were previously part of chapter 388-15 WAC.

Repeals WAC 388-71-0545, 388-71-0550 and 388-71-0555, and moves language into other sections.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39A.095.

Statute Being Implemented: RCW 74.39A.095, 43.20A.710, 74.39A.090, 74.39A.050, chapter 74.39A RCW.

Summary: Further defines provider qualifications for individual providers and home care agency providers, adds language about fingerprint-based background check requirements for providers who have lived in the state of Washington less than three years, and adds four drug-related crimes to the list of disqualifying crimes.

Reasons Supporting Proposal: Further defines provider qualifications as mandated by legislation passed in 2000.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sue McDonough, 640 Woodland Square Loop, Lacey, WA, (360) 725-2533.

Name of Proponent: Department of Social and Health Services, Aging and Adult Services Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Rules define provider qualifications for individual

providers and home care agency providers who provide in-home services to clients on the COPES, Medicaid personal care, and chore programs. Rules incorporate changes in statute, which now require fingerprint-based background checks on individual providers and home care agency providers who have lived in Washington state less than three years and adds four drug-related crimes to the list of disqualifying crimes. Clarifies language to include providers of DDD clients.

Proposal Changes the Following Existing Rules: Defines provider qualifications, changes sections for clarity, and adds new language to reflect changes in statute. Repeals WAC 388-71-0545, 38-71-0550 and 388-71-0555, which have been incorporated into other WAC sections.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the content of the rules is dictated by statute. There is no impact on small businesses because costs were absorbed by the department.

RCW 34.05.328 does not apply to this rule adoption. Rules do meet the definition of "significant legislative rule," but the department is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(iv)(vii).

Hearing Location: DSHS Office Building 2, Auditorium, 14th Avenue and Jefferson Street, Olympia, WA 98504, on April 24, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by April 17, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopecKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by April 24, 2001.

Date of Intended Adoption: No sooner than April 25, 2001.

March 14, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0500 What is the purpose of WAC 388-71-0500 through 388-71-0580? ~~((An adult))~~ A client/legal ((guardian)) representative may choose an individual provider or a home care agency provider. The intent of WAC 388-71-0500 through 388-71-0580 is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-15-202 (25) and (26);

(2) Qualifications of a home care agency provider, as defined in WAC 388-15-202(2) and chapter 246-336 WAC;

(3) Conditions under which the department ~~((/))~~ or the area agency on aging (AAA) will pay for the services of an individual provider ~~((and~~

~~((4) Conditions under which the department/AAA may deny a contract to an individual provider or terminate payment to an individual provider))~~ or a home care agency provider.

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0505 How does ~~((an adult))~~ a client hire an individual provider? The ~~((adult))~~ client, or legal ~~((guardian, as defined in chapter 11.88 RCW))~~ representative:

(1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider;

(2) Establishes an employer/employee relationship with the provider; and

(3) May receive assistance from the social worker/case manager or other resources in this process.

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0510 How does a person become an individual provider? In order to become an individual provider, a person must:

(1) Be eighteen years of age or older;

(2) Provide the social worker/case manager/designee with:

(a) Picture identification; and

(b) A Social Security card; or

(c) Authorization to work in the United States ~~((;)).~~

(3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW ~~((;)).~~

(a) Preliminary results may require a thumb print ~~((or an interstate))~~ for identification purposes;

(b) An FBI fingerprint-based background check ~~((and))~~ is required if the person has lived in the state of Washington less than three years.

(4) Sign a home and community-based service provider contract/agreement to provide services to a COPES or Medicaid personal care client ~~((, or other department contract or agreement)).~~

NEW SECTION

WAC 388-71-0513 Is a background check required of a home care agency provider? In order to be a home care agency provider, a person must complete the department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years.

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency provider when employed to provide care to ~~((an adult))~~ a client? An individual provider or home care agency provider must:

(1) Understand the client's service plan (~~(, which is written in clear language,))~~ that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's service plan, within the scope of practice in WAC 388-15-202(38) and 388-15-203;

(3) Accommodate client's individual preferences and differences in providing care, within the scope of the service plan;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the service plan;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department ~~((f))~~ or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. Notification to the client/legal guardian must:

(a) Give at least two weeks' notice, and

(b) Be in writing.

(10) ~~((In addition to the above requirements, the individual provider and home care agency provider must:~~

~~(a)) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and~~

~~((b) Maintain certain employment standards, which include:~~

~~(i) Maintaining a drug/alcohol free work place;~~

~~(ii) Absence of criminal activity; and~~

~~(iii) Skills, knowledge, ability, and willingness to provide services))~~ (11) Comply with all applicable laws and regulations.

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0540 When will the department ~~((f))~~ or AAA ~~((pay anyone the adult client chooses to be))~~ deny payment for services of an individual provider or home care agency provider? The department ~~((f))~~ or AAA ~~((cannot contract or pay))~~ will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), ~~((unless the client is on the chore personal care program;~~

~~(2))~~ except in the case of an individual provider for a Chore services client. Note: For Chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under this chapter;

~~((as listed in))~~ (3) Has been convicted of a disqualifying crime, ((as listed in)) under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

~~((3))~~ (4) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as ~~((per))~~ defined in chapter 74.34 RCW ~~((or RCW 74.39A.050(8))~~);

~~((4))~~ (5) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations; ~~((and/or~~

~~(5) Is determined by the department/AAA to be unable to appropriately meet the client's needs, per RCW 74.39A.095 (7) or (8))~~ (6) Does not successfully complete the training requirements within the time limits required in WAC 388-71-0520;

(7) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(8) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(9) In addition, the department or AAA may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

NEW SECTION

WAC 388-71-0546 When can the department or AAA reject the client's choice of an individual provider? The department or AAA may reject a client's request to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842;

(3) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;

(4) Other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

NEW SECTION

WAC 388-71-0551 When can the department or AAA terminate or summarily suspend an individual provider's contract? The department or AAA may take action to terminate an individual provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department or AAA may summarily suspend the contract

pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

- (1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;
- (2) Using or being under the influence of alcohol or illegal drugs during working hours;
- (3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;
- (4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;
- (5) A complaint from the client or client's representative that the client is not receiving adequate care;
- (6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or
- (7) Failure to respond appropriately to emergencies.

NEW SECTION

WAC 388-71-0556 When can the department or AAA otherwise terminate an individual provider's contract? The department or AAA may otherwise terminate the individual provider's contract for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0560 What are the ~~((adult))~~ client's rights if the department denies, terminates, or summarily suspends an individual provider's contract? If the department denies, terminates, or summarily suspends the individual provider's contract, the client has the right to:

- (1) A fair hearing to appeal the decision, per chapter ~~((388-08))~~ 388-02 WAC, and
- (2) Receive services from another currently contracted individual provider or home care agency provider, or other options the client is eligible for, if a contract is summarily suspended.
- (3) The hearing rights afforded under this section are those of the client, not the individual provider.

AMENDATORY SECTION (Amending WSR 00-03-043, filed 1/13/00, effective 2/13/00)

WAC 388-71-0580 Self-directed care—Who must direct self-directed care? Self-directed care under chapter 74.39 RCW must be directed by ~~((the))~~ an adult client for whom the health-related tasks are provided. The adult client is responsible to train the individual provider in the health-related tasks which the client self-directs.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 388-71-0545 | Under what conditions will the department/AAA deny payment to or terminate the contract of an individual provider, or deny payment to a home care agency provider? |
| WAC 388-71-0550 | Are there other conditions under which the department/AAA may deny payment, or deny or terminate a contract to an individual provider? |
| WAC 388-71-0555 | When can the department/AAA summarily suspend an individual provider's contract? |

WSR 01-07-051
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 16, 2001, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-04-036 and 01-03-119.

Title of Rule: Chapter 388-472 WAC, Client rights and responsibilities; and chapter 388-200 WAC, Necessary supplemental accommodations.

Purpose: WAC 388-200-1050, 388-200-1300 and 388-200-1350, necessary supplemental accommodation, are being repealed and rewritten as a part of the client rights and responsibilities chapter, chapter 388-472 WAC. WAC 388-472-0005 Client rights and responsibilities, will be rewritten in order to be in the same writing style as the remainder of the chapter. All of chapter 388-472 WAC will meet the standards of Executive Order No. 97-02 for regulatory improvement.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

Statute Being Implemented: Chapters 74.04 and 74.08 RCW.

Summary: The rules are being rewritten to meet the WAC migration and clear-writing mandates.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carla Gira, Program Manager, Lacey Government Center, 1009 College Street S.E., Lacey, WA 98503, (360) 413-3264.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

PROPOSED

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains what client rights and responsibilities are, as well as necessary supplemental accommodations (NSA).

Proposal Changes the Following Existing Rules: WAC 388-200-1050, 388-200-1300, and 388-200-1350 are being repealed and rewritten as a part of chapter 388-472 WAC.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small business.

RCW 34.05.328 applies to this rule adoption. The rule meets the definition of a "significant legislative rule" but DSHS is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: DSHS Office Building 2, 14th Avenue and Jefferson Street, Olympia, Washington 98501, on April 24, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by April 17, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coopecKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by April 24, 2001.

Date of Intended Adoption: No sooner than April 25, 2001.

March 16, 2001

Brian Lindgren

for Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-17-025, filed 8/10/99, effective 10/1/99)

WAC 388-472-0005 ((Client)) What are my rights and responsibilities((:))? ((Unless specifically stated,)) For the purposes of this chapter, "we" and "us" refer to the administrations within the department of social and health services that provide cash and medical assistance benefits. "You" refers to the head of the household applicant or recipient.

The following rules apply to cash, food and medical assistance programs unless stated otherwise.

(1) ((A person who applies for or receives public assistance has)) If you apply for or receive benefits you have the right to:

(a) Be fully informed, in writing, of all legal rights and responsibilities in connection with benefits;

(b) Be treated politely and fairly without regard to race, color, ((ereed,)) political ((affiliation)) beliefs, national origin, religion, age, gender, disability or birthplace;

((b) File an application on the same day, during regular business hours, that the person contacts the department. A client has the right to get a receipt when leaving an application or other materials with the department;

(e) Have an application promptly accepted and promptly acted upon;

(d) Ask that the application be processed without delay if the person is pregnant, in need of immediate medical care,

experiencing an emergency such as having no money for food, or facing an eviction. If a pregnant client requests an interview, she has the right to have one within five working days;

(e) Get a written decision in most cases within thirty days;

(i) Medical and some disability cases may take forty five to sixty days. Pregnancy medical will be authorized within fifteen working days.

(ii) Food stamps will be authorized within thirty days if the person is eligible. If the person is eligible and has little or no money, food stamps will be authorized within five days;

(f) Be fully informed, in writing, of all legal rights and responsibilities in connection with public assistance;

(g) Have information kept private. The department may share some facts with other agencies for efficient management of federal and state programs;

(h) For cash and medical assistance programs, ask the department not to collect child support if the absent parent may harm the person or person's child;

(i) For cash assistance programs, ask for extra money to help in an emergency, such as an eviction or a utility shutoff;

(j) Get a written notice, in most cases, at least ten days before the department makes changes to lower or stop benefits;

(k) Ask for a fair hearing if the person does not agree with the department about a decision. Without affecting the right to a fair hearing, the person can also ask a supervisor or administrator to review an employee decision or action;

(l) Have interpreter or translator services at no cost or undue delay;

(m) Refuse to speak to a fraud early detection (FRED) investigator from the division of fraud investigations. The person does not have to let an investigator into the home. The person may ask the investigator to come back at another time. Such a request will not affect the person's eligibility for benefits;

(n) For medical assistance programs only: A person applying for or receiving medical assistance, limited casualty programs, medical care services, or children's health services has the same rights as cash assistance clients; and

(o) Receive help from the department to register to vote.

(2) A client is responsible for:

(a) Reporting any changes to the department within ten days for all cash and food assistance programs and twenty days for all medical assistance programs;

(b) Giving all the facts needed to determine eligibility;

(c) Giving the department proof of any facts for which proof is needed;

(d) For most cash or medical assistance programs related to children, cooperating with the department to get child support or medical care support unless it can be shown that harm to the person or child may occur;

(e) For cash or medical assistance programs, applying for and taking any benefits from other programs, if eligible;

(f) Completing reports and reviews when asked to do so;

(g) Seeking and taking a job or training if required; and

(h) For medical assistance programs only, showing the medical identification card or other adequate department-generated notification of eligibility to the medical care provider.

(3) Clients will be screened and provided with necessary supplemental accommodation as specified under WAC 388-200-1300))

(c) Give us a written request for benefits using a form or alternative method designated by us. You have the right to get a receipt when leaving an application or other materials with us;

(d) Ask that the application be processed without delay if you are pregnant, in need of immediate medical care, experiencing an emergency such as having no money for food, or facing an eviction. If you are pregnant and request an interview, you have the right to have one within five working days;

(e) Get a written decision in most cases within thirty days.

(i) Medical and some disability decisions may take forty-five to sixty days. Pregnancy medical will be authorized within fifteen working days.

(ii) Food assistance will be authorized within thirty days if you are eligible. If you are eligible and have little or no money, food assistance will be authorized within five days.

(f) Have information you give us kept private. We share some facts with other agencies for efficient management of federal and state programs;

(g) For cash and medical assistance programs, ask us not to collect child support if the absent parent may harm you or your child;

(h) For some cash assistance programs, ask for extra money to help in an emergency, such as an eviction or a utility shutoff;

(i) Get a written notice, in most cases, at least ten days before we make changes to reduce or end your benefits;

(j) Ask for a fair hearing if you do not agree with us about a decision. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(k) Have interpreter or translator services provided at no cost to you and without delay;

(l) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits;

(m) If you are applying for or receiving medical assistance, limited casualty programs, medical care services, or children's health services you have the same rights as cash assistance clients; and

(n) Receive help from us to register to vote.

(2) You are responsible to:

(a) Report any changes to us within:

(i) Ten days for all cash and food assistance programs;

and
(ii) Twenty days for all medical assistance programs.

(b) Give all the facts needed to determine eligibility;

(c) Give us proof of any facts for which proof is needed;

(d) For most cash or medical assistance programs related to children, cooperate with us to get child support or medical care support unless you show that cooperation may harm you or your child;

(e) Apply for and get any benefits from other agencies or programs prior to getting cash or medical assistance from us;

(f) Complete reports and reviews when asked to do so;

(g) Get a job or training if required;

(h) Show your medical identification card or other notification of eligibility from us to your medical care provider; and

(i) Cooperate with the quality assurance review process.

(3) You will be screened for and provided necessary supplemental accommodation services as described in this chapter.

NEW SECTION

WAC 388-472-0010 What are necessary supplemental accommodation services? Necessary supplemental accommodation (NSA) services are services provided to you if you have a mental, neurological, physical or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

NSA services include but are not limited to:

(1) Arranging for or providing help to complete and submit forms to us;

(2) Helping you give or get the information we need to decide or continue eligibility;

(3) Helping you request continuing benefits;

(4) If you miss an appointment or deadline, contacting you about the reason before we reduce or end your benefits;

(5) Explaining to you the reduction in or ending of your benefits (see WAC 388-418-0020);

(6) If we know you have a person who helps you with your applications, notifying them when we need information or when we are about to reduce or end your benefits;

(7) Assisting you with requests for fair hearings;

(8) Providing protective payments if needed, according to WAC 388-265-1250; and

(9) On request, reviewing our decision to terminate, suspend or reduce your benefits.

NEW SECTION

WAC 388-472-0020 How does the department decide if I am eligible for NSA services? When you, as head of household, apply for benefits either in person or by phone, we screen you to decide if you meet NSA requirements. We explain NSA services to you during the screening.

(1) We identify you as NSA if you:

(a) Say you need NSA services in order to have equal access to our programs and services;

(b) Have or claim to have a mental impairment;

(c) Have a developmental disability;

(d) Are disabled by alcohol or drug addiction;

(e) Are unable to read or write in any language; or

(f) Are a minor not residing with your parents.

(2) We identify you as NSA if we observe you to have cognitive limitations, whether or not you have a disability, which may prevent you from understanding the nature of NSA services or affect your ability to access our programs. Cognitive limitations are limitations in your ability to communicate, understand, remember, process information, exer-

cise judgement and make decisions, perform routine tasks or relate appropriately with others.

NEW SECTION

WAC 388-472-0030 How can I get NSA services? (1)

After we screen you for NSA eligibility and initially identify your case as NSA, we mark your case file with a uniform NSA identifier.

(2) After you are initially identified as NSA, we complete an assessment to confirm your NSA designation.

(3) If the assessment confirms your NSA designation, we develop an accommodation plan that specifies the services we will provide to you to improve your access to our programs and services.

(4) If you are designated as NSA according to WAC 388-472-0020 (1) and (2), we include all the NSA services listed in WAC 388-472-0010 in your accommodation plan.

(5) Based on your request or a change in your needs, the NSA designation and the accommodation plan may be assessed and changed.

(6) Even if you are eligible to receive NSA services you may refuse NSA services.

NEW SECTION

WAC 388-472-0040 What are the department's responsibilities in giving NSA services to me? (1) All of our staff are continually responsible to identify you as possibly NSA eligible and assist you with NSA services.

(2) We provide a grace period to continue your financial, food or medical assistance when:

(a) We stop a benefit because we are unable to tell if you continue to qualify; and

(3) You provide proof you still qualify for the benefit within the twenty days right after the benefit stops. We restore lost benefits as follows:

(i) We reopen your medical assistance from the first of the month; and

(ii) We recalculate your cash and food assistance and issue you the correct amount without taking away any benefits as long as you were eligible to receive them.

NEW SECTION

WAC 388-472-0050 What if I don't accept or follow through the program requirements because I'm not able to or I don't understand them? (1) We consider how your limitation or impairment affects your ability to accept and follow through on all program requirements. This can include, but is not limited to, your actions in failing to:

(a) Follow through with medical treatment;

(b) Follow through with referrals to other agencies;

(c) Provide timely income reports;

(d) Maintain employment;

(e) Participate in food assistance employment and training; or

(f) Participate in the WorkFirst program.

(2) If we decide your limitation was the cause of your refusal to accept or failure to follow through on these require-

ments, we will find that you have good cause and we will not take any adverse action.

(3) Following a finding of good cause not to have followed through with the requirement, we will review your accommodation plan to assure that all services necessary to enable you to meet the program requirements are being provided to you.

(4) If we are unable to accommodate your condition so that you are able to participate in program requirements, we will waive program requirements.

(5) If participation in program requirements is not waived, you must cooperate with program requirements.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-200-1050	Department and client responsibilities.
WAC 388-200-1300	Necessary supplemental accommodation services (NSA).
WAC 388-200-1350	Dispute resolution for clients needing supplemental accommodations.

WSR 01-07-052

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed March 16, 2001, 3:37 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Family child day care minimum licensing requirements, chapter 388-155 WAC.

Purpose: To provide minimum licensing requirements for family child care homes. February 24, 2000, thirty-eight sections of chapter 388-155 WAC were amended. All were changed, in compliance with the governor's order to simplify and clarify, to say "must" instead of "shall." This adoption will change "shall" to "must" in the rest of chapter 388-155 WAC. This will create a smoother and clearer document. Also, the area code needs to be added to WAC 388-155-270 (6)(c).

Other Identifying Information: Change "shall" to "must" throughout the text. Specific numbers are WAC 388-155-020, 388-155-040, 388-155-050, 388-155-060, 388-155-080, 388-155-085, 388-155-090, 388-155-092, 388-155-093, 388-155-094, 388-155-095, 388-155-098, 388-155-160, 388-155-190, 388-155-330, 388-155-370, 388-155-380, 388-155-420, 388-155-480, 388-155-605, 388-155-610, 388-155-630, 388-155-640, 388-155-650, 388-155-660, 388-155-670 and 388-

155-680; and add area code in WAC 388-155-270 (6)(c), which was inadvertently omitted.

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 74.15.030.

Summary: WACs cited above will have the word "shall" changed to "must." This will make the intent more clear throughout the text. Area code that was inadvertently omitted will be added.

Reasons Supporting Proposal: Governor's initiative to clarify and simplify rules.

Name of Agency Personnel Responsible for Drafting: Leslie Edwards-Hill, 14th and Jefferson, Olympia, Washington 98504-5700, (360) 902-8041; Implementation and Enforcement: Rachael Langen, Office of Child Care Policy, (360) 902-8038.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The word "shall" will be changed to "must" throughout the text, which will clarify the intent of the rule. This is also in conformity with the clear rule-writing style and principles. It will be easier for providers to understand that rules with "must" are mandatory.

An area code that was omitted will be added so that providers can utilize the phone number.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. One was prepared for the other WACs that were changed. This has no economic impact, it is simply a clarification of existing rules.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Blake Office Park (East), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 8, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 1, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coo-peKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 8, 2001.

Date of Intended Adoption: No sooner than May 9, 2001.

March 15, 2001

Charles Hunter, Director

Administrative Services Division

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-08 issue of the Register.

WSR 01-07-056

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF PERSONNEL

[Filed March 19, 2001, 10:23 a.m.]

The Washington Personnel Resource Board hereby withdraws the proposed amendments to WAC 251-01-175, 251-17-150 and 356-22-220, originally filed as WSR 00-18-028 on August 29, 2000.

If you have any questions, please contact Donna Parker at 664-6347.

Doug Tanabe
Acting Secretary

WSR 01-07-058

PROPOSED RULES WENATCHEE VALLEY COLLEGE

[Filed March 19, 2001, 1:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-102 and 01-03-103.

Title of Rule: Chapter 132W-125 WAC, Withholding services for outstanding debt; chapter 132W-105 WAC, Board of trustees; chapter 132W-109 WAC, Practice and procedure; chapter 132W-112 WAC, Student rights and freedoms; chapter 132W-115 WAC, Student code of conduct and discipline procedure; chapter 132W-117 WAC, Parking and traffic; chapter 132W-277 WAC, Public records; and chapter 132W-325 WAC, Environmental protection.

Purpose: Chapter 132W-125 WAC, establish as a rule the policy of the college to withhold services from those who have a debt owing to the institution; chapter 132W-105 WAC, establish as a rule the board's bylaws, office location, meeting dates and delegation to the president of the college; chapter 132W-109 WAC, establish the hearing procedure for administrative and adjudicative hearings in compliance with RCW 34.05.250; chapter 132W-112 WAC, public the array of college, state and federal policies setting the rights of students and freedoms; chapter 132W-115 WAC, establish the student conduct code and the disciplinary process for violations of that code; chapter 132W-117 WAC, parking and campus traffic regulations for both vehicular and nonvehicular are established through this rule; chapter 132W-277 WAC, establish for the college the rules through which the public can access public documents; and chapter 132W-325 WAC, adopt the requirements of chapter 43.21C RCW and relevant WACs as an operational procedure of the college.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Summary: Chapter 132W-125 WAC, the college provides several levels of service to students and employees. If a debt is incurred and not paid the institution needs a process to recover that debt. This rule establishes the colleges policy and procedure and the rights of the debtor.

Chapter 132W-105 WAC, the board has established policies concerning its operation and delegation of authority which it now proposes to make a rule.

PROPOSED

Chapter 132W-109 WAC, the rule provides the basic policy and procedures for administrative hearings for the college following the requirements of RCW 34.05.250 and chapter 10-08 WAC.

Chapter 132W-112 WAC, several college policies, state code and law, and federal legislation grant specific rights and freedoms to students. This rule enumerates those rights and freedoms.

Chapter 132W-115 WAC, the rule provides expectations of student conduct and behavior and the procedures that are established to discipline students who violate those expectations.

Chapter 132W-117 WAC, the college has parking, traffic and fine procedures for automobiles as well as nonvehicular modes of transport for both campuses.

Chapter 132W-277 WAC, in compliance with state law, the college adopts procedures to provide access to public records.

Chapter 132W-325 WAC, the college will comply with chapter 43.21C RCW in capital projects and designate the responsible official for compliance.

Name of Agency Personnel Responsible for Drafting and Implementation: William Martin, 1300 5th Street, Wenatchee, WA 98801, (509) 664-2554; and Enforcement: College President, 1300 5th Street, Wenatchee, WA 98801, (509) 662-1651.

Name of Proponent: Wenatchee Valley College, public.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 132W-125 WAC, the rule establishes the policy, procedures for withholding services from persons owing monies to the college and rights of appeal of those persons if they feel aggrieved.

Chapter 132W-105 WAC, the college has repealed a chapter covering the bylaws and operations of the board that were drafted in the late 1970s. These rules replace them and updates to current policy. The office is established in district headquarters, the meeting dates and basic procedures of board operation are adopted and the authority for college operation to the president is delegated.

Chapter 132W-109 WAC, the simplified rules of this chapter guide the college in administrative hearings as set up in state law and administrative code.

Chapter 132W-112 WAC, student rights granted by the college under policy as well those derived from United States constitutional and state and federal law are enumerated as a college rule.

Chapter 132W-115 WAC, the college has requirements for student conduct and behavior and has established disciplinary procedures of due process for violations of those requirements.

Chapter 132W-117 WAC, in order to provide for orderly use of college parking facilities as well as safety for students and staff, we have put in place parking and traffic management procedures. The procedures also contain the violation fine structure and the appeals process for those fines.

Chapter 132W-277 WAC, requirements for public records access are provided in state law. The college has established local procedures for compliance with those laws.

Chapter 132W-325 WAC, we are required under chapter 43.21C RCW to adopt procedures that comply with SEPA for capital project in design and construction. This rule adopts those requirements.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not apply.

Section 201, chapter 403, Laws of 1995, applies to this rule adoption. The proposed rules were generated in compliance with RCW 34.05.328 and at the request and with the advise of the institution's assistant attorney general.

Hearing Location: Wenatchee Valley College, Well's Hall 1028, 1300 5th, Wenatchee, WA 98801, on May 22, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Carla Boyd by May 18, 2001, TDD (509) 662-1651, or (509) 664-2549.

Submit Written Comments to: William Martin, Wenatchee Valley College, 1300 5th, Wenatchee, WA 98801, fax (509) 664-2576, by May 21, 2001.

Date of Intended Adoption: May 23, 2001.

March 14, 2001

William Martin, Rules Coordinator

Dean of Administrative Services

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-09 issue of the Register.

WSR 01-07-061

PROPOSED RULES

PIERCE COLLEGE

[Filed March 19, 2001, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-126.

Title of Rule: Prevention of the disclosure of directory information, WAC 132K-122-100.

Purpose: To amend the deadline for filing a request for nondisclosure of directory information and the timeframe in which the request is valid.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Summary: Language revisions needed to better address issues of disclosure and/or nondisclosure of directory information.

Reasons Supporting Proposal: Language revisions will allow the college to address issues of disclosure and/or nondisclosure more effectively and efficiently.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cynthia Torres-Jimenez, Pierce College at Fort Steilacoom, Room 305, (253) 964-6623.

Name of Proponent: Pierce College District, public.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Amending the language of WAC 132K-122-100

will allow the college to address issues of disclosure and/or nondisclosure more effectively and efficiently.

Proposal Changes the Following Existing Rules: Amending the rule will change the deadline for filing a request for nondisclosure of directory information and the timeframe in which the request remains in effect.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Pierce College at Fort Steilacoom, International House, 9401 Farwest Drive S.W., Lakewood, WA 98498, on April 30, 2001, at 3:00 p.m. Hearing will be teleconferenced with Pierce College at Puyallup, Room A-155.

Assistance for Persons with Disabilities: Contact Cynthia Torres-Jimenez by April 23, 2001, TDD (253) 964-6628, or (253) 964-6623.

Submit Written Comments to: Cynthia Torres-Jimenez, fax (253) 964-6427, by April 23, 2001.

Date of Intended Adoption: May 3, 2001.

March 9, 2001
Cynthia T. Jimenez
Registrar

AMENDATORY SECTION ([Amending] WSR 01-03-126 [86-15-020], filed 7/11/86)

WAC 132K-122-100 Prevention of the disclosure of directory information. A student may refuse to permit the disclosure of directory information as defined by WAC 132K-122-020(3) by filing a request to prevent disclosure of directory information with the ~~((office of the registrar by the end of the third week of the fall quarter of each academic year))~~ {Registrar's Office by the tenth day of the quarter (eighth day for summer quarter).} ~~((A separate request to prevent disclosure of directory information must be filed for each academic year.))~~ {The request for non-disclosure of directory information will remain in effect until the student notifies the Registrar's Office, in writing, to cancel it.}

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 01-07-062
PROPOSED RULES
PIERCE COLLEGE**

[Filed March 19, 2001, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-125.

Title of Rule: Definition of directory information, WAC 132K-122-020(3).

Purpose: Amend the definition of directory information.

Statutory Authority for Adoption: RCW 58B.50.140 [28B.50.140].

Statute Being Implemented: RCW 58B.50.140 [28B.50.140].

Summary: Amending the definition of directory information will allow the college to expand/delete specific items listed as directory information without having to amend the WAC each time.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cynthia Torres-Jimenez, Pierce College at Fort Steilacoom, Room 305, (253) 964-6623.

Name of Proponent: Pierce College District, public.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Pierce College will amend its definition of directory information to allow the college to expand/delete the specific items it designates as directory information without having to change the WAC each time. In compliance with the Family Educational Rights and Privacy Act (FERPA), Pierce College will annually notify students of the specific information in their education records designated as directory information.

Proposal Changes the Following Existing Rules: The definition of directory information will change from listing the specific items Pierce College designates as directory information to a more general definition.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Pierce College at Fort Steilacoom, International House, 9401 Farwest Drive S.W., Lakewood, WA 98498, on April 30, 2001, at 3:00 p.m. Hearing will be teleconferenced with Pierce College at Puyallup, Room A-155.

Assistance for Persons with Disabilities: Contact Cynthia Torres-Jimenez by April 23, 2001, TDD (253) 964-6628, or (253) 964-6623.

Submit Written Comments to: Cynthia Torres-Jimenez, fax (253) 964-6427, by April 27, 2001.

Date of Intended Adoption: May 3, 2001.

March 9, 2001
Cynthia T. Jimenez
Registrar

AMENDATORY SECTION ([Amending] WSR 01-03-125 [86-15-020], filed 7/11/86)

WAC 132K-122-020 (3) The term "directory information" means ~~((the student's name, dates of attendance, and degrees received))~~ {information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Pierce College will annually notify students of the specific information in their education records designated as directory information.} Directory information may be disclosed at the discretion of the college and without the consent of the student unless he or she elects to prevent disclosure as provided for in WAC 132K-122-100.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 01-07-070
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (By the Code Reviser's Office)
 [Filed March 20, 2001, 9:01 a.m.]

WAC 388-160-0005, 388-160-0015, 388-160-0025, 388-160-0035, 388-160-0045, 388-160-0055, 388-160-0065, 388-160-0075, 388-160-0085, 388-160-0095, 388-160-010, 388-160-0105, 388-160-0115, 388-160-0125, 388-160-0135, 388-160-0145, 388-160-0155, 388-160-0165, 388-160-0175, 388-160-0185, 388-160-0195, 388-160-020, 388-160-0205, 388-160-0215, 388-160-0225, 388-160-0235, 388-160-0245, 388-160-0255, 388-160-0265, 388-160-0275, 388-160-0285, 388-160-0295, 388-160-030, 388-160-0305, 388-160-0315, 388-160-0325, 388-160-0335, 388-160-0345, 388-160-0355, 388-160-0365, 388-160-0375, 388-160-0385, 388-160-0395, 388-160-040, 388-160-0405, 388-160-0415, 388-160-0425, 388-160-0435, 388-160-0445, 388-160-0455, 388-160-0465, 388-160-0475, 388-160-0485, 388-160-0495, 388-160-050, 388-160-0505, 388-160-0515, 388-160-0525, 388-160-0535, 388-160-0545, 388-160-0555, 388-160-0565, 388-160-0575, 388-160-0585, 388-160-0595, 388-160-060, 388-160-0605, 388-160-0615, 388-160-0625, 388-160-0635, 388-160-0645, 388-160-070, 388-160-080, 388-160-090, 388-160-100, 388-160-110, 388-160-120, 388-160-130, 388-160-140, 388-160-150, 388-160-160, 388-160-170, 388-160-180, 388-160-190, 388-160-200, 388-160-210, 388-160-220, 388-160-230, 388-160-240, 388-160-250, 388-160-260, 388-160-270, 388-160-280, 388-160-290, 388-160-300, 388-160-310, 388-160-320, 388-160-340, 388-160-350, 388-160-360, 388-160-370, 388-160-380, 388-160-390, 388-160-400, 388-160-410, 388-160-420, 388-160-430, 388-160-440, 388-160-460, 388-160-470, 388-160-480, 388-160-490, 388-160-500, 388-160-510, 388-160-520, 388-160-530, 388-160-5840, 388-160-550 and 388-160-560, proposed by the Department of Social and Health Services in WSR 00-17-158 appearing in issue 00-18 of the State Register, which was distributed on September 20, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 01-07-071
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (By the Code Reviser's Office)
 [Filed March 20, 2001, 9:01 a.m.]

WAC 388-146-0010, 388-146-0020, 388-146-0030, 388-146-0040, 388-146-0045, 388-146-0050, 388-146-0060, 388-146-0070, 388-146-0080, 388-146-0090, 388-146-0100, 388-146-0110, 388-146-0120, 388-146-0130, 388-146-0140, 388-146-0150, 388-146-0160, 388-146-0170, 388-146-0180, 388-146-0190, 388-146-0200, 388-146-0210, 388-146-0220, 388-330-010, 388-330-020, 388-330-030, 388-330-035, 388-330-040, 388-330-050 and 388-330-060, proposed by the Department of Social and Health Services in WSR 00-17-159 appearing in issue 00-18 of the State Register, which was distributed on September 20, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 01-07-072
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (By the Code Reviser's Office)
 [Filed March 20, 2001, 9:02 a.m.]

WAC 388-15-001, 388-15-005, 388-15-009, 388-15-013, 388-15-017, 388-15-021, 388-15-025, 388-15-029, 388-15-033, 388-15-037, 388-15-041, 388-15-045, 388-15-049, 388-15-053, 388-15-057, 388-15-061, 388-15-065, 388-15-069, 388-15-073, 388-15-077, 388-15-081, 388-15-085, 388-15-089, 388-15-093, 388-15-097, 388-15-101, 388-15-105, 388-15-109, 388-15-113, 388-15-117, 388-15-121, 388-15-125, 388-15-129, 388-15-130, 388-15-131, 388-15-132, 388-15-133, 388-15-134, 388-15-135 and 388-15-141, proposed by the Department of Social and Health Services in WSR 00-17-188 appearing in issue 00-18 of the State Register, which was distributed on September 20, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

PROPOSED

WSR 01-07-073
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL
 (By the Code Reviser's Office)
 [Filed March 20, 2001, 9:07 a.m.]

WAC 51-11-0602 and 51-11-1401, proposed by the Building Code Council in WSR 00-18-017 appearing in issue 00-18 of the State Register, which was distributed on September 20, 2000, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 01-07-079
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
 [Filed March 21, 2001, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-08-093.

Title of Rule: Post retirement benefit options.

Purpose: Amends WAC 415-104-215, 415-108-326, 415-110-326, and 415-112-727 to provide new post-retirement benefit options for members. These change are required under SHB 2604 (2000). WAC are also being changed to assure that any remaining balance of accumulated contributions (Plans 1 and 2) go to the member's beneficiaries or estate, rather than to the retirement fund. In addition, DRS is making some minor housekeeping changes.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845, 43.43.278.

Summary: Amends WAC 415-104-215, 415-108-326, 415-110-326, and 415-112-727 to provide enhanced post-retirement benefit options for members.

Reasons Supporting Proposal: These changes are required under SHB 2604 (2000).

Name of Agency Personnel Responsible for Drafting: Merry A. Kogut, 6835 Capitol Boulevard, Tumwater, WA, (360) 664-7291; Implementation: Margaret Wimmer, 6835 Capitol Boulevard, Tumwater, WA, (360) 664-7044; and Enforcement: Lucille Christenson, 6835 Capitol Boulevard, Tumwater, WA, (360) 664-7069.

Name of Proponent: Department of Retirement Systems, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: SHB 2604, passed in the 2000 legislative session, requires that a retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse from a postretirement marriage as a survivor during a one-year period beginning one year after the date

of the postretirement marriage. A member who entered into a postretirement marriage prior to the effective date of the rules adopted pursuant to this subsection and satisfies certain conditions shall have one year to designate their spouse as a survivor beneficiary following the adoption of the rules. A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted. WAC are also being changed to assure that any remaining balance of accumulated contributions (Plans 1 and 2) go to the member's beneficiaries or estate, rather than to the retirement fund. In addition, DRS is making some minor house-keeping changes.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments have no effect on businesses.

RCW 34.05.328 does not apply to this rule adoption. The Department of Retirement Systems is not one of the named departments in this section (RCW 34.05.328).

Hearing Location: Department of Retirement Systems, 6835 Capitol Boulevard, Boardroom, 3rd Floor, Tumwater, WA, on April 24, 2001, at 10:30 a.m.

Assistance for Persons with Disabilities: Contact rules coordinator by seven days before hearing, if possible, phone (360) 664-7291, TTY (360) 586-5450, e-mail merryk@drs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Merry A. Kogut, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Merryk@drs.wa.gov, fax (360) 664-3618, by April 24, 2001.

Date of Intended Adoption: No sooner than April 25, 2001.

March 20, 2001
 Merry A. Kogut
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-16-075, filed 8/3/99, effective 9/3/99)

WAC 415-104-215 Retirement benefit options. RCW 41.26.460 enables the department to provide retiring LEOFF Plan 2 members with four retirement benefit options. The member must choose an option when applying for service or disability retirement.

(1) **Option One: Benefit option without survivor features (standard allowance).** The department pays the retiree a monthly retirement allowance actuarially based solely on the single life of the member, in accordance with RCW 41.26.430 (service) or 41.26.470 (disability). When the retiree dies, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

- ((a) The retiree's designated beneficiary; or if none, to
- (b) The retiree's surviving spouse; or if none, to
- (c) The retiree's legal representative.

The member must designate a beneficiary at the time of retirement by filing a completed and notarized form provided by the department.)) (a) Such person or persons, trust, or

organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(2) Benefit options with a survivor feature. A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, ~~((the))~~ any remaining balance ((is retained in the retirement fund)) of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the tie of death nor a surviving spouse, then to the retiree's legal representative.

Plan Two:

Agnes retires in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(inelig.)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLA's	191.05
Original Option One Benefit Amount		+ Total COLA's		= New Benefit Amount
\$2000		+ \$191.05		= \$2,191.05*

* In the future (i.e., Year 5), Agnes' COLA will be based on the increased benefit amount (\$2,191.05).

~~((a))~~ (i) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a monthly retirement allowance equal to the gross monthly allowance received by the retiree.

~~((b))~~ (ii) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor one-half of the amount of the retiree's gross monthly retirement allowance.

~~((c))~~ (iii) Option Four (joint and two-thirds allowance).

~~((i)) This subsection applies))~~ (A) Option Four is available to members retiring on or after January 1, 1996.

~~((ii))~~ (B) When the retiree dies, the department pays the survivor two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) Benefit increases when survivor predeceases retiree (pop-up provision).

(a) This ~~((section))~~ subsection applies to members retiring on or after January 1, 1996, who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation example:

PROPOSED

(d) If the survivor dies and the retiree's benefit increases under this section, and thereafter the retiree also dies before all employee contributions are exhausted, ((the) any remaining balance ((is retained by the retirement fund)) of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(5) Any retiree who retired before January 1, 1996, and who elected to receive a ~~((reduced retirement allowance))~~ benefit option with a survivor feature under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(b) The retiree provides the department proper proof of the designated beneficiary's death.

The retiree is not required to apply for the increased benefit provided in this subsection. The adjusted retirement allowance will be effective on July 1, 1998, or the first day of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.26.460 (3)(c) for Plan 2 retirees.

(6) Postretirement benefit options.

(a) Postretirement marriage option. Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

(b) Removal of a nonspouse survivor option. Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

(7) Survivor. For the purposes of this provision, "survivor" means a person nominated by the member to receive a

monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

AMENDATORY SECTION (Amending WSR 99-14-008, filed 6/24/99, effective 7/25/99)

WAC 415-108-326 Retirement benefit options. RCW 41.40.188 (Plan 1) ~~((and))~~, RCW 41.40.660 (Plan 2), and RCW 41.40.660 (Plan 3) enable the department to provide retiring members with four retirement benefit options for receipt of the defined benefit portion of their retirement benefits. In addition, retiring Plan 1 members may select the COLA (cost-of-living adjustment) option. The retiring member must choose an option(s) when applying for service or disability retirement:

(1) Option One: Benefit option without survivor features (standard allowance). The department will pay a monthly retirement allowance based solely on the single life of the member, as provided by RCW 41.40.185, 41.40.190, 41.40.230, 41.40.235, 41.40.250, ~~((41.40.660, or))~~ 41.40.670, 41.40.820, or 41.40.825. When the retiree dies all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

~~((a) The retiree's designated beneficiary; or if none, to~~

~~(b) The retiree's surviving spouse; or if none, to~~

~~(c) The retiree's legal representative.)~~ **(a) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or**

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

The member must designate a beneficiary at the time of retirement by filing a completed and notarized form provided by the department.

(2) Benefit options with a survivor feature. A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, ~~((the remaining balance is retained in the retirement fund))~~ **all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:**

(a) Such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

~~((a))~~ (i) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor an allowance equal to the gross monthly allowance received by the retiree.

~~((b))~~ (ii) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

~~((c))~~ (iii) Option Four (joint and two-thirds allowance).

~~((i) This subsection applies)~~ (A) Option Four is available to members retiring on or after January 1, 1996.

~~((ii))~~ (B) When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits

Plan One:

Lucinda retires from PERS Plan 1 in 1996 (Year 0). She would like Garth, her husband, to receive a monthly allowance when she dies. Therefore, Lucinda chooses one of the benefit options with a survivor feature. As a result, her monthly allowance is actuarially reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Garth dies in January 2001 (Year 5). Under the "pop-up" provision, Lucinda's monthly benefit will increase to \$2,000, the amount she would have received had she chosen the Option One (standard allowance) plus any COLA's Lucinda had received based on her prior benefit allowance:

Original Option 1 Benefit Amount	+	Total COLA's	=	New Benefit Amt.
\$2,000.00	+	0 (None accrued)	=	\$2,000.00*

Plan Two:

Agnes retires from PERS Plan 2 in 1996 (Year 0). Agnes would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result, her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(ineligible)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLA's	191.05

Original Option One Benefit Amount	+	Total COLA's	=	New Benefit Amount
\$2000	+	\$191.05	=	\$2,191.05*

* In the future (i.e. Year 4), COLAs will be based on the increased benefit amount.

pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) **Supplemental COLA option for Plan 1 members.** Retiring Plan 1 members may select an annual cost-of-living adjustment (COLA) option, in addition to their choice of retirement benefit options listed in subsections (1) and (2) of this section. Retiring members who choose this supplemental option will have their monthly retirement allowance actuarially reduced to offset the cost of annual adjustment.

(5) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This ~~(section)~~ subsection applies to members retiring on or after January 1, 1996, who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation examples.

PROPOSED

(d) If the survivor dies and the retiree's benefit increases under this section, and thereafter the retiree also dies before all employee contributions are exhausted, the remaining balance is retained by the retirement fund.

(6) Any retiree who retired before January 1, 1996, and who elected to receive a ~~((reduced retirement allowance))~~ benefit option with a survivor feature under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(b) The retiree provides to the department proper proof of the designated beneficiary's death. The retiree is not required to apply for the increased benefit provided by this subsection.

The adjusted retirement allowance will be effective on July 1, 1998, or the first of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.40.188 (3)(c) for Plan 1 retirees or RCW 41.40.660 (3)(c) for Plan 2 retirees.

(7) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

(8) Postretirement benefit options.

(a) Postretirement marriage option. Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birth date of the new spouse; and

(iv) A member may exercise this option one time only.

(b) Removal of a nonspouse survivor option. Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-326 Retirement benefit options. RCW 41.35.220 enables the department to provide retiring mem-

bers with four retirement benefit options. The retiring member must choose an option ~~((s))~~ when applying for service or disability retirement:

(1) Option One: Benefit option without survivor features (standard allowance). The department will pay a monthly retirement allowance based solely on the single life of the member, as provided by RCW ~~((41.35.220))~~ 41.35.420, 41.35.440, 41.35.680, or 41.35.690. When the retiree dies all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

~~(a) The retiree's designated beneficiary; or if none, to~~

~~(b) The retiree's surviving spouse; or if none, to~~

~~(c) The retiree's legal representative.~~

The member must designate a beneficiary at the time of retirement by filing a completed and notarized form provided by the department.) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(2) Benefit options with a survivor feature. A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, ~~((the))~~ all benefits cease. Any remaining balance ((is retained in the retirement fund)) will be paid to:

(a) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

~~((Once retired with a survivor option, the retiree may only change the survivor option upon returning to eligible employment for two consecutive years.~~

~~((a))~~ (i) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor an allowance equal to the gross monthly allowance received by the retiree.

~~((b))~~ (ii) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

~~((e))~~ (iii) Option Four (joint and two-thirds allowance).
~~((i))~~ This subsection applies to members retiring on or after January 1, 1996.

~~((ii))~~ When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) ~~((If a member retires on or after June 6, 1996,))~~ The department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) Benefit increases when survivor predeceases retiree (pop-up provision).

(a) This ~~((section))~~ subsection applies to retiring members ~~((retiring on or after January 1, 1996,))~~ who select a benefit option with a survivor feature (Option Two, Three, or Four).

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

Year	Option One (Standard Allow.)	Survivor Option (2, 3, 4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (2006)	2,000.00	1,750.00	(ineligible)	0.00
1 (2007)		1,750.00	.02	35.00
2 (2008)		1,785.00	.03	53.55
3 (2009)		1,838.55	.025	45.96
4 (2010)		1,884.51	.03	56.54
5 (2011)	2,000.00	1,941.05	-	-
			Total COLAs	191.05
Original Option One Benefit Amount \$2000		+ Total COLAs + \$191.05		= New Benefit Amount = \$2,191.05*

* In the future (i.e. Year 4), COLAs will be based on the increased benefit amount.

(d) If the survivor dies and the retiree's benefit increases under this ~~((section))~~ subsection, and thereafter the retiree also dies before all employee contributions are exhausted, the remaining balance is retained by the retirement fund.

~~((5))~~ ~~((Any retiree who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:~~

~~((a))~~ The retiree's designated beneficiary predeceases or has predeceased the retiree; and

~~((b))~~ The retiree provides to the department proper proof of the designated beneficiary's death. The retiree is not required to apply for the increased benefit provided by this subsection.

~~The adjusted retirement allowance will be effective on July 1, 1998, or the first of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.35.220~~
~~((3)(e))~~ for Plan 2 retirees.

~~((6))~~ **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation examples.

Plan two:

Agnes retires from SERS Plan 2 in 2006 (Year 0). Agnes would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result, her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in 2011 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen option one (standard allowance) plus her accumulated COLAs:

(6) Postretirement benefit options.

(a) Postretirement marriage option. Members who select the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

(b) Removal of a nonspouse survivor option. Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

PROPOSED

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-112-727 Retirement benefit options. RCW 41.32.530 (Plan 1), RCW 41.32.785 (Plan 2) and RCW 41.32.851 (Plan 3) enable the department to provide retiring members with four retirement benefit options for receipt of the defined benefit portion of their retirement benefits. In addition, retiring Plan 1 members may select the COLA (cost-of-living adjustment) option. The retiring member must choose an option(s) when applying for service or disability retirement.

(1) **Option One: Benefit options without survivor feature (standard allowance).**

(a) Maximum benefit allowance. Plan 1 retirees may elect to receive the maximum benefit possible which is based on a single life annuity. The maximum benefit allowance does not include a survivor allowance or beneficiary payment. When the retiree dies, all benefits cease. Any remaining balance in employee contributions is retained by the retirement ~~((system))~~ fund.

(b) Option One (standard allowance). The department pays a monthly retirement allowance based on a reduced single life annuity of the member, as provided in RCW 41.32.480 (Plan 1 - Service), RCW 41.32.550 (Plan 1 - Disability), RCW 41.32.765 (Plan 2 - Service), RCW 41.32.790 (Plan 2 - Disability), RCW 41.32.875 (Plan 3 - Service), or RCW 41.32.880 (Plan 3 - Disability). ~~((Except for Plan 3,))~~ When the retiree dies, all benefits cease. Any remaining balance of the member's accumulated contributions will be paid to:

- ~~((i))~~ The retiree's designated beneficiary; or if none, to
- ~~((ii))~~ The retiree's surviving spouse; or if none, to
- ~~((iii))~~ The retiree's legal representative.

~~A member selecting Option One must designate a beneficiary at the time of retirement by filing a completed and notarized form provided by the department.)~~ (i) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person nor persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(2) **Benefit options with a survivor feature.** A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, ~~((the))~~ all benefits cease. Any remaining balance ~~((is retained in the retirement fund))~~ will be paid to:

(a) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person nor persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

~~((a))~~ (i) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a retirement allowance equal to the gross monthly allowance received by the retiree.

~~((b))~~ (ii) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

~~((c))~~ (iii) Option Four (joint and two-thirds allowance). ~~((This subsection applies))~~ (A) Option Four is available to members retiring on or after January 1, 1996.

~~((d))~~ (B) When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement benefit allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) **Supplemental COLA option for Plan 1 members.** Retiring Plan 1 members may select an annual cost-of-living adjustment (COLA) option in addition to their choice of retirement benefit options listed above in subsections (1) and (2) of this section. Retiring members who choose this supplemental option will have their monthly retirement allowance actuarially reduced to offset the cost of annual adjustment.

(5) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This ~~((section))~~ subsection applies to members retiring on or after January 1, 1996, who select Option Two, Three, or Four.

(b) Plan 1 members. If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen the maximum benefit ~~((, minus))~~;

(ii) Minus any reduction in the maximum allowance resulting from a withdrawal of contributions ~~((, plus))~~;

(iii) Plus any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Plan 2 and Plan 3 members. If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen the standard allowance; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(d) Pop-up recalculation example.

Plan One:

Lucinda retires from TRS Plan 1 in 1996 (Year 0) with \$55,000 in accumulated contributions. As a TRS 1 member she is allowed to withdraw some or all of her contributions when she retires. She decides to withdraw \$5,000 so she and Garth, her husband, can take a cruise. This will actuarially reduce Lucinda's maximum benefit from \$2,000 per month to \$1,963.86. Lucinda would also like her husband Garth to receive a monthly allowance after she dies. Therefore, Lucinda chooses one of the benefit options with a survivor feature. As a result, her monthly allowance is further actuarially reduced from \$1,963.86 to \$1,846.03. Unfortunately, Garth dies in January 2001 (Year 5). Under the "pop-up" provision, Lucinda's monthly benefit will increase to \$1,963.86, the amount she would have received had she chosen the maximum benefit (after reduction for her withdrawals). If Lucinda selected the COLA option or if she has otherwise become eligible for a COLA, the accumulated COLAs (based on the prior benefit allowance) will be added to the \$1,963.86*.

Plan Two:

Agnes retires from TRS Plan 2 in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allowance)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(inelig.)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLA's	191.05
Original Option One Benefit Amount		+ Total COLA's	= New Benefit Amount	
\$2000		+ \$191.05	= \$2,191.05*	

*In the future (i.e., 2001 or Year 5), COLAs will be based on the increased benefit amount.

(e) If the survivor dies and the retiree's benefit increases under this ~~((section))~~ subsection, and thereafter the retiree also dies before all accumulated contributions are exhausted, ~~((the))~~ any remaining balance ~~((is retained by the retirement fund))~~ of the member's accumulated contributions will be paid to:

- (i) Such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or
- (ii) If there is no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or
- (iii) The member's estate; or
- (iv) If there is neither such designated person nor persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(6) Any retiree who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

- (a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and
- (b) The retiree provides the department proper proof of the designated beneficiary's death. The retiree is not required to apply for the increased benefit provided in this subsection.

The adjusted retirement allowance will be effective on July 1, 1998, or the first day of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.32.530 (3)(c) for Plan 1 retirees or RCW 41.32.785 (3)(c) for Plan 2 retirees.

(7) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

(8) Postretirement benefit options.

(a) Postretirement marriage option. Members who select the maximum option (Plan 1 only) or the standard allowance (Option One) at the time of retirement and marry after retirement may subsequently select a survivor option with their new spouse as survivor beneficiary, provided that:

(i) The retiree's monthly benefit is not subject to a property settlement agreement from a court decree of dissolution or legal separation;

(ii) The selection is made either:

(A) During a one year window, on or after the date of the first anniversary and before the second anniversary of the postretirement marriage; or

(B) Before June 1, 2002, if the postretirement marriage occurred before June 1, 2001;

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(iii) The retiree provides a marriage certificate as proof of the postretirement marriage and provides proof of the birthdate of the new spouse; and

(iv) A member may exercise this option one time only.

(b) Removal of a nonspouse survivor option. Members who selected a nonspouse as survivor beneficiary at the time of retirement may remove that survivor designation and have the benefit adjusted to a standard allowance. A member may exercise this option one time only.

(c) Selection (a) or (b) of this subsection will become effective the first of the month following the department's receipt of the required paperwork.

WSR 01-07-080

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed March 21, 2001, 8:28 a.m.]

The Washington State Department of Fish and Wildlife withdraws proposed amendments to WAC 220-56-315 filed in WSR 01-01-025 on December 7, 2000.

Evan Jacoby
Rules Coordinator

WSR 01-07-081

PROPOSED RULES DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed March 21, 2001, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-145.

Title of Rule: Increasing fees and assessments paid by banks, thrifts, and other entities regulated by the Division of Banks.

Purpose: To provide additional revenue to the division.

Statutory Authority for Adoption: RCW 30.04.030, 33.04.025, 43.320.040.

Statute Being Implemented: RCW 30.04.070, 32.04.150, 33.28.020.

Summary: The proposed rule provides for an automatic annual rate increase in fees and assessments charged by the Division of Banks, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; and allows for the waiver of fees and assessments, if certain conditions are met.

Reasons Supporting Proposal: The division needs significant additional revenues to pay for the operation of the division and to maintain a reserve.

Name of Agency Personnel Responsible for Drafting: Patty Brombacher, 210 11th Street S.W., Room 300, Olympia, WA 98504, (360) 902-8748; Implementation and Enforcement: David Kroeger, 210 11th Street S.W., Room 300, Olympia, WA 98504, (360) 902-8747.

Name of Proponent: Division of Banks, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Explanation: The proposed rule provides for an automatic annual rate increase in fees and assessments charged by the Division of Banks, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; allows for the waiver of fees and assessments, if certain conditions are met; and eliminates the cap on assessments on assets over \$10 billion.

Purpose: To increase revenue to cover the operation of the division and to maintain a reserve for the division.

Anticipated Effects: To provide additional revenues to the division and to increase fees and assessments paid by institutions regulated by the division.

Proposal Changes the Following Existing Rules: The proposed rule amends WAC 208-544-039 and 208-586-140 to provide for an automatic annual rate increase in fees and assessments charged by the Division of Banks, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; amends WAC 208-544-039 and 208-586-140 to allow for the waiver of fees and assessments, if certain conditions are met; amends WAC 208-544-039 (1)(d) to eliminate the cap on assessments on assets over \$10 billion; and repeals WAC 208-544-037, 208-544-050, and 208-586-135.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Subject: Rule proposed by the Division of Banks ("division") of the Washington State Department of Financial Institutions (DFI) to revise chapters 208-544 and 208-586 WAC.

By: Dave Kroeger, Director of Banks.

Date: March 21, 2001.

Introduction: The division has prepared this SBEIS in compliance with chapter 19.85 RCW, the Regulatory Fairness Act (RFA). The preproposal statement of inquiry (form CR-101) in connection with the proposed rule was filed at WSR 01-03-145. The proposed rule affects state commercial banks, savings banks, savings and loan associations, and other institutions subject to regulation by the division. Collectively these entities will be referred to in this SBEIS as "Institutions."

Background for Proposed Rule: Titles 30, 32, and 33 RCW authorize the director of DFI to collect from each institution the cost of their examination and supervision. (See RCW 30.04.070, 32.04.150, and 33.28.020.) Regulated financial institutions pay three types of charges assessed by the division:

1. A semiannual asset charge based on the total assets of the institution;
2. Hourly charges for examinations and other tasks performed by the division;
3. Miscellaneous charges and fees associated with the issuance of various certificates, application processing, licensing, legal assistance, and filing of documents.

The division needs significant additional revenues to pay the cost of its operation and to maintain its reserve. Under state law, the division cannot increase its fee and assessment rates in any one fiscal year by more than the "fiscal growth factor" for the year. The fiscal growth factor for the current fiscal year is 2.87%. In order to generate significant additional revenues, the proposed rule provides for an annual increase every July 1 up to the amount of the fiscal growth factor for that fiscal year. The rule also provides that fees and assessments may be waived if certain conditions are met.

Description of Proposed Rule: The proposed rule:

- Provides for the increase of fee and assessment rates on July 1, 2001, and every July 1 thereafter, up to the amount of the then current fiscal growth factor.
- Provides for a waiver of fees and assessments, if certain conditions are met.
- Eliminates the cap on assessments on assets over \$10 billion.

Required Elements of SBEIS: The elements of the SBEIS required by the RFA are set forth below.

Element 1. A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

Response: The only substantive change in the proposed rule is the increase in fee and assessment rates paid by institutions. See "Description of Proposed Rule" above for a brief description of the requirements of the proposed rule. The proposed rule does not change the reporting, record-keeping or compliance requirements of the current rule, or the kinds of professional services that a small business is likely to need to comply with the proposed rule.

Element 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor and increased administrative costs.

Response: The proposed rule increases assessment and fee rates and provides for an automatic annual increase in such rates. The proposed rule should not increase any of the compliance costs associated with the payment of such fees or assessments, including costs for equipment, supplies, labor, or other administrative costs.

Element 3. Whether compliance with the proposed rule will cause business to lose sales or revenue.

Response: The annual increases will be fairly small. The reason is that the annual rate increases are limited to the amount of the fiscal growth factor (FGF), and the FGF is currently running less than 3%. Consequently, it is very doubtful that the increase in cost will prevent or delay institutions from bringing new products or services to market or cause them to lose market share.

Element 4. A comparison of the compliance costs for the small business segment and large business segment of the affected industry(ies), and whether the impact on the small business segment is disproportionate.

Response: Under the proposed rule, all fees and assessment rates are increased by the fiscal growth factor, so all institutions, regardless of size, will face the same percentage

increase in their fee or assessment. Any existing disproportionality in fee or assessments rates will be maintained, but no additional disproportionality will be introduced.

Element 5. Steps taken by the agency under RCW 19.85.030(3) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

Response: We have reviewed the six steps under RCW 19.85.030 (3)(a) through (f). Our analysis is as follows:

(a) Reducing, modifying, or eliminating substantive regulatory requirements: We believe that the proposed rule is necessary to ensure that the division has sufficient funds to operate and is, in the final analysis, necessary to ensure the safety and soundness of institutions, regardless of size. Consequently, we believe that the compliance requirements in this area should not be reduced for small institutions.

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements: The proposed rule does not increase record-keeping or reporting requirements.

(c) Reducing the frequency of inspections: The proposed rule does not provide for inspections.

(d) Delaying compliance timetables: The proposed rule does not change the timing of payment of assessments and fees.

(e) Reducing or modifying fine schedules for noncompliance: The proposed rule does not impose new fine schedules.

(f) Any other mitigation techniques: We are not aware of other mitigation techniques. However, we welcome comments from small institutions on how to make the proposed rule less onerous for them.

Consequently, as discussed above, we do not believe that it is legal or feasible to reduce the costs of the proposed rule on small businesses.

Element 6. A description of how the agency will involve small business in the development of the proposed rule.

Response: All institutions, including smaller ones, will be provided with a copy of the proposed rule and an opportunity to provide comment on the proposal. Institutions are welcome to contact the division to comment on the rule. Small institutions in particular are encouraged to provide comments on how the rule could be made less onerous for them.

Element 7. A list of the industry(ies) affected by the proposed rule.

Response: The industries affected by the proposed rule are as follows:

State commercial banks: Standard industrial classification 6022.

Savings institutions, not federally chartered: Standard industrial classification 6036.

Nondeposit trust facilities: Standard industrial classification 6091.

Branches and agencies of foreign banks: Standard industrial classification 6081.

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A copy of the statement may be obtained by writing to Patty Brombacher, Division of Banks, 210 11th Street S.W., Room 300, Olympia, WA 98504, phone (360) 902-8748, fax (360) 704-6948.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Financial Institutions is not a listed agency in section 201.

Hearing Location: General Administration Building, Auditorium, 1st Floor, 210 11th Street S.W., Olympia, WA 98504, on May 1, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Patty Brombacher by close of business April 13, 2001, TDD (360) 664-8126.

Submit Written Comments to: David Kroger, Assistant Director, Division of Banks, 210 11th Street S.W., Room 300, Olympia, WA 98504, fax (360) 704-6947, by close of business April 30, 2001.

Date of Intended Adoption: May 1, 2001.

March 20, 2001

John L. Bley
Director

AMENDATORY SECTION (Amending WSR 01-06-024, filed 2/27/01, effective 3/30/01)

WAC 208-544-039 Charges and fees effective July 1, ~~(1999)~~ 2001. (1) Effective July 1, ~~(1999)~~ 2001, the rate of charges and fees under WAC 208-512-045, 208-544-020 and 208-544-030 shall be as follows:

(a) WAC 208-512-045 (1)(c) and (d) - The fee shall be \$100.00 for the issuance and filing of certificates.

(b) WAC 208-512-045 (1)(e) - The fee shall be 50 cents per page.

(c) WAC 208-512-045(2) - The fee shall be ~~\$(96.87))~~ 102.43 per employee hour expended.

(d) WAC 208-544-020(1) - The rates shall be the following:

If total assets are:		The assessment is:		
Over	But not Over	This Amount	Plus	Of Excess Over
Million	Million			Million
0	500	0	((-0000151549)) <u>0.000016022</u>	0
500	1,000	((7,577)) <u>8.011</u>	((-0000145309)) <u>0.000015364</u>	500
1,000	((10,000))	((14,842)) <u>15.693</u>	((-0000143149)) <u>0.000015134</u>	1,000
((10,000	—	<u>143.676</u>	-000	<u>10,000))</u>

(e) WAC 208-544-020(2) - The rate shall be ~~((-000037876))~~ 0.04005.

(f) WAC 208-544-030(1) - The fee shall be ~~\$(69.95))~~ 73.95 per hour.

(g) WAC 208-544-030(2) - The fee shall be ~~\$(96.87))~~ 102.43 per hour.

(2) ~~((Thereafter, effective July 1, 2000, and again on July 1, 2001, the charges and fees set forth in subsection (1)(c), (d), (e), (f), and (g) of this section shall be increased by the fiscal growth factor as determined by the office of financial~~

~~management pursuant to RCW 43.135.025.))~~ (a) On July 1, 2002, and each July 1 after that date, the rate of charges and fees under subsection (1)(c), (d), (e), (f), and (g) of this section, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(b) The director may round off a rate increase under this subsection. However, no rate increase may exceed the applicable fiscal growth factor.

(c) By June 1 of each year the director will make available a chart of the new rates that will take effect on the immediately following July 1.

(3) The director may ~~((suspend the collection of))~~ waive any or all of the charges and/or fees imposed under this section, in whole or in part, when he or she determines that both of the following factors are present:

(a) The banking examination fund established in RCW 43.320.110 ~~(or its successor)~~ exceeds the projected acceptable minimum fund balance level approved by the office of financial management (OFM); and

(b) That such course of action would be fiscally prudent.

(4)(a) If the charges and fees assessed under WAC 208-544-020(1) relating to a semiannual asset charge and WAC 208-544-030(1) relating to the hourly examination fee exceed ninety-five percent of the assessment charge applicable for a two-year period of the office of the comptroller of the currency (OCC) or its successor then the assessments paid in excess of such amount shall be rebated to the institution pursuant to (e) of this subsection unless abated by the director as provided in (f) of this subsection.

(b) For purposes of determining rebate entitlement, the total of semiannual assessments and examination fees will be determined by adding the monthly average semiannual assessment and the monthly average of the examination fees for any twenty-four month period beginning on or after July 1, 2000. The monthly average is determined by dividing the semiannual assessment fee by six and applying the monthly average to the previous six months. The monthly average examination fee is determined by dividing the examination fee for each examination during the averaging period by the number of months between each such examination and the previous examination as determined by the date of the examinations and applying the monthly average to those months. The OCC charge is determined in the same manner. Under no circumstances will an institution be permitted to calculate a rebate based on a period of time that was included, in whole or in part, in the calculation of another rebate under this section.

(c) The rebate is determined by the difference between the sum of the applicable monthly average state charges for the twenty-four month period minus ninety-five percent of the sum of the applicable monthly average OCC charge for the same period, as each are determined in (b) of this subsection.

(d) Entitlement of the rebate will occur only upon petition and satisfactory proof to the director.

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(e) Rebate abatement. At the discretion of the director, all or part of the rebate determined under (d) of this subsection may be denied if the director determines that:

(i) The institution required a substantially greater than average amount of supervisory time for reasons other than as a result of economic, legal, regulatory, or other conditions beyond the control of competent management;

(ii) The institution required a substantially greater than average amount of examination time for an institution of its size for reasons other than as a result of economic, legal, regulatory, or other conditions beyond the control of competent management;

(iii) Examinations or investigations were performed by third parties under personal services contracts;

(iv) The banking examination fund established in RCW 43.320.110 (or its successor) does not exceed the projected acceptable minimum fund balance level approved by OFM or is insufficient to satisfy the rebates under this subsection and still maintain the operations of the department at a fiscally prudent level;

(v) The institution maintained a composite uniform financial institution rating (CAMELS) of 3, 4 or 5 during any time during the rebate period; or

(vi) Such other factors as the director may deem equitable or relevant.

(f) Institutions may become eligible to receive a rebate after June 30, 2002, for amounts paid on or after July 1, 2000.

NEW SECTION

WAC 208-544-065 Effective date. These revisions will take effect on July 1, 2001.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-544-037 Charges and fees effective June 25, 1999.

WAC 208-544-050 Limitations on assessments.

AMENDATORY SECTION (Amending WSR 01-06-024, filed 2/27/01, effective 3/30/01)

WAC 208-586-140 Charges and fees effective July 1, ((1999)) 2001. (1) Effective July 1, ((1999)) 2001, the rate of charges and fees under chapters 208-586 and 208-594 WAC shall be as follows:

(a) WAC 208-586-030(1) - The fee shall be \$((43.05)) 45.51 per hour.

(b) WAC 208-586-030(2) - The fee shall be \$((48.43)) 51.19 per hour.

(c) WAC 208-586-030(3) - The fee shall be \$((53.81)) 56.89 per hour.

(d) WAC 208-586-040 - The asset charge shall be ((.0322916)) 0.0348046 per thousand dollars of assets.

(e) WAC 208-586-075 - The fee shall be \$2,500.00 for the first branch and \$500.00 for each additional branch.

(f) WAC 208-586-080 - The fee shall be \$50.00 for the home office and each branch.

(g) WAC 208-586-090 - The fee shall be \$((64.57)) 68.27 per hour.

(h) WAC 208-586-100 - The fee shall be \$((53.81)) 56.89 per hour.

(i) WAC 208-586-110 - The fee shall be \$((53.81)) 56.89 per hour.

(j) WAC 208-586-120 - The fee shall be \$5,000.00.

(k) WAC 208-594-070 - The fee shall be \$1,000.00.

(2) ~~((Thereafter, effective July 1, 2000, and again on July 1, 2001, the charges and fees set forth in subsection (1)(a), (b), (c), (d), (g), (h), and (i) of this section shall be increased by the fiscal growth factor as determined by the office of financial management pursuant to RCW 43.135.025.))~~ (a) On July 1, 2002, and each July 1 after that date, the rate of charges and fees under subsection (1)(a), (b), (c), (d), (g), (h), and (i) of this section, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(b) The director may round off a rate increase under this subsection. However, no rate increase may exceed the applicable fiscal growth factor.

(c) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

(3) The director may ~~((suspend the collection of))~~ waive any or all of the charges and/or fees imposed under this section, in whole or in part, when he or she determines that both of the following factors are present:

(a) The banking examination fund established in RCW 43.320.110 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(b) That such course of action would be fiscally prudent.

NEW SECTION

WAC 208-586-150 Effective date. These revisions will take effect on July 1, 2001.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-586-135 Charges and fees effective June 25, 1999.

**WSR 01-07-082
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**

[Filed March 21, 2001, 8:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-146.

Title of Rule: Increasing assessments and fees paid by credit unions and affiliated parties examined by the Division of Credit Unions.

Purpose: To provide additional revenue to the division.

Statutory Authority for Adoption: RCW 31.12.516, 43.320.040.

Statute Being Implemented: RCW 31.12.516, 31.12.555.

Summary: The proposed rule increases by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001; provides for an automatic annual rate increase in assessments and fees charged by the division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; allows for the waiver of fees and assessments, if certain conditions are met; and clarifies assessments and fees charged to out-of-state and foreign credit unions.

Reasons Supporting Proposal: The division needs significant additional revenues to pay for the operation of the division and to maintain a reserve.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Parker Cann, 210 11th Street S.W., Room 300, Olympia, WA 98504, (360) 902-8778.

Name of Proponent: Division of Credit Unions, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Explanation: The proposed rule increases by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001; provides for an automatic annual rate increase in assessments and fees charged by the division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; allows for the waiver of assessments and fees, if certain conditions are met; and clarifies assessments and fees charged to out-of-state and foreign credit unions.

Purpose: To increase revenue to cover the operation of the division and to maintain a reserve for the division.

Anticipated Effects: To provide additional revenues to the division and to increase assessments and fees paid by credit unions.

Proposal Changes the Following Existing Rules: The proposed rule amends WAC 208-418-040 and adds a new section to increase by 2.87% the rate of assessments and fees charged by the Division of Credit Unions, effective in June 2001; adds a new WAC section to provide for an automatic annual rate increase in assessments and fees charged by the division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; adds a new WAC section to provide definitions; add a new WAC section to allow for the waiver of assessments and fees, if certain conditions are met; amends WAC 208-418-040 and 208-418-070 to clarify assessments and fees charged to out-of-state and foreign credit unions; amends WAC 208-418-050 to clarify that the division can pass through the costs of special counsel; repeals WAC 208-418-060 ("One-time special assessment

for fiscal 1997"); and amends WAC 208-418-020 to make clarifying and conforming changes.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Subject: Rule proposed by the Division of Credit Unions ("division") of the Washington State Department of Financial Institutions (DFI) to revise chapter 208-418 WAC to increase assessments and fees.

By: Parker Cann, Director of Credit Unions.

Date: March 21, 2001.

Introduction: The division has prepared this SBEIS in compliance with chapter 19.85 of the RCW, the Regulatory Fairness Act (RFA). The preproposal statement of inquiry (form CR-101) in connection with the proposed rule was filed at WSR 01-03-146.

Background For Proposed Rule: State credit unions pay assessments and fees to the Division of Credit Unions to pay for the operation of the division and to establish a reserve for the division. RCW 31.12.516. For the most part, the division is funded by quarterly assessments based on asset size. WAC 208-418-040. The division also charges miscellaneous fees for, among other things, the processing of community field of membership applications. WAC 208-418-070.

The division needs significant additional revenues to pay the cost of its operation and to maintain its reserve. Under state law, the division cannot increase its assessment and fee rates in any one fiscal year by more than the "fiscal growth factor" for the year. The fiscal growth factor for the current fiscal year is 2.87%. In order to generate significant additional revenues, the proposed rule provides for an immediate increase of 2.87% in the rate of assessments and fees, and provides for an annual increase every July 1 up to the amount of the fiscal growth factor for that fiscal year. The rule also provides that assessments and fees may be waived if certain conditions are met.

Other technical changes are made by the rule concerning assessments and fees paid by out-of-state and foreign credit unions operating a branch in Washington.

Description Of Proposed Rule: The proposed rule:

- Increases assessment and fee rates by 2.87%, effective in June 2001.
- Provides for the increase of assessment and fees rates on July 1, 2001, and every July 1 thereafter, up to the amount of the then current fiscal growth factor.
- Provides for a waiver of assessments and fees, if certain conditions are met.
- Clarifies assessment of out-of-state and foreign credit unions.

REQUIRED ELEMENTS OF SBEIS: The elements of the SBEIS required by the RFA are set forth below.

ELEMENT 1. A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

RESPONSE: The only substantive change in the proposed rule is the increase in fee and assessment rates paid by credit unions. See "Description of Proposed Rule" above for a brief description of the requirements of the proposed rule. The proposed rule does not change the reporting, record-keeping or compliance requirements of the current rule, or the kinds of professional services that a small business is likely to need to comply with the proposed rule.

ELEMENT 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor and increased administrative costs.

RESPONSE: The proposed rule increases assessment and fees rates and provides for an automatic annual increase in such rates. The proposed rule should not increase any of the compliance costs associated with the payment of such assessments or fees, including costs for equipment, supplies, labor, or other administrative costs.

ELEMENT 3. Whether compliance with the proposed rule will cause business to lose sales or revenue.

RESPONSE: The annual increases will be fairly small. The reason is that the annual rate increases are limited to the amount of the fiscal growth factor (FGF), and the FGF is currently running less than 3%. Consequently, it is very doubtful that the increase in cost will prevent or delay credit unions from bringing new products or services to market or cause them to lose market share.

ELEMENT 4. A comparison of the compliance costs for the small business segment and large business segment of the affected industry(ies), and whether the impact on the small business segment is disproportionate.

RESPONSE: Under the proposed rule, all assessment and fee rates are increased by the fiscal growth factor, so all credit unions, regardless of size, will face the same percentage increase in their assessments or fees. Any existing disproportionality in assessment or fee rates will be maintained, but no additional disproportionality will be introduced.

ELEMENT 5. Steps taken by the agency under RCW 19.85.030(3) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

RESPONSE: We have reviewed the six steps under RCW 19.85.030 (3)(a) through (f). Our analysis is as follows:

(a) Reducing, modifying, or eliminating substantive regulatory requirements: We believe that the proposed rule is necessary to ensure that the division has sufficient funds to operate and is, in the final analysis, necessary to ensure the safety and soundness of credit unions, regardless of size. Consequently, we believe that the rule's requirements should not be reduced for small credit unions.

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements: The proposed rule does not increase record-keeping or reporting requirements.

(c) Reducing the frequency of inspections: The proposed rule does not provide for inspections.

(d) Delaying compliance timetables: The proposed rule does not change the timing of payment of assessments and fees.

(e) Reducing or modifying fine schedules for noncompliance: The proposed rule does not impose new fine schedules.

(f) Any other mitigation techniques: We are not aware of other mitigation techniques. However, we welcome comments from small credit unions on how to make the proposed rule less onerous for them.

Consequently, as discussed above, we do not believe that it is legal or feasible to reduce the costs of the proposed rule on small businesses.

ELEMENT 6. A description of how the agency will involve small business in the development of the proposed rule.

RESPONSE: All credit unions, including smaller credit unions, will be provided with a copy of the proposed rule and an opportunity to provide comment on the proposal. Credit unions are encouraged to contact the division to comment on the rule. Small credit unions in particular are welcome to provide comments on how the rule could be made less onerous for them.

ELEMENT 7. A list of the industry(ies) affected by the proposed rule.

RESPONSE: The industry affected by the proposed rule is state credit unions, standard industrial classification 6062.

A copy of the statement may be obtained by writing to Tina Philippsen, Division of Credit Unions, 210 11th Street S.W., Room 300, Olympia, WA 98504, phone (360) 902-8718, fax (360) 704-6918.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Financial Institutions is not a listed agency in section 201.

Hearing Location: General Administration Building, Auditorium, 1st Floor, 210 11th Street S.W., Olympia, WA 98504, on May 1, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Tina Philippsen, (360) 902-8718, by close of business April 13, 2001, TDD (360) 664-8126.

Submit Written Comments to: Parker Cann, Assistant Director, Division of Credit Unions, 210 11th Street S.W., Room 300, Olympia, WA 98504, fax (360) 704-6947, by close of business April 30, 2001.

Date of Intended Adoption: May 1, 2001.

March 20, 2001

John L. Bley

Director

NEW SECTION

WAC 208-418-010 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Credit union" includes a Washington credit union, an out-of-state credit union and a foreign credit union.

(2) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction, that is operating a branch in Washington in accordance with RCW 31.12.471.

(3) "Hourly fee" means a fee of \$57.42 per hour per examiner or other staff person of the division.

(4) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or U.S. territory or possession, that is operating a branch in Washington in accordance with RCW 31.12.471.

(5)(a) "Total assets" of a Washington credit union includes all assets of the credit union as reported on the credit union's most recent form 5300 or similar financial report.

(b) "Total assets" of an out-of-state or foreign credit union is derived from the following fraction:

Total assets x in-state branch shares and deposits

Total shares and deposits

"Total assets" and "shares and deposits" include respectively all assets and shares and deposits as reported on the credit union's most recent form 5300 or similar financial report.

(6) "Washington credit union" means a credit union organized and operating under chapter 31.12 RCW.

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-020 Collection of fees. Chapter ~~((274, Laws of 1996,))~~ 31.12 RCW authorizes the director to charge fees to credit unions and certain ~~((related))~~ affiliated parties in order to cover the costs of the operation of the division of credit unions and to establish a reasonable reserve for the division. As set forth in more detail in this chapter, the fees for this purpose shall consist of:

- (1) Quarterly asset assessments charged to credit unions;
- (2) Charges to a credit union for costs incurred by the division for certain types of attorney general assistance in regard to the credit union; and
- (3) Certain other fees charged by the director.

~~((Fees must be paid no later than thirty days after their due date.))~~ The director may waive all or any portion of any fee payable by a credit union or other party ~~((based on the ability of the credit union or party to pay the fee)).~~

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-040 Quarterly asset assessments. (1) The director will charge each credit union a quarterly asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January 1, April 1, July 1, and October 1. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30 for the October 1 and January 1 assessments, and as of the prior December 31 for the April 1 and July 1 assessments. ~~((Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state chartered during the quarter.))~~

(2) Credit Union's Total Assets	Quarterly Asset Assessment
over \$500M	\$ ((+18,357)) <u>18,883</u> + ((-000015)) <u>0.00001543</u> x total assets over \$500M
over \$100M up to \$500M	\$ ((5,104)) <u>5,250</u> + ((-000033134)) <u>0.00003408</u> x total assets over \$100M
over \$ ((20)) <u>25</u> M up to \$100M	((-000051035)) <u>0.00005250</u> x total assets
over \$10M up to \$ ((20)) <u>25</u> M	\$ ((+125)) <u>1,157</u>
over \$2M up to \$10M	\$ ((750)) <u>771</u>
over \$ ((200)) <u>500</u> K up to \$2M	\$ ((500)) <u>514</u>
up to \$ ((200)) <u>500</u> K	\$0
((Corporate Centrals	-.0000252 x total assets))

M = Million K = Thousand

(3) Quarterly asset assessments are charged for the calendar quarter that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the quarter. A credit union converting to state charter will pay a prorated quarterly asset assessment for the quarter during which the conversion is completed.

~~((For the purpose of this chapter, "total assets" includes all assets held by a Washington chartered credit union whether held within this state or a branch in another state, and assets of foreign credit unions held through branches within the state of Washington, as reported on the credit union's form 5300 or similar financial report. However, the director may waive any assessment on assets held by Washington chartered credit unions through branches in other states based upon reciprocal agreements with the other state's regulatory authority. As used in this chapter, "foreign credit union" means a credit union chartered under the laws of another state or a foreign country.))~~ From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, off-site monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-050 Pass through of attorney general costs. (1) The director will charge each credit union the actual cost incurred by the division of credit unions for certain legal assistance rendered by an assistant attorney general or special counsel in regard to the credit union. Legal assistance includes legal assistance rendered in connection with: Supervisory committee meetings and board meetings; receiverships, conservatorships, liquidations and declarations of

PROPOSED

insolvency; enforcement agreements or actions; collection actions; administrative hearings; and ((written)) opinions requested by a credit union or the division of credit unions. Charges are due upon receipt of billing from the division.

(2) The division will notify a credit union before the division incurs expense for legal assistance which may be charged to the credit union under this section.

AMENDATORY SECTION (Amending WSR 96-12-058, filed 5/31/96, effective 7/1/96)

WAC 208-418-070 Other fees. (1) The director will charge hourly fees as follows:

(a) An hourly fee will be charged to a party other than a credit union or a subsidiary of one or more credit unions for each electronic data processing examination of the party by the division of credit unions.

(b) An hourly fee will be charged to a credit union for the processing of the credit union's application to add a community group to its field of membership.

(c) An hourly fee will be charged to a credit union for a fraud investigation of the credit union and/or its related parties by the division.

(d) An hourly fee will be charged to ((a)) an out-of-state or foreign credit union for ((an on-site)) examination and supervision by the division under WAC 208-418-040(4).

(e) An hourly fee will be charged to ((a)) an out-of-state or foreign credit union for the processing of the credit union's application to ((do business)) operate a branch in this state.

(f) An hourly fee will be charged to other divisions or agencies for examinations, investigations, or similar undertakings performed on their behalf by the division.

(2) ((As used in this section, "hourly fee" means a fee of \$55.82 per hour per examiner or other staff person of the division.

((3)) In addition, the director will charge a credit union for the actual cost incurred by the division for an examination or investigation of the credit union and/or its related parties performed under personal services contract by third parties.

((4)) (3) Charges under this section are due upon receipt of billing from the division.

NEW SECTION

WAC 208-418-090 Rate increase. (1) On July 1, 2001, and each July 1 after that date, the fee and assessment rates under WAC 208-418-040 and 208-418-070, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

NEW SECTION

WAC 208-418-100 Waiver of fees. The director may waive any or all of the fees and assessments imposed under WAC 208-418-040 and 208-418-070, in whole or in part, when he or she determines that both of the following factors are present:

(1) The credit union examination fund established in RCW 43.320.120 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-418-060 One-time special assessment for fiscal 1997.

**WSR 01-07-083
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**

[Filed March 21, 2001, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-147.

Title of Rule: Increasing fees and assessments paid by consumer loan companies, check cashers and sellers, mortgage brokers and escrow officers and agents.

Purpose: To provide additional revenue to the Division of Consumer Services.

Statutory Authority for Adoption: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200.

Statute Being Implemented: RCW 18.44.081, [18.44]-091, [18.44].121, 19.146.228, 31.04.045, [31.04].085, [31.04]145, 31.45.030, [31.45].050, [31.45].100.

Summary: The proposed rule increases by 2.87% the rate of fees and assessments charged by the Division of Consumer Services, effective in June 2001; provides for an automatic annual rate increase in fees and assessments charged by the division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; and allows for the waiver of fees and assessments, if certain conditions are met.

Reasons Supporting Proposal: The division needs significant additional revenues to pay for the operation of the division and to maintain a reserve.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Thomson, 210 11th Street S.W., Room 300, Olympia, WA 98504, (360) 902-8787.

Name of Proponent: Division of Consumer Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Explanation: The proposed rule increases by 2.87% the rate of fees and assessments charged by the Division of Consumer Services, effective in June 2001; provides for an automatic annual rate increase in fees and assessments charged by the division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; and allows for the waiver of fees and assessments, if certain conditions are met.

Purpose: To increase revenue to cover the operation of the division and to maintain a reserve for the division.

Anticipated Effects: To provide additional revenues to the division and to increase fees and assessments paid by consumer loan companies, check cashers and sellers, mortgage brokers, and escrow officers and agents.

Proposal Changes the Following Existing Rules: The proposed rule amends WAC sections to increase by 2.87% the rate of fees and assessments charged by the Division of Consumer Services, effective in June 2001. See amendments to WAC 208-620-190, 208-630-021, 208-630-022, 208-630-023, 208-660-010, 208-660-060, and 208-680B-080; adds new WAC sections to provide for an automatic annual rate increase in fees and assessments charged by the division, on July 1, 2001, and every July 1 thereafter, up to the then current fiscal growth factor; and adds new WAC sections to allow for the waiver of fees and assessments, if certain conditions are met.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Subject: Rule proposed by the Division of Consumer Services ("division") of the Washington State Department of Financial Institutions (DFI) to revise chapters 208-620, 208-630, 208-660 and 208-680B WAC.

By: Mark Thomson, Director of Consumer Services.

Date: March 21, 2001.

Introduction: The division has prepared this SBEIS in compliance with chapter 19.85 RCW, the Regulatory Fairness Act (RFA). The preproposal statement of inquiry (form CR-101) in connection with the proposed rule was filed at WSR 01-03-147. The proposed rule affects consumer loan companies, check cashers and sellers, mortgage brokers and escrow officers and agents. Collectively these entities and individuals will be referred to in this SBEIS as "companies."

Background for Proposed Rule: Consumer loan companies pay fees and assessments to the division to pay for the operation of the division and to establish a reserve for the division. RCW 31.04.045, 31.04.085, and 31.04.145. For the most part, this program is funded by annual assessments and examination fees. WAC 208-620-190. The division also charges miscellaneous fees for, among other things, license applications. WAC 208-620-190.

Check cashers and sellers pay fees and assessments to the division to pay for the operation of the division and to establish a reserve for the division. RCW 31.45.050. For the most part, this program is funded by annual assessments and examination fees. WAC 208-630-022 and 208-630-023. The

division also charges miscellaneous fees for, among other things, license applications. WAC 208-630-021.

Mortgage brokers pay fees and assessments to the division to pay for the operation of the division and to establish a reserve for the division. RCW 19.146.228. For the most part, this program is funded by annual license fees. WAC 208-660-060. The division also charges miscellaneous fees for, among other things, license applications. WAC 208-660-060.

Escrow officers and agents pay fees and assessments to the division to pay for the operation of the division and to establish a reserve for the division. RCW 18.44.121. For the most part, this program is funded by annual license fees. WAC 208-680B-080. The division also charges miscellaneous fees for, among other things, license applications. WAC 208-680B-080.

The division needs significant additional revenues to pay the cost of its operation and to maintain its reserve. Under state law, the division cannot increase its fee and assessment rates in any one fiscal year by more than the "fiscal growth factor" for the year. The fiscal growth factor for the current fiscal year is 2.87%. In order to generate significant additional revenues, the proposed rule provides for an immediate increase of 2.87% in the rate of fees and assessments, and provides for an annual increase every July 1 up to the amount of the fiscal growth factor for that fiscal year. The rule also provides that fees and assessments may be waived if certain conditions are met.

Description of Proposed Rule: The proposed rule:

- Increases fee and assessment rates by 2.87%, effective in June 2001.
- Provides for the increase of fee and assessment rates on July 1, 2001, and every July thereafter, up to the amount of the then current fiscal growth factor.
- Provides for a waiver of fees and assessments, if certain conditions are met.

Required Elements of SBEIS: The elements of the SBEIS required by the RFA are set forth below.

Element 1. A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

Response: The only substantive change in the proposed rule is the increase in fee and assessment rates paid by companies. See "Description of Proposed Rule" above for a brief description of the requirements of the proposed rule. The proposed rule does not change the reporting, record-keeping or compliance requirements of the current rules, or the kinds of professional services that a small business is likely to need to comply with the proposed rule.

Element 2. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, labor and increased administrative costs.

Response: The proposed rule increases assessment and fee rates and provides for an automatic annual increase in such rates. The proposed rule should not increase any of the compliance costs associated with the payment of such fees or

assessments, including costs for equipment, supplies, labor, or other administrative costs.

Element 3. Whether compliance with the proposed rule will cause business to lose sales or revenue.

Response: The annual increases will be fairly small. The reason is that the annual rate increases are limited to the amount of the fiscal growth factor (FGF), and the FGF is currently running less than 3%. Consequently, it is very doubtful that the increase in cost will prevent or delay companies from bringing new products or services to market or cause them to lose market share.

Element 4. A comparison of the compliance costs for the small business segment and large business segment of the affected industry(ies), and whether the impact on the small business segment is disproportionate.

Response: Under the proposed rule, all fees and assessment rates are increased by the fiscal growth factor, so all companies, regardless of size, will face the same percentage increase in their fee or assessment. Any existing disproportionality in fee or assessments rates will be maintained, but no additional disproportionality will be introduced.

Element 5. Steps taken by the agency under RCW 19.85.030(3) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

Response: We have reviewed the six steps under RCW 19.85.030 (3)(a) through (f). Our analysis is as follows:

(a) **Reducing, modifying, or eliminating substantive regulatory requirements:** We believe that the proposed rule is necessary to ensure that the division has sufficient funds to operate and is, in the final analysis, necessary to ensure that companies do not violate applicable state law. Consequently, we believe that the rule's requirements should not be reduced for small companies.

(b) **Simplifying, reducing, or eliminating record-keeping and reporting requirements:** The proposed rule does not increase record-keeping or reporting requirements.

(c) **Reducing the frequency of inspections:** The proposed rule does not provide for inspections.

(d) **Delaying compliance timetables:** The proposed rule does not change the timing of payment of assessments and fees.

(e) **Reducing or modifying fine schedules for noncompliance:** The proposed rule does not impose new fine schedules.

(f) **Any other mitigation techniques:** We are not aware of other mitigation techniques. However, we welcome comments from small companies on how to make the proposed rule less onerous for them.

Consequently, as discussed above, we do not believe that it is legal or feasible to reduce the costs of the proposed rule on small businesses.

Element 6. A description of how the agency will involve small business in the development of the proposed rule.

Response: All companies, including smaller companies, will be provided with a copy of the proposed rule and an

opportunity to provide comment on the proposal. Companies are encouraged to contact the division to comment on the rule. Small companies in particular are welcome to provide comments on how the rule could be made less onerous for them. Opportunity to discuss the proposal will be provided at meetings of the Escrow Commission and the Mortgage Brokerage Commission.

Element 7. A list of the industry(ies) affected by the proposed rule.

Response: The industries affected by the proposed rule are:

Consumer loan companies: Standard industrial classification 6141.

Check cashers and sellers: Standard industrial classification 6099.

Mortgage brokers: Standard industrial classification 6163.

Escrow companies: Standard industrial classification 6531.

A copy of the statement may be obtained by writing to Jeannette Terry, Division of Consumer Services, 210 11th Street S.W., Room 300, Olympia, WA 98504, phone (360) 902-8786, fax (360) 704-6986.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Financial Institutions is not a listed agency in section 201.

Hearing Location: General Administration Building, Auditorium, 1st Floor, 210 11th Street S.W., Olympia, WA 98504, on May 1, 2001, at 12:00 p.m.

Assistance for Persons with Disabilities: Contact Jeannette Terry, (360) 902-8786, by close of business April 13, 2001, TDD (360) 664-8126.

Submit Written Comments to: Mark Thomson, Assistant Director, Division of Consumer Services, 210 11th Street S.W., Room 300, Olympia, WA 98504, fax (360) 704-6987, by close of business April 30, 2001.

Date of Intended Adoption: May 1, 2001.

March 20, 2001

John L. Bley
Director

AMENDATORY SECTION (Amending WSR 97-09-035, filed 4/11/97, effective 5/12/97)

WAC 208-630-021 Application review and investigation fee. (1) The director shall collect a fee of (~~sixty-five dollars~~) \$66.86 per employee hour expended for services, plus actual expenses, for review of application and investigation of:

- (a) New license applications;
- (b) Additional locations;
- (c) Change of control;
- (d) Relocation of office;
- (e) Voluntary or involuntary liquidation of licensee; and
- (f) Small loan endorsement applications.

(2) The director may require a lump sum payment in advance to cover the anticipated cost of review and investigation of the activities described in this section. If the lump sum payment required exceeds the actual amount derived in sub-

section (1) of this section, the amount in excess shall be refunded.

AMENDATORY SECTION (Amending WSR 97-09-035, filed 4/11/97, effective 5/12/97)

WAC 208-630-022 Annual assessment charge. (1) The director will charge each licensee an annual assessment at the rate set forth in subsection (2) of this section. Assessments for a calendar year will be computed on total volume of transactions as of December 31 of the previous calendar year. For licensees with a fiscal year of January through December, annual assessments are due on or before April 15. For licensees with a fiscal year other than that stated above, annual assessments are due one hundred five days after the close of the licensee's fiscal year. For the calendar year 1997, annual assessments for all licensees are due on or before June 30, 1997.

(2) The annual assessment rate is:

(a) For check cashers:

(i) If the volume of checks cashed is one million dollars or less, there is no annual assessment;

(ii) If the volume of checks cashed is over one million dollars, the annual assessment is ~~((five hundred dollars))~~ \$514.35 per licensed location.

(b) For check sellers:

(i) If the volume of checks sold is one million dollars or less, there is no annual assessment;

(ii) If the volume of checks sold is over one million dollars, the annual assessment is ~~((five hundred dollars))~~ \$514.35 per licensed location.

(c) For licensees with small loan endorsements, in addition to (a) and/or (b) of this subsection:

(i) If the volume of small loans made is one million dollars or less, there is no annual assessment;

(ii) If the volume of small loans made is over one million dollars, the annual assessment is ~~((five hundred dollars))~~ \$514.35 per licensed location.

(3) For purposes of this section, "volume" includes all transactions made under this chapter and chapter 31.45 RCW by a Washington licensed check casher or check seller at all licensed locations.

AMENDATORY SECTION (Amending WSR 97-09-035, filed 4/11/97, effective 5/12/97)

WAC 208-630-023 Examination fees. The fee for examinations described in WAC 208-630-015 shall be ~~((sixty five dollars))~~ \$66.86 per employee hour expended.

NEW SECTION

WAC 208-630-02303 Fee increase. (1) On July 1, 2001, and each July 1 after that date, the fee and assessment rates under WAC 208-630-021, 208-630-022, and 208-630-023, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025. However, there will be no rate increase under

this subsection (1) for assessments described in WAC 208-630-022 (2)(a)(i), (b)(i) and (c)(i).

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

NEW SECTION

WAC 208-630-02305 Waiver of fees. The director may waive any or all of the fees and assessments imposed under WAC 208-630-021, 208-630-022, and 208-630-023, in whole or in part, when he or she determines that both of the following factors are present:

(1) The banking examination fund established in RCW 43.320.110 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

AMENDATORY SECTION (Amending WSR 96-04-013, filed 1/26/96, effective 2/26/96)

WAC 208-620-190 Schedule of fees. The director shall collect fees for services as specified below:

(1) **Applications and certificates.**

(a) A charge of ~~((ninety dollars))~~ \$92.58 per hour for services plus actual expenses for review of application and attendant investigation for:

(i) New consumer loan company certificate of authority or licensed location certificate;

(ii) Branch licensed locations certificate;

(iii) Relocation of main office or branch;

(iv) Notice of change of control;

(v) Opinions rendered regarding interpretations of statutes and rules.

(b) A fee of ~~((one hundred dollars))~~ \$102.87 for issuing the following certificates:

(i) Certificate of authority;

(ii) Licensed location certificate;

(iii) Certificate of good standing.

(2) **Examinations.** A charge of ~~((sixty five dollars))~~ \$66.86 per hour for regular and special examinations of the licensee's records. The director will submit a statement for the charges following the completion of any applicable examination. The charges must be paid within thirty days after the statement is submitted to the licensee.

(3) **Annual assessment fee.**

(a) An annual assessment fee based on adjusted total loan value as defined in (b) of this subsection. The amount of the annual assessment fee is ~~((0.00169792))~~ 0.000174665 multiplied by the adjusted total loan value as calculated from the consolidated annual report for the previous calendar year.

(b) The "adjusted total loan value" is the sum of:

(i) The total unpaid balance of loans originated subject to the act that were retained or purchased by the licensee; and

(ii) The total unpaid balance of loans originated subject to the act that were sold by the licensee with servicing retained (if any); and

(iii) The total amount of loans originated subject to the act that were sold by the licensee during the previous calendar year with servicing released (if any).

NEW SECTION

WAC 208-620-191 Fee increase. (1) On July 1, 2001, and each July 1 after that date, the fee and assessment rates under WAC 208-620-190, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

NEW SECTION

WAC 208-620-192 Waiver of fees. The director may waive any or all of the fees and assessments imposed under WAC 208-620-190, in whole or in part, when he or she determines that both of the following factors are present:

(1) The banking examination fund established in RCW 43.320.110 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

AMENDATORY SECTION (Amending WSR 96-05-018 [96-21-082], filed 10/16/96, effective 11/16/96)

WAC 208-680B-080 Escrow officer and agent fees. The director shall charge the following fees:

Title of Fee	Fee
Escrow officer:	
First examination	\$((+150.00)) <u>154.30</u>
Reexamination	((+50.00)) <u>154.30</u>
Original license	((+60.00)) <u>164.59</u>
License renewal	((+60.00)) <u>164.59</u>
Transfer of license, name or address change or license activation	((25.00)) <u>25.71</u>
Duplicate license	((25.00)) <u>25.71</u>

Escrow agent:	
Application and original certificate	((345.00)) <u>354.90</u>
Renewal	((345.00)) <u>354.90</u>
Late renewal with penalty	((517.50)) <u>532.35</u>
Transfer of certificate, name or address change	((25.00)) <u>25.71</u>
Duplicate certificate	((25.00)) <u>25.71</u>
Escrow agent branch office:	
Application and original license	((345.00)) <u>354.90</u>
Renewal	((345.00)) <u>354.90</u>
Late renewal with penalty	((517.50)) <u>532.35</u>
Transfer of license, name or address change	((25.00)) <u>25.71</u>
Duplicate license	((25.00)) <u>25.71</u>

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

NEW SECTION

WAC 208-680B-081 Fee increase. (1) On July 1, 2001, and each July 1 after that date, the fee and assessment rates under WAC 208-680B-080, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

NEW SECTION

WAC 208-680B-082 Waiver of fees. The director may waive any or all of the fees and assessments imposed under WAC 208-680B-080, in whole or in part, when he or she determines that both of the following factors are present:

(1) The banking examination fund established in RCW 43.320.110 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

PROPOSED

AMENDATORY SECTION (Amending WSR 01-01-044, filed 12/8/00, effective 1/8/01)

WAC 208-660-010 Definitions. As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) "Advertising material" means any form of sales or promotional materials to be used in connection with the mortgage broker business.

(2) "Affiliate" means any person who controls, is controlled by, or is under common control with, another person.

(3) "Application deposit" means a deposit in immediately available funds consisting of (~~three hundred fifty dollars~~) the equivalent of ten hours investigation fees under WAC 208-660-060 for each license applied for and (~~one hundred seventy five dollars~~) the equivalent of five hours investigation fees under WAC 208-660-060 for each branch office certificate applied for. For example, an applicant requesting a license and two branch office certificates must submit an application deposit of seven hundred dollars (calculated by adding (~~three hundred fifty dollars~~) ten hours investigation fees to the product of two times (~~one hundred seventy five dollars~~) five hours investigation fees).

(4) "Approved examination" means a written examination approved by the director.

(5) "Approved licensing or continuing education course" means a licensing or continuing education course approved by the director.

(6) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(7) "Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

(8) "Branch office certificate" means a branch office license issued by the director to engage in the mortgage broker business as the branch office indicated in the certificate, pursuant to RCW 19.146.265.

(9) "Certificate of passing an approved examination" means a certificate signed by the examination administrator verifying that the individual performed with a satisfactory score or higher on an approved licensing examination.

(10) "Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

(11) "Certificate of satisfactory completion of an approved licensing course" means a certificate signed by the course provider verifying that the individual has attended at least forty hours of class of an approved licensing course.

(12) "Consumer Protection Act" means chapter 19.86 RCW.

(13) A person "controls" an entity if the person, directly or indirectly through one or more intermediaries, alone or in concert with others, owns, controls, or holds the power to

vote twenty-five percent or more of the outstanding stock or voting power of the controlled entity.

(14) A person is "convicted" of a crime, irrespective of the pronouncement or suspension of sentence, if the person:

- Is convicted of the crime in any jurisdiction;
- Is convicted of a crime which, if committed within this state would constitute such a crime under the laws of this state;

• Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

• Has been found guilty of such a crime by the decision or judgment of a court or federal magistrate or by the verdict of a jury.

(15) "Department" means the department of financial institutions.

(16) "Designated broker" means a natural person designated by the applicant for a license or licensee who meets the experience, education, and examination requirements set forth in RCW 19.146.210(e).

(17) "Director" means the director of financial institutions.

(18) "Employee" means any natural person who:

- Has an employment relationship, acknowledged by both the employee and the mortgage broker; and
- Is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(19) "Financial institution" means a federally insured bank, savings bank, savings and loan association, or credit union, whether state or federally chartered, authorized to conduct business in this state.

(20) "Financial misconduct" means without limitation:

- Any conduct prohibited by the Mortgage Broker Practices Act;
- Any similar conduct prohibited by statutes governing mortgage brokers in other states; and
- Any similar conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers.

(21) A person "holds oneself out" by advertising or otherwise informing the public that the person engages in any of the activities indicated, including without limit through the use of business cards, stationery, brochures, rate lists or other promotional items.

(22) "Independent contractor" or "person who independently contracts" means any person that:

- Expressly or impliedly contracts to perform mortgage broker activities for a licensee;
- With respect to its manner or means of performing the activities, is not subject to the licensee's right of control; and
- Is not treated as an employee by the licensee for purposes of compliance with federal income tax laws.

(23) "Investigation" means an examination undertaken for the purpose of detection of violations of this chapter or securing information lawfully required under this chapter.

(24) "License" means a license issued by the director to engage in the mortgage broker business.

(25) "Licensee" or "licensed mortgage broker" means:

- A mortgage broker licensed by the director; and
- Any person required to be licensed pursuant to RCW 19.146.200 and 19.146.020.

(26) "Loan originator" means a natural person:

- Who is a mortgage broker employee who performs any mortgage broker activities; or
- Who is retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in the performance of any mortgage broker activities.

(27) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms upon which it will make a loan available to the borrower.

(28) "Material litigation" means any conviction in the prior seven years for a felony, or for a gross misdemeanor involving dishonesty or financial misconduct, and any litigation pending at any time during the prior seven years that would be relevant to the director's ruling on an application for a license, including but not limited to, the following types of litigation:

- Criminal actions involving felony charges.
- Criminal or civil actions involving dishonesty or financial misconduct.

(29) "Mortgage broker" means any person that for compensation or gain, or in the expectation of compensation or gain:

- Makes a residential mortgage loan or assists a person in obtaining a residential mortgage loan; or
- Holds himself or herself out as being able to do so.

(30) "Mortgage Broker Practices Act" means chapter 19.146 RCW and chapter 208-660 WAC.

(31) "Out-of-state applicant or licensee" means an applicant for a license or licensee that does not maintain a physical office within this state.

(32) "Person" means a natural person, corporation, company, partnership, limited liability company, or association.

(33) "Prepaid escrowed costs of ownership," as used in RCW 19.146.030(5), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the security property.

(34) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership, company, association or corporation, and the owner of a sole proprietorship.

(35) "RCW" means the *Revised Code of Washington*.

(36) "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act, 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

(37) "Registered agent" means a person or persons located within this state that is appointed to accept service of process for an out-of-state licensee.

(38) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

(39) "Subsidiary" means a corporation, company, partnership, or association that is controlled by another.

(40) "Third-party provider" means any third party, other than a mortgage broker or lender, that provides goods or services to the mortgage broker in connection with the preparation of a borrower's loan and includes, but is not limited to, credit reporting agencies, title insurance companies, appraisers, structural and pest inspectors, or escrow companies. However, "third-party provider" does include a third-party lender, to the extent it provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(41) "Transfer" means a sale, transfer, assignment, or other disposition, whether by operation of law in a merger or otherwise.

(42) "Truth in Lending Act" means the Truth in Lending Act, 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

AMENDATORY SECTION (Amending WSR 96-04-028, filed 2/1/96, effective 4/1/96)

WAC 208-660-060 Department's fees and assessments. (1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of (~~thirty five dollars~~) \$36.00 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

(2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of (~~forty five dollars~~) \$46.29 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

(3) Each licensee shall pay to the director an annual assessment of (~~five hundred dollars~~) \$514.35 for each license, and (~~five hundred dollars~~) \$514.35 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be cal-

culated at the rate of (~~forty-five dollars~~) \$46.29 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

NEW SECTION

WAC 208-660-061 Fee increase. (1) On July 1, 2001, and each July 1 after that date, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

NEW SECTION

WAC 208-660-062 Waiver of fees. The director may waive any or all of the fees and assessments imposed under WAC 208-660-060, in whole or in part, when he or she determines that both of the following factors are present:

(1) The banking examination fund established in RCW 43.320.110 (or its successor) exceeds the projected acceptable minimum fund balance level approved by the office of financial management; and

(2) That such course of action would be fiscally prudent.

WSR 01-07-084

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 21, 2001, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-20-033.

Title of Rule: Chapter 308-400 WAC, Uniform commercial code and chapter 308-410 WAC, Uniform commercial code field access.

Purpose: Repeal chapters 308-400 and 308-410 WAC and replace with new set of rules, chapter 308-390 WAC, to implement Revised Article 9 (chapter 62A.9A RCW) which becomes effective July 1, 2001.

Statutory Authority for Adoption: RCW 62A.9-409, 60.11.040, 60.13.040, 60.68.035, and 34.05.220.

Statute Being Implemented: Chapter 62A.9A RCW, RCW 60.11.040, 60.13.040, 60.68.035.

Summary: Replace existing rules with new rules for filing UCC financing statements and liens. New rules also include procedures for searching the UCC files.

Reasons Supporting Proposal: The UCC program is moving toward new technology in order to meet the requirements of Revised Article 9 changes, reduce repetitive pro-

cesses, allow for electronic filing, and electronic payment of filing fees. The use of new technology demands the standardization of forms and procedures for the automated and expedient processing of filings. These rules are based on model rules developed by the International Association of Corporate Administrators to promote uniform procedures across the nation.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jon Donnellan, 405 Black Lake Boulevard, Olympia, WA, (360) 664-1530.

Name of Proponent: Department of Licensing, Uniform Commercial Code, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The UCC program is confronting the implementation of new technology in order to meet the proposed requirements of revised Article 9 dealing with Uniform Commercial Code, as well as electronic filings, and the electronic payment of filing fees. The program needs to position itself for the implementation of automated technology by standardizing its procedures with those in other states across the nation.

Proposal Changes the Following Existing Rules: Repeals chapters 308-400 and 308-410 WAC in total.

Adds new chapter 308-390 WAC, describing procedures for filing financing statements and liens, and for searching the UCC records, including: Definitions, forms, fees, payment, and document delivery.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 34.05.310 (4)(c), 19.85.025(3), 62A.9A-526(b). These rules are proposed to adopt national standards in accordance with Revised Article 9, section 526 "to keep the filing office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions..."

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. Department of Licensing is exempt from this statute.

Hearing Location: Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, 2nd Floor, Conference Room, Olympia, WA 98502, on April 24, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Margaret Vogeli by April 17, 2001, TDD (360) 586-2788, or (360) 664-1530.

Submit Written Comments to: Margaret Vogeli, Management Analyst, Uniform Commercial Code, P.O. Box 9660, Olympia, WA 98507-9660, fax (360) 586-4414, by April 19, 2001.

Date of Intended Adoption: April 27, 2001.

March 19, 2001
Alan E. Rathbun
Assistant Director

PROPOSED

Chapter 308-390 WAC

UNIFORM COMMERCIAL CODE,
REVISED ARTICLE 9NEW SECTION

WAC 308-390-100 General provisions. (1) These rules are adopted under the authority of Revised Article 9 of the Uniform Commercial Code, chapter 62A.9A RCW. The rules set forth in this chapter are effective with respect to financing statements filed on or after July 1, 2001, and to predecessor filings in effect immediately prior to that date.

(2) The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to these rules, the filing officer does none of the following:

- (a) Determine the legal sufficiency or insufficiency of a record.
- (b) Determine that a security interest in collateral exists or does not exist.
- (c) Determine that information in the record is correct or incorrect, in whole or in part.
- (d) Create a presumption that information in the record is correct or incorrect, in whole or in part.

NEW SECTION

WAC 308-390-101 Definitions. The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule shall have the respective meanings given such terms in chapter 62A.9A RCW.

(1) "ACH account" is a method of payment via electronic funds transfer under National Automated Clearing House Association rules and agreement with the department of licensing.

(2) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(3) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(4) "Certified search" is a certified record of information maintained by the filing office.

(5) "Continuation" shall have the meaning prescribed by RCW 62A.9A-102(27).

(6) "Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(7) "File number" shall have the meaning prescribed by RCW 62A.9A-519(b).

(8) "Filing office" and "filing officer" mean the department of licensing and the director of the department of licensing or designee.

(9) "Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.

(10) "Financing statement" shall have the meaning prescribed by RCW 62A.9A-102(39).

(11) "Image" means the image of a financing statement, or portion of a financing statement, as stored in the UCC information management system.

(12) "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

(13) "Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

(14) "On-line services" means the interactive internet application for filing and search functions.

(15) "Organization" means a legal person who is not an individual.

(16) "Organizational number" means the identifying number issued to an entity upon the formation of that entity by the filing office in the jurisdiction of formation.

(17) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

(18) "Secured party of record" shall have the meaning prescribed in RCW 62A.9A-511.

(19) "Termination statement" shall have the meaning prescribed by RCW 62A.9A-102(79).

(20) "UCC" means the Uniform Commercial Code as adopted in this state under chapter 62A.9A RCW.

(21) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings.

(22) "UCC website" means the series of related internet web pages provided for on-line filing and search functions.

NEW SECTION

WAC 308-390-102 UCC record delivery and time of filing. UCC documents may be tendered for filing at the filing office as follows:

(1) Personal delivery, at the filing office's street address during regular business hours. The file time for a UCC document delivered by this method is when the UCC document is received by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

(2) Express mail delivery, at the filing office's street address during regular business hours. The file time for a UCC document delivered by this method is 5:00 p.m. on the day of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business.

(3) Postal service delivery, to the filing office's mailing address. The file time for a UCC document delivered by this method is 5:00 p.m. on the day of delivery (even though the

UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business.

(4) Electronic mail and telefacsimile delivery, to the filing office's e-mail address or the filing office's fax filing telephone number, are not accepted.

(5) Electronic filing. Financing statements may be entered on-line after July 1, 2001, as described in WAC 308-390-313 and 308-390-315. The time of filing of a financing statement delivered by direct on-line access or by web page data entry is the time that the filing office's information management system analyzes the relevant transmission, determines that all the required elements of the transmission have been received in a required format, and acknowledges acceptance to that system.

NEW SECTION

WAC 308-390-103 Search request delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC documents may be delivered to the filing office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.

NEW SECTION

WAC 308-390-104 Forms. Only the forms prescribed by RCW 62A.9A-521 and other forms approved by the filing office shall be accepted.

NEW SECTION

WAC 308-390-105 Fees. (1) The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format is \$13.28. If there are additional pages, the fee is \$1.00 for each additional page. But the fee for filing and indexing a UCC document communicated by a medium authorized by these rules which is other than on paper or in a paper-based format shall be \$10.00.

(2) For an initial financing statement that indicates that it is filed in connection with a public-finance transaction or in connection with a manufactured-home transaction will be filed at the fee provided in subsection (1) of this section.

(3) UCC search fee. The fee for a UCC search request communicated on paper or in a paper-based format is \$18.80. The fee for filing and indexing a UCC search request communicated by a medium authorized by these rules which is other than on paper or in a paper-based format shall be \$15.00.

(4) UCC search—Copies. The fee for a UCC search and copies of all relevant documents is \$26.57.

(5) UCC search—Partial copies. The fee for a UCC search and copies of first pages only is \$20.00.

NEW SECTION

WAC 308-390-106 Expedited services. Expedited services are not provided.

NEW SECTION

WAC 308-390-107 Methods of payment. Filing fees and fees for public records services may be paid by the following methods:

(1) Cash. Payment in cash shall be accepted if paid in person at the filing office.

(2) Checks. Personal checks, cashier's checks and money orders made payable to the department of licensing shall be accepted if they are drawn on a bank acceptable to the filing office.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Credit cards. The filing office shall accept payment by credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed payment. This method of payment is accepted for on-line services only.

NEW SECTION

WAC 308-390-108 Overpayment and underpayment policies. (1) Overpayment. The filing officer shall refund the amount of an overpayment exceeding \$10.00 to the remitter. The filing officer shall refund an overpayment of \$9.99 or less only upon the written request of the remitter.

(2) Underpayment. Upon receipt of a document with an insufficient fee, a copy of the document shall be returned to the remitter as provided in WAC 308-390-204(2). A refund shall be delivered under separate cover.

(3) All refunds shall be made in the form of a warrant issued by the state treasurer's office. Warrants shall be redeemed within one hundred eighty days from date of issue and will not be reissued.

NEW SECTION

WAC 308-390-109 Bulk records. Bulk data from the UCC information management system shall be available in a format approved by the department. A list of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Charges shall be determined by written agreement between the department and the purchaser.

NEW SECTION

WAC 308-390-200 Acceptance and refusal of records. The following filing requirements are in addition to those outlined in chapter 62A.9A RCW.

NEW SECTION

WAC 308-390-201 Multiple names. (1) To file multiple debtor names on a paper submittal, a filer must provide the additional names in boxes 2 or 11 only of the national UCC Financing Statement and box 7 only on the national UCC Financing Statement Amendment. Debtor names appearing in other boxes or on attachments will not be indexed. There is no limit to the number of addendum pages that may be attached.

(2) To file multiple secured party names on a paper submittal, a filer must provide the additional names in box 12 only of the national UCC Financing Statement Addendum and box 7 of the national UCC Financing Statement Amendment. Secured party names appearing in other boxes or on attachments will not be indexed. There is no limit to the number of addendum pages that may be attached.

NEW SECTION

WAC 308-390-202 Deadline for filing a continuation statement. (1) The first day on which a continuation may be filed is the date corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses, although filing by certain means may not be possible on the date if the filing office is not open on that date. The relevant lapse date for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date.

NEW SECTION

WAC 308-390-203 Acknowledgment. (1) If there is no ground for refusal of the document, an acknowledgment is prepared and sent to the address provided in box B of the national forms. If the financing statement was tendered by on-line access, the notice or acknowledgment is transmitted to the remitter by on-line response.

(2) The acknowledgment will show the financing statement as it was recorded. The filer shall be responsible for verifying that the information was recorded accurately. If an input error is detected, the filer must notify the filing office within ninety days of the date of filing and the record will be corrected as provided in WAC 308-390-401. If no objection to the department of licensing record is communicated by the filer within ninety days, the record will be deemed identical to the filing submitted.

NEW SECTION

WAC 308-390-204 Grounds for refusal. (1) In addition to the grounds listed in RCW 62A.9A-516 allowing the filing officer to refuse a UCC record, the filing officer shall refuse a UCC record if:

(a) The record contains illegible information. The term "illegible" is not limited to refer only to written expressions on paper; it requires machine-readable transmission in all formats. Labels and imprints from an ink stamp are illegible.

(b) No address is given in the address field. As used in this section, address is deemed to include city and state.

(c) The information on the financing statement form is not machine-printed. Attachments to the form, however, may be handwritten.

(d) The filing officer is unable to decipher the information provided.

(2) Procedure upon refusal. If the filing officer finds grounds to refuse a financing statement, the filing officer shall return an image of the document to the remitter and shall refund the filing fee in the form of a warrant issued by the state treasurer's office.

(3) Multiple secured parties. If the record contains more than one secured party or assignee name or address and some names or addresses are missing, the grounds for refusal shall be applied to each secured party separately.

(4) Notification of defects. Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

(5) Refusal errors. If, within ninety days of the date of the refusal notice, a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer shall file the UCC record with the filing date and time the UCC record was originally tendered for filing. The filing officer shall also file a statement noting when and why the record was changed.

NEW SECTION

WAC 308-390-300 UCC information management system. The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which have not lapsed. The rules in this section describe the UCC information management system.

NEW SECTION

WAC 308-390-301 Primary data elements. The primary data elements used in the UCC information management system are the following:

(1) Identification numbers.

(a) Each initial financing statement is identified by its file number as described in RCW 62A.9A-519(b). Identification of the initial financing statement is permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

(b) A UCC document other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of financing statement. In the information management system, each financing statement has a status of lapsed or unlapsed.

(6) Page count. The total number of pages in a UCC document is maintained in the information management system.

(7) Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in RCW 62A.9A-515.

NEW SECTION

WAC 308-390-302 Names of debtors who are individuals. For the purpose of this rule, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor or a secured party on a UCC record who is an individual.

(1) Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., "Cher") in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

(2) Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, when a UCC record is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

(3) Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" shall not be entered in the UCC information management system. Suffixes are not part of an individual's name and should not be provided by filers in UCC records. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III," are entered in a field designated for name suffixes. In either case, they will be entered into the information management system exactly as received.

(4) Truncation—Individual names. Personal name fields in the UCC data base are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields are as follows:

- (a) First name: 100 characters.
- (b) Middle name: 100 characters.
- (c) Last name: 100 characters.
- (d) Suffix: 10 characters.

NEW SECTION

WAC 308-390-303 Names of debtors that are organizations. This rule applies to the name of an organization who is a debtor or a secured party on a UCC record.

(1) Single field. The names of organizations are stored in files that include only the names of organizations and not the names of individuals. A single field is used to store an organization name.

(2) Truncation—Organization names. The organization name field in the UCC data base is fixed in length. The maximum length is 300 characters. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

NEW SECTION

WAC 308-390-304 Estates. Although they are not human beings, estates are treated as if the decedent were the debtor under WAC 308-390-302.

NEW SECTION

WAC 308-390-305 Trusts. If the trust is named in its organic record(s), its full legal name, as set forth in such record(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC record that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it will be entered as if it were a part of the name under WAC 308-390-403.

NEW SECTION

WAC 308-390-306 Initial financing statement. Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the record shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

NEW SECTION

WAC 308-390-307 Amendment. Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

(a) Collateral amendment or address change. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

(b) Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC records that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC records. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

(c) Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

(d) Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the

financing statement, except the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

(e) Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

(f) Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) Deletion of a secured party. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

(2) Status of financing statement. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

NEW SECTION

WAC 308-390-308 Assignment of powers of secured party of record. (1) Status of the parties. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(2) Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

NEW SECTION

WAC 308-390-309 Status of parties upon filing a continuation. (1) Continuation of lapse date. Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.

(2) Status of parties. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

(3) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

NEW SECTION

WAC 308-390-310 Status of parties upon filing a termination. (1) Status of parties. The filing of a termination shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive one year after it is terminated with respect to all secured parties of record.

NEW SECTION

WAC 308-390-311 Correction statement. (1) Status of parties. The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

(2) Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.

NEW SECTION

WAC 308-390-312 Procedure upon lapse. If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office. On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement lapsed and the financing statement will no longer be made available to a searcher unless unlapsed statements are requested by the searcher and the financing statement is still retrievable by the information management system.

NEW SECTION

WAC 308-390-313 XML records. (1) The Extensible Markup Language (XML format), as adopted by the International Association of Corporation Administrators, is adopted in this state for electronic transmission of UCC records. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office.

(2) Implementation guide. The filing office publishes an implementation guide that prescribes the use of the XML format. The guide shall be available to the public upon request.

NEW SECTION

WAC 308-390-314 EDI documents. Electronic data interchange (EDI) of UCC records using ANSI X12 154 standards is not an accepted form of electronic transmission.

NEW SECTION

WAC 308-390-315 Direct on-line (non-XML) filing and search procedures. (1) Direct on-line filing and search services are available to any person with internet access to the UCC website. On-line services require payment by credit card or an ACH account number as provided in WAC 308-390-107.

(2) Record filing procedures. Initial financing statements and amendments may be filed via the UCC website that allows entry of the information permitted on the national forms. A record which is created by the filer in this manner is subject to all of the provisions of this chapter as if it were a paper document submitted to the filing office, except that attachments may not be submitted. Instructions on how to file are provided on the website.

(3) Search request procedures. A certified search naming a particular debtor may be obtained via the UCC website. A request that is created by the filer in this manner is subject

to all of the provisions of this chapter as if it were a paper search request submitted to the filing office. Copies of individual financing statements may be ordered on-line, but will not be displayed or transmitted on-line. Copies will be deposited in the U.S. Postal Service within two business days following receipt of the request. Instructions on how to request a certified search are provided on the website.

NEW SECTION

WAC 308-390-400 Filing and data entry procedures. This section contains rules describing the filing procedures of the filing officer upon and after receipt of a UCC record. Except as provided in these rules, data are transferred from a UCC record to the information management system exactly as the data are set forth in the record or search request. No effort is made to correct errors of any kind.

NEW SECTION

WAC 308-390-401 Errors of the filing officer. The filing officer may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification date, the filing officer shall file a filing officer statement in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

NEW SECTION

WAC 308-390-402 Notice of bankruptcy. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

NEW SECTION

WAC 308-390-403 Data entry of names. A record should designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

(1) Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

(2) Individual names. The filing officer enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

NEW SECTION

WAC 308-390-500 Search requests and reports. General requirements. The filing officer maintains for public

inspection a searchable index for all records of UCC documents. The index shall provide for the retrieval of a record by the name of the debtor, the name of the secured party, and by the file number of the initial financing statement and each filed UCC document relating to the initial financing statement.

NEW SECTION

WAC 308-390-501 Search requests. Search requests shall contain the following information:

(1) Name searched. A customer's search request should state the full correct name of the debtor or the name variant to be searched and must specify whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.

(2) Fee. The appropriate fee shall be enclosed, payable by a method described in WAC 308-390-107.

(3) Search request with filing. If a filer requests a search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC document, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC document is filed.

NEW SECTION

WAC 308-390-502 Rules applied to search requests. Search results are produced by the application of standardized search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search. The following rules apply to searches:

(1) There is no limit to the number of matches that may be returned in response to the search criteria.

(2) No distinction is made between upper and lower case letters.

(3) Punctuation marks and accents are disregarded.

(4) Words and abbreviations at the end of a name that indicate the existence or nature of an organization are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

(5) The word "the" at the beginning of the search criteria is disregarded.

(6) All spaces are disregarded.

(7) For first and middle names of individuals, initials are equated with all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name and with any name or initial or no name or initial in the middle name field.

(8) After using the preceding rules to modify the name to be searched, the search will reveal only names of debtors that are contained in unexpired financing statements and exactly match the name requested, as modified.

NEW SECTION

WAC 308-390-503 Optional information. A UCC search request must be submitted on an approved form and may contain any of the following information:

(1) The request may limit the records requested by limiting them by the city of the debtor, the date of filing (or a range of filing dates), or specific file number(s). A report created by the filing officer in response to such a request shall contain the statement:

"A limited search may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search."

(2) The request may ask for copies of all pages or of first pages only of UCC documents identified on the primary search response.

(3) The request may ask for a listing of all financing statements and notices that include a named secured party in a specific city and state. Copies may not be requested.

(4) The request may ask for records of lien notices only, or by type of lien.

(5) The request may ask for all records maintained by the information management system including those that have lapsed within the last twelve months.

(6) Instructions to return results by express mail will be honored if the remitter includes a prepaid way-bill or account number and the requested mode is available to the filing office.

NEW SECTION

WAC 308-390-504 Search responses. Reports created in response to a search request shall include the following:

(1) Filing officer. Identification of the filing officer and the certification of the filing officer required by RCW 62A.9A-523.

(2) Report date. The date the report was generated.

(3) Name searched. Identification of the name searched.

(4) Certification date. The certification date and time for which the search is effective.

(5) Identification of initial financing statements. Identification of each unexpired initial financing statement or lien filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

(6) History of financing statement. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the certification date.

(7) Copies. Copies of all UCC records revealed by the search and requested by the searcher.

NEW SECTION

WAC 308-390-505 Transition. For five years after the on-line search application is made available, a person may browse the UCC data base at no cost for the purpose of identifying debtor names to be searched. Instructions on how to use the browse function are provided on the UCC website. The noncertified response to a debtor name browse will include whether or not an exact name match occurred and if so, in what city the debtor resides. A data browse may not reveal all filings against the debtor searched, or may reveal filings against other debtors, and the searcher bears the risk of relying on the uncertified inquiry.

NEW SECTION

WAC 308-390-600 Other lien notices. Notices of certain liens are filed in the UCC office and are included in search reports.

NEW SECTION

WAC 308-390-601 Agricultural liens. Agricultural liens are filed in the same manner as an initial financing statement. The filer shall designate the statement as an agricultural lien in box 5. The lien shall be indexed by debtor name and will be revealed by searches as provided in WAC 308-390-504.

NEW SECTION

WAC 308-390-602 Preparer or processor lien. (1) A producer or commercial fisherman may authenticate a record evidencing a preparer or processor lien using the same filing forms and procedures outlined in this chapter for filing a financing statement, and by adding the following statutory requirements prescribed in RCW 60.13.040:

(a) Designate the statement as a preparer or processor lien by marking "Non-UCC Filing" (not AG-lien) in box 5 and naming the type of lien in box 8.

(b) Identify name and address of the preparer, processor, or conditioner to be charged with the lien in box 1.

(c) Identify name and address of the lien holder in box 3.

(d) Describe the agricultural product or fish to be charged with the lien in box 4.

(e) State the amount of the debt and the date on which payment was due in box 10 of the Addendum.

(2) Where to file. File in the department of licensing as provided in WAC 308-390-102.

(3) Fee. The fees are the same as provided in WAC 308-390-105.

(4) Duration. The lien lapses five years after the date of filing unless continued as provided in WAC 308-390-202.

(5) Mechanics of search. All liens and financing statements are revealed in a search as provided in WAC 308-390-504.

NEW SECTION

WAC 308-390-603 Notice of liens in favor of a governmental body. Records of certain governmental liens are maintained by the filing office under statutes other than the UCC and are treated in a manner substantially similar to UCC records. These liens are included on all searches as provided in WAC 308-390-504.

(1) Notice of Federal Tax Lien, RCW 60.68.045

(2) Criminal Profiteering Lien, RCW 9A.82.120-140

(3) Department of Justice Lien, RCW 60.68.015

WSR 01-07-086**PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed March 21, 2001, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-08-114.

Title of Rule: Chapter 246-928 WAC, Respiratory care practitioners.

Purpose: Proposed amendments are to provide clarification and to incorporate SHB 1536, chapter 334, Laws of 1997 into chapter 18.89 RCW, that mandates the licensure of respiratory care practitioners who were formerly certified by the Department of Health (DOH) and requires that applicants complete programs with a two-year curriculum.

Statutory Authority for Adoption: RCW 18.89.050(1).

Statute Being Implemented: Chapter 18.89 RCW.

Summary: The statute specifically requires that applicants complete programs with a two-year curriculum. It directs DOH to establish the minimum educational qualifications so credentialed providers comply with the statute and rule. The statute also allows DOH to approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the licensure examination. In addition, the statute requires DOH to establish temporary practice, reciprocity, and/or temporary permit qualifications and requirements for respiratory care practitioners.

Reasons Supporting Proposal: The proposed amendments eliminate unnecessary regulations, implement legislation, clarify existing language and make housekeeping changes.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tracy Hansen, 1300 S.E. Quince Street, Olympia, WA 98504, (360) 236-4940.

Name of Proponent: Department of Health, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules will provide clarification and implement 1997 legislation. Chapter 18.89 RCW specifically requires that applicants complete programs with a two-year curriculum. It directs DOH to establish the minimum educational qualifications so credentialed providers comply with the statute and rule. The statute also allows DOH to

PROPOSED

approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the licensure examination. In addition, the statute requires DOH to establish temporary practice, reciprocity, and/or temporary permit qualifications and requirements for respiratory care practitioners.

Proposal Changes the Following Existing Rules: Amendments are to provide clarification and to incorporate the 1997 legislative changes to chapter 18.89 RCW, that mandates licensure of respiratory care practitioners who were formerly certified by DOH and requires applicants to complete programs with a two-year curriculum.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

The proposed regulations will establish requirements for respiratory care practitioners. Under the Regulatory Fairness Act (chapter 19.85 RCW), a small business economic impact statement (SBEIS) is required whenever a regulation imposes "more than minor" costs on a regulated business. Some rules are being amended, combined, repealed and creating new rules. Some of the new and amended WAC sections include requirements transferred from the WACs being repealed.

The following rules are *old statute* requirements: WAC 246-928-420, 246-928-430, 246-928-450, 246-928-510, 246-928-540, 246-928-550, 246-928-610, 246-928-620, 246-928-630, 246-928-640, 246-928-650, 246-928-660, and 246-928-990.

The following rules are *new statute* requirements: WAC 246-928-410, 246-928-520, 246-928-530, and 246-928-560.

The following rules are *old rule requirements*: WAC 246-928-246-928-420, 246-928-430, 246-928-450, 246-928-520, 246-928-530, 246-928-540, 246-928-550, 246-928-560, 246-928-610, 246-928-620, 246-928-630, 246-928-640, 246-928-650, 246-928-660, and 246-928-990.

The following rules are *new rule requirements*: WAC 246-928-246-928-410, 246-928-510, 246-928-520, 246-928-530, and 246-928-560.

The "more than minor" threshold varies by industry. The standard industrial code classifications used to determine the threshold for more than minor impact were: 806 and 809.

STANDARD INDUSTRIAL CODE	ECONOMIC ACTIVITY	MINOR COST THRESHOLD
806	Hospitals	50.00
809	Misc. Health	53.00

Costs Required To Comply.

Does the cost of the proposed rule exceed the threshold where an SBEIS is required?

The following WACs are below the minor cost threshold so an SBEIS is not required:

WAC 246-928-410, this rule explains who must be licensed and who is exempt from [from] licensure and required by RCW 19.89.040 [18.89.040]. No change in requirements. No new costs to comply.

WAC 246-928-420, licensure is required by RCW 18.89.050 [(1)](c). Applications for licensure are required by

RCW 18.89.120. No change in requirement. No new costs to comply.

WAC 246-928-430, renewal for licensure is required by RCW 18.89.050 [(1)](c). Applications for renewal are required by RCW 18.89.140. No change in requirement. No new costs to comply.

WAC 246-928-450, reinstate of an expired license is required by RCW 18.89.050 [(1)](c). Applications for reinstatement of an expired license are required by RCW 18.89.-140. No change in requirement. No new costs to comply.

WAC 246-928-510, this rule is an overview of the qualifications for licensure as required by RCW 18.89.50 [18.89.-050(1)] (d) and (f) and 18.89.090. No change in requirements. No new costs to comply.

WAC 246-928-530, temporary practice qualifications for licensure is required by RCW 18.89.050 [(1)](c) and 18.89.090(2). The Department of Health will check applicant's eligibility for the next available examination through the National Board for Respiratory Care. No new costs to comply.

WAC 246-928-540, examination for licensure is required by RCW 18.89.050 [(1)](d) and 18.89.090. No change in requirement. No new costs to comply.

WAC 246-928-550, AIDS education for licensure is required by RCW 18.89.050 [(1)](d) and 70.24.270. No change in requirement. No new costs to comply.

WAC 246-928-610, requirements for mandatory reporting of unprofessional conduct in accordance with RCW 18.130.080. No change in requirement. No new costs to comply.

WAC 246-928-620, requirements for health care institution reporting of unprofessional conduct in accordance with RCW 18.130.080. No change in requirement. No new costs to comply.

WAC 246-928-630, requirements for associations or societies reporting of unprofessional conduct in accordance with RCW 18.130.080. No change in requirement. No new costs to comply.

WAC 246-928-640, requirements for professional liability carriers reporting of unprofessional conduct in accordance with RCW 18.130.080. No change in requirement. No new costs to comply.

WAC 246-928-650, requirements for courts reporting of unprofessional conduct in accordance with RCW 18.130.080. No change in requirement. No new costs to comply.

WAC 246-928-660, requirements for state and federal agencies reporting of unprofessional conduct in accordance with RCW 18.130.080. No change in requirement. No new costs to comply.

WAC 246-928-990, fees for application/licensure, temporary practice permit, renewal, reinstatement, duplicate and verification of licensure is required by RCW 19.89.050 [18.89.050 (1)](b). No new costs to comply.

The following WACs are new costs and exceed the threshold so an SBEIS is required:

WAC 246-928-520, minimum education qualifications for licensure is required by RCW 18.89.050 [(1)](d) and (f), and 18.89.090. The new statute requires two-year programs as evidence of fulfillment of the required education. Costs are associated with the educational programs.

PROPOSED

WAC 246-928-560, a person holding a license in another state or jurisdiction may apply for licensure and/or temporary permit as required by RCW 18.89.050 [(1)](f) and (i), 18.89.090, 18.89.150, and 18.130.075. The new statute requires two-year programs as evidence of fulfillment of the required education. Costs are associated with the educational programs.

Does the proposed rule affect both large and small businesses? The Regulatory Fairness Act defines a business as any "entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit." The act defines a small business as one that employs less than fifty individuals.

The Department of Health estimates that 2,000 practitioners will be subject to the requirements of the proposed rules. Each practitioner must obtain a separate, individual credential. Since the proposed rule will only affect individuals, from the perspective of the Regulatory Fairness Act, all affected businesses are small.

Does the proposed rule impose disproportionate cost on small businesses? Since all practitioners affected by the proposed rules meet the definition of small business, the rule cannot impose disproportionate costs. Therefore, the department is not obligated to provide regulatory relief.

How did the department involve the public in the development of the proposed rule? Public involvement was solicited through two open public meetings in August 1997 to solicit comment regarding the drafting of rules to implement SHB 1536 Licensure of Respiratory Care Practitioners. The current rules and new legislative mandates that may require amendments, repeals, and/or new sections to current rules were discussed. Proposed draft rules were mailed to approximately five hundred thirty certified respiratory care practitioners, educators, the Medical Quality Assurance Commission, the Board of Osteopathic Medicine, the Podiatric Board, the Board of Pharmacy, various related associations, and the general public.

On March 20, 1998, program staff held an open public meeting on the rules development. Approximately twenty certified respiratory care practitioners were in attendance, to include educators and members of the Respiratory Care Society of Washington. Department staff involved in review [of] proposed language for rules were: Director, executive director, assistant attorney general, health policy and constituent relations, Respiratory Care Ad Hoc Committee, health professions operations and support services.

**Respiratory Care Practitioners, chapter 18.89 RCW
Significant Analysis
WAC 246-928-520, 246-928-530,
246-928-560, and 246-928-990**

A respiratory care practitioner is employed in the treatment, management, diagnostic testing, rehabilitation, and care of patients with deficiencies and abnormalities, which affect the cardiopulmonary system and associated aspects of other systems, and is under the medical direction of a qualified physician. Currently, the Department of Health (DOH)

certifies respiratory care practitioners. The proposed regulation would establish licensure requirements for these practitioners. In addition, the proposed rule requires applicants complete at least a two year program in respiratory care and would establish the process DOH uses to approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the licensure examination.

As a part of the revision process, DOH is required under the Administrative Procedure Act to conduct an analysis of the proposed changes (RCW 34.05.328). However, there are certain exemptions from this requirement. One exemption is when the proposed regulation adopts without material change "Washington state statutes." The proposed regulation contains several requirements that are clearly mandated by state statute. The department prepared cost-benefit and other analyses for those areas that were not otherwise exempt from the significant analysis. Finally, some parts of the significant analysis lend themselves broad answers that apply to the entire proposal, while others require more specific section by section analysis.

I. Clearly state the general goals and specific objectives of the statute that the rule implements (RCW 34.05.328 (1)(a)): In 1997, the legislature enacted SHB 1536, chapter 18.89 RCW. This law mandated the licensure of respiratory care practitioners who were formerly certified by the Department of Health. The objective of this legislation, as stated in the findings section is "to safeguard life, health, and to promote public welfare." The statute requires that a person practicing or offering to practice respiratory care must "submit evidence that he or she is qualified to practice." The statute specifically requires that applicants complete programs with a two-year curriculum. It directs DOH to establish the minimum educational qualifications so credentialed providers comply with the statute and rule. (WAC 246-928-520 describes the minimum educational qualifications for licensure as a respiratory care practitioner.) The statute also allows DOH to approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the licensure examination. In addition, the statute requires DOH to establish temporary practice, reciprocity, and/or temporary permit qualifications and requirements for respiratory care practitioners.

II. Determine that the rule is needed to achieve the general goals and specific objectives of the authorizing statute. Include an analysis of alternatives to rule making and the consequences of not adopting rules (RCW 34.05.328 (1)(b)): The proposed rule is needed to carry out the directives of the authorizing statute. The statute clearly requires DOH to issue regulations governing the licensure of respiratory care practitioners. The department's rule-making discretion is limited to establishing the qualifications for licensure such as minimum educational requirements and approved educational institutions.

III. Determine that the probable benefits of the rules are greater than the probable costs. Consider both the qualitative and quantitative benefits and costs (RCW 24.05.328 [34.05.328] (1)(c)): The department has regulatory discretion on four parts of the proposed rules: (1) The

minimum educational qualifications; (2) the eligible requirements for temporary practice for new graduates who have completed an approved two-year program; (3) the qualifications and requirements for credentialing out-of-state individuals; and, (4) application/licensure, temporary practice permit, renewal, reinstatement, duplicate and verification of licensure fees as required by RCW 19.89.050 [18.89.050](b).

The proposal would also repeal the examination application and examination retake fees relating to alternative training. The state established alternative training rules in 1989. No person has ever applied for credentialing via alternative training. In addition, practitioners who have obtained the optional national certification will be able to qualify for licensure under the proposed state requirements. Therefore, the state determined that the alternative training rules provide no benefit and is proposing their repeal.

Education Requirements:

Benefits: The proposed minimum education standards for licensure of respiratory care practitioners provide several types of benefits. First, the proposed rules protect public health by making certain that the respiratory care practitioner has the education needed to provide consumers quality care. Moreover, practitioners meeting the proposed standards should have the capability of performing assessments and making decisions without constant supervision. An additional benefit arising from the proposed rule is avoided cost. The department expects that the expected improvement in care will accelerate the patient's return to work and may enhance the patient's productivity and employment.

In addition to the educational standards, the credentialing examination provides the benefit of consistency and will ensure competency. To pass the examination, practitioners will have to demonstrate a minimum level of knowledge, skill and experience necessary to safely practice respiratory care. In addition, the examination will test the applicant's knowledge of underlying protocols, and help ensure that practitioners will practice within these boundaries.

Another type of benefit accrues to practitioners. By utilizing current national standards rather than requiring state specific qualifications practitioners may more easily move from state to state. The department developed the proposed education standards for licensure to be substantially equivalent to the qualification standards set by the two primary national certifying bodies (although the requirements for formal training and experience vary slightly) and standards commonly accepted in the fields of respiratory care. This should help improve the mobility of practitioners entering and leaving the state.

Costs: The department does not anticipate any added costs as a result of adding the proposed educational requirements. The authorizing statute clearly requires that the department establish education standards. So the only potential cost attributable to these regulations is from standards so restrictive that they exclude a significant proportion of current practitioners and educational institutions.

Cost - Benefit Comparison: After carefully considering the potential benefits and costs, DOH finds that the proposed minimum educational requirements have benefits in excess of costs. The department finds minimal potential costs and

significant potential benefits. Moreover, the department believes that costs may even go down because of the substantially lower risk that an incompetent person is practicing.

Credentialing of Out-of-State Practitioners: Current regulations require out-of-state practitioners to complete a two-year curriculum. Under the proposed regulation DOH would check the applicant's eligibility for the next available examination through the National Board for Respiratory Care. In addition, out-of-state practitioners would have to meet the same educational requirements as in-state practitioners (specified at WAC 246-928-520).

Benefits: This proposal would clarify for out-of-state practitioners the process they would have to go through to become eligible to sit for the National Board for Respiratory Care examination. The proposal would also ensure that all respiratory practitioners operating in this state have met the same minimum education requirements.

Costs: The department does not anticipate any added costs as a result of adding the proposed educational requirements. The proposed rule simply outlines the eligibility requirements and process out-of-state practitioners must follow to become licensed in Washington state.

Cost - Benefit Comparison: After carefully considering the potential benefits and costs, DOH finds that the proposed minimum regulatory revisions have benefits in excess of costs.

The proposal also includes specific qualifications and requirements. The state alternative training rules were established April 7, 1989. No person has ever applied for credentialing via alternative training. In addition, practitioners who have obtained the optional national certification will be able to qualify for licensure under the state requirements. Therefore, a repeal of the alternative training rules is appropriate, as there is no benefit.

Licensure Fees: The significant change in licensing fees (WAC 246-928-990) is the repeal of the examination application and examination retake fees relating to alternative training.

Benefits: As stated above, the alternative training approach to licensing has never been used and so the department determined that it provided no benefit and could potentially confuse applicants. Eliminating this requirement and its associated specified fees reduces the risk of public confusion.

Costs: The department expects that this change would not impose any costs.

Cost - Benefit Comparison: The department concludes that the probable benefits of this proposed change exceed the probable costs.

IV. Determine, after considering alternative versions of the rule that the proposed rule is the least burdensome alternative for those required to comply with it (RCW 34.05.328 (1)(d)): These rules were written to impose the least burden possible while fulfilling the goals and objectives of the statute. The statute requires respiratory care practitioners have a two-year degree and pass an exam. The department chose the National Board for Respiratory Care's entry level examination to meet this requirement. The department

also used the national accreditation organizations for respiratory care to designate acceptable educational programs.

DOH maintained open contact with stakeholders during the course of the rules development. This open contact has been with a variety of stakeholders, such as: Respiratory care professional ad hoc committee members, educators, Medical Quality Assurance Commission, Board of Osteopathic Medicine, Podiatric Board, Board of Pharmacy, various related associations, the general public, and individuals credential under chapter 18.89 RCW. The department did not receive any opposition during this rule development. This collaborative effort has produced clear descriptive rules for applicants and licensees.

V. Will compliance with these rules cause a practitioner to violate another state or federal law (RCW 34.05.328 (1)(e))? No.

VI. Will the rules impose more stringent requirements on private entities than public entities (RCW 34.05.328 (1)(f))? No.

VII. Does any federal statute or regulation regulate the same activities? If yes, do they differ from the proposed rules (RCW 34.05.328 (1)(g))? No.

VIII. Coordinate the rule, to the maximum extent practicable, with other federal, state and local laws applicable to the same activity or subject matter. Not applicable.

A copy of the statement may be obtained by writing to Tracy Hansen, Program Manager, Respiratory Care Practitioners Program, P.O. Box 47870, Olympia, WA 98504-7870, phone (360) 236-4940, fax (360) 586-0745.

RCW 34.05.328 applies to this rule adoption. These rules are significant because they alter qualifications for the issuance of a license and adopt new requirements.

Hearing Location: Department of Health Conference Center, 1101 South Eastside Street, Olympia, WA 98504, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Tracy Hansen by April 10, 2001, TDD (800) 833-6388, or (360) 236-4940.

Submit Written Comments to: Tracy Hansen, fax (360) 586-0745, by April 23, 2001.

Date of Intended Adoption: April 30, 2001.

March 19, 2001

M. C. Selecky
Secretary

NEW SECTION

WAC 246-928-310 Introduction. This chapter explains the requirements for respiratory care practitioner licensure. These rules, which implement the provisions of chapter 18.89 RCW, are divided into four parts:

Part I explains the definitions for and the process to become licensed as a respiratory care practitioner;

Part II specifies the requirements for licensure including educational and examination criteria;

Part III explains the grandfather clause for individuals who held a current or expired certification as respiratory care practitioner prior to July 1, 1998;

Part IV lists the fees for licensure and renewal cycle for respiratory care practitioners.

NEW SECTION

WAC 246-928-320 General definitions. This section defines terms used in the rules contained in this chapter.

(1) "Respiratory care practitioner" means a person licensed by the department of health, who is authorized under chapter 18.89 RCW and these rules to practice respiratory therapy. WAC 246-928-410 explains who must be licensed as a respiratory care practitioner.

(2) "Applicant" means a person whose application for licensure as a respiratory care practitioner is being submitted to the department of health.

(3) "Department" means the Washington state department of health.

PART I

DEFINITIONS AND PROCEDURES FOR LICENSING AS A RESPIRATORY CARE PRACTITIONER

NEW SECTION

WAC 246-928-410 Who must be licensed as a respiratory care practitioner with the department. This section identifies who must be licensed as a respiratory care practitioner with the department and who is exempt from licensure.

(1) Any person performing or offering to perform the functions authorized in RCW 18.89.040 must be licensed as a respiratory care practitioner. A certification, registration or other credential issued by a professional organization does not substitute for licensure as a respiratory care practitioner in Washington state.

(2) The following individuals are exempt from licensure as a respiratory care practitioner with the department:

(a) Any person performing or offering to perform the functions authorized in RCW 18.89.040, if that person already holds a current licensure, certification or registration that authorizes these functions;

(b) Any person employed by the United States government who is practicing respiratory care as a performance of the duties prescribed for him or her by the laws of and rules of the United States;

(c) Any person who is pursuing a supervised course of study leading to a degree or certificate in respiratory care, if the person is designated by a title that clearly indicates his or her status as a student or trainee and limited to the extent of demonstrated proficiency of completed curriculum, and under direct supervision;

(d) Any person who is licensed as a registered nurse under chapter 18.79 RCW;

(e) Any person who is practicing respiratory care without compensation for a family member.

NEW SECTION

WAC 246-928-420 How to become licensed as a respiratory care practitioner. This section explains how a person may become licensed as a respiratory care practitioner with the department.

(1) The department shall provide forms for use by an applicant for licensure as a respiratory care practitioner. All applications for licensure must be submitted on these forms, with the appropriate fee required in WAC 246-928-990. The specific requirements and process for licensure is set forth in WAC 246-12-020.

(2) The applicant shall certify that all information on the application forms is accurate. The applicant is subject to investigation and discipline by the department for any apparent violation of chapters 18.130 and 18.89 RCW, or this chapter.

NEW SECTION

WAC 246-928-430 How and when to renew a respiratory care practitioner license. This section explains how and when to renew a respiratory care practitioner license.

(1) Applications for renewal of the license for respiratory care practitioner shall be submitted on forms provided by the department, with the appropriate fee required in WAC 246-928-990. The specific requirements and process for renewal of a license is set forth in WAC 246-12-030.

(2) Renewal fees must be postmarked on or before the renewal date or the department will charge a late renewal penalty fee and licensure reissuance fee.

NEW SECTION

WAC 246-928-450 How to reinstate an expired respiratory care practitioner license. This section explains the process for reinstatement of an expired respiratory care practitioner license. Applications for reinstatement of an expired license may be submitted on forms provided by the department, with the appropriate fee required in WAC 246-928-990. The specific requirements and process for reinstatement of an expired license is set forth in WAC 246-12-040.

PART II**REQUIREMENTS FOR LICENSURE AS A RESPIRATORY CARE PRACTITIONER**NEW SECTION

WAC 246-928-510 Overview of the qualifications required for licensure as a respiratory care practitioner. This section provides an overview of the qualifications required for licensure as a respiratory care practitioner.

The requirements for licensure are intended to ensure the minimum level of knowledge, skill and experience necessary to practice safely as a respiratory care practitioner. Licensure requires applicants to submit proof to the department that they have satisfied educational and examination requirements in this chapter. Individuals who were certified in good

standing on July 1, 1998, and who apply within one year of the effective date of July 1, 1998, are eligible for licensure without additional education or reexamination as required by RCW 18.89.090. The specific requirements and procedures for grandfathering are explained in WAC 246-928-610 and 246-928-620.

NEW SECTION

WAC 246-928-520 Minimum educational qualifications for licensure as a respiratory care practitioner. This section provides the minimum educational qualifications for licensure as a respiratory care practitioner.

(1) To meet the educational requirements required by RCW 18.89.090, an applicant must be a graduate of a two-year respiratory therapy educational program. Programs must be:

Accredited by the Committee On Accreditation for Respiratory Care (COARC) or accredited by the American Medical Association's (AMA) Committee on Allied Health Education and Accreditation (CAHEA), or its successor, the Commission on Accreditation of Allied Health Education Program (CAAHEP).

(2) An official transcript indicating completion of a two-year program must be provided as evidence of fulfillment of the required education.

NEW SECTION

WAC 246-928-530 How new graduates may qualify for temporary practice and what is required. (1) An individual who has completed an approved program under WAC 246-928-520 is eligible for temporary practice. To meet the requirements for temporary practice under this rule, an individual is required to:

(a) Submit the application and fee as required in WAC 246-928-990;

(b) Sit for the examination within ninety days of graduation as required in WAC 246-928-560; and

(c) Be under the supervision of a licensed respiratory care practitioner.

Temporary practice may begin from the time the application and fee is submitted to the department.

(2) An applicant shall request examination results be submitted directly to the department from National Board for Respiratory Care.

(3) An applicant who receives notification that he or she successfully passed the examination may continue to practice under the supervision of a licensed respiratory care practitioner until the department has issued a license to the applicant.

(4) An applicant who receives notification of failure to pass the examination shall cease practice immediately. Resumption of practice may occur only after successfully passing the examination and becoming licensed as a respiratory care practitioner by the department.

NEW SECTION

WAC 246-928-540 Examination requirements for licensure as a respiratory care practitioner. This section

provides the minimum examination requirements for licensure as a respiratory care practitioner.

An applicant who has taken and passed the National Board for Respiratory Care (NBRC) entry level examination, has met the minimum examination requirements of RCW 18.89.090 (1)(b). Applicants shall request the NBRC to verify to the department that the applicant has successfully passed the NBRC examination.

NEW SECTION

WAC 246-928-550 Education and training in AIDS prevention is required for licensure as a respiratory care practitioner. This section explains the required education and training in AIDS prevention.

Applicants must complete seven hours of AIDS education as required in chapter 246-12 WAC, Part 8.

NEW SECTION

WAC 246-928-560 How to apply for licensure for persons credentialed out-of-state. This section explains how a person holding a license in another state or jurisdiction may apply for licensure.

(1) An applicant who is currently or was previously credentialed in another state or jurisdiction may qualify for licensure in Washington state. Applicants must submit the following documentation to be considered for licensure:

(a) An application fee and forms as specified in WAC 246-928-420 and 246-928-990; and

(b) Written verification directly from all states in which the applicant is or was credentialed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment; and

(c) Verification of completion of the required education and examination as specified in WAC 246-928-520.

(2) Applicants who have completed a two-year program recognized by the Canadian Society of Respiratory Therapists (CSRT) in their current list, or any previous lists, and are eligible to sit for the CSRT registry examination; or have been issued a registration by the CSRT are considered to have met the educational and examination requirements in this chapter. Canadian applicants are required to submit verification directly from CSRT, as well as all of the information listed above for applicants licensed in another jurisdiction.

NEW SECTION

WAC 246-928-570 How to apply for temporary practice permit for persons credentialed out-of-state. This section explains how a person holding a license in another state or jurisdiction may apply for a temporary practice permit.

(1) An applicant who is currently or was previously credentialed in another state or jurisdiction may qualify for licensure in Washington state. Applicants must submit the following documentation to be considered for a temporary practice permit:

(a) A completed application on forms provided by the department with the request for a temporary practice permit indicated;

(b) An application fee and a temporary practice permit fee as specified in WAC 246-928-990;

(c) Written verification directly from all states or jurisdictions in which the applicant is or was licensed, attesting that the applicant has or had a license in good standing and is not subject to charges or disciplinary action for unprofessional conduct or impairment; and

(d) Verification of completion of the required education and examination as specified in WAC 246-928-520.

(2) The department shall issue a one-time-only temporary practice permit unless the department determines a basis for denial of the license or issuance of a conditional license.

(3) The temporary permit shall expire upon the issuance of a license by the department, or within three months, whichever occurs first. The permit shall not be extended beyond the expiration date.

(4) Issuance of a temporary practice permit does not ensure that the department will grant a full license. Temporary permit holders are subject to the same education and examination requirements as set forth in WAC 246-928-520 and 246-928-550.

(5) The following situations are not considered substantially equal for Washington state licensure:

(a) Certification of persons credentialed out-of-state through a state-constructed examination; or

(b) Grandfathering provisions where proof of education and examination was not required.

PART III

GRANDFATHER CLAUSE AND PROCEDURES

Note: The following rules in Part III explain the requirements and procedures for grandfathering of individuals who were respiratory care practitioners prior to July 1, 1998. The provisions of WAC 246-928-610 and 246-928-620 do not apply to applicants who have never been credentialed in the state of Washington as a respiratory care practitioner.

NEW SECTION

WAC 246-928-610 "Grandfathering" of currently certified practitioners to licensure. Individuals who are currently certified as a Washington state respiratory care practitioner in good standing on the effective date of chapter 18.89 RCW are eligible to become licensed as respiratory care practitioners without having to complete the two-year curriculum required by RCW 18.89.050 (1)(f) and without having to retake the examination. The department may issue a license to all practitioners who are in good standing prior to July 1, 1998.

NEW SECTION

WAC 246-928-620 "Grandfathering" of expired certified practitioners to licensure. Respiratory care practitioners whose Washington state certifications expired on or

PROPOSED

before July 1, 1998, have one year from the effective date to apply for licensure.

(1) Prior to July 1, 1999, a respiratory care practitioner who was previously certified with the department as a respiratory care practitioner may become licensed without having to complete the two-year curriculum required by RCW 18.89.050 (1)(f) and without having to retake the examination. The practitioner must follow the reinstatement procedures outlined in WAC 246-12-040.

(2) After July 1, 1999, a respiratory care practitioner whose Washington state certification expired on or before July 1, 1998, must meet the current criteria for licensure required by RCW 18.89.050 (1)(f) and (g).

PART IV REQUIREMENTS FOR REPORTING UNPROFESSIONAL CONDUCT

NEW SECTION

WAC 246-928-710 Mandatory reporting. (1) All reports required by this chapter shall be submitted to the department as soon as possible, but no later than twenty days after a determination is made.

(2) A report should contain the following information if known:

(a) The name, address, and telephone number of the person making the report.

(b) The name, address, and telephone numbers of the respiratory care practitioner being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which prompted the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid in the evaluation of the report.

(3) Mandatory reports shall be exempt from public inspection and copying to the extent permitted under RCW 42.17.310 or to the extent that public inspection or copying of the report or any portion of the report would invade or violate a person's right to privacy as set forth in RCW 42.17.255.

(4) A person is immune from civil liability, whether direct or derivative, for providing information to the department pursuant to RCW 18.130.070.

NEW SECTION

WAC 246-928-720 Health care institutions. The chief administrator, executive officer, or any health care institution shall report to the department when any respiratory care practitioner's services are terminated or are restricted based on a determination that the respiratory care practitioner has either committed an act or acts which may constitute unprofessional conduct or that the respiratory care practitioner may be

unable to practice with reasonable skill or safety to clients by reason of any mental or physical condition.

NEW SECTION

WAC 246-928-730 Respiratory care practitioner associations or societies. The president or chief executive officer of any respiratory care practitioner association or society within this state shall report to the department when the association or society determines that a respiratory care practitioner has committed unprofessional conduct or that a respiratory care practitioner may not be able to practice respiratory care with reasonable skill and safety to patients as the result of any mental or physical conditions. The report required by this section shall be made without regard to whether the license holder appeals, accepts, or acts upon the determination made by the association or society. Notification of appeal shall be included.

NEW SECTION

WAC 246-928-740 Professional liability carriers. Every institution or organization providing professional liability insurance directly or indirectly to respiratory care practitioners shall send a complete report to the department of any malpractice settlement, award, or payment in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured respiratory care practitioner's incompetency or negligence in the practice of respiratory care. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a twelve-month period as a result of the respiratory care practitioner's alleged incompetence or negligence.

NEW SECTION

WAC 246-928-750 Courts. The department requests the assistance of the clerk of trial courts within the state to report all professional malpractice judgments and all convictions of licensed respiratory care practitioners, other than minor traffic violations.

NEW SECTION

WAC 246-928-760 State and federal agencies. The department requests the assistance of executive officers of any state or federal program operating in the state of Washington, under which a respiratory care practitioner is employed to provide patient care services, to report to the department whenever such a respiratory care practitioner has been judged to have demonstrated his/her incompetency or negligence in the practice of respiratory care, or has otherwise committed unprofessional conduct, or is a mentally or physically disabled respiratory care practitioner. These requirements do not supersede any state or federal law.

PART V

RESPIRATORY CARE PRACTITIONER LICENSING AND RENEWAL FEES

AMENDATORY SECTION (Amending WSR 98-05-060 [99-05-101], filed 2/13/98 [4/6/99], effective 3/16/98 [7/1/99])

WAC 246-928-990 Respiratory care fees and renewal cycle. (1) Certificates must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$ ((85.00)) <u>70.00</u>
Temporary practice permit	((50.00)) <u>35.00</u>
((Examination application	110.00
Examination retake	25.00))
Duplicate license	15.00
((Certification of certificate	25.00))
<u>Verification of licensure</u>	<u>15.00</u>
Renewal	((80.00)) <u>50.00</u>
Late renewal penalty	50.00
Expired ((certificate)) <u>license</u> reissuance	50.00

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-928-015	Scope of practice—Allowed procedures.
WAC 246-928-020	Recognized educational programs—Respiratory care practitioners.
WAC 246-928-030	State examination—Examination waiver—Examination application deadline.
WAC 246-928-040	Examination eligibility.
WAC 246-928-050	Definition of "commonly accepted standards for the profession."
WAC 246-928-060	Grandfather—Verification of practice.

WAC 246-928-080	Reciprocity—Requirements for certification.
WAC 246-928-085	Temporary permits—Issuance and duration.
WAC 246-928-110	General provisions.
WAC 246-928-120	Mandatory reporting.
WAC 246-928-130	Health care institutions.
WAC 246-928-140	Respiratory care practitioner associations or societies.
WAC 246-928-150	Professional liability carriers.
WAC 246-928-160	Courts.
WAC 246-928-170	State and federal agencies.
WAC 246-928-180	Cooperation with investigation.
WAC 246-928-190	AIDS prevention and information education requirements.
WAC 246-928-200	Temporary practice.
WAC 246-928-210	Definitions—Alternative training respiratory care practitioners.
WAC 246-928-220	Alternative training requirements.

WSR 01-07-087
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed March 21, 2001, 9:28 a.m.]

Original Notice.
Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Adopt Regulation I, Section 6.01.

Revise Regulation I, Sections 1.07, 6.03, 6.04, 6.06, 6.07, 6.09, 6.10, and 9.16.

Purpose: To bring the agency's rules into conformance with the Washington Clean Air Act (chapter 70.94 RCW) and WAC 173-400-171 (public notice), and to reduce the number of permit applications for sources with a de minimis impact on air quality.

Other Identifying Information: Section 1.07 pertains to Definitions; Article 6 pertains to New Source Review; Section 9.16 pertains to Spray-Coating Operations.

Statutory Authority for Adoption: Chapter 70.94 RCW.
Statute Being Implemented: RCW 70.94.141.

Summary: Moves pertinent definitions from Section 1.07 into Section 6.01 for better accessibility. Adds a definition for "New Source" to Section 6.01. Brings agency rules into conformance with chapter 70.94 RCW and WAC 173-

PROPOSED

400-171. Removes references to the Notice of Construction program from Section 9.16.

Reasons Supporting Proposal: RCW 70.94.153 specifies a thirty-day review period for new source review involving the replacement or substantial alteration of control equipment. Section 6.07 presently specifies a sixty-day period for all new source review.

RCW 70.94.153 also deems complete applications for such equipment to be unconditionally approved if not acted on within this thirty-day period. Section 6.07 does not presently specify this.

RCW 70.94.153 allows approval orders for such equipment to prescribe only reasonable operation and maintenance conditions. Section 6.07 presently specifies that all approval orders may contain conditions as are reasonably necessary to ensure the maintenance of compliance with applicable emission standards.

RCW 70.94.152(5) limits the review of modifications to existing sources to those individual sources proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Section 6.07 does not presently specify this.

RCW 70.94.152(9) requires the agency to notify the applicant within thirty days of receipt of an application either that it is complete or to notify the applicant of all additional information necessary to complete the application. Section 6.03 presently requires notification only for incomplete applications.

RCW 70.94.152 (1) and (11) exempt sources from new source review if they are deemed by the agency to have a de minimis impact on air quality. The agency has reviewed thousands of applications since the current list of exempt equipment was last updated in 1992. The agency has also reviewed the exemptions used by ecology, the Bay Area Air Quality Management District, and the South Coast Air Quality Management District. The agency has determined that many sources presently subject to review have a de minimis impact on air quality. In addition, the agency has determined that some new sources warrant a notification, but not a review under RCW 70.94.152.

RCW 70.94.085 allows the agency to enter into cost-reimbursement agreements with applicants for review of complex projects (requiring an Environmental Impact Statement). Section 6.04 presently does not specify this.

WAC 173-400-171 requires public notice if a 'significant net increase in emissions' of any pollutant regulated by state or federal law would result. WAC 173-400-030(74) defines a 'significant net increase in emission' to include sources with particulate matter (with an aerodynamic diameter <100 micrometers) emissions >25 tons per year. Section 6.06 presently does not specify a limit for this contaminant. Additionally, the public notice provisions in Section 6.06 pertaining to limits on potential to emit and risk analyses need to be clarified.

Many of the defined terms used in Article 6 are not intuitive. Moving these definitions from Section 1.07 to a new section in Article 6, would make them more accessible. The definition of 'new source' from RCW 70.94.030(16) would be added but no changes are proposed to the existing definitions.

RCW 70.94.152 does not authorize the agency to require a Notice of Construction for existing sources of air contaminants. Section 9.16(d) presently requires all outdoor spray-coating operations to be approved under a Notice of Construction.

Name of Agency Personnel Responsible for Drafting: Gerry Pade, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4065; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050; and Enforcement: Neal Shulman, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4078.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: These changes would bring the agency rules into conformance with the Washington Clean Air Act (chapter 70.94 RCW) and the public notice provisions of WAC 173-400-171, and they would reduce the number of permit applications for sources with a de minimis impact on air quality. This would allow facilities to make changes more quickly and at less cost. It would also enable the agency to spend more effort on those permits needing more time, including operating permits.

The provisions of RCW 70.94.152 would be implemented for review of new sources including limiting review of modifications of existing sources to those pollutants that increase as a result of the modification, and the provision to notify applicants when their applications are complete. Specific references to the Notice of Construction program found in Regulation I, Section 9.16 (spray-coating operations) would be removed.

The provisions of RCW 70.94.153 would be implemented for review of the replacement or substantial alteration of control equipment - including the shorter review period, the default unconditional approval, and the provisions for conditioning approvals of such permits.

The authority under RCW 70.94.085 would also be implemented allowing the agency to enter into cost-reimbursement agreements with applicants for review of complex projects (requiring an EIS).

Proposal Changes the Following Existing Rules: Pertinent definitions from Section 1.07 would be deleted and moved to Article 6. The definition of New Source would be added to Article 6. References to the Notice of Construction program in Section 9.16 would be removed. Changes would be made to Article 6 as listed above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency Offices, 110 Union Street, #500, Seattle, WA 98101, on May 10, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 3, 2001, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, fax (206) 343-7522, by April 30, 2001.

Date of Intended Adoption: May 10, 2001.

March 20, 2001

Gerald S. Pade

Engineer II

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-08 issue of the Register.

WSR 01-07-088
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed March 21, 2001, 9:30 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: Adopt Regulation I, Article 2.

Purpose: To more effectively implement the State Environmental Policy Act (SEPA).

Other Identifying Information: Article 2 pertains to SEPA rules.

Statutory Authority for Adoption: Chapters 70.94 and 43.21C RCW.

Statute Being Implemented: Chapter 43.21C RCW.

Summary: The agency desires to update its SEPA policies to reflect agency values, and to state its SEPA policies in rule rather than resolution.

Reasons Supporting Proposal: This change will more effectively and comprehensively implement SEPA, resulting in better quality decisions regarding environmental impacts in the Puget Sound region.

Name of Agency Personnel Responsible for Drafting: Laurie Halvorson, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4030; Implementation: Dave Kircher, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4050; and Enforcement: Neal Shulman, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4078.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The agency desires to update its SEPA policies to reflect agency values. The agency also desires to state its SEPA policies in rule rather than resolution.

The intent of the proposed rule change is to more effectively implement SEPA. The agency currently implements SEPA through Agency Board Resolution #565, adopted Sep-

tember 13, 1984. This resolution has not been updated and does not reflect current agency policies and priorities. It is also difficult for the public to access because it is available only by requesting a hard copy from the agency.

The anticipated effects are better quality decisions with respect to environmental impacts in the Puget Sound region, more effective and comprehensive SEPA implementation, increased opportunity for public notice and comment, and more accessible agency SEPA policies.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Puget Sound Clean Air Agency Offices, 110 Union Street, #500, Seattle, WA 98101, on May 10, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by May 3, 2001, TDD (800) 833-6388, or (800) 833-6385 (Braille).

Submit Written Comments to: Dennis McLerran, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, fax (206) 343-7522, by April 30, 2001.

Date of Intended Adoption: May 10, 2001.

March 20, 2001

Laurie Halvorson

General Counsel

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-08 issue of the Register.

WSR 01-07-091
PROPOSED RULES
GAMBLING COMMISSION
[Filed March 21, 2001, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-04-005 with a publish date of February 21, 2001.

Title of Rule: Amendatory section WAC 230-04-190 Issuance of license—Expiration—Restrictions.

Purpose: Mr. William Krapf submitted a Petition for Rule Change, which was filed at the March 2001 commission meeting. Currently, licensees can take advantage of a two-part payment plan if their licensing fees are \$1,200 or more. Due to a decline in business and revenue, Mr. Krapf would like to reduce the threshold amount, from \$1,200 to \$800. When the agency first started the two-part payment plan, the threshold amount was \$800. During our growth period, the threshold was increased to \$1,200. Approximately seven hundred licensees currently take advantage of the two-part payment plan. If this change is approved, approximately eighty more licensees will have the option of using the two-part payment plan.

Statutory Authority for Adoption: RCW 9.46.070 and 34.05.330.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Lacey, (360) 438-7654 ext. 374; Implementation: Ben Bishop, Lacey, (360) 438-7640; and Enforcement: Bob Berg, Lacey, (360) 438-7654 ext. 348.

Name of Proponent: Staff, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2), therefore a small business economic impact statement is not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This agency does not choose to make section 201, chapter 403, Laws of 1995, apply to this rule adoption.

Hearing Location: The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, phone (253) 858-1111, on May 11, 2001, at 1:30 a.m.

Assistance for Persons with Disabilities: Contact Shirley Corbett by May 1, 2001, at TDD (360) 438-7638, or (360) 438-7654 ext. 302.

Submit Written Comments to: Susan Arland, Mailstop 42400, Olympia, WA 98504-2400, fax (360) 438-8652, by May 1, 2001.

Date of Intended Adoption: May 11, 2001.

March 21, 2001

Susan Arland

Rules Coordinator

AMENDATORY SECTION [(Amending WSR 97-14-013, filed 6/20/97)]

WAC 230-04-190 Issuance of license—Expiration—Restrictions. The commission may only issue a license to qualified applicants. All licenses are issued subject to the following restrictions:

(1) The commission may issue the following licenses:

(a) **Charitable and nonprofit organizations and agricultural fairs.** The commission may issue a license to qualified bona fide charitable or nonprofit organizations or to qualified agricultural fairs to operate each of the following activities upon a specified location:

- (i) Bingo;
- (ii) Raffles;
- (iii) Amusement games;
- (iv) Punch boards and pull-tabs;
- (v) Social card games; and

(vi) Fund raising events as defined in RCW 9.46.0233: Provided, That any agricultural fair authorized under the provisions of chapter 15.76 or 36.37 RCW is prohibited from conducting fund raising events.

(b) **Commercial amusement games.** The commission may issue a separate license to any person to operate amusement games at one or more of the locations listed in WAC 230-04-138.

(c) **Commercial stimulant card games.** The commission may issue a license to any person operating a business primarily engaged in the selling of items of food or drink for consumption on the premises to allow a specified portion of a specified premises to be used by persons to play authorized card games.

(d) **Public card room employee.** The commission may issue a license to any person to perform duties in a public card room.

(e) **Commercial stimulant punch boards and pull-tabs.** The commission may issue a license to a person operating a business primarily engaged in the selling of items of food or drink for consumption on the premises to operate punch boards and pull-tabs upon specified premises.

(f) **Manufacturers and distributors of gambling equipment and paraphernalia.** The commission may issue a separate or combination license to the following:

(i) Manufacturers of punch boards, pull-tabs, devices for the dispensing of pull-tabs, bingo equipment, and other gambling equipment, supplies, and paraphernalia; and

(ii) **Distributors** of punch boards, pull-tabs, devices for the dispensing of pull-tabs, bingo equipment, and any gambling equipment, supplies, or paraphernalia for use in connection with authorized activities.

(g) **Representatives of manufacturers or distributors.** The commission may issue a separate license to a representative of a manufacturer or distributor to engage in the sale and distribution of gambling equipment and paraphernalia.

(h) **Recreational gaming activity permit.** The commission may issue a permit to an organization that has been in existence for at least six months to conduct a recreational gaming activity as defined by WAC 230-02-505.

License expiration.

(2) (~~License expiration.~~) Each such license shall be valid for the period of time or the level of gross gambling receipts set forth on the license. In no case shall the time period exceed one year from the date that such license is issued: Provided, That license expiration dates may be adjusted by commission staff to schedule workload. Organizations licensed for more than one activity may have all expiration dates adjusted to end on the same day. Whenever license expiration dates are adjusted under this provision, the required fee shall be prorated by the commission. The prorated fees shall be computed on a monthly basis (i.e., one-twelfth of the annual payment per month) and subtracted from the regular annual fee. A prorated fee will be based on the number of whole months remaining upon approval of a license. For purposes of computing fees under this section, any part of a month in which the activity is authorized to be operated shall be deemed to be a whole month. Any difference between the required fee which exceeds twenty dollars, shall be refunded to the applicant. Specific expiration dates are as follows:

(a) Licenses issued to conduct any authorized activity in connection with and upon the site of a qualified agricultural fair, qualified community-wide civic festival, qualified world's fair, or qualified civic center shall be valid only for the duration of the fair or festival, or, in the case of an activity at a civic center, for the seasons during which the civic center is operating and open to the public. In no event shall such license exceed one calendar year.

(b) A license issued to conduct a raffle in connection with a qualified agricultural fair, qualified community-wide civic festival or qualified world's fair shall be in effect from the date the license was issued through the conclusion of the fair or festival;

(c) A license issued to conduct a card tournament shall be valid only for the duration of the tournament, but in no event shall exceed ten consecutive days;

(d) A license issued to conduct a fund raising event shall be valid only for the place and time set forth in the application or otherwise approved by the commission. The number of events permitted under the license in any calendar year is subject to the limitations set out in RCW 9.46.0233 defining a fund raising event: Provided, That a fund raising event license shall allow an organization to have possession of gambling equipment authorized for use at a fund raising event for a period of one year beginning on the day of the event and to rent such for up to four occasions per year to other organizations licensed to operate fund raising events;

(e) A license issued to an individual shall be valid for a period not to exceed one year from the date the individual was assigned duties requiring a license, the date the license was actually issued, or as set forth elsewhere in this title, whichever occurs first: Provided, That a charitable or non-profit gambling manager or distributor representative license shall become void upon a change of employer; and

(f) A bingo license that has been limited under the restrictions of WAC 230-20-062 shall expire when the level of authorized gross gambling receipts is reached. A license that expires under this subsection shall not be granted an increase in license class for the current license period until all requirements of WAC 230-04-260 have been met or the commission grants an increase in license class under procedures set forth in WAC 230-20-062.

Reinstating expired licenses.

(3) If any licensee fails to submit a properly completed application and all applicable fees prior to the normal expiration date, the license shall expire and the operation of the applicable activity must immediately cease. When a license expires, a new application must then be submitted and a pre-licensing evaluation/investigation to the extent deemed necessary by the director will be completed prior to granting a license: Provided, That if a properly completed renewal application and fees are received at the commission headquarters office within the fourteen-day period following the expiration date, the commission may reinstate the license using normal renewal procedures. Reinstating a license under this provision does not, in any case, grant authority to operate the activity during the period between the normal expiration date and the date of reinstatement.

Two-part payment plan for license fees.

(4) The commission may allow an applicant renewing an annual license or applying for an additional license to pay the license fee in two payments under the following conditions:

(a) The license fee is at least (~~one thousand two~~) eight hundred dollars;

(b) The applicant pays an administrative processing fee as set forth in WAC 230-04-202 or 230-04-203, plus one-half of the annual license fee at the time of application or renewal;

(c) Licenses issued under the two-payment plan shall be issued with an expiration date as determined by subsection (2) of this section and a second-half payment due date. If the second-half payment is received on or before the due date, the license will remain in effect until the expiration date. If the licensee fails to submit the second-half payment prior to the due date, the license shall expire and all operations of the activity must stop; and

(d) Gross gambling receipts during the first-half payment period must not exceed fifty percent of the authorized class limitation for annual gross gambling receipts. Licensees whose gross gambling receipts exceed fifty percent of the authorized level shall be required to apply for a license at the appropriate license class as required by WAC 230-04-260 and pay the full upgrade fee, plus an administrative processing fee, as set forth in WAC 230-04-202 and 230-04-203.

Conditions of license issuance.

(5) (~~Conditions of license issuance.~~) All activities so licensed are licensed subject to compliance with all of the applicable provisions of chapter 9.46 RCW, including any amendments thereto, all applicable rules and regulations passed by the commission, all other applicable laws of the United States, the state of Washington and all political subdivisions of the state of Washington which include but are not limited to the following:

- (a) Business licenses or permits;
- (b) Health certificates;
- (c) Fire inspections;
- (d) Use and occupancy permit; and
- (e) Liquor license or permit.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 01-07-092
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 21, 2001, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-05-045 with a published date of March 7, 2001.

Title of Rule: Amendatory sections WAC 230-40-010 Social card games—Rules of play—Types of card games authorized and 230-40-070 Licensee to furnish all cards, chips and other services.

Purpose: A business, Digideal, recently requested approval of a device that produces electronic facsimiles of

cards for use in card games. If approved by the commission, this device would be an option for card room operators and tribal casinos. This device would replace standard, paper playing cards with an electronic facsimile of a playing card (a video picture). The device would contain one or more decks of cards in an electronic format. The electronic cards would be shuffled through a random number generator to ensure they are properly "shuffled." This device will have to undergo stringent lab testing prior to being put into play. The gaming lab will test the security and technical protocols to ensure the integrity of the card games are not compromised in anyway.

Statutory Authority for Adoption: RCW 9.46.070.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Lacey, (360) 438-7654 ext. 374; Implementation: Ben Bishop, Lacey, (360) 438-7640; and Enforcement: Bob Berg, Lacey, (360) 438-7654 ext. 348.

Name of Proponent: Staff, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal Changes the Following Existing Rules: See Purpose above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2), therefore a small business economic impact statement is not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. This agency does not choose to make section 201, chapter 403, Laws of 1995, apply to this rule adoption.

Hearing Location: The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, phone (253) 858-1111, on May 11, 2001, at 1:30 a.m.

Assistance for Persons with Disabilities: Contact Shirley Corbett by May 1, 2001, at TDD (360) 438-7638, or (360) 438-7654 ext 302.

Submit Written Comments to: Susan Arland, Mailstop 42400, Olympia, WA 98504-2400, fax (360) 438-8652, by May 1, 2001.

Date of Intended Adoption: May 11, 2001.

March 21, 2001

Susan Arland

Rules Coordinator

AMENDATORY SECTION [(Amending Order 383, filed 4/14/00)]

WAC 230-40-010 Social card games—Rules of play—Types of card games authorized. Social card games shall be played using rules and procedures as set forth in this section. Only card games that have been specifically authorized are allowed to be played in public or social card rooms.

All card games.

(1) Social card games shall be played in the following manner:

(a) The game must be played with one or more standard decks of playing cards or with approved electronic card facsimiles which meet the requirements of WAC 230-40-070 (1)(c): Provided, That cards may be removed to comply with rules of a specific game, such as pinochle;

(b) Players shall compete against all other players on an equal basis for nonhouse-banked games or against the licensee for house-banked games;

(c) Each player shall receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager;

(d) Players shall not place wagers on any other player's or the house's hand and no side bets between players are allowed: Provided, That the following shall not be in violation of this section:

(i) An insurance bet placed in the game of blackjack;

(ii) A tip wager made on behalf of a dealer; or

(iii) "Envy" provisions which allow a player to receive a prize if another player wins a jackpot or odds wager;

(e) A player's win or loss shall be determined during the course of play of a single card game;

(f) No more than two separate games shall be played with a single hand of cards. For purposes of this section, bonus features and progressive jackpots are considered a game: Provided, That bonus features that allow a player to receive an additional prize if another player achieves a specific hand, such as "envy" or "share the wealth" features, shall not be considered a separate game if the player does not have to place a separate wager to participate; and

(g) The rules of play for each specific game played at a licensed card room shall be maintained on the licensed premises and immediately available for review by commission staff, local law enforcement, or a player upon request. Commission staff shall approve any modification to such rules prior to implementation. In addition, any rules related to wager or prize pay out restrictions shall be clearly posted in the immediate area of such games.

Nonhouse-banked card games.

(2) Nonhouse-banked card games shall only be played in the manner set forth in *The New Complete Hoyle, Revised, Hoyle's Modern Encyclopedia of Card Games*, or a similar authoritative book on card games approved by the director: Provided, That each licensee may make immaterial modifications to each authorized game set out in Hoyle. The following nonhouse-banked card games are authorized:

(a) Poker;

(b) Hearts;

(c) Pinochle;

(d) Cribbage;

(e) Rummy;

(f) Panguingue (Pan);

(g) Pitch;

(h) Bid Whist;

(i) Washington blackjack, if the business was licensed and operating the game on April 1, 2000, and under the restrictions set forth in WAC 230-40-125;

(j) Other games or modifications to approved games may be approved by the director, or the director's designee, on a case-by-case basis. Requests for approval of a game must be submitted in writing, and include the rules of play and all wagering schemes.

House-banked card games.

(3) House-banked card games shall be approved by the director, or the director's designee, on a case-by-case basis. Request for approval of a house-banked card game must be submitted in writing, including the rules of play and all wagering schemes. A list of all approved games, modifications to games, and rules of play shall be available at all commission offices. The director may approve games in which the determination of whether a player wins or loses depends upon one or more of the following:

(a) The player's hand is a specific:

(i) Pattern or ranking of cards (pair, straight, flush, royal flush, etc.);

(ii) Combination of cards (two queens of hearts, ace and jack of spades, three sevens, etc.); or

(iii) Value of the cards (seventeen, twenty-one, etc.); and/or

(b) The player has a higher ranking or value hand than the house/dealer/banker.

Removing and approved game from play.

(4) Once a game is approved for play, the director shall not remove it from the authorized list of games without providing licensees written notice. Licensees shall be afforded an opportunity to object to the director's decision. If an objection is filed, an administrative law judge shall review the director's decision utilizing the brief adjudicative procedures set forth in WAC 230-50-010.

Procedures for when a proposed game is denied.

(5) The licensee shall be notified in writing when the director denies a request for a new game or modification of a game. The notification shall include reasons for the denial and provide the petitioner all information necessary for a formal petition to the commission for rule making, amendments, or repeal, as set forth in WAC 230-50-800.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION [(Amending Order 383, filed 4/14/00)]

WAC 230-40-070 Licensee to furnish all cards, chips and other services. Each public card room and Class A social card room licensee shall furnish all chips and cards in connection with all card games conducted on its premises at no additional charge to the players, except as provided in WAC 230-40-050(6).

Standards for chips and cards.

All chips and cards shall be of generally conventional size and design, and include safeguards that maximize the integrity of the card games. The following standards and procedures apply to this section:

(1) The licensee shall furnish chips and cards that meet the following requirements:

(a) **Chips.** Chips must include the house name or logo, clearly denote the chip value, be produced by a licensed manufacturer, and purchased from a licensed manufacturer or distributor: Provided, That the director may exempt Class A, B, C, and E licensees with five tables or less from this provision if chips are readily identifiable as having been furnished by that particular licensee and values of chips are clearly posted in the card room: Provided further, That Class D licensees are exempt from the provisions set forth in this subsection; and

(b) **Cards.** The deck or decks of cards must include the house name or logo, be produced by a licensed manufacturer, and be purchased from a licensed manufacturer or distributor: Provided, That Class A, B, C, D, and E licensees with five tables or less are exempt from this provision. These licensees shall comply with all other requirements related to the type of games being played.

(c) **Electronic facsimiles of cards.** Electronic card facsimiles may be approved by the director for use in house-banked card games and are subject to the following conditions:

(i) The system is proven through testing by a licensed game testing laboratory to:

(A) Produce accurate facsimiles of one or more standard decks of playing cards;

(B) Randomly shuffle the cards prior to each round of play or shoe loading;

(C) Contain a backup system for recording and display of at least five previous rounds of play;

(D) Contain security protocols which prevent unauthorized access;

(E) Provide a means of testing of computer software; and

(F) Meet any additional technical standards required by the commission.

(ii) The costs of initial laboratory testing and any additional testing required by the commission shall be paid for by the manufacturer.

Bank Services.

(2) (~~Bank services~~) The licensee shall sell its chips to all players desiring to buy them and redeem all chips at the value for which they were sold. The licensee shall collect the money taken in on chips sold and fees collected and shall keep these funds separate and apart from all other money received by the licensee.

Procedures for selling chips for cash or check.

(3) Chips shall be sold for cash only and a licensee shall not extend credit of any nature to a person purchasing chips: Provided, That a licensee may accept a check in accordance with WAC 230-12-053 and 230-40-845. Each receipt by a person of a quantity of chips from the licensee shall be a separate transaction for the purpose of this rule. Checks received for chips retained by the licensee after close of business shall be deposited by the licensee not later than the second day following receipt upon which the licensee's bank is open for business.

Protecting the integrity of cards and chips.

(4) The licensee shall safeguard all chips and cards to assure integrity of games and banking services. ~~((and no))~~ Licensee shall not allow:

(a) Playing cards that have been shaved, sanded, cut, carved, or otherwise marked in any manner which may make certain cards identifiable to players other than as allowed by the rules of the particular game.

(b) Any cards or chips which are not furnished by the licensee to be used in any card game conducted upon its premises; or

(c) Any other person to buy or sell chips for use in card games upon its premises.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 01-07-095**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed March 21, 2001, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-134.

Title of Rule: Chapter 16-400 WAC, Fruit and vegetable inspection fees, change the hourly inspection rates (regular and overtime).

Purpose: Raise fees within fiscal growth factor, current fees are below actual costs of providing services. Alignment of inspection charges with inspection practices and procedures.

Statutory Authority for Adoption: Chapter 15.17 RCW.

Statute Being Implemented: RCW 15.17.030.

Summary: The purpose of this rule is to increase the hourly inspection rates (regular and overtime), within the fiscal growth factors allowed under Initiative 601. The increased inspection rate will reduce the proportionate disparity of inspection costs between the high volume and low volume warehouses. High volume warehouses are generally assessed fees on a per unit basis which usually meets or exceeds the hourly rate fee. The low volume warehouses are assessed fees on a per unit basis in addition to the hourly rate to compensate for the total inspection time.

Reasons Supporting Proposal: See Summary above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Quigley, Olympia, (360) 902-1833.

Name of Proponent: Department of Agriculture, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current hourly fees are \$23.00 per hour, which is not sufficient to recover actual per hour expenses.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this rule is to increase the hourly inspection rates (regular and overtime), within the fiscal

growth factors allowed under Initiative 601. The increased inspection rate will reduce the proportionate disparity of inspection costs between the high volume warehouses and the lower volume warehouses. High volume warehouses are generally assessed fees on a per unit basis which usually meets or exceeds the hourly rate for the total inspection time. The lower volume warehouses are assessed fees on a per unit basis in addition to the hourly rate to compensate for the total inspection time.

Proposal Changes the Following Existing Rules: Increase the hourly inspection rates from \$23.00 to \$23.66 per hour on June 30, 2001, and to \$24.30 per hour on July 1, 2001. Increase the overtime inspection rates from \$31.25 to \$32.15 per hour on June 30, 2001, and \$33.05 per hour on July 1, 2001.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The financial impact, if any, will be minimal and does not represent a disproportionate cost to small businesses.

The purpose of this increase in the hourly inspection rates for regular and overtime is to establish the necessary fees to recover the costs of providing inspection and/or certification or other requested services as authorized under RCW 15.17.150. The proposed hourly rate increase is within the fiscal growth factor established by Initiative 601.

Cost of Compliance: The proposed rule will raise the cost of the hourly fee for inspection certification from \$23.00 per hour to \$24.30 per hour for regular time and from \$31.25 per hour to \$33.05 per hour for overtime. The purpose for the increase in the hourly fee is to raise the fee to keep current with the fiscal growth factor regulated by Initiative 601. The current hourly fees charged for inspections and certifications are below actual costs of providing services, and the increase in the hourly fees will also bring the alignment of inspection charges with inspection practices and procedures. Inspection and certification charges are based on an hourly and/or hundredweight unit charge. The only time the hourly fee is applied is when the hundredweight fee does not cover the number of hours an inspector is certifying commodities at a warehouse. In general, the hundredweight fee covers the cost of inspection except in small businesses with low volume packouts of apples, cherries and apricots and the hundredweight unit charges does not cover the amount of time of the inspection.

Impact on Business: The proposed hourly fee increase will not impose a disproportionate economic impact on small business since the majority of the businesses have insignificant increases in the new hourly fees. The cost is based on the number of hours a company is charged for inspection certification when the hundredweight fee does not cover the number of hours of inspection service. All of the companies affected by the hourly fee increase would be considered small businesses with less than fifty employees. For crop year 2000, forty-eight companies were identified as small businesses and their inspection certificates were audited for the number of hours charged either regular time and/or overtime hourly fees. Based on the hourly charges for crop year 2000 for these companies, and applying the proposed rate increases, the total increase for the proposed hourly fee is \$889.16.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Washington Apple Commission, 2900 Euclid Avenue, Wenatchee, WA, on April 30, 2001, at 1:00 p.m.; at the Yakima Ag Center, 21 North 1st Avenue, Yakima, WA, on May 1, 2001, at 1:00 p.m.; and at the Shilo Inn, 1819 East Kittleson, Moses Lake, WA, on May 3, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Jodi Jones, TDD (360) 902-1976, or (360) 901-1996.

Submit Written Comments to: Jim Quigley, Program Manager, Washington State Department of Agriculture Fruit and Vegetable Inspection Program, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2085, by May 5, 2001.

Date of Intended Adoption: May 15, 2001.

March 16, 2001
Robert W. Gore
Assistant Director

AMENDATORY SECTION (Amending WSR 98-10-083, filed 5/5/98, effective 6/5/98)

WAC 16-400-040 Grade and condition certificates—Vegetables. Charges for grade and condition certificates for all vegetables shall be:

(1) The minimum charge for all vegetables shall be nine dollars.

(2) Charges for grade and condition certificates for fresh market vegetables in containers—wrapped, place pack, face and fill, in bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins or in bags per cwt. or fraction thereof:

(a) For federal-state certification:

Asparagus	21¢
Cantaloupes, and corn	12.5¢
Onions	8¢
Potatoes, and seed potatoes	6¢
Processing potatoes	6¢

Complete inspection (rate shall be reduced for level of service required)

Tomatoes	19¢
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(a) For state certification:

Asparagus	19¢
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(3) Inspection fees for cabbage, carrots, cauliflower, celery, cucumbers, lettuce, rhubarb, rutabagas, squash, watermelons, etc., shall be at the hourly rate of ~~((twenty-two))~~ twenty-three dollars and ~~((twenty-five))~~ sixty-six cents beginning June 30, ~~((1998))~~ 2001, and ~~((twenty-three))~~ twenty-four dollars and thirty cents beginning July 1, ~~((1998))~~ 2001.

(4) Inspection for quality, condition, and/or size determination, whether in bulk or in containers, for all vegetables for processing, except potatoes, charges shall be two dollars fifty cents per ton net weight or fraction thereof. When inspection is requested only for the purpose of verifying the product, conveyance, markings, or other factors not

related to quality, the charges shall be at the hourly rate, but not less than the minimum certificate charge of nine dollars.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 98-10-083, filed 5/5/98, effective 6/5/98)

WAC 16-400-100 Certificates. Certificate charges shall be in accordance with the following provisions:

(1) Consolidation certificates shall be charged as specified in WAC 16-400-010 and 16-400-040 and shall have an additional charge of three dollars for each additional local lot.

(2) Condition certificate charges shall be two-thirds of the grade and condition certificates with the following exceptions:

(a) Previously inspected lots shall have a minimum charge of nine dollars.

(b) When the lot has had no prior inspection for quality or grade and it is requested that the certificate carry out-bound car, truck, or state lot number, the grade and condition certificate schedule shall apply.

(c) Out-of-state products reported on state certificates shall be charged on the applicable grade and condition certificate schedule, except there shall be an hourly charge of ~~((twenty-two))~~ twenty-three dollars and ~~((twenty-five))~~ sixty-six cents beginning June 30, ~~((1998))~~ 2001, and ~~((twenty-three))~~ twenty-four dollars and thirty cents beginning July 1, ~~((1998))~~ 2001.

(d) For lots of controlled atmosphere storage apples which were previously certified, a state condition certificate or quality control inspection may be issued without additional charge.

(3) Car hook-up, loading or unloading certificate shall be charged at the rates specified in subsection (2)(a) of this section.

(4) Sanitary and quarantine certificate charges for fruits and vegetables shall be:

(a) Six dollars for the issuance of a certificate, plus the hourly rates specified in WAC 16-400-210 (1)(a) when the shipment is not covered by federal-state or state certificates.

(b) Six dollars per set when the shipment is covered by federal-state or state certificates.

(5) Container weight, or checkloading certificates shall be charged at the rates specified in WAC 16-400-210 (1)(a).

(6) Federal-state certification shall meet the criteria for sampling as established by United States Department of Agriculture, Agricultural Marketing Service. When the federal-state inspector or inspector's aide must physically obtain samples from lots blocked out for loading or from lots in storage, charges of seven and on-half cents per cwt. Shall be made in addition to inspection fees. When assistance is provided by the applicant's personnel, charges for sampling shall be reduced accordingly.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

PROPOSED

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 98-10-083, filed 5/5/98, effective 6/5/98)

WAC 16-400-210 Other charges. Other miscellaneous charges are listed below:

(1) Charges for platform inspection shall be:

(a) Platform inspections, time taking samples, extra time, phytosanitary and/or quarantine inspection, and all other services, shall be charged at the hourly rate of ~~((twenty-two))~~ twenty-three dollars and ~~((twenty-five))~~ sixty-six cents beginning June 30, ~~((1998))~~ 2001, and ~~((twenty-three))~~ twenty-four dollars and thirty cents beginning July 1, ~~((1998))~~ 2001.

(b) Time allowance - Where a platform inspector is working full time at one house and also doing certification inspection, the inspector shall allow credit for the time according to limits outlined in the schedule for such certification at the hourly rate of ~~((twenty-two))~~ twenty-three dollars and ~~((twenty-five))~~ sixty-six cents beginning June 30, ~~((1998))~~ 2001, and ~~((twenty-three))~~ twenty-four dollars and thirty cents beginning July 1, ~~((1998))~~ 2001.

Should the certificate charges divided by the respective hourly rates equal or exceed the number of hours worked, no platform charge shall be assessed. Should the certificate charges divided by the respective hourly rates be less than the number of hours worked, the platform charge shall be made to bring the total to the appropriate charge.

(2) Fumigation charges—The minimum charge for supervision of fumigation shall be eighteen dollars. Additional or unnecessary stand-by time shall be charged as specified in subsection (1)(a) of this section. In temporary, non-permanent facilities or those lacking adequate devices for maintenance of acceptable treatment temperatures, no fumigations shall be started after 3:00 p.m. from October 1 to May 31, nor after 10:00 p.m. from June 1 to September 30.

(3) Field or orchard inspections made at the applicant's request for determination of presence or absence of disease or insect infestation, or for other reason, shall be at the rate of two dollars fifty cents per acre or fraction thereof or at the rate specified in subsection (1)(a) of this section except as otherwise provided in subsection (13) of this section.

(4) Seed sampling fees shall be arranged with the plant services division for services performed.

(5) Extra charges on services provided shall be assessed according to provisions listed below.

(a) The minimum inspection charge for each commodity and requested form shall be at the rate specified in subsection (1)(a) of this section.

(b) If, through no fault of the inspection service, time over the maximum allowance as supported by unit rates for each commodity and requested form is required, such excess time shall be at the rate as specified in subsection (1)(a) of this section.

(c) For all inspection services performed beyond a regularly scheduled eight-hour week day shift or on Saturdays, or Sundays, or state legal holidays, an hourly charge shall be

made equivalent to ~~((thirty))~~ thirty-two dollars and fifteen cents beginning June 30, ~~((1998))~~ 2001, and ~~((thirty-one))~~ thirty-three dollars and ~~((twenty-five))~~ five cents beginning July 1, ~~((1998))~~ 2001.

These charges shall be made for actual hours spent in performance of duties. This shall include unit charges, plus, if necessary, overtime charges to equal the respective overtime hourly rates.

The following are state legal holidays: New Year's Day, Veteran's Day, Memorial Day (the last Monday of May), Independence Day, Labor Day (the first Monday in September), Thanksgiving Day (the fourth Thursday in November) and the day following Thanksgiving Day, Christmas Day, Martin Luther King, Jr. Day (third Monday in January), and President's Day (third Monday in February).

(d) When the per unit charge for inspection in any one day equals or exceeds the basic hourly and/or overtime charge, no additional hourly or overtime charges shall be assessed.

(6) Mileage—Whenever necessary, mileage shall be charged at the rate established by the state office of financial management.

(7) Electronic transmission of documents—Telegrams, facsimile, or electronic transmission of inspection documents shall be charged at the rate of four dollars per transmission in addition to Western Union charges made directly to the applicant.

(8) Services provided to other agencies—Services provided to other agencies, commissions, and organizations shall be charged at the rate specified in subsection (1)(a) of this section.

(9) Timely payment—Payment of fees and charges is due within thirty days after date of statement, provided:

(a) If payment is not received within thirty days, service may be withheld until the delinquent account is paid; or

(b) In the case of such delinquent accounts, cash payment for subsequent service may be required; and

(c) A penalty of eighteen percent per annum shall be assessed on the delinquent account balance.

(10) USDA positive lot identification—Certification utilizing positive lot identification shall be charged at the rates specified in this section and WAC 16-400-010, 16-400-040, and 16-400-100. An additional charge of ten percent may be added when an inspector is required to be on-site when no other inspections are requested. Service will be provided first in those instances in which positive lot identification is a mandatory condition of the sales transaction. Other requests for positive lot identification will be serviced upon adequate notification to the inspection service and availability of inspection personnel.

(11) Controlled atmosphere license fee—The application for an annual license to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee of five dollars per room, with a minimum fee established at twenty-five dollars for five rooms or less.

(12) Inspection fees may be waived on inspections of fruits and vegetables when donated to bona fide nonprofit organizations: Provided, That shipping containers shall be conspicuously labeled or marked as "not for resale."

(13) For apple pest certification by survey method; \$.0075 per cwt. Or fraction thereof on all fresh apples produced in the state of Washington or marketed under Washington state grades and standards.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 01-07-096
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed March 21, 2001, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-100.

Title of Rule: Quarantine—Agricultural pests, WAC 16-470-900 through 16-470-921.

Purpose: To amend fee schedule sections to reflect fiscal growth factors for fiscal year 2001 and fiscal year 2002, and other modifications as necessary to acknowledge changes in industry practices, environmental conditions and legislative mandates.

Statutory Authority for Adoption: Chapters 17.24, 15.14 RCW.

Statute Being Implemented: Chapters 17.24, 15.14 RCW.

Summary: Revision of chapter 16-470 WAC, increases inspection and testing fees to correspond to the fiscal growth factors of fiscal year 2001 and fiscal year 2002. The increases will occur in two stages, with one increasing 2.8%, effective June 30, 2001, and the second increasing 2.79%, effective July 1, 2001.

Reasons Supporting Proposal: Current fee schedules are not anticipated to cover costs to render services by the plant services and the pest programs. The department is mandated to support these activities through industry fees.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, 2nd Floor, Olympia,

WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Thomas Wessels, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 16-470-900 through 16-470-920 establishes fee schedules for inspection and testing for agricultural and quarantine plant pests. The current inspection and testing fee income is not anticipated to be adequate to cover program costs for these activities. This makes it necessary to increase fees for these services within the fiscal growth factors for both fiscal years 2001 and 2002. Many of these services are optional, as testing and diagnostic services are available from a number of agencies throughout the nation and participation in planting stock certification programs is voluntary.

Proposal Changes the Following Existing Rules: Revision of sections of WAC 16-470-900 through 16-470-920 would increase current fees for requested inspection and testing by a maximum of 2.87% for FY 01, to become effective June 30, 2001, and by a maximum of 2.79% for FY 02, to become effective July 1, 2001.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

COST ANALYSIS TO DETERMINE WHETHER A SMALL BUSINESS ECONOMIC IMPACT STATEMENT IS REQUIRED FOR REVISION OF WAC 16-470-900 THROUGH 16-470-920, SCHEDULE OF FEES FOR REQUESTED SERVICES RELATING TO QUARANTINE PESTS

Rule Summary: This revision increases fees for inspection and testing for agricultural and quarantine plant pests by approximately 2.87% for fiscal year 2001 and approximately 2.79% for fiscal year 2002 for a total increase of approximately 5.6%. These fees cover the requested inspection and testing services needed to facilitate the movement or sales of agricultural products, forest products and bees. Fees will be increased in two stages with the first increase of 2.87% effective June 30, 2001 and the second increase of 2.79% effective July 1, 2001. This increase corresponds to the fiscal growth factors of fiscal years 2001 and 2002 (Tables 1, 2).

Fee	Current Rate	6/30/01 Rate	7/1/01 Rate
Hourly rate for normal business hours	\$26.90	\$27.65	\$28.40
Hourly rate for nonbusiness hours	\$34.40	\$35.35	\$36.30
Site inspection and/or permit review	\$53.80	\$55.30	\$56.80

Table 1

	1 sample	5 samples	10 samples	50 samples	100 samples
Virus	\$80.70	\$59.20	\$45.20	\$17.20	\$2.65
Bacteria	\$35.60	\$34.40	\$32.25	\$31.20	\$31.20
Fungi	\$37.65	\$32.25	\$31.20	\$30.10	\$27.90
Nematode	\$27.90	\$25.80	\$23.65	\$23.65	\$21.50

Table 2a current testing fee schedule

PROPOSED

	1 sample	5 samples	10 samples	50 samples	100 samples
Virus	\$83.00	\$60.80	\$46.45	\$17.65	\$2.70
Bacteria	\$36.60	\$35.35	\$33.15	\$32.05	\$32.05
Fungi	\$38.70	\$33.15	\$32.05	\$30.95	\$28.70
Nematode	\$28.70	\$26.50	\$24.30	\$24.30	\$22.10

Table 2b testing fees effective June 30, 2001

	1 sample	5 samples	10 samples	50 samples	100 samples
Virus	\$85.30	\$62.45	\$47.70	\$18.10	\$2.75
Bacteria	\$37.60	\$36.30	\$34.05	\$32.90	\$32.90
Fungi	\$39.75	\$34.05	\$32.90	\$31.80	\$29.50
Nematode	\$29.50	\$27.20	\$24.95	\$24.95	\$22.70

Table 2c testing fees effective July 1, 2001

Affected Groups: Exporters of planting stock, both seed and nursery stock, are the primary users of these services. Businesses or individuals importing plants under the USDA-APHIS Post-entry Quarantine Program also use services covered by this fee schedule.

The department billed approximately thirty-nine customers for these services in 2000, most of those being seed companies and nurseries. Based on the amount billed in 2000, the proposed fee increase will have more than a minor economic impact on only two companies, neither of which is a small business.

The volume of requested inspections and tests varies widely in any given year depending on export demand and the risk associated with an agricultural product. Utilizing WSDA services to obtain inspections and tests performed under this fee schedule is voluntary. USDA APHIS, universities and regulatory agencies in other states also provide these services.

Industry Outreach: The nursery advisory committee and the fruit tree advisory committee were notified of the proposed fee increases. All companies with active WSDA accounts for these services also received written notification.

Justification for Revision: Although some plant certification programs have separate fee schedules, services provided under this rule are important to planting stock certification programs and businesses requiring export certification. The phytosanitary requirements of importing countries must be met before agricultural products are exported. An inspection or a test to minimize the risk of introducing an exotic plant pest with the imported product often meets these requirements. Although most of these services are provided by regulatory agencies in other states it is often less expensive and more convenient for Washington businesses to have these services provided within the state.

This program provides phytosanitary services at cost. Increases in the cost of labor and materials in laboratory testing and field inspecting need to be offset by increases in revenue. If certification and other services were provided at a loss, the Plant Services Program would be required to operate at a loss, until, ultimately, it would be unable to continue to function.

An alternative would be to discontinue these services, requiring Washington exporters to use services provided by

plant protection organizations in other states. This could put Washington exporters at a disadvantage as other agencies providing inspecting and laboratory testing services often have different priorities and may not provide needed services in a timely manner.

Conclusion: The proposed revisions of chapter 16-470 WAC will raise fees for inspection and plant pathology testing services approximately 5.6% in a two step process. The first increase of approximately 2.87% will take place on June 30, 2001 and a second increase of approximately 2.79% will become effective on July 1, 2001. The increases comply with the OFM fiscal growth factors for fiscal years 2001 and 2002.

The proposed fee increase will have no reporting, record-keeping or other compliance requirement for affected companies. The fee schedule applies to voluntary testing and inspection necessary for export or planting stock certification.

The businesses using these services are classified as SIC code 0139, which includes nurseries and seed growers. Based on the fees paid by the thirty-nine customers using these services in 2000, the proposed increase will not impose more than minor costs on small businesses. Therefore, an SBEIS is not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street, 2nd Floor, Conference Room 271, Olympia, WA 98504-2560, on April 26, 2001, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Lou Jones by April 18, 2001, TDD (360) 902-1996 or (360) 902-1806.

Submit Written Comments to: Mary Toohey, Assistant Director, Laboratory Services Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail mtoohey@agr.wa.gov, fax (360) 902-2094, by April 27, 2001.

Date of Intended Adoption: May 8, 2001.

March 21, 2001

Mary A. Martin Toohey
Assistant Director

PROPOSED

AMENDATORY SECTION (Amending WSR 99-22-076, filed 11/2/99, effective 12/3/99)

WAC 16-470-911 Schedule of fees and charges—Applicable fees and charges—Effective ((July 1, 1999)) June 30, 2001.

- (1) Hourly rate
 - (a) Business hours \$((26.90)) 27.65
 - (b) Nonbusiness hours (see WAC 16-407-905) \$((34.40)) 35.35

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Plant pathology laboratory diagnostic fees are as follows:

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+samples
virus (ELISA)	\$((80.70)) <u>83.00</u> ea	\$((59.15)) <u>60.80</u> ea	\$((45.20)) <u>46.45</u> ea	\$((17.20)) <u>17.65</u> ea	\$((2.65)) <u>2.70</u> ea
bacteria	((35.60)) <u>36.60</u> ea	((34.40)) <u>35.35</u> ea	((32.25)) <u>33.15</u> ea	((31.20)) <u>32.05</u> ea	((31.20)) <u>32.05</u> ea
fungus	((37.65)) <u>38.70</u> ea	((32.25)) <u>33.15</u> ea	((31.20)) <u>32.05</u> ea	((30.10)) <u>30.95</u> ea	((27.90)) <u>28.70</u> ea
nematode	((27.90)) <u>28.70</u> ea	((25.80)) <u>26.50</u> ea	((23.65)) <u>24.30</u> ea	((23.65)) <u>24.30</u> ea	((21.50)) <u>22.10</u> ea

Note: To receive volume rates, samples must be submitted as a unit and identification request must be for one specific virus, bacterium, fungus, or nematode.

(4) For large projects, the department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate.

NEW SECTION

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges—Effective July 1, 2001. (1) Hourly rate.

- (a) Business hours \$28.40
- (b) Nonbusiness hours (see WAC 16-407-905) . . \$36.30

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Plant pathology laboratory diagnostic fees are as follows:

Identity Determination	1 sample	5 samples	10 samples	50 samples	100+samples
virus (ELISA)	\$85.30 ea	\$62.45 ea	\$47.70 ea	\$18.10 ea	\$2.75 ea
bacteria	37.60 ea	36.30 ea	34.05 ea	32.90 ea	32.90 ea
fungus	39.75 ea	34.05 ea	32.90 ea	31.80 ea	29.50 ea
nematode	29.50 ea	27.20 ea	24.95 ea	24.90 ea	22.70 ea

Note: To receive volume rates, samples must be submitted as a unit and identification request must be for one specific virus, bacterium, fungus, or nematode.

(4) For large projects, the department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate.

AMENDATORY SECTION (Amending WSR 99-12-035, filed 5/26/99, effective 6/26/99)

WAC 16-470-916 Schedule of fees and charges—Fees for post entry inspection services—Effective ((July 1, 1999)) June 30, 2001.

- (1) Site inspection and/or permit review and approval \$((53.80)) 55.30
- (2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.
- (3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

NEW SECTION

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services—Effective July 1, 2001. (1) Site inspection and/or permit review and approval \$56.80

- (2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.
- (3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

AMENDATORY SECTION (Amending WSR 99-12-035, filed 5/26/99, effective 6/26/99)

WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees—Effective July 1, 1999. (1) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

- (2) Postage, special handling services and other miscellaneous costs exceeding five dollars are charged back at the actual cost.
- (3) Certificates of inspection, phytosanitary certificates, and other official documents are provided subject to the charges and conditions established in chapter 16-401 WAC ((16-401-026)).

WSR 01-07-097
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed March 21, 2001, 11:07 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 01-03-139.
Title of Rule: Certification of caneberry planting stock, chapter 16-333 WAC.

PROPOSED

Purpose: To amend fee schedule sections to reflect fiscal growth factors for fiscal year 2001 and fiscal year 2002 and to reflect changes in industry practices.

Statutory Authority for Adoption: Chapter 15.14 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

Summary: The revision of chapter 16-333 WAC will increase application and hourly inspection fees to correspond to the fiscal growth factors for fiscal year 2001 and fiscal year 2002. The increase will occur in two stages, with one increase of a maximum of 2.87% effective June 30, 2001, and the second increase of a maximum of 2.79% effective July 1, 2001. The existing requirement for foundation plants to be grown in pasteurized media is broadened, and the tolerance for diseases in planting stock is changed.

Reasons Supporting Proposal: Current fees are inadequate to cover costs of caneberry plant certification, and it is necessary to raise fees within the fiscal growth factors of both fiscal year 2001 and fiscal year 2002. The affected industry requested a technical change in requirements to reflect current industry practices.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Thomas Wessels, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Currently, five nurseries participate in the caneberry planting stock certification program, which is created by these rules. Participation in the production of certified planting stock is entirely voluntary for any producer of caneberry plants. Enrollment and compliance with the requirements of this fee-for-service program are intended to produce a known, high quality agricultural product apparently free of specified diseases and other pests, that normally commands a market premium.

Proposal Changes the Following Existing Rules: Chapter 16-333 WAC establishes the fee schedule for caneberry plant certification. Proposed changes would increase both application and hourly fees for the program by a maximum of the fiscal growth factor for FY 01, to become effective June 30, 2001, and another increase in fees by a maximum of the fiscal growth factor for FY 02, to become effective July 1, 2001. Additional changes to chapter 16-333 WAC should have neutral economic impact. They consist of one technical change in requirements for media in which foundation stock is planted, and a minor change in the tolerance for undesignated diseases in foundation, registered, and certified planting stock.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Analysis of the economic effects of the proposed rule changes demonstrates that: (1) The changes will affect much less than 10% of the business in the relevant SIC and (2) the cost of the changes for any grower is likely to be minor.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street, 2nd Floor, Conference Room 271, Olympia, WA 98504-2560, on April 26, 2001, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Lou Jones by April 18, 2001, TDD (360) [902-]1996 or (360) [902-]1806.

Submit Written Comments to: Mary Toohey, Assistant Director, Laboratory Services Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail mtoohey@agr.wa.gov, phone (360) 902-1907, fax (360) 902-2094, by April 26, 2001.

Date of Intended Adoption: May 8, 2001.

March 21, 2001

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending WSR 00-19-035, filed 9/12/00, effective 10/13/00)

WAC 16-333-040 Caneberry certification fees effective June 30, 2001. (1) Caneberry certification application fee. The applicant must furnish all information requested on the application form furnished by the department, including, but not limited to, the crop, variety, class planted, date planted, source of seed or plants, acreage, field number, applicant's name and address, applicant's signature, and date of application. The applicant must allow the department to take plants or plant parts from any planting for inspection and testing purposes. A separate application is required for each cultivar and/or lot entered for certification. Applications must be filed with the Plant Services Program, P.O. Box 42560, Olympia, Washington 98504-2560 by May 15 each year and be accompanied by a ~~((one hundred twenty five dollar))~~ **\$128.55** fee.

(2) Inspection fees. The inspection fee is ~~((twenty five dollars))~~ **\$25.70** per hour plus mileage charged at a rate established by the state office of financial management. Inspection and testing are payable upon completion of work. Billing may be arranged subject to department policies and processes.

(3) The department will remove any applicant from the certification program for failing to pay fees when due.

(4) The department will not accept applications from growers owing the department for previous fees.

NEW SECTION

WAC 16-333-041 Caneberry certification fees effective July 1, 2001. (1) Caneberry certification application fee. The applicant must furnish all information requested on the application form furnished by the department, including, but not limited to, the crop, variety, class planted, date planted, source of seed or plants, acreage, field number, applicant's name and address, applicant's signature, and date of application. The applicant must allow the department to take plants or plant parts from any planting for inspection and testing purposes. A separate application is required for each cultivar and/or lot entered for certification. Applications must be

filed with the Plant Services Program, P.O. Box 42560, Olympia, Washington 98504-2560 by May 15 each year and be accompanied by a \$132.00 fee.

(2) Inspection fees. The inspection fee is \$26.40 per hour plus mileage charged at a rate established by the state office of financial management. Inspection and testing are payable upon completion of work. Billing may be arranged subject to department policies and processes.

(3) The department will remove any applicant from the certification program for failing to pay fees when due.

(4) The department will not accept applications from growers owing the department for previous fees.

AMENDATORY SECTION (Amending WSR 00-19-035, filed 9/12/00, effective 10/13/00)

WAC 16-333-045 Production requirements for foundation caneberry planting stock. (1) Foundation caneberry plants must originate directly from nuclear stock and may be grown in a greenhouse, screenhouse or field.

(2) Growers may use micro-propagation techniques to multiply foundation plants prior to planting them in a foundation greenhouse, screenhouse or field, if both of the following conditions are met:

(a) The micro-propagated plants are isolated at all times from all other caneberry plants, except those that have been indexed and found free of virus or virus-like infections; and

(b) The micro-propagation facility is approved by the department.

(3) Growers may transplant micro-propagated foundation plants to a greenhouse or screenhouse for conditioning prior to planting them in a foundation field.

(4) Foundation plants may be harvested from a foundation field planting for no more than one year.

(5) Foundation plants grown in an insect-proof facility (~~on pasteurized~~) in approved soil-less media may be maintained indefinitely, providing they are indexed and found free of virus or virus-like infections at intervals of no more than three years by personnel employed by the United States Department of Agriculture or other institution approved by the department.

(6) Each foundation plant in a foundation greenhouse or screenhouse must be grown in a container individually identified by the cultivar and lot.

(7) Different cultivars planted in a foundation field must be separated by a distance of fourteen feet or by a physical barrier that prevents the intermingling of roots.

(8) Upon request, growers must provide records to the department documenting the cultivar, nuclear source, indexing results and date of acquisition for any foundation stock.

AMENDATORY SECTION (Amending WSR 00-19-035, filed 9/12/00, effective 10/13/00)

WAC 16-333-085 Tolerances for foundation, registered and certified caneberry planting stock. (1) Each lot of foundation, registered or certified planting stock may have no more than the percentage of affected plants listed in the table below:

Factors	Foundation	Registered	Certified
	All inspections	All inspections	All inspections
	Percent	Percent	Percent
Varietal mixture	0	0	0
Visible symptoms of virus diseases	0	0.05	0.5
Crown and cane gall	0	0.1	1.0
Nematode	0	0.05	0.1
Anthracnose	0	2.0	5.0
Other diseases	0	((0-2))	((0-5))
		Practically free	Practically free
Root, cane or crown inhabiting insects	0	0.05	0.1

(2) Caneberry planting stock that fails to meet any tolerance for its intended class may be reclassified to the next class for which it meets all of the tolerances.

WSR 01-07-098
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed March 21, 2001, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-140.

Title of Rule: Certification of strawberry planting stock, chapter 16-328 WAC.

Purpose: To amend fee schedule sections to reflect fiscal growth factors for fiscal year 2001 and fiscal year 2002, and to change an application date for operational clarification.

Statutory Authority for Adoption: Chapter 15.14 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

Summary: The revision of chapter 16-328 WAC will increase application and hourly inspection fees to correspond to the fiscal growth factors for fiscal year 2001 and fiscal year 2002. The increases will occur in two stages, with one increase of a maximum of 2.87% effective June 30, 2001, and the second increase of a maximum of 2.79% effective July 1, 2001.

Reasons Supporting Proposal: Current fees are inadequate to cover costs of strawberry plant certification, and it is necessary to raise fees within the fiscal growth factors of both fiscal year 2001 and fiscal year 2002. An application date is changed for operational clarity.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Thomas Wessels, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: One grower currently enrolls in the Washington strawberry planting stock certification program, which is created by these rules. Participation in the production of certi-

PROPOSED

fied planting stock is entirely voluntary for any producer of strawberry plants. Enrollment and compliance with the requirements of this fee-for-service program are intended to produce a known, high quality agriculture product apparently free of specified diseases and other pests, that normally commands a market premium.

Proposal Changes the Following Existing Rules: Chapter 16-328 WAC establishes the fee schedule for strawberry plant certification. The proposed changes increase both application and hourly fees for the program by a maximum of the fiscal growth factor for FY 01, to become effective June 30, 2001, and another increase in fees by a maximum of the fiscal growth factor for FY 02, to become effective July 1, 2001. To clarify operational detail, the annual application date was changed from June 30 to June 15. The effect of the date change is to delay implementation of the fee increases until the 2002 growing season.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Analysis of the economic effects of the proposed rule changes demonstrates that: (1) The changes will affect much less than 10% of the businesses in the relevant SIC and (2) the cost of the changes for any grower is likely to be minor.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Hearing Location: Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street, 2nd Floor, Conference Room 271, Olympia, WA 98504-2560, on April 26, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Lou Jones by April 18, 2001, TDD (360) 902-1996, or (360) 902-1806.

Submit Written Comments to: Mary Toohey, Assistant Director, Laboratory Services Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail mtoohey@agr.wa.gov, phone (360) 902-1907, fax (360) 902-2094, by April 26, 2001.

Date of Intended Adoption: May 8, 2001.

March 21, 2001

Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 00-19-034, filed 9/12/00, effective 10/13/00)

WAC 16-328-010 Strawberry plant certification fees.
Effective June 30, 2001, strawberry plant certification fees are as follows:

(1) Certification application fee. The applicant must furnish all information requested on the application for inspection, including, but not limited to, the crop, variety, class planted, date planted, source of seed or plants, acreage, field number, applicant's name and address, applicant's signature, and date of application. The applicant must allow the department to take plants or plant parts from any planting for inspection or testing purposes. A separate application is required for each cultivar and/or lot entered for certification. Applications for inspection must be filed with the Plant Ser-

vices Program, P.O. Box 42560, Olympia, Washington, 98504-2560 by June ((30)) 15 of each year and be accompanied by a ((one hundred twenty five dollar)) \$128.22 fee.

(2) Inspection fees. The inspection fee is ((twenty five dollars)) \$25.70 per hour plus mileage charged at a rate established by the state office of financial management. Inspection and testing fees are payable upon completion of work. Billing may be arranged subject to department policies and processes.

(3) The department will remove any applicant from the certification program for failing to pay fees when due.

(4) The department will not accept applications from growers owing the department for previous fees.

NEW SECTION

WAC 16-328-011 Strawberry plant certification fees.
Effective July 1, 2001, strawberry plant certification fees are as follows:

(1) Certification application fee. The applicant must furnish all information requested on the application for inspection, including, but not limited to, the crop, variety, class planted, date planted, source of seed or plants, acreage, field number, applicant's name and address, applicant's signature, and date of application. The applicant must allow the department to take plants or plant parts from any planting for inspection or testing purposes. A separate application is required for each cultivar and/or lot entered for certification. Applications for inspection must be filed with the Plant Services Program, P.O. Box 42560, Olympia, Washington, 98504-2560 by June 15 of each year and be accompanied by a \$132.00 fee.

(2) Inspection fees. The inspection fee is \$26.40 per hour plus mileage charged at a rate established by the state office of financial management. Inspection and testing fees are payable upon completion of work. Billing may be arranged subject to department policies and processes.

(3) The department will remove any applicant from the certification program for failing to pay fees when due.

(4) The department will not accept applications from growers owing the department for previous fees.

WSR 01-07-099

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 21, 2001, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-02-101.

Title of Rule: Nursery inspection fees, chapter 16-401 WAC.

Purpose: To amend current fee schedule sections to increase fees-for-services within the fiscal growth factors for fiscal year 2001 and fiscal year 2002.

Statutory Authority for Adoption: Chapters 15.13, 15.14 RCW.

Statute Being Implemented: Chapters 15.13, 15.14 RCW.

Summary: The proposed revisions will increase nursery fees for services and miscellaneous charges related to requested services. The increases will occur in two stages, with an increase of a maximum of 2.87% becoming effective June 30, 2001, and a second increase for a maximum of 2.79% becoming effective July 1, 2001.

Reasons Supporting Proposal: Current fee levels are not anticipated to cover costs to render these services by the plant services program. The department is mandated in statute to support the program through industry fees.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Thomas Wessels, 1111 Washington Street, 2nd Floor, Olympia, WA 98504-2560, (360) 902-1984.

Name of Proponent: Washington State Department of Agriculture, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule establishes the fees charged by the plant services program for activities authorized in chapters 15.13 and 15.14 RCW and sets forth related billing and licensing information. The current inspection fee income is not anticipated to be adequate to cover program costs for these activities. This has made it necessary to raise fees for inspections and other requested (that is, optional) services within the fiscal growth factors for both fiscal year 2001 and 2002. The

proposal does **not** include increases in nursery license fees. We anticipate that the amendments will enable the program to remain financially solvent (as required by statute).

Proposal Changes the Following Existing Rules: Chapter 16-401 WAC establishes the fee schedule for nursery inspection fees and miscellaneous charges related to requested services. The proposed changes increase these fees by a maximum of the fiscal growth factor for fiscal year 2001, to become effective June 30, 2001, and another increase in fees by a maximum of the fiscal growth factor for fiscal year 2002, to become effective July 1, 2001. Nursery license fees are also established by chapter 16-401 WAC, however, no changes in license fees are proposed.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

COST ANALYSIS TO DETERMINE WHETHER A SMALL BUSINESS ECONOMIC IMPACT STATEMENT IS REQUIRED FOR REVISION OF CHAPTER 16-401 WAC TO INCREASE NURSERY INSPECTION FEES

Rule Summary: This proposed revision of chapter 16-401 WAC increases nursery fees for services and miscellaneous charges related to requested services by approximately 2.87% for fiscal year 2001 and approximately 2.79% for fiscal year 2002 for a total increase of approximately 5.6%. Fees will be increased in two stages with the first increase effective June 30, 2001, and a second increase effective July 1, 2001 (see Table 1). These increases correspond to the fiscal growth factors of fiscal year 2001 and fiscal year 2002.

PROPOSED

License/fee	Current rate	6/30/99 rate	7/1/99 rate
Hourly rate during business hours	\$26.90	\$27.65	\$28.40
Hourly rate during nonbusiness hours	\$34.40	\$35.35	\$36.30
Phytosanitary certificate issued more than 24 hrs. after the time of inspection	\$12.90	\$13.25	\$13.60
Additional phytosanitary certificates issued more than 24 hrs. after the time of inspection	\$4.20	\$4.30	\$4.40
Sanitation inspection or witnessing a treatment of nonplant material - hourly	\$26.90	\$27.65	\$28.40
Certificate of sanitation for nonplant material (one certificate issued at time of inspection)	No charge	No charge	No charge
Additional certificates of sanitation for nonplant material (no charge for first certificate)	\$4.20	\$4.30	\$4.40
Brown garden snail inspections - hourly	\$26.90	\$27.65	\$28.40
Brown garden snail certificate	No charge	No charge	No charge
Additional brown garden snail certificates	\$4.20	\$4.30	\$4.40
Certificate of plant health (noncommercial)	\$5.35	\$5.50	\$5.65
Witnessing or certifying fumigation per hour	\$26.90	\$27.65	\$28.40
Fumigation charge per lot or container	\$10.75	\$11.05	\$11.35
Postage, special handling services or other miscellaneous costs exceeding five dollars	Actual cost	Actual cost	Actual cost
Nursery stickers and inspection tags in lots of 250	\$5.35	\$5.50	\$5.65
Nursery stickers and inspection tags - less than 250 (minimum 10)	\$.26	\$.267	\$.27
Authorization to preprint WA nursery stock inspection certificates on shipping containers	\$26.90	\$27.65	\$28.40

Table 1. Summary of fee increases.

Affected Groups and Costs: The proposed fee increase will affect approximately six hundred thirty-eight customers who use nursery inspection services. Customers utilizing these services include wholesale nurseries requiring a growing season inspection, hay and lumber exporters, and growers of certified planting stock. The average cost to a customer in 2000 was \$198, which will increase by \$11 if the proposal is adopted.

This proposed increase would mostly affect large wholesale nurseries and nonnursery business such as Christmas tree growers and exporters of other agricultural products. It would have a significant economic impact on forty-one businesses that required extensive field inspections or multiple phytosanitary certifications in past years. A major forest products company was the largest user of these services in 2000 and will pay approximately \$1415 annually if the fees in chapter 16-401 WAC are increased as proposed.

SIC code	Type of business	No affected	Total no.	% affected
0139	Hay	8	163	5%
5153	Export	5	113	4%
0181	Nurseries	16	399	4%
0831	Forest products	9	233	4%
0811	Christmas trees	1	288	0.3%

Table 2

Two businesses not listed in Table 2 that may also be affected by the proposed fee increase are large manufacturing companies requiring certification of solid wood packing material to China.

Except for situations where licensed nurseries are found to be out of compliance with chapter 15.13 RCW or its rules, the services affected by the proposed fee increases are discretionary - that is, certain market opportunities require one or

more of these services, but the decision to enter that segment of the market is optional for the producer.

Current Economic Situation: Nursery inspection activities are supported entirely by nursery license fees and fees for services. Most of the funding comes from nursery license fees, which increased a total of approximately 7.6% in fiscal years 1999 and 2000. Approximately 30% of the funding comes from requested services. This proposal solely addresses fees for requested services.

The plant services program regulates the sale and movement of horticulture plants within the state of Washington. This program is also responsible for certifying plants and plant products for export and enforcing nursery related quarantines. The current fee schedule has been in place since July 1, 1999. Despite the fee increases within the fiscal growth factors for FY 99 and FY 00, the fund balance continued to decline until February 2000 when the plant services program began certifying hay exports to Japan, a service formerly provided by USDA-PPQ. Phytosanitary certificates issued for hay exports now account for approximately half of the phytosanitary certificates issued by the plant services program and have added approximately \$10,000 of revenue to the program per month. Increased fund balances commencing in March 2000 are largely due to the revenue generated by certification of hay exports (Figure 1). Further significant revenue increases from this source are not anticipated.

Expenses associated with nursery inspection activities are continuing to increase and will offset the increases in revenue from the export programs. Large increases in employee benefits are anticipated, further eroding any gains made during the last two years. The proposed fee increases, along with continued increases in efficiency, will keep the program economically viable for the next two years.

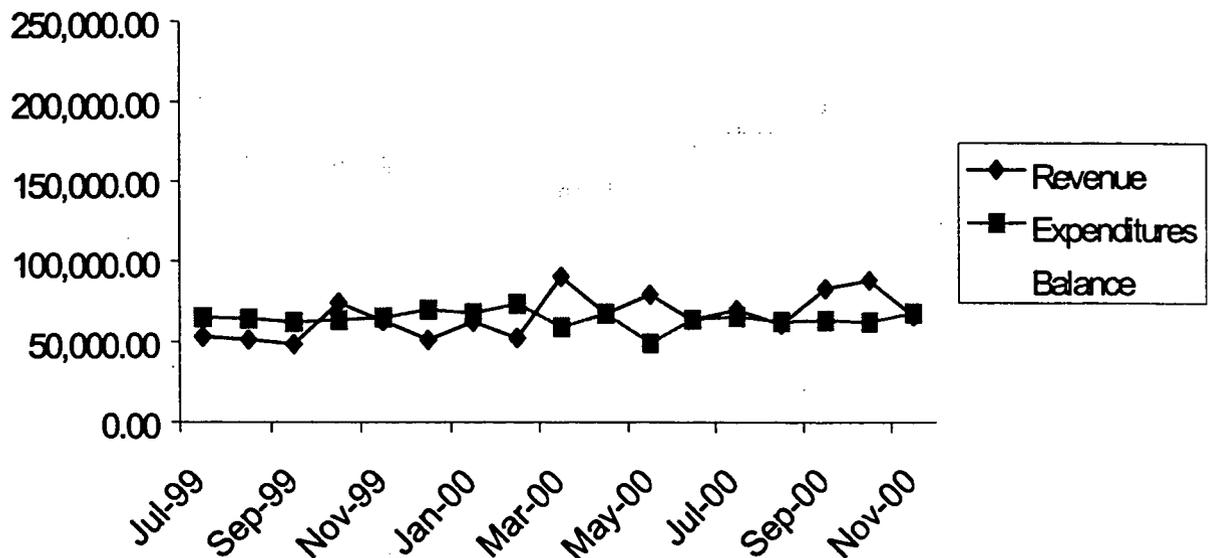


Figure 1.

PROPOSED

Industry Outreach: The agency discussed the proposed fee increases with the statutorily established industry advisory committee (the Nursery Advisory Committee) on June 9, 2000, and received endorsement for the proposal at a subsequent meeting on March 9, 2001. A news release explaining the proposal will be published in the nursery trade journal, B & B, in the spring of 2001. The proposal was also discussed at the Fruit Tree Advisory Committee meeting on March 7, 2001. The department will send out a letter informing all customers of the proposed increase and soliciting comments.

Alternatives to a Fee Increase: A viable nursery inspection program is necessary for an orderly trade of horticulture plants. Without increased fees, the current level of service could be maintained for a limited time until the fund reserve became depleted. At that time nursery inspection activities would have to be terminated.

Another alternative to an increase in fees for requested services would be termination of export certification services to nonlicensed nurseries. This would allow the plant services program to reduce the number of staff to a level supported by nursery license fees. USDA-PPQ, the relevant federal agency, could possibly provide export services to nonnursery exporters, but only at a considerably higher cost to the customer.

Conclusion: This proposed revision would increase fees for services authorized in chapter 16-401 WAC by approximately 2.87% for fiscal year 2001 and approximately 2.79% for fiscal year 2002 for a total increase of approximately 5.6%. The increases would be implemented in two steps with the first increase effective June 30, 2001, and a second increase effective July 1, 2001. The increases are needed to keep the plant services program financially sound in the coming years. The hourly fee for inspections would be raised \$1.50 from the current rate of \$26.90 for services provided during business hours and \$1.90 to the current \$34.40 for services provided outside of normal business hours. This increase would have an economical impact of \$50 or more on approximately forty-one customers out of a total of six hundred thirty-eight.

The Regulatory Fairness Act, chapter 19.85 RCW, requires a small business economic impact analysis on proposed rules that impose more than minor costs on 10% of the businesses in any one industry within a four digit SIC classification. Industries affected by chapter 16-401 WAC are in SIC classifications 0139, 0831, 0811 and 5153. The proposed increase will affect less than 10% of the businesses in these industries; therefore, a small business economic impact statement is not required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street, 2nd Floor, Conference Room 271, Olympia, WA 98504-2560, on April 26, 2001, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Lou Jones by April 18, 2001, TDD (360) 902-1996, or (360) 902-1806.

Submit Written Comments to: Mary Toohey, Assistant Director, Laboratory Services Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA

98504-2560, e-mail mtoohey@agr.wa.gov, fax (360) 902-2094, by April 27, 2001.

Date of Intended Adoption: May 8, 2001.

March 21, 2001

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending WSR 99-12-034, filed 5/26/99, effective 6/26/99)

WAC 16-401-021 Schedule of fees and charges—Facility inspection—Effective July 1, 1999. (1) Any plant material at a location licensed as a nursery dealer under chapter 15.13 RCW is subject to regulatory inspections. A nursery inspection report will be issued, without additional charge except as provided in subsection (2) of this section, stating the results of the inspection.

(2) A fee may be charged for repeated, subsequent inspections of license locations where plant material does not meet the requirements set forth in chapter 15.13 RCW: Provided, That the license location is subject to no more than two paid inspections each license period. Fees are assessed on the basis of the time required for the inspection at the applicable hourly rate provided in chapter 16-401 WAC ((16-401-026)).

AMENDATORY SECTION (Amending WSR 99-12-034, filed 5/26/99, effective 6/26/99)

WAC 16-401-026 Schedule of fees and charges—Applicable rates and charges—Effective ((July 1, 1999)) June 30, 2001. The following rates apply for requested inspection services:

- (1) Hourly rate
 - (a) Business hours \$ ((26.90)) 27.65
 - (b) Nonbusiness hours (see WAC 16-401-023) \$ ((34.40)) 35.35

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a work day or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

(a) There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

PROPOSED

(b) Phytosanitary certificates issued more than twenty-four hours from the time of the inspection, first certificate \$ ((~~12.90~~)) 13.25

(c) Additional phytosanitary certificates \$ ((~~4.20~~)) 4.30 ea.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

- (a) There is no additional charge for the first certificate.
(b) Additional certificates \$ ((~~4.20~~)) 4.30 ea.

(5) Inspections for garden brown snail certification or other miscellaneous inspection certification are charged at the applicable hourly rate.

- (a) For the first certificate no charge
(b) For additional certificates \$ ((~~4.20~~)) 4.30 ea.

(6) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee of \$ ((~~10.75~~)) 11.05

(7) For a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection \$ ((~~5.35~~)) 5.50

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate (per WAC 16-401-026) applies. One certificate for one service is issued at no charge. Additional certificates are issued at the \$((~~4.20~~)) 4.30 rate.

NEW SECTION

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges—Effective July 1, 2001. The following rates apply for requested inspection services:

- (1) Hourly rate.
(a) Business hours \$28.40
(b) Nonbusiness hours (see WAC 16-401-023) . . \$36.30

(2) Mileage at the established office of financial management rate (schedule A), per diem at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a work day or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

(a) There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(b) Phytosanitary certificates issued more than twenty-four hours from the time of the inspection, first certificate \$13.60

(c) Additional phytosanitary certificates \$4.40 ea.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

- (a) There is no additional charge for the first certificate.
(b) Additional certificates \$4.40

(5) Inspections for garden brown snail certification or other miscellaneous inspection certification are charged at the applicable hourly rate.

- (a) For the first certificate no charge
(b) For additional certificates \$4.40

(6) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee of \$11.35

(7) For a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection \$5.65

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge. Additional certificates are issued at the \$4.40 rate.

AMENDATORY SECTION (Amending WSR 99-12-034, filed 5/26/99, effective 6/26/99)

WAC 16-401-031 Schedule of fees and charges—Miscellaneous charges—Effective ((~~July 1, 1999~~)) June 30, 2001. The following rates for miscellaneous charges on requested inspections shall apply.

- (1) Postage, special handling services and other miscellaneous costs exceeding five dollars are charged at the actual cost.
(2) Other requested office services, not specifically provided for, are charged a fee based on the portion of an hour at the applicable hourly rate in chapter 16-401 WAC ((~~16-401-026~~)).
(3) Nursery stickers and nursery stock inspection certificate tags:
(a) In lots of 250 \$ ((~~5.35~~)) 5.50 per lot
(b) Less than 250 (minimum 10) \$ ((~~0.26~~)) 0.267 each
(4) Authorization by the department to preprint Washington nursery stock inspection certificates on shipping containers, yearly authorization fee or renewal \$ ((~~26.90~~)) 27.65

NEW SECTION

WAC 16-401-032 Schedule of fees and charges—Miscellaneous charges—Effective July 1, 2001. The fol-

PROPOSED

lowing rates for miscellaneous charges on requested inspections shall apply.

(1) Postage, special handling services and other miscellaneous costs exceeding five dollars are charges at the actual cost.

(2) Other requested office services, not specifically provided for, are charged a fee based on the portion of an hour at the applicable hourly rate in chapter 16-401 WAC.

(3) Nursery stickers and nursery stock inspection certificate tags:

- (a) In lots of 250 \$5.65 per lot
- (b) Less than 250 (minimum 10) \$0.27

(4) Authorization by the department to preprint Washington nursery stock inspection certificates on shipping containers, yearly authorization fee or renewal \$28.40

AMENDATORY SECTION (Amending WSR 99-12-034, filed 5/26/99, effective 6/26/99)

WAC 16-401-041 Nursery dealer license fees(—**Effective July 1, 1999**). Annual license fees as established below, must accompany the application for nursery dealer license:

- (1) Retail nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars \$ 37.67
 - (b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is \$ 80.72
 - (c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$ 161.45

- (2) Wholesale nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars \$ 80.72
 - (b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more \$ 161.45

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270(~~per permit~~).

- (a) Effective June 30, 2001 per permit . . . ((5-35)) 5.50
- (b) Effective July 1, 2001, per permit \$ 5.65

Statutory Authority for Adoption: RCW 18.220.040 [18.220].050, [18.220].070, [18.220].080, 43.24.016 (2)(d) and 43.24.086.

Statute Being Implemented: Chapter 18.220 RCW.

Summary: ESSB 6455 requires the Department of Licensing to develop and administer a new statewide licensing program for geologists. The rules are necessary to implement the RCW.

Reasons Supporting Proposal: The fees charged by the agency for administering application, licensure, and the renewal process are set at a level to support operations of the program, as required by RCW 43.24.086.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Margaret Epting, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1386.

Name of Proponent: Department of Licensing, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The WAC on fees lists the services for which fees are charged and the respective amount for each of the services. The purpose of all listed fees is to recover the cost of administering the program. The anticipated effects of listing the fees is to inform interested parties, provide timely customer service, and reduce telephonic inquiries.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a professional license and not a business license.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Licensing is exempt from RCW 34.05.328.

Hearing Location: 2nd Floor Conference Room, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 98502, on April 24, 2001, at 1:30.

Assistance for Persons with Disabilities: Contact Scott Black by April 14, 2001, TDD (360) 586-2788, or (360) 664-2551.

Submit Written Comments to: Scott Black, Geologist Licensing Board, P.O. Box 9045, Olympia, WA 98507-9045, fax (360) 664-2551, by April 20, 2001.

Date of Intended Adoption: May 25, 2001.

March 21, 2001
Alan E. Rathbun
Assistant Director

WSR 01-07-100
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed March 21, 2001, 11:14 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 01-03-052.

Title of Rule: Fees WAC, to set fees for geologist licensing services provided by the Department of Licensing.

NEW SECTION

WAC 308-15-150 Fees.

Type of Fee	Amount
Geologist License	
Application fee	100.00
Application fee - Reciprocity	200.00
Initial License	100.00

Type of Fee	Amount
Examination	
Fundamentals of Geology (vendor charge)	125.00
Practice of Geology (vendor charge)	150.00
Administration fee for reexamination	65.00
Review of Examination	
Manual regrade (vendor charge)	50.00
Administrative fee for regrade	15.00
Late fee (if examination is scheduled less than 30 days prior to Examination date - vendor charge)	25.00
Specialty License	
Specialty fee (if you are also applying for geologist license)	
Application fee - 1 Specialty	200.00
Application fee - 2 Specialties	300.00
Application fee - Reciprocity - 1 Specialty	350.00
Application fee - Reciprocity - 2 Specialties	500.00
Initial license - 1 Specialty	185.00
Initial license - 2 Specialties	270.00
Fee per Specialty (if you are a licensed geologist)	
Application fee	100.00
Application fee - Reciprocity	150.00
Initial license	85.00
Examination fee per Specialty	300.00
Examination review	100.00
Renewal Fees	
Annual Renewal fee (geologist)	100.00
Additional fee for late renewal (geologist)	100.00
Annual Renewal fee (geologist plus 1 specialty)	185.00
Additional fee for late renewal (geologist plus 1 specialty)	185.00
Annual Renewal fee (geologist plus 2 specialties)	270.00
Additional fee for late renewal (geologist plus 2 specialties)	270.00
Miscellaneous Fees	
Duplicate License or Wall Certificate	25.00
Certification of license records to other jurisdictions	45.00
Proctor Examination in another Jurisdiction	100.00

**WSR 01-07-101
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed March 21, 2001, 11:16 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 01-03-052.

Title of Rule: To establish WAC chapters for implementation of the geologist licensing program in the Department of Licensing.

Statutory Authority for Adoption: RCW 18.220.040, 18.220.050, 43.24.016 (2)(d).

Statute Being Implemented: Chapter 18.220 RCW.

Summary: ESSB 6455 requires the Department of Licensing to develop and administer a new statewide licensing program for geologists, effective July 1, 2001. The rules are necessary to implement the RCW.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Margaret Epting, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1386.

Name of Proponent: Department of Licensing, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The new WAC chapters will outline the procedures for licensing geologists, and will also clearly state the educational and experience requirements needed to be licensed as a geologist or geologist specialist.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a professional license and not a business license.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Department of Licensing is exempt from RCW 34.05.328.

Hearing Location: 2nd Floor Conference Room, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 98502, on April 24, 2001, at 1:30.

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Date of Intended Adoption: May 25, 2001.

March 21, 2001
Alan E. Rathbun
Assistant Director

NEW SECTION

WAC 308-15-010 State board of licensing. (1) Meetings: The Washington state geologist licensing board, hereafter called the board, will hold its regular public meeting annually in March. Special public meetings may be held at such times and places as the board may find necessary. Pub-

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lic notice of all public meetings will be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.

(2) **Rules of order:** The latest edition of *Robert's Rules of Order* will govern the conduct of business at meetings and sessions of the board.

(3) **Officers:** The board will elect a chair, a vice-chair and a secretary. Beginning with the March 2002 meeting, the board will elect officers for the ensuing year at its regular annual meeting.

(4) **Quorum:** A quorum at any regular or special meeting or session will consist of four members of the board.

(5) **Licensed geologists:** The board will maintain a roster of licensed geologists.

NEW SECTION

WAC 308-15-020 Definitions. (1) **"Geological work of a character satisfactory to the board"** means that the applicant's qualifying work history consists of professional experience in the practice of geology. Professional geological work is work performed at a professional level that requires the application of professional knowledge, principles and methods to geological problems through the exercise of individual initiative and judgment in investigating, measuring, interpreting and reporting on the physical phenomena of the earth. Implicit in this definition is the recognition of professional responsibility and integrity and the acknowledgment of minimal supervision. Professional geological work specifically does not include routine activities by themselves such as drafting, sampling, sample preparation, routine laboratory work, or core logging, where the elements of initiative, scientific judgment and decision making are lacking, nor does it include activities which do not use scientific methods to process and interpret geologic data. It also does not include engineering or other physical sciences where geological investigation, analysis and interpretation are minimal or lacking. Professional specialty experience is considered to meet this definition.

(2) **"Professional specialty practice of a character satisfactory to the board"** means that the applicant has qualifying work history pertinent to the specialty that meets the standards for professional geologic work defined above. Elements, typical applications, types of projects, and required knowledge, skills and abilities for the engineering geologist and hydrogeologist specialties are outlined in WAC 308-15-090.

(3) **"Year of professional practice"** means at least 1600 hours of work in the practice during a year. Examples of a "year of professional practice" include 200 eight-hour days or 160 ten-hour days during a year. Part-time work will be counted on a prorated basis.

(4) **"Year of professional specialty practice"** means at least 1600 hours of work in a specialty during a calendar year, per examples given in subsection (3) of this section.

(5) **"Geologic interpretation," as applied to the practice of geology and its specialties,** is the iterative process by which geologists, using generally accepted geologic principles, determine geologic history, origin and process from observation and testing of rock, soil and water characteristics,

contents, distribution, orientation, lateral and vertical continuity; and resulting landforms.

(6) **"Geologic mapping"** is the process by which geologic observations, data and interpretations are gathered, located and portrayed, such as in plan view and on cross-sections. Information and data are gathered in a format on geologic maps and cross-sections, at a level of detail and at a frequency of data points appropriate for the application and the scale of the portrayal.

(7) **"Grandparenting"** means the issuance of a license as a geologist, engineering geologist, or hydrogeologist within one year after July 1, 2001, or for licensing in a new specialty within one year of recognition of the specialty by the board, without further written examination, if the applicant meets the requirements outlined in WAC 308-15-040 and, for a specialty, WAC 308-15-090.

(8) **"Reciprocity"** means the issuance of a license without examination as a geologist or specialty geologist to a person who holds a license or certificate of qualifications issued by proper authority of any state, territory, or possession of the United States, District of Columbia, or any foreign country, if the applicant meets the requirements outlined in WAC 308-15-040 and, for a specialty, WAC 308-15-090.

NEW SECTION

WAC 308-15-030 How do I apply for a geologist license? (1) Contact the board to obtain the application forms and instructions.

(2) Review the available options for licensure:

(a) Examination in WAC 308-15-050;

(b) Reciprocity in WAC 308-15-060; and

(c) Grandparenting in WAC 308-15-020(7).

If you are applying for licensure by examination, your application must be received by the date specified in the application instructions.

(3) Solicit references and transcripts in the format and on the forms as specified in the application instructions.

(4) Send your application forms to the address noted on the form, along with applicable fees, references and transcripts.

NEW SECTION

WAC 308-15-040 What are the minimum requirements to be eligible for a geologist or specialty license?

You are eligible for licensure as a professional geologist or specialist if you meet the following minimum requirements:

(1) You are of good moral character, as attested to by two references.

(2) You have graduated from an accredited college or university with a degree in geology, engineering geology, hydrogeology or one of the related geological sciences, or educational equivalents, and completed a minimum of 30 semester/45 quarter hours or their equivalent of course work in geological science. This includes classes in physical geology, historical geology, structural geology, mineralogy/petrology and sedimentary geology/stratigraphy. If you do not meet these requirements, you must demonstrate to the

board that you have completed educational equivalents. You must document your college or university educational experience by submitting official sealed transcripts to the board.

(3) You have at least five years of professional geological or specialty practice or, if applying for a specialty, five years of specialty practice satisfactory to the board, after receipt of a bachelor's degree. The following education and experience criteria qualify toward accumulation of the required years of professional work:

(a) You will receive up to two years' credit, one year for each year of full time graduate study in geology, engineering geology, hydrogeology or one of the related geological sciences, as documented in the transcripts provided;

(b) You must have at least three years of geological experience under the supervision of state-licensed geologists or specialty geologists or others who, in the opinion of the board, are qualified to have responsible charge as provided by the information supplied on forms provided by the board.

(i) Your geological experience may include geological research or teaching at the university or college level which, in the judgment of the board, is comparable to experience obtained in the practice of geology or a specialty.

(ii) If requested by the board, you may be required to submit one or more reports which were prepared by you or where you contributed to their preparation.

(c) If you are applying under the grandparenting provisions in this chapter, you may comply with this requirement by providing documentation of geological experience where you were the person in responsible charge and meet the requirements in (b) of this subsection.

(4) You must have passed a geologist examination and, if applying for a specialty, a specialty examination, unless you are eligible for licensure by grandparenting. All examinations must be adopted by or acceptable to the board.

NEW SECTION

WAC 308-15-050 What is the examination process to be licensed as a geologist? (1) Beginning July 1, 2002, you will be required to take and pass an examination to become a licensed geologist in the state of Washington.

(2) The board has adopted the national Association of State Boards of Geology (ASBOG) standardized examination. You will be notified of the date and time of the examination when you receive your application packet.

(a) **Nature of the examination:** Information on the examination is available on the ASBOG website. The examination currently consists of two parts: Fundamentals of Geology (FG) and Practice of Geology (PG). Each part of the examination is four hours long.

(b) **Testing location and date:** The location and testing date will be posted on the department of licensing's geologist website. The examination is administered every March and September.

(c) **Applying for the examination:** To apply for the examination, you must submit the following to the board:

(i) Completed state geologist licensing application form;
(ii) Professional and personal references required to document five years of professional experience; and

(iii) Official sealed transcripts.

(3) **Fees:** You must send in your examination and application fees with your application. The application must be received by the date specified in the application instructions. If you do not meet the requirements for licensing, only your examination fees will be refunded. Fees are listed in WAC 308-15-150.

(4) **Special accommodations:** If you have a disability, the board will provide accommodations consistent with the Americans with Disabilities Act. You should request special accommodations at least ninety days prior to the examination date.

(5) **Notification of scoring:** The board will notify you by mail of your examination score within ninety days of taking the examination.

(6) **Failing the examination:** If you fail the examination, for a fee you can request:

(a) A report showing the failed subject areas; or

(b) To review the examination, question by question, at a location specified by the board. You will be allowed to see the test and review those questions you failed and those you answered correctly. An answer key is not provided and you are not allowed to keep or copy the examination.

(7) **Retake of examination:** You must submit a request on a form provided by the board and the required fees to retake either part of the examination.

NEW SECTION

WAC 308-15-060 How do I obtain a geologist or specialty license by reciprocity. To obtain a license as a geologist or specialty geologist without further examination, you must meet all of the following criteria:

(1) Your education and experience qualifications must meet the requirements of WAC 308-15-040 and, if applying for specialty geologist license, WAC 308-15-090;

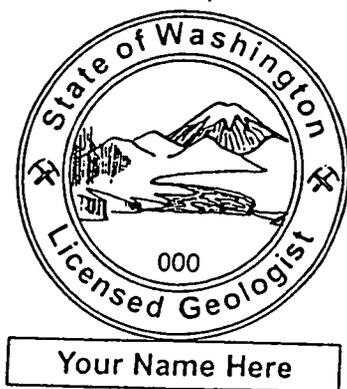
(2) You currently must hold a valid geologist or specialty geologist license, registration, or certification issued by a state or jurisdiction approved by the board; and

(3) You must have passed the geologist examination adopted by or acceptable to the board. If you are applying for a specialty geologist license, you must also have passed a specialty geologist examination adopted by or acceptable to the board.

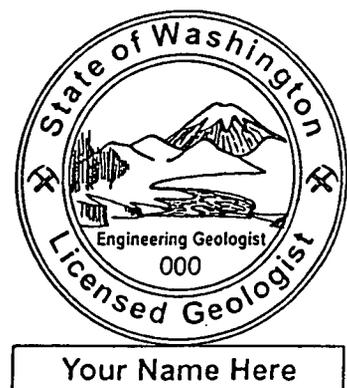
NEW SECTION

WAC 308-15-070 Do I need a stamp? Upon licensure, you must obtain a stamp bearing your name, license number, and the legend "State of Washington Licensed Geologist." If you are licensed as an engineering geologist or hydrogeologist, the specialty must be noted on the stamp. Facsimiles of the stamps of the designs authorized by the director are shown below.

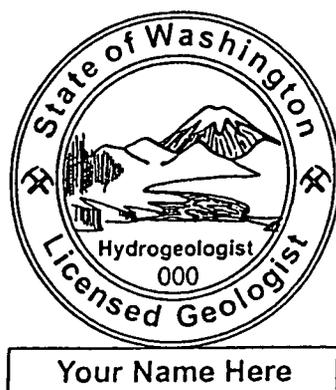
Geologist stamp here



Engineering geologist stamp here



Hydrogeologist stamp here



NEW SECTION

WAC 308-15-075 When do I need to use my stamp?

(1) You must stamp, sign, and date every final geology or specialty geology report, letter report, or document that is prepared by you or prepared under your supervision or direction and submitted to other parties.

(a) All figures, maps, and plates bound within final reports or documents do not need to be individually stamped,

signed and dated. Unbound final figures, maps, and plates must be individually stamped, signed and dated.

(b) Preliminary or draft geology or specialty geology work does not have to be stamped, but the documents and all associated figures, maps, and plates must be clearly marked as preliminary or draft.

(2) You must stamp, sign, and date every final geology or specialty geology design and specification that is prepared by you or prepared under your supervision or direction. Preliminary or draft geology or specialty geology design and specification drawings do not have to be stamped, but each design and specification must be clearly marked as preliminary or draft.

(3) If you stamp, sign and date work that you have only reviewed, you are responsible to the same extent as if you prepared the report, design or specification.

NEW SECTION

WAC 308-15-080 What do I need to know about renewing or reinstating my license? (1) **Term of license:** Your license will be issued for a period of one year.

(2) **Address changes:** Your renewal notice will be sent to the address of record. You must notify the geologist licensing board in writing within thirty days of any address changes.

(3) **Renewal date:** Your license renewal date will be your birth date.

(a) If your license is issued during the first year of the program (July 1, 2001, through June 30, 2002), your renewal date will be the first birth date to occur after July 1, 2002. However, if your next birth date is within three months of the initial date of issuance of the license, your original license will expire on the second birthday following issuance of your original license.

(b) If your license is issued after June 30, 2002, your renewal after the first year of the program will be for a one-year period, due on your birth date. However, if your next birth date is within three months of the initial date of issuance of your license, your license will expire on the second birthday following issuance of your original license.

(4) **Renewal fee and late fee:** You must pay the prescribed renewal fee to the department of licensing on or before the expiration date. If you fail to pay your license renewal fee within ninety days following the expiration date, you must pay the renewal fee plus a late fee equal to one additional year's renewal fee.

(5) **Reinstatement:** In addition to the fees outlined in subsection (4) of this section, if you fail to pay a renewal fee for a period of five years or more, you may be reinstated upon payment of all delinquent renewal fees, the current year's renewal fee, and a late fee equal to an additional year's renewal fee. In addition to the payment of delinquent fees and a reinstatement fee, you must submit the following:

(a) A summary of the current law and rules governing geologists;

(b) A professional resume of your geologist activities during the delinquent period, including licensure in another

PROPOSED

jurisdiction, with sufficient detail to demonstrate to the board that your skills have been maintained; and

(c) A detailed explanation of the circumstances surrounding the reason you allowed your license to expire.

NEW SECTION

WAC 308-15-090 What are the speciality licenses, qualifications and processes for licensure? (1) The types of specialty licenses are engineering geologist and hydrogeologist. In addition to being a licensed geologist, if your practice is predominantly specialty geologic work as outlined in (a)(i) and (ii) or (b)(i) and (ii) of this subsection, you must have a license to practice the specialty.

(a) **Engineering geologist.**

(i) **Elements of the engineering geologist specialty:** In addition to tasks commonly performed by licensed geologists, the practice of engineering geology includes the designation and classification of geotechnical soil and rock units using engineering soil and rock classification systems. The relationship between the strength characteristics of soil and rock, the effects of ground and surface water and current and past surficial geologic processes, including slope, fluvial and coastal processes, as well as deep-seated geologic processes such as volcanic activity and seismicity, on landform development are interpreted. Geotechnical zones or domains are designated for each site or area based on soil and rock strength characteristics, common landforms, related geologic processes or other pertinent factors. Proposed developmental modifications such as removing vegetation, using various types of earth materials in construction, applying loads to foundations, constructing cut or fill slopes, and modifying ground or surface water characteristics, are then evaluated and, where appropriate, analyzed to predict likely changes in types and rates of surficial geologic processes. Surficial and deep-seated geologic processes are likewise evaluated and analyzed to predict their effect on proposed development or use.

(ii) **Typical engineering geologic applications and types of projects:** Engineering geology is applied during all project phases, from project conception through planning, design, construction and, where warranted, closure. Planning-level engineering geology work is commonly conducted in response to forest practice regulations, critical areas ordinances for various jurisdictions, and the State Environmental Policy Act. Typical planning-level engineering geology applications include: Timber harvest planning, proposed siting of residential and commercial developments and other buildings and facilities, and alternative route selection for roads, rail lines, trails and utilities. Site-specific civil engineering projects where engineering geologic services are commonly applied include: Road, trail and railroad cuts, fills, and tunnels; foundations for bridges and other drainage structures; retaining walls, dams, buildings, water towers, power transmission line towers, slope, channel and shoreline stabilization facilities, fish ladders, ski lifts and other structures; landings for logging; airport landing strips, rock bolt systems and blasting plans.

(iii) **Knowledge, skills and abilities required for licensure as an engineering geologist:** In addition to being licensed as a geologist in the state of Washington, you must also possess the following knowledge, skills and abilities in order to be licensed as an engineering geologist:

(A) Knowledge of the geology of the state of Washington; (B) Skill and ability in use of geotechnical field classification systems for soil and rock;

(C) Ability to recognize landforms resulting from surficial and deep-seated geologic processes;

(D) Knowledge of and ability to evaluate and analyze soil and rock mechanical relationships related to geologic materials and surficial geologic processes;

(E) Knowledge of the appropriate application of geotechnical laboratory testing methods;

(F) Ability to interpret and portray engineering geologic information and data three-dimensionally, at a scale appropriate for site-specific application; and

(G) Knowledge and understanding of the principles of grading codes, as well as critical areas, shoreline and other pertinent regulations.

(b) **Hydrogeologist.**

(i) **Elements of the hydrogeologist specialty.** In addition to tasks commonly performed by licensed geologists, the practice of hydrogeology involves the study of the movement of water and other fluids through geologic materials, the mechanical, physical, chemical, and thermal interaction of fluids with geologic materials, and the transport of energy and chemical constituents by fluids in the subsurface.

(ii) **Typical hydrogeologic applications and types of projects.** Typical applications include regional or basin ground water resource quantity and quality characterization and development; protection of ground water resources; waste site subsurface characterization; design of vadose and saturated zone cleanups; design, testing, and construction supervision of test, production, recharge, injection, remediation, dewatering and resource protection wells; fluid flow and transport modeling; dewatering system design; and evaluation of potential impacts caused by proposed activities on the quantity and quality of ground water and potential mitigations.

(iii) **Knowledge, skills and abilities required for licensure as a hydrogeologist:** In addition to being licensed as a geologist in the state of Washington, you must also possess the following knowledge, skills and abilities in order to be licensed as a hydrogeologist:

(A) Knowledge of the hydrogeology of the state of Washington;

(B) Knowledge of and skill in applying the principles of vadose and saturated zone hydraulics, and ground water quantity and quality;

(C) Knowledge of federal, state, county and local regulations applicable to ground water resources;

(D) Ability to apply elementary soil and rock mechanics in relation to ground water, including the description of soil and rock samples; and

(E) Ability to prepare and interpret logs as they relate to subsurface fluid movement, interaction with geologic materials, and transport of energy and chemical constituents.

(2) Process required for licensure in a specialty.

(a) **Documentation of specialty experience:** To obtain a specialty license, you must provide a documented record of five years of experience in the applicable geologic specialty, per WAC 308-15-040.

(b) **Documentation of specialty education and training:** In addition to the educational requirements outlined for geologists under WAC 308-15-040, you must complete advanced study, seminars or on-the-job training pertinent to the specialty and acceptable to the board. Examples of academic training pertinent to engineering geology include classes in engineering geology, environmental geology, rock and soil mechanics, geomorphology, volcanology and seismicity. Examples of seminars pertinent to engineering geology include slope stability, rock slope engineering, tunneling, blast design, shoreline processes and engineering geologic field methods short courses. Examples of academic training pertinent to hydrogeology include classes in hydrogeology, geomorphology, hydraulics and advanced geochemistry. Examples of seminars pertinent to hydrogeology include classes taught by experts in the discipline, classes offered in hydrogeologic computer modeling, and various seminars and symposia on ground water, geochemical forensics and ground water law and regulations.

(c) **Examination requirements for specialty licensure:** During the period July 1, 2001, to June 30, 2002, a license in a specialty can be obtained by "grandparenting" as outlined in WAC 308-15-040. Following the period ending June 30, 2002, a license in a specialty can be obtained through reciprocity, as outlined in WAC 308-15-040. For those who are not eligible for grandparenting, a specialty examination is required in addition to the examination described for geologist licensure in WAC 308-15-040. An examination will be required for each specialty license and will be administered as needed.

NEW SECTION

WAC 308-15-100 What is a brief adjudicative proceeding (BAP)? The board adopts RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act to administer brief adjudicative proceedings (BAP). These proceedings are conducted at the request of an applicant for reasons set out in subsection 308-15-101 or at the discretion of the board chair per RCW 34.05.482.

NEW SECTION

WAC 308-15-101 When can a brief adjudicative proceeding (BAP) be requested? Requests for a BAP will be conducted where the matter is limited solely to one or more of the following issues:

- (1) To determine whether an applicant for licensing meets the minimum criteria for licensing to practice as a geologist in this state and the board proposes to deny the application;
- (2) To determine whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the board;

(3) To determine whether an applicant for or in the examination process will be denied to sit for future examinations; and

(4) To determine whether a license holder requesting renewal or reinstatement has submitted all required information and meets minimum criteria for renewal or reinstatement.

NEW SECTION

WAC 308-15-102 What records are required for a brief adjudicative proceeding (BAP)? (1) Original or renewal license: The preliminary record for an application for an original or renewal license will include:

(a) The application for the license, renewal, reinstatement or approval and all associated documents; and

(b) All documents relied on by the program in proposing to deny the application, renewal, reinstatement or approval; and (c) All correspondence between the applicant for license, renewal, reinstatement or approval and the program regarding the application.

(2) Final order or agreement: The preliminary record to determine compliance with a previously issued final order or agreement will include:

(a) The previously issued final order or agreement; and (b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement; and

(c) All correspondence between the license holder and the program, regarding compliance with the final order or agreement; and

(d) All documents relied on by the program that show the license holder has failed to comply with the previously issued final order or agreement.

NEW SECTION

WAC 308-15-103 How are brief adjudicative proceedings (BAPs) conducted? (1) A presiding officer, designated by the director, conducts brief adjudicative proceedings. The presiding officer will have agency expertise in the subject matter but will not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer will designate the date by which written documents must be submitted by the parties.

(3) The presiding officer may, at his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer may employ agency expertise as a basis for a decision.

(6) The presiding officer will not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer will enter an initial order.

WSR 01-07-105
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-164.

Title of Rule: WAC 390-16-011 Forms—Registration statement for political committees—Form C-1pc.

Purpose: To incorporate proposed changes regarding mini and abbreviated reporting.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.040 and 42.17.080.

Summary: WAC 390-16-011 is the official form providing the statement of organization by political committees. This rule changes the abbreviated reporting option to a mini reporting option and changes the language on PDC Form C-1pc to clarify the circumstances under which a political committee would be eligible to select the mini reporting option.

Reasons Supporting Proposal: Conforms with proposed change to the mini and abbreviated reporting options.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-2735; and Enforcement: Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-8853.

Name of Proponent: Public Disclosure Commission, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule would eliminate the abbreviated reporting option on the registration statement for political committees (PDC Form C-1pc) and replace it with a mini reporting option and language to reflect an increase in the threshold dollar amounts from \$2,000 to \$3,500 and in the single contributor maximum from \$200 to \$300.

Proposal Changes the Following Existing Rules: The proposed amendment implements the commission's effort to simplify and streamline the campaign reporting option for persons who qualify for less than full reporting.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule does not impact small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Public Disclosure Commission is not an agency listed in subsection (5)(a)(i) of section 201. Further, the Public Disclosure Commission does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Ruthann Bryant, (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, by April 20, 2001.

Date of Intended Adoption: April 24, 2001.

March 21, 2001

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 00-22-050, filed 10/27/00)

WAC 390-16-011 Forms—Registration statement for political committees. The official form for providing the statement of organization by political committees for designating a campaign treasurer and depository and for reporting information required to qualify for (~~abbreviated~~) mini campaign finance reporting is designated "C-1pc", revised (~~(1/00)~~) 6/01. Copies of this form are available at the Commission Office, 711 Capitol Way, Room (~~(403)~~) 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

PROPOSED



Political Committee Registration

C1PC

(11/00)

Committee Name (Show entire official name.)		Acronym:
Mailing Address		Telephone: ()
City	County	Fax ()
Zip + 4		E-mail:

NEW OR AMENDED REGISTRATION? <input type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.	COMMITTEE STATUS <input type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input type="checkbox"/> _____ election year only. Date of general or special election: _____ (Year)
--	--

1. What is the purpose or description of the committee?

Bona Fide Political Party Committee - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list or specify here the names of the candidates you support.

Ballot Committee - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: _____ Ballot Number _____ FOR AGAINST

Other Political Committee - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name: _____

For single election-year only committees (not continuing committees): Is the committee supporting or opposing
 (a) one or more candidates? Yes No If yes, attach a list of each candidate's name, office sought and political party affiliation.
 (b) the entire ticket of a political party? Yes No If yes, identify the party.

2. Related or affiliated committees. List name, address and relationship. Continued on attached sheet

3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)
 If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.

ABBREVIATED REPORTING
 Abbreviated Reporting is selected. No more than \$2,000 will be raised or spent and no more than \$200 in the aggregate will be accepted from any one contributor.

FULL REPORTING
 Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address

Telephone Number: ()

5. Treasurer's Name and Address (List deputy treasurers on attached sheet.) Continued on attached sheet

Daytime Telephone Number: ()

6. Committee Officers. List name, title, and address. Continue on attached sheet if necessary. See reverse for definition of "officer." Continued on attached sheet

7. Campaign Bank or Depository

Branch

City

8. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday - two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address.

Street Address, Room Number, City

Hours (Two consecutive hours; see 8(a))

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ()

9. Eligibility to Give to State Office Candidates: During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).

10. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge.

Committee Treasurer's Signature _____ Date _____

Need campaign finance forms and instructions? Please check one of the following boxes.

I already have forms and instructions.

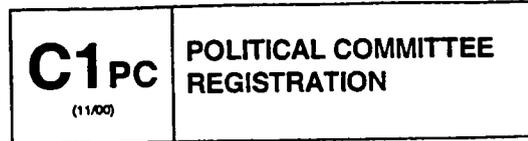
I will get forms and instructions from my county elections office.

I want the Public Disclosure Commission to mail me the proper forms and instructions.

Distribution of This Report:
 ORIGINAL - Public Disclosure Commission
 COPY - County Elections Office (Auditor)
 COPY - Your own records

SEE INSTRUCTIONS ON REVERSE

PROPOSED



Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

Who Must File

Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.

When To File

Within 2 weeks of organizing a committee or first expecting to receive contributions or make expenditures, whichever occurs first. (Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)

File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.

Continuing political committees using Abbreviated Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand delivered to PDC.

Where To File

Send the **original to PDC** at the above address. Send a **copy to County Auditor** (county elections office) of the county in which the committee headquarters is located. If there is no headquarters, send to the County Auditor of the county in which the treasurer resides. Keep a copy as part of the committee's records.

"Officer" of a Political Committee – Definition

Officer of a political committee includes the following persons:

- the treasurer,
- any person designated as an officer on the C-1pc registration statement, and
- any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

Contact PDC or County Elections Office for Instruction Manuals and Reporting Forms or look under the "Filer Assistance" menu category on PDC's Web Site: www.pdc.wa.gov

PROPOSED



Political Committee Registration

C1PC (6/01)

Committee Name (Show entire official name.) Acronym: Telephone: () Mailing Address Fax: () City County Zip + 4 E-mail:

NEW OR AMENDED REGISTRATION? COMMITTEE STATUS
[] NEW. Complete entire form. [] Continuing (On-going; not established in anticipation of any particular campaign election.)
[] AMENDS previous report. Complete entire form. [] election year only. Date of general or special election: (Year)

1. What is the purpose or description of the committee?
[] Bona Fide Political Party Committee - official state or county central committee or legislative district committee.
[] Ballot Committee - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: Ballot Number FOR AGAINST
[] Other Political Committee - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name:
For single election-year only committees (not continuing committees): Is the committee supporting or opposing
(a) one or more candidates? [] Yes [] No If yes, attach a list of each candidate's name, office sought and political party affiliation.
(b) the entire ticket of a political party? [] Yes [] No If yes, identify the party:

2. Related or affiliated committees. List name, address and relationship. [] Continued on attached sheet
3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.)
If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.
[] MINI REPORTING Mini Reporting is selected. No more than \$3,500 will be raised or spent and no more than \$300 in the aggregate will be accepted from any one contributor.
[] FULL REPORTING Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.

4. Campaign Manager's or Media Contact's Name and Address Telephone Number: ()
5. Treasurer's Name and Address (List deputy treasurers on attached sheet.) [] Continued on attached sheet Daytime Telephone Number: ()
6. Committee Officers. List name, title, and address. Continue on attached sheet if necessary. See reverse for definition of "officer." [] Continued on attached sheet

7. Campaign Bank or Depository Branch City

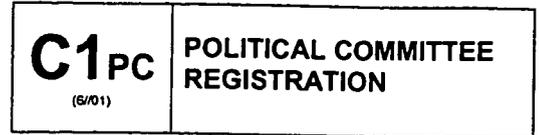
8. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday - two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address.
Street Address, Room Number, City Hours [Two consecutive hours; see 8(a)]

9. Eligibility to Give to State Office Candidates: During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.
[] A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).
10. Signature and Certification. I certify that this statement is true, complete and correct to the best of my knowledge.
Committee Treasurer's Signature Date

Need campaign finance forms and instructions? Please check one of the following boxes.
[] I already have forms and instructions. [] I want the Public Disclosure Commission to mail me the proper forms and instructions.
[] I will get forms and instructions from my county elections office.
Distribution of This Report: ORIGINAL - Public Disclosure Commission COPY - County Elections Office (Auditor) COPY - Your own records

SEE INSTRUCTIONS ON REVERSE

PROPOSED



Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

Who Must File

Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.

When To File

Within 2 weeks of organizing a committee or first expecting to receive contributions or make expenditures, whichever occurs first. **(Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)**

File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.

Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

Where To File

Send the **original to PDC** at the above address. Send a **copy to County Auditor** (county elections office) of the county in which the committee headquarters is located. If there is no headquarters, send to the County Auditor of the county in which the treasurer resides. Keep a copy as part of the committee's records.

"Officer" of a Political Committee – Definition

Officer of a political committee includes the following persons:

- the treasurer,
- any person designated as an officer on the C-1pc registration statement, and
- any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

**Contact PDC or County Elections Office for Instruction Manuals
and Reporting Forms or look under the "Filer Assistance" menu category on PDC's
Web Site: www.pdc.wa.gov**

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

PROPOSED

WSR 01-07-106
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-161.

Title of Rule: WAC 390-16-105 Abbreviated campaign reporting—Eligibility.

Purpose: To outline the circumstances and dollar thresholds under which a candidate and/or political committee is eligible to use a reporting option other than full reporting.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.370.

Summary: RCW 42.17.370(8) authorizes the commission to relieve, by rule, candidates or political committees of obligations to comply with the provisions of chapter 42.17 RCW. This rule eliminates the abbreviated campaign reporting option and replaces it with a single mini campaign reporting option. It clarifies under what circumstances a candidate or political committee would be eligible to select the new mini reporting option and increases the threshold dollar amounts for mini reporting.

Reasons Supporting Proposal: The rule would clarify and simplify the reporting requirements for candidates and political committees who choose to file campaign finance reports under the mini reporting option.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-2735; and Enforcement: Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-8853.

Name of Proponent: Public Disclosure Commission, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule would eliminate the abbreviated reporting option for candidates and political committees and replace it with a mini reporting option that increases the threshold dollar amounts from \$2,000 to \$3,500 and increases the maximum contribution amounts from \$200 to \$300. The rule also exempts candidate filing fees paid for by a bona fide political party committee from the contribution aggregate threshold.

Proposal Changes the Following Existing Rules: Simplifies and streamlines the campaign reporting option for persons who qualify for less than full reporting.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule does not impact small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Public Disclosure Commission is not an agency listed in subsection (5)(a)(i) of section 201. Further, the Public Disclosure Commission does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Ruthann Bryant, (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, by April 20, 2001.

Date of Intended Adoption: April 24, 2001.

March 21, 2001

V. Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 86-04-071, filed 2/5/86)

WAC 390-16-105 ((~~Abbreviated~~)) Mini campaign reporting—Eligibility. (1) ((~~No~~)) A candidate or candidate's authorized committee ((and no political committee)), as those terms are defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.060 ((-)) through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, 390-16-120 and 390-16-125 when neither ((the)) aggregate contributions nor ((the)) aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed ((two)) three thousand five hundred dollars and no contribution or contributions from any ((source)) person other than the candidate((s personal resources)) within such aggregate exceed((s)) ((two)) three hundred dollars. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.060 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, 390-16-120 and 390-16-125 when neither aggregate contributions nor aggregate expenditures exceed three thousand five hundred dollars and no contribution or contributions from any person exceed three hundred dollars.

(3) ((~~No~~)) A continuing political committee, as that term is defined in RCW 42.17.020, shall not be required to comply with the provisions of RCW 42.17.060 through 42.17.090 except as otherwise prescribed in WAC 390-16-038, 390-16-115, 390-16-120 and 390-16-125 when neither ((the)) aggregate contributions nor ((the)) aggregate expenditures during a calendar year exceed ((two)) three thousand five hundred dollars and no contribution or contributions from any person exceed ((two)) three hundred dollars.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 01-07-107**PROPOSED RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed March 21, 2001, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-159.

Title of Rule: WAC 390-16-111 Abbreviated campaign reporting—Special fund raising events.

Purpose: To update this rule to reflect changes in WAC 390-16-105.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.370.

Summary: WAC 390-16-111 clarifies that the single contributor threshold under the abbreviated reporting option does not apply to a fundraising event as long as funds received from any person during the campaign or calendar year do not exceed the limit. This rule would be amended to reflect the proposed changes in WAC 390-16-105.

Reasons Supporting Proposal: The rule amendment conforms to rule changes renaming the abbreviated reporting option under WAC 390-16-105 and to reflect the threshold changes from \$200 to \$300 under the proposed new mini reporting option.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-2735; and Enforcement: Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-8853.

Name of Proponent: Public Disclosure Commission, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule would clarify that the single contributor threshold under WAC 390-16-105 does not apply to a fundraising event as long as funds received from any person during the campaign or calendar year do not exceed the limit.

Proposal Changes the Following Existing Rules: Conforms with proposed amendments to WAC 390-16-105.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule does not impact small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Public Disclosure Commission is not an agency listed in subsection (5)(a)(i) of section 201. Further, the Public Disclosure Commission does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Ruthann Bryant, (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, by April 20, 2001.

Date of Intended Adoption: April 24, 2001.

March 21, 2001

V. Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 89-20-068, filed 10/4/89)

WAC 390-16-111 ((Abbreviated)) Mini campaign reporting—Special fund raising events. The term "any person" as used in WAC 390-16-105 does not mean a fund raising activity conducted pursuant to RCW 42.17.067. Candidates and committees using ((abbreviated)) mini reporting as provided in chapter 390-16 WAC shall not be limited to receiving ((two)) three hundred dollars from a fund raising event provided that the payments from any person do not exceed ((two)) three hundred dollars from all fund raising ((events)) conducted during a campaign or calendar year.

WSR 01-07-108**PROPOSED RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed March 21, 2001, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-162.

Title of Rule: WAC 390-16-150 Mini campaign reporting.

Purpose: To eliminate this rule.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.370.

Summary: WAC 390-16-150 outlines the circumstances and dollar thresholds under which a candidate is eligible to use the current mini campaign reporting option. Proposed amendments to WAC 390-16-105 renders this rule obsolete.

Reasons Supporting Proposal: The repeal of this rule conforms to proposed rule changes eliminating the abbreviated reporting option under WAC 390-16-105 and instituting a campaign reporting system having only two options (mini and full reporting).

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-2735; and Enforcement: Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-8853.

Name of Proponent: Public Disclosure Commission, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule would be repealed to conform with proposed amendments to WAC 390-16-105 which changes the

PROPOSED

name of abbreviated reporting to mini reporting and adjusts the thresholds for using the new mini reporting.

Proposal Changes the Following Existing Rules: The change simplifies and streamlines the campaign reporting process for candidates and committees who qualify for less than full reporting.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule does not impact small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Public Disclosure Commission is not an agency listed in subsection (5)(a)(i) of section 201. Further, the Public Disclosure Commission does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Ruthann Bryant, (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, by April 20, 2001.

Date of Intended Adoption: April 24, 2001.

March 21, 2001

V. Rippie

Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-16-150 Mini campaign reporting

WSR 01-07-109

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2001, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-160.

Title of Rule: WAC 390-24-200 Descriptions of real property.

Purpose: To make the listing of the street address one of the options for reporting real property.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.241.

Summary: WAC 390-24-200 outlines what is required in reporting real property on the personal financial affairs statement (PDC Form F-1). Currently, the rule requires that the street address be listed for each parcel, if there is a street address. This rule amendment would make the listing of the street address one of the options for reporting real property. However, using the street address would not be mandatory.

Reasons Supporting Proposal: The rule amendment would allow options other than the street address to be used in reporting real property on the personal financial affairs statement.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-2735; and **Enforcement:** Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-8853.

Name of Proponent: Public Disclosure Commission, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule would allow the use of the assessor's parcel number, the abbreviated legal description appearing on the property tax statement, the complete legal description or the street address as options for reporting real property. The use of street address would not be mandatory.

Proposal Changes the Following Existing Rules: The proposed change gives F-1 filers more flexibility in reporting the location of real property.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule does not impact small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Public Disclosure Commission is not an agency listed in subsection (5)(a)(i) of section 201. Further, the Public Disclosure Commission does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Ruthann Bryant, (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, by April 20, 2001.

Date of Intended Adoption: April 24, 2001.

March 21, 2001

V. Rippie

Executive Director

AMENDATORY SECTION (Amending Order 88-04, filed 9/29/88)

WAC 390-24-200 Descriptions of real property. (1) For the purposes of reporting real property as required by RCW 42.17.241 (1)(h)-(k), the filer shall list the street address of each parcel, ~~((if there is one. If there is no address, other sufficient descriptions of the property would be (a)))~~ the assessor's parcel number, ~~((b))~~ the abbreviated legal description appearing on property tax statements, or ~~((c))~~ the complete legal description.

PROPOSED

(2) Each property description shall be followed by the name of the county in which the property is located.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 01-07-110
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION**

[Filed March 21, 2001, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-03-163.

Title of Rule: WAC 390-16-012 Forms—Registration statement for candidates—Form C-1.

Purpose: To incorporate proposed changes regarding the current mini and abbreviated reporting options.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.040 and 42.17.080.

Summary: WAC 390-16-012 is the official form providing the statement of organization by candidates. This rule eliminates the abbreviated reporting option and changes the language on PDC Form C-1 to clarify the circumstances under which a candidate would be eligible to select the mini reporting option.

Reasons Supporting Proposal: Conforms with proposed changes to the mini and abbreviated reporting options.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-2735; and Enforcement: Phil Stutzman, Public Disclosure Commission, 711 Capitol Way, Room 403, Olympia, (360) 664-8853.

Name of Proponent: Public Disclosure Commission, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rule would eliminate the abbreviated reporting option on the registration statement for candidates (PDC Form C-1) and modify the language under the mini reporting option to reflect the threshold dollar increases from \$2,000 to \$3,500 and \$200 to \$300.

Proposal Changes the Following Existing Rules: The proposed amendment implements the commission's effort to simplify and streamline the campaign reporting option for persons who qualify for less than full reporting.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule does not impact small businesses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Public Disclosure Commission is not an agency listed in subsection (5)(a)(i) of section 201. Further, the Public Disclosure Commission does not voluntarily make section 201 applicable to this rule adoption pur-

suant to subsection (5)(a)(ii) of section 201, and to date JARRC has not made section 201 applicable to this rule adoption.

Hearing Location: Commission Hearing Room, Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA, on April 24, 2001, at 9:00 a.m.

Assistance for Persons with Disabilities: Ruthann Bryant, (360) 753-1111.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, fax (360) 753-1112, by April 20, 2001.

Date of Intended Adoption: April 24, 2001.

March 21, 2001

V. Rippie

Executive Director

AMENDATORY SECTION (Amending WSR 00-22-051, filed 10/27/00)

WAC 390-16-012 Forms—Registration statement for candidates. The official form for providing the statement of organization by candidates and candidate's committees, for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting (~~((or abbreviated campaign finance reporting))~~) is designated "C-1", revised (~~((+1/00))~~) 6/01. Copies of this form are available at the Commission Office, 711 Capitol Way, Room (~~((403))~~) 206, P.O. Box 40908, Olympia, Washington, 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

PROPOSED



Candidate Registration

C1

(11A00)

Candidate's Name (Give candidate's full name.) Telephone Numbers
()

Candidate's Committee Name (Do not abbreviate.)
()

Mailing Address Fax Number
()

City County Zip + 4 E-Mail Address

1. What office are you running for? Legislative District, County or City Position No. Do you now hold this office?
Yes No

2. Political party (if partisan office) 3. Date of general or special election

4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option III, Full Reporting. See instruction manuals for information about reports required and changing reporting options.

Option I MINI REPORTING

In addition to my filing fee of \$ _____, I will raise and spend no more than \$500, including any charges for the voters pamphlet. I will not accept more than \$200 in the aggregate from any contributor except myself.

Option II ABBREVIATED REPORTING

I will raise and spend no more than \$2,000, including my filing fee and any charges for the voters pamphlet. I will not accept more than \$200 in the aggregate from any contributor except myself.

Option III FULL REPORTING

I will use the Full Reporting System. I will file the frequent, detailed campaign reports required by law.

5. Treasurer's Name and Address. Candidate may be treasurer. List deputy treasurers on attached sheet. Continued on attached sheet Daytime Telephone Number
()

6. Committee Officers. List name, title and address. Continue on attached sheet if necessary. See reverse for definition of "officer." Continued on attached sheet

7. Campaign Bank or Depository Branch City

8. Related or Affiliated Political Committees. List name, address and relationship. Continued on attached sheet

9. Campaign books must be open to the public, except on a weekend or legal holiday, during the eight days before the election: (a) on the eighth day for two consecutive hours between 8 a.m. and 8 p.m.; if the eighth day is a legal holiday - two consecutive hours on the seventh day between 8 a.m. and 8 p.m.; and (b) on the other weekdays, by appointment between 8 a.m. and 8 p.m. Specify location and hours below. It is not acceptable to provide a post office box or an out-of-area address.

Street Address, Room Number, City

Hours [Two consecutive hours; see 9(a)]

In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ()

10. CERTIFICATION:

I certify that this report is true, complete and correct to the best of my knowledge.

Candidate's Signature

Date

Please advise us about which forms and instructions you need. Remember, candidates must file a Financial Affairs Statement (F-1) unless a current one is already on file with PDC. Check all boxes that apply.

- I already have financial affairs and campaign disclosure forms and instructions.
- I am using Mini Reporting and, therefore, do not need the other campaign disclosure forms. In addition, I have already filed my Financial Affairs Statement and need no additional F-1 forms.
- I will obtain all forms and instructions from my county elections office.
- I want PDC to mail me:
 - the F-1 instruction booklet (which includes forms)
 - the appropriate campaign disclosure forms and instructions.

Distribution of This Report:

- ORIGINAL - Public Disclosure Commission
 - COPY - County Elections Office (Auditor)
 - COPY - Your own records
- (Note: City candidates contact City Clerk to see if local filing is required.)

SEE INSTRUCTIONS ON REVERSE

PROPOSED

C1 <small>(11/00)</small>	CANDIDATE REGISTRATION
-------------------------------------	-----------------------------------

Please consult PDC instruction manuals when completing this report.
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

PROPOSED

Who Must File

Candidates who seek

- state office (legislative or statewide executive),
- a state supreme court or state court of appeals position,
- local office in jurisdictions having 5,000 or more registered voters as of the last general election or in jurisdictions covering an entire county.

When To File

Within 2 weeks of becoming a candidate. A person becomes a candidate for PDC purposes when he or she **first** does any of the following:

- receives contributions, makes expenditures, or reserves space or facilities with intent to promote his or her candidacy;
- purchases commercial advertising space or broadcast time to promote his or her candidacy;
- authorizes another person to take one of these above actions on his or her behalf;
- announces publicly that he or she is seeking office; or
- files a declaration of candidacy with the appropriate elections official.

File an amended registration within 10 days of a material change to information provided on previously filed C-1. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

Where To File

Send the **original to PDC** at the above address. Send a **copy to County Auditor** (county elections office) of the county in which the candidate resides. Candidates for city offices are advised to contact their City Clerk to learn if local filing is required by local ordinance. Keep a copy as part of the campaign's records.

"Officer" of a Candidate's Committee – Definition

Officer of a candidate's authorized committee or officer of a candidate's committee includes the following persons:

- the treasurer,
- any person designated as an officer on the C-1 registration statement, and
- any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. (WAC 390-05-245)

**Contact PDC or County Elections Office for Instruction Manuals
and Reporting Forms or look under the "Filer Assistance" menu category on PDC's
Web Site: www.pdc.wa.gov**



Candidate Registration

C1
(601)

Candidate's Name (Give candidate's full name.)		Telephone Numbers ()
Candidate's Committee Name (Do not abbreviate.)		()
Mailing Address		Fax Number ()
City	County	Zip + 4
		E-Mail Address

1. What office are you running for? Legislative District, County or City Position No. Do you now hold this office?
Yes No

2. Political party (if partisan office) 3. Date of general or special election

4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.

Option I **MINI REPORTING:** In addition to my filing fee of \$_____, I will raise and spend no more than \$3,500, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$300 in the aggregate from any contributor except myself.

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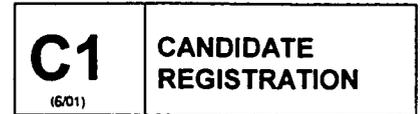
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ORIGINAL – Public Disclosure Commission
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SEE INSTRUCTIONS ON REVERSE

PROPOSED



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and Reporting Forms or look under the "Filer Assistance" menu category on PDC's
Web Site: www.pdc.wa.gov**

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 01-07-116
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Rehabilitative Services Administration)
[Filed March 21, 2001, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-08-048.

Title of Rule: New chapter 388-865 WAC, Community mental health and involuntary treatment; formerly chapter 388-860 WAC, Juvenile involuntary treatment; chapter 388-861 WAC, Commitment, treatment and/or evaluation of mentally ill persons; and chapter 388-862 WAC, Community mental health programs. This CR-102 is pursuant to a pre-proposal notice of inquiry (CR-101) filed on March 31, 2000, as WSR 00-08-048, regarding rule making related to chapters 275-54 WAC, Juvenile involuntary treatment; chapter 275-55 WAC, Voluntary admission—Involuntary commitment, treatment and/or evaluation of mentally ill persons; and chapter 275-57 WAC, Community mental health programs. Pursuant to WSR 00-23-089 filed November 20, 2000, chapters 275-54, 275-55 and 275-57 WAC were renumbered as chapters 388-860, 388-861, and 388-862 WAC, respectively.

Purpose: Integration of administrative rule to be consistent with an integrated mental health system; streamlining rules by eliminating duplication and inconsistency between the rules and waiver/contracts; implementation of changes in chapters 71.05, 71.24 and 71.34 RCW; incorporates department policies; and incorporates some federal Medicaid requirements into rule.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, 43.20B.335 [43.20B.335].

Statute Being Implemented: Chapters 71.05, 71.24, and 71.34 RCW.

Summary: A review of the current administrative rules done in compliance with Executive Order 97-02 revealed that there is duplication, and inconsistencies as well as outdated material. The rules have been combined, written in a clearer format, incorporated requirements from recent legislation, and made changes consistent with changes that have occurred within the system.

Reasons Supporting Proposal: Executive order for regulatory improvement.

Name of Agency Personnel Responsible for Drafting: Kathy Burns Peterson, OB-2, Olympia, Washington, (360) 902-0843; Implementation and Enforcement: Darleen Vernon, OB2, Olympia, Washington, (360) 902-0873.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rewriting of these rules were started under the governor's executive order on regulatory improvement. This rule decreases duplication and inconsistencies; creates an integrated rule to be consistent with integrated contracts, and incorporates in fact or by reference the requirements of fed-

eral law and waiver, recent state laws, duplicative portions of contract, and division policies.

Proposal Changes the Following Existing Rules: The current three rules have been combined. This means that many sections have been moved, revised and reorganized.

WAC 388-865-0100 Purpose, the purpose statement incorporates the three statutes that are being implemented, and the Title XIX section 1915(b) waiver.

WAC 388-865-0105 What the mental health division does and how it is organized, information only.

WAC 388-865-0110 Access to records of registration, says information must not be shared or released except as specified under RCW 71.05.390.

WAC 388-865-0115 Access to clinical records, gives all the references in law to confidentiality of consumer records.

WAC 388-865-0120 Waiver of a minimum standard of this chapter, no substantial change from current WAC 388-862-0120.

WAC 388-865-0150 Definitions, changes the definition of a mental health professional, and adds the definition for substantial hardship. Many former definitions are defined within the context within which the term is used.

WAC 388-865-0200 Regional support networks (RSNs), lists the programs RSNs administers; adds inpatient that has been in law but not rule.

WAC 388-865-0201 Distribution of available resources, tells how available funds will be distributed to the regional support networks. Some RSNs will receive lesser increases than historically; others will receive more than historically.

WAC 388-865-0203 Distribution formula for state hospital beds, describes the formula for distribution between RSNs of available civil beds in state hospitals - some get more and others get less.

WAC 388-865-0205 Initial certification of a regional support network, puts mental health procedure into rule.

WAC 388-865-0215 Consumer eligibility and payment for services, puts current practice into rule.

WAC 388-865-0229 Inpatient services, puts policy about single bed certification into rule.

WAC 388-865-0230 Community support services, adds counseling and psychotherapy services and day treatment services to the list of community support services. These are in current law, but not current rule.

WAC 388-865-0235 Residential and housing services, adds a service required of the regional support network by current law, but not current rule. Requires regional support networks to assure treatment to and to inform people in long-term residential care of their long-term care rights.

WAC 388-865-0240 Consumer employment services, adds a service required of the regional support network by current law, but not current rule.

WAC 388-865-0250 Ombuds services, expands the scope of the ombuds office and requires a toll-free, independent line; eliminates the requirement for the mental health division, regional support network, or prepaid health plan to include representatives of consumer and family advocates when revising the terms of the contract regarding ombuds services.

PROPOSED

WAC 388-865-0255 Consumer grievance process, incorporates new rules about a consumer's right to continue to receive services if they contest termination of services.

WAC 388-865-0260 Mental health professionals and specialists, puts current practice into rule.

WAC 388-865-0265 Mental health professional—Exception, puts mental health division procedure into rule; requires the person who receives the exception to be in the process of meeting the minimum requirements; adds a process for small businesses as defined in chapter 19.85 RCW to avoid any disproportionate economic impact.

WAC 388-865-0280 Quality management process, puts requirements from current contract into rule.

WAC 388-865-0282 Quality review teams, puts requirements from current contract into rule.

WAC 388-865-0286 Coordination with a mental health prepaid health plan, new, will only apply if HCFA rescinds an exception currently in effect for the Mental Health Division.

WAC 388-865-0300 Mental health prepaid health plans, puts requirements from waiver/contract into rule.

WAC 388-865-0305 Regional support network contracting as a mental health prepaid health plan, puts requirements from waiver/contract into rule.

WAC 388-865-0307 Distribution of funds, places new formula into rule; some will get more, others will get less.

WAC 388-865-0310 Mental health prepaid health plans—Minimum standards, puts requirements from waiver/contract into rule; and where possible references regional support network requirements to avoid duplication.

WAC 388-865-0315 Governing body, puts requirements from waiver/contract into rule.

WAC 388-865-0320 Utilization management, puts requirements from waiver/contract into rule.

WAC 388-865-0325 Risk management, puts requirements from waiver/contract into rule.

WAC 388-865-0330 Marketing/education of mental health services, puts requirements from waiver/contract into rule.

WAC 388-865-0340 Consumer disenrollment, puts requirements from waiver/contract into rule, and puts mental health procedure into rule.

WAC 388-865-0345 Choice of primary care provider, puts current DSHS practice into rule, consistent with HCFA rules.

WAC 388-865-0350 Mental health screening for children, puts requirements from waiver/contract into rule.

WAC 388-865-0360 Monitoring of mental health prepaid health plans, puts current practice into rule.

WAC 388-865-0363 Coordination with the regional support network, new, will only apply if HCFA rescinds an exception currently in effect for the Mental Health Division.

WAC 388-865-0365 Suspension, revocation, limitation or restriction of a contract, puts requirements from waiver/contract into rule.

WAC 388-865-0405 Competency requirements for staff, incorporates rules from other regulatory agencies.

WAC 388-865-0410 Consumer rights, clarifies the consumer's right to make an advance directive, consistent with federal law.

WAC 388-865-0420 Admission and intake evaluation, adds a consumer report of culture/cultural history.

WAC 388-865-0425 Individual service plan, incorporates minimum state and federal requirements so providers will be in compliance with standards of both systems.

WAC 388-865-0430 Clinical record, requires that a copy of the advance directive, power of attorney or letters of guardianship be kept in the clinical record, if provided by the consumer.

WAC 388-865-0435 Consumer access to their clinical record, limits the rate for copying consistent with chapter 70.02 RCW.

WAC 388-865-0436 Clinical record access procedures, requires the agency to develop policies and procedures to ensure information about consumers is protected and released only in accordance with law.

WAC 388-865-0440 Availability of consumer information, requirement from waiver/contract moved to rules.

WAC 388-865-0452 Emergency crisis intervention services, adds requirements for policies and procedures; use of mental health specialists; allows the provision of emergency triage services at a level less than inpatient services.

WAC 388-865-0454 Provider of crisis telephone services only, new section that applies only sections of rule that are necessary when only these services are provided.

WAC 388-865-0458 Psychiatric treatment, including medication supervision, slight change in the name of the service, to be consistent with the law.

WAC 388-865-0460 Counseling and psychotherapy services, new licensable service, consistent with the law.

WAC 388-865-0462 Day treatment services, new licensable service, consistent with the law.

WAC 388-865-0466 Community support outpatient certification, certification standards from the current outpatient section of chapter 388-860 WAC minus standards that are already required for licensure.

WAC 388-865-0468 Emergency crisis intervention services certification, certification standards from the current emergency services section of chapter 388-860 WAC minus standards that are already required for licensure.

WAC 388-865-0470 The process for initial licensing of service providers, a shortened version of current rule.

WAC 388-865-0474 Fees for community support service provider licensure, moved from a rule so it would be more accessible to service providers.

WAC 388-865-0476 Licensure based on deemed status, expands on current rule and practice.

WAC 388-865-0484 Process to certify providers of involuntary services, eliminates duplicative review of similar requirements between licensing and certification.

WAC 388-865-0501 Certification based on deemed status, addition that allows deeming for certification under certain circumstances.

WAC 388-865-0502 Single bed certification, places current procedure into rule.

WAC 388-865-0524 Clinical record, requires that a copy of the advance directive, power of attorney or letters of guardianship be kept in the clinical record, if provided by the consumer.

PROPOSED

WAC 388-865-0530 Competence requirements for staff, incorporates rules from other regulatory agencies; requires that clinical supervisors meet the qualifications of mental health professionals or specialists.

WAC 388-865-0535 - 388-865-0540, fees for evaluation and treatment facility certification, moved from another WAC to be more accessible to providers.

WAC 388-865-0545 Use of seclusion and restraint procedures—Adults, deletes "unruly behavior" as an allowable reason to use restraints or seclusion; requires policies and procedures about the use of restraints and seclusion; requires that the consumer must be informed of the reasons for seclusion or restraint and told what specific behaviors are required to gain release from restraint and seclusion.

WAC 388-865-0546 Use of seclusion and restraint procedures—Children, deletes "unruly behavior" as a criteria for use of seclusion and restraint.

WAC 388-865-0557 Rights related to antipsychotic medication, new rules required by RCW 71.05.215 which requires providers to develop protocols for administering medication involuntarily.

WAC 388-865-0600 - 388-865-0620, as the result of new legislation in chapter 71.05 RCW, new rules about sharing information between mental health providers and Department of Corrections.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Division staff have analyzed the proposed rule amendments and conclude that no new costs will be imposed on the small businesses affected by the amendments. The preparation of a comprehensive small business economic impact statement is not required. For information contact (360) 902-0830.

RCW 34.05.328 applies to this rule adoption. Portions of this rule making do meet the definition of significant legislative rules. An analysis has been prepared. Please contact Kelly Cooper, (360) 664-6094 to receive a copy.

Hearing Location: Blake Office Park (behind Goodyear Courtesy Tire), 4500 10th Avenue S.E., Rose Room, Lacey, WA 98503, on May 22, 2001, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Kelly Cooper, DSHS Rules Coordinator, by May 15, 2001, phone (360) 664-6094, TTY (360) 664-6178, e-mail coo-peKD@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Kelly Cooper, DSHS Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 664-6185, by May 22, 2001.

Date of Intended Adoption: No sooner than May 23, 2001.

March 21, 2001

Susan Bush

for Charles Hunter, Director

Administrative Services Division

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-09 issue of the Register.

WSR 01-07-117

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed March 21, 2001, 11:54 a.m.]

Continuance of WSR 00-20-063.

Preproposal statement of inquiry was filed as WSR 98-16-099.

Title of Rule: Amendments to forest practices rules, Title 222 WAC.

Purpose: The Forest Practices Board is conducting rule making on a comprehensive package of new and revised permanent rules because current forest practices rules are not providing adequate protection for salmon and other aquatic resources. The Forest Practices Board and the Department of Natural Resources face many new resource protection challenges, the most significant of which are the current and proposed listings of salmonids under the federal Endangered Species Act (ESA) and water quality-limited waters under the federal Clean Water Act (CWA).

At its September 22, 1998, meeting, the Forest Practices Board approved the following goals for this rule package:

1. To provide compliance with the Endangered Species Act for aquatic and riparian-dependent species;
2. To restore and maintain riparian habitat on state and private forest lands to support a harvestable supply of fish;
3. To meet the requirements of the Clean Water Act for water quality on state and private forest lands; and
4. To keep the timber industry economically viable in Washington.

This proposal is based on the forests and fish report (dated April 29, 1999). This report recommends scientifically based changes to the forest practices rules developed through negotiations with the federal agencies responsible for administering the Endangered Species Act and the Clean Water Act, the forestry industry, small landowners, tribal governments, state agencies, and counties. The legislature has strongly encouraged the board to follow the recommendations of the forest and fish report. The legislature has found that forest practices rules consistent with the forests and fish report:

- (a) Will lead to:
 - (i) Salmon habitat that meets riparian functions vital to the long-term recovery of salmon on more than sixty thousand miles of streams in this state;
 - (ii) Identification of forest roads contributing to habitat degradation and corrective action to remedy those problems to protect salmon habitat;
 - (iii) Increased protection of steep and unstable slopes; and
 - (iv) The implementation of scientifically based adaptive management and monitoring processes for evaluating the impacts of forest practices on aquatic resources, and a process for amending the forest practices rules to incorporate new information as it becomes available; and
- (b) Will lead to the protection of aquatic resources to the maximum extent practicable consistent with maintaining commercial forest management as an economically viable use of lands suitable for that purpose; and

PROPOSED

(c) Will provide a regulatory climate and structure more likely to keep landowners from converting forest lands to other uses that would be less desirable for salmon recovery.

The legislature has also found that rules consistent with the forest and fish report constitute a comprehensive and coordinated program to provide substantial and sufficient contributions to salmon recovery and water quality enhancement in areas impacted by forest practices and are intended to fully satisfy the requirements of the Endangered Species Act (16 U.S.C. Sec. 1531 et seq.) with respect to incidental take of salmon and other aquatic resources and the Clean Water Act (33 U.S.C. Sec. 1251 et seq.) with respect to nonpoint source pollution attributable to forest practices.

The Forest Practices Board adopted emergency rules based on the forest and fish report that became effective March 20, 2000, and adopted amendments to these emergency rules effective July 3, 2000. These emergency rules will remain in place until new permanent forest practices rules are adopted or until June 30, 2001, whichever is sooner. RCW 76.09.055.

A draft environmental impact statement analyzing the environmental effects of current rules, the preferred alternative based on the forest and fish report, and a third alternative was published on March 20, 2000. The final EIS will be available in late April.

Revisions to the permanent rule proposal have been made based on the public review process for the draft EIS, experience from implementing the forest and fish emergency rules, further input the negotiated process designed to achieve greater consistency with the forest and fish report, and public comments and discussions at board meetings.

Other Identifying Information: For more information see the forest practices website at <http://www.wa.gov/dnr/hdocs/fp/fpb/fpb.html>.

Statutory Authority for Adoption: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9).

Statute Being Implemented: Chapter 76.09 RCW, RCW 76.13.100 - [76.13.]130, 77.85.180 - [77.85.]190.

Summary: Modify forest practices rules (Title 222 WAC) to incorporate new public resource protection requirements. Categories of rules include practices and procedures, State Environmental Policy Act guidelines, policy and organization, definitions, application and notification procedures, small forest landowner forestry riparian easement program, watershed analysis, riparian open space program, road construction and maintenance, timber harvesting, reforestation, forest chemical, alternate plans, supplemental directives, consultation and enforcement, relationship to other laws and regulations.

Citation of existing rules amended by this order: Amending WAC 222-08-020 Orientation and training, 222-08-030 Reporting procedures, 222-08-035 Continuing review of forest practices rules, 222-10-010 Policies and authorities, 222-10-041 Northern spotted owls, 222-12-010 Authority, 222-12-020 Rule sections, 222-12-030 Classes of forest practices, 222-12-040 Alternate plans-policy, 222-12-045 Adaptive management program, 222-12-046 Cumulative effects, 222-12-050 Notices to comply—Stop work orders, 222-12-070 Enforcement policy, 222-12-090 Forest practices board manual, 222-16-010 General definitions, 222-16-030

Water typing system, 222-16-035 Wetland typing system, 222-16-050 Classes of forest practices, 222-16-070 Pesticide uses with the potential for a substantial impact on the environment, 222-16-080 Critical habitats (state) of threatened and endangered species, 222-16-100 Planning options for the northern spotted owl, 222-16-105 Cooperative habitat enhancement agreements, 222-20-010 Applications and notifications—Policy, 222-20-020 Application time limits, 222-20-040 Approval conditions, 222-20-050 Conversion to non-forest use, 222-20-070 Emergency forest practices, 222-20-080 Application and notification expiration, 222-20-100 Notice to parks and OAHF, 222-22-070 Prescription recommendation, 222-22-080 Approval of watershed analysis, 222-22-090 Use and review of watershed analysis, 222-22-100 Application review prior to watershed analysis, 222-24-010 Policy, 222-24-020 Road location and design, 222-24-030 Road construction, 222-24-035 Landing location and construction, 222-24-040 Water crossing structures, 222-24-050 Road maintenance and abandonment, 222-24-060 Rock quarries, gravel pits, borrow pits, and spoil disposal areas, 222-30-010 Policy—Timber harvesting, 222-30-020 Harvest unit planning and design, 222-30-025 Even-aged harvest—Size and timing, 222-30-040 Shade requirements to maintain water temperature, 222-30-050 Felling and bucking, 222-30-060 Cable yarding, 222-30-070 Ground-based logging systems, 222-30-100 Slash disposal or prescribed burning, 222-30-110 Timber harvesting on islands, 222-34-040 Site preparation and rehabilitation, 222-38-010 Policy—Forest chemicals, 222-38-020 Handling, storage, and application of pesticides, 222-38-030 Handling, storage, and application of fertilizers, 222-38-040 Handling, storage, and application of other forest chemicals, 222-46-030 Notice to comply, 222-46-040 Stop work orders, 222-46-060 Civil penalties, 222-46-070 Injunctions, civil suits, disapprovals, 222-50-010 Policy, 222-50-020 Other agency requirements, 222-50-030 Interagency agreements, 222-50-040 Safety and health, 222-50-050 Forest fire prevention and suppression, and 222-50-060 Other regulatory programs administered by the department; new sections WAC 222-10-030 SEPA policies for potentially unstable slopes and landforms, 222-10-035 Watershed analysis SEPA policies, 222-10-125 Exemption from RCW 43.21C.030 (2)(c), 222-12-0401 Alternate plans—Process, 222-12-0402 Assistance available for small forest landowners, 222-12-0403 Cooperative development of alternate plan board manual, 222-12-0404 Cooperation for effective alternate planning, 222-12-0405 Auditing and monitoring, 222-12-041 Use of approved state and federal conservation agreements for aquatic resources, 222-12-044 Cooperative opportunities, 222-16-031 Interim water typing system, 222-16-036 Wetland mapping, 222-20-015 Multiyear permits, 222-20-055 Continuing forest land obligations, 222-21-005 Policy, 222-21-010 Definitions, 222-21-020 Criteria for accepting riparian easement, 222-21-030 Document standards, 222-21-035 Description of easement, 222-21-040 Timber cruises, 222-21-045 Valuation, 222-21-050 Payment of compensation, 222-21-060 Commercially reasonable harvest, 222-21-065 Uneconomic to harvest, 222-21-070 Blowdown and salvage, 222-21-080 Eminent domain, 222-21-090 Internal Department of Natural Resources review of small forest landowner office compensation decisions, 222-22-075

Monitoring, 222-22-076 Restoration, 222-23-010 Policy and definitions, 222-23-020 Submitting and processing of applications for the Riparian Open Space Program, 222-23-025 Priorities for conveyances; use of lands conveyed, 222-23-030 Conveyance forms and procedure, 222-24-015 Construction in wetlands, 222-24-026 Temporary roads, 222-24-051 Road maintenance schedule, 222-24-052 Road maintenance, 222-30-021 Western Washington riparian management zones, 222-30-022 Eastern Washington riparian management zones, 222-30-023 Riparian management zones for exempt 20-acre parcels, 222-30-045 Salvage logging within riparian management zones, 222-46-012 Representatives on inspections and 222-46-090 Financial assurances; and repealing 222-30-030 Stream bank integrity and 222-24-025 Road design.

Reasons Supporting Proposal: Modifications to rules are needed to better protect Washington's public resources.

Name of Agency Personnel Responsible for Drafting: Terry Ruff, 1111 Washington Street S.E., Olympia, WA 98504-7012, (360) 902-1395; **Implementation and Enforcement:** Lloyd Handlos, 1111 Washington Street S.E., Olympia, WA 98504-7012, (360) 902-1041.

Name of Proponent: Forest Practices Board, governmental.

Rule is necessary because of federal law, these rules are intended to fully satisfy the requirements of the Federal Endangered Species Act (16 U.S.C. § 1531 et seq.) with respect to the incidental take of salmon and other aquatic resources and the Federal Clean Water Act (33 U.S.C. § 1251 et seq.) with respect to nonpoint sources of pollution attributable to forest practices. See RCW 76.13.180.

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of the proposed rule is to develop a biologically sound and economically practicable solution that will improve and protect riparian habitat on nonfederal forest lands in the state of Washington. See also Purpose above.

The proposed rule:

- Revises the water typing rules used to identify streams that are or are not used by fish so that more adequate protection is provided for fish habitat along those streams. Provides an interim water-typing system while the fish habitat water-typing model is completed.
- Provides a multi-year forest practices permit for landowners who have completed watershed analysis, approved alternate plan or who have submitted an application for a road maintenance and abandonment plan.
- Adds several new definitions for each topic: Unstable slopes, roads, RMZs, pesticides, water-typing, multi-year permits.
- Expands the Class IV-Special SEPA trigger for unstable slopes, gives SEPA guidance, and adds definitions related to unstable slopes.
- Requires that all watershed analyses are reviewed under SEPA and includes a monitoring and restoration component.
- Revises riparian management zone requirements for Eastern and Western Washington; identifies and delineates RMZ core, inner and outer zones for each side of the state; continues the January 1999 riparian require-

ments for exempt 20 acre parcels for landowners who own less than eighty acres of forest land.

- Presents options for variable buffer widths for aerial application of pesticides and directs addition of best management practices for application of pesticides to the Forest Practices Board manual.
- Directs that best management practices related to roads be added to the FPB manual; revises requirements for road location and design, relief drainage structures, water crossing structures, and road maintenance and abandonment; separates wetland delineation rules into a new section.
- Expands adaptive management requirements by formally establishing the Cooperative Monitoring, Evaluation, and Research (CMER) committee and charging them with implementing adaptive management based on scientific findings; encourages cooperative opportunities for working with the board; directs establishment of resource objectives and independent scientific review process.
- Establishes criteria for hardwood conversions in the RMZ inner zone.
- Establishes a riparian open space program which compensates landowners for ecological protection and fisheries enhancement.
- Creates a forest riparian easement program to acquire easements from small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.
- Develops the alternate plan process which allows departure from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application if the alternate plan provides protection to public resources at least equal in overall effectiveness to the act and rules.
- Defines the use of approved state and federal conservation agreements for aquatic resources.
- Establishes financial assurances to ensure that landowners or operators with past violations have sufficient resources to cover any penalties and mitigation measures which might be assessed.
- Eliminates the automatic pass through for critical habitat.
- Changes rule language to be consistent with statutory language and corrects minor editing inconsistencies.

The anticipated effects for these rules include improved water quality and fish habitat, as well as better overall protection of public resources while maintaining a viable forest products industry. See the Environmental Impact Statement for more details on the impact of the proposal.

Proposal Changes the Following Existing Rules: See Explanation of Rule above.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Reviser's note: The following small business economic impact statement has been filed electronically and is published as is. It has not been through the usual editing and proofing process.

**Small Business Economic Impact Statement
for New Proposed Forest Practices Rules
Implementing the Forests and Fish Report**

Final Report

**Submitted: January 22, 2001
To the Department Of Natural Resources
DNR Agreement # FY00-133**

Prepared by:

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The study was funded by the Department of Natural Resources under an interagency agreement with the University of Washington FY00-133.

EXECUTIVE SUMMARY

The Forest Practices Board (FPB) and the Department of Ecology (DOE) are considering making changes to permanent forest practices rules. Since the proposed permanent rule changes will impose more than minor costs on forest products businesses, a Small Business Economic Impact Statement (SBEIS) is required (RCW 19.85.030). This study analyzes the effects of the new proposed rule compliance costs on small and large businesses.

The rule complying community is all forest businesses in the State of Washington. Forest businesses are businesses

that own or control cutting rights on forestlands and include, but are not limited to, landowners, loggers and mill owners. Small forest businesses are those businesses with 50 or fewer employees.

Compliance cost is defined as a loss in current revenue, a loss in asset and higher operating costs. The basis for comparing costs between large and small businesses is the cost per one hundred dollars of sales. In western Washington, the cost of implementing the proposed rules falls more heavily to small businesses compared to large businesses. The compliance cost is 25.6% for small businesses and 18.5% for large businesses. These percentages represent the value of compliance cost relative to the total business value, i.e. their timber asset value. In eastern Washington, small businesses will lose 31.0% of their business value by implementing the rules compared to 22.1% for large businesses.

In western Washington the greatest cost associated with adopting the proposed rule is realized in the form of foregone sales associated with establishing Riparian Management Zones (RMZ). This cost is estimated to be 19.1% of the total business value for small businesses and 11.1% for large businesses. Road maintenance and stream crossings could add an additional cost of 6.9% and 5.5% of total business value for large and small businesses, respectively. RMZ setup costs comprise a smaller percentage of the new proposed rule compliance cost. The RMZ setup costs are 0.5% and 1.0% of total value for large and small businesses respectively.

The major component of compliance cost in eastern Washington is associated with road maintenance and stream crossings. For large businesses, this cost comprises more than three-quarters of the total compliance cost of 22.1%. For small businesses, road maintenance and stream crossings comprise nearly half of the total compliance cost of 31.0%. Small businesses also incur a substantial cost in the form of foregone sales to establish the RMZ. Twelve percent of the total business value for small businesses is compliance cost related to RMZ versus 4.2% for large businesses. RMZ setup costs are also three times as much for small businesses than large businesses.

In addition to the compliance cost, lost employment resulting from lower timber harvests suggests that there are substantial wage losses and potentially large disproportional impacts on small businesses. The losses amount to nearly \$16 million in eastern Washington for the forestry and sawmilling sectors (assumed to mostly impact small businesses) and nearly \$7 million for the pulp and paper sectors (assumed to mostly impact large businesses). In western Washington, the losses are over \$160 million in the saw-milling and forestry sectors (again assumed to be mostly small businesses) and \$123 million in the pulp and paper sectors.

A compensation program would pay an estimated \$0.68 on average to western Washington small landowners for every \$1.00 of lost sales resulting from the new RMZ. The total compensation package for the small businesses that were sampled for this evaluation would total \$3.9 million compared to \$5.7 million in lost sales associated with the RMZ. The compensation for eastern Washington is \$0.50 on average for small landowners for every \$1.00 of lost sales resulting from the new RMZ. The total compensation for the businesses sampled totals \$233,000 compared to \$467,000 in

lost sales. The difference in compensation between eastern and western Washington is due to the higher proportion of compliance cost associated with road maintenance and stream crossing in eastern Washington.

In addition, the FPB and the Washington State Legislature have taken other steps to reduce the cost of the proposed new forest practices rules on small businesses. They include delaying compliance timetables for road maintenance and abandonment plans required by the new rules for small landowners. Also, small landowners who own less than 80 acres statewide (with a forest practices application on less than 20 acres) are not required to follow the new proposed forest practices rules for riparian protection. They are however, subject to the permanent riparian management zone rules and watershed analysis prescriptions in effect as of January 1, 1999. They must also allow for an additional 15% volume requirement where watershed analysis prescriptions are not in effect. These landowners will be allowed to harvest more timber than larger landowners under the new rules.

The mitigation for these small landowners is substantial. In western Washington it reduces potential foregone sales from \$1.1 million to \$147,000. In eastern Washington the compliance cost is reduced by \$800,000 (the estimated value of lost sales) among those small landowners sampled for this study.

Small landowners with timber harvests of less the 2 million board feet receive a 16% tax credit on taxes imposed under RCW 84.33.074 for complying with the new proposed forest practices rules. The harvesters will pay a lower timber tax for timber harvested in compliance with the new proposed rules.

The Department of Natural Resources (DNR) also established a small forest landowner office to be a resource and focal point for small forest landowner concerns.

Other mitigation measures listed in the new proposed forest practices rules that are available to all landowners include: alternate plans, multi-year permits, and Habitat Conservation Plan (HCP) exemptions. Alternate plans allow a landowner to develop an alternate method of protecting public resources that might better fit their particular situation, yet still provide an equal or greater level of protection for public resources. Those landowners that have unusual constraints that make it difficult to comply with the forest practices rules have the option to propose an alternate plan. Multi-year permits allow a landowner in a watershed analysis unit to instigate multiple forest practice actions for up to 5 years as opposed to the standard 2-year permit. Landowners with an approved HCP that provides for species protection under the forest practices rules are not subject to forest practices rules.

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STUDY OBJECTIVE

The objective is to determine whether the compliance cost exhibits a disproportionate impact on the state's small businesses. The legislative purpose of the Regulatory Fairness Act RCW 19.85 (RFA) is set out in RCW 19.85.011:

"The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business".

The specific purpose for the SBEIS is contained in RCW 19.85.040.

"(1) A small business economic impact statement must include a brief description of the reporting, record keeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the costs of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;
(b) Cost per hour of labor; or
(c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(3).

(b) A description of how the agency will involve small businesses in the development of the rule; and

(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply."

Background information on the Forests and Fish Report is presented in the next section. Section 3 provides a description of the requirements for an SBEIS. This section is followed by the method of analysis, data and data analysis. Results are presented next, followed by employment costs and a final section, which provides mitigation measures undertaken.

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The Small Business Economic Impact Statement for New Proposed New Forest Practices Rules

John Perez-Garcia, Jane Edelson and Kevin Zobrist. College of Forest Resources, University of Washington, Seattle WA

INTRODUCTION

The Forest Practices Board (FPB) and the Department of Ecology (DOE) are considering making changes to the permanent forest practices rules. The goals for the proposed changes are:

- 1. to provide compliance with the Endangered Species Act for aquatic and riparian-dependent species on non-federal forest lands.,
2. to restore and maintain riparian habitat on non-federal forest lands to support harvestable supply of fish,
3. to meet the requirements of the Clean Water Act for water quality on non-federal forest lands,
4. to keep the timber industry in the State of Washington economically viable..

Since the proposed permanent rule changes will impose more than minor costs on forest products businesses, a Small Business Economic Impact Statement (SBEIS) is required (RCW 19.85.030). This study analyzes the effects of the new proposed rule compliance costs on small and large businesses.

PROPOSED

BACKGROUND INFORMATION AND NEW PROPOSED RULE CHANGES

The Forests and Fish Report

In November 1997, in anticipation of the listing of several subspecies of Washington salmon as threatened or endangered, participants in Timber, Fish, and Wildlife (TFW) began negotiating a proposal for new forest practices rules. The goal of this proposal was to protect and restore riparian habitat on non-federal forestlands in compliance with the Endangered Species Act and the Clean Water Act, while maintaining the economic viability of Washington's timber industry. Participants in the TFW process included six caucuses: federal agencies, state agencies, Indian tribes, counties, environmentalists, and the timber industry. The environmentalists withdrew from the debate in September 1998, but the remaining participants agreed to a conceptual proposal for new forest practice rules to protect salmon habitat on non-federal forestlands in Washington. The process became known as the "Forest and Fish" negotiations and the stakeholders' recommendations became known as the "Forests and Fish Report," which is the foundation for the forestry module portion of the Washington State salmon recovery plan.

Proposed Rules

In the spring of 1999, legislation based on the Forests and Fish Report was passed by the Washington State Legislature and signed into law by Governor Gary Locke¹. The legislation requires the FPB, which is responsible for establishing forest practices rules, to adopt a set of emergency rules that are consistent with the recommendations of the Forests and Fish Report. Following that, permanent rules are to be adopted by the board. For the permanent rules the board is not required to follow the recommendations of the Forests and Fish Report, but it is "strongly encouraged" to by the legislation.

The FPB proposed emergency rules in October 1999, and after a public hearing in November the rules were finalized and adopted by the board on January 20, 2000. The emergency rules became effective on March 20, 2000. Additions to the emergency rules were adopted May 10, 2000, and became effective July 3, 2000. These emergency rules will remain in effect until June 30, 2001, or until the permanent rules are adopted, whichever is sooner.

Summary of New Proposed Rules

The new proposed rules introduce changes to forest practices that will impose a cost to forest practice applicants. While there are many aspects of the new proposed rules that change the way applications for forest practices are approved, the major aspects of these changes are the focus of this study. They include the changes to forest practices that affect timber harvests, access to the timber through road construction and maintenance and administrative setup costs associated with the new rule changes. Other aspects such as procedures for unstable slopes, multi-year permits, adaptive management and watershed analysis are assumed to comprise a significantly smaller compliance cost and/or there is no information at the time of the study to allow any cost estimate to be determined.

The new proposed rules address:

- (i) water typing rules,
- (ii) riparian habitat management,
- (iii) unstable slopes,
- (iv) forest roads,
- (v) wetlands,
- (vi) watershed analysis,
- (vii) adaptive management,
- (viii) forest pesticides, and
- (ix) cultural resources.

Of these nine topics, riparian habitat management and forest roads make up the greatest portion of the compliance cost associated with the new proposed rules. Unstable slopes may be a third major component of the compliance cost, but their analysis is difficult because there is no statewide identification of unstable slopes, which precludes any statistical analysis of their compliance cost. The following paragraphs present each topic briefly with a description of how it may impact compliance cost.

Water typing under the proposed rules classifies waters of the state into three types. Type S waters are all waters inventoried as "shorelines of the state". Type F waters are waters not classified as Type S, which contain fish habitat. Type N waters are waters not classified as Type S or F, which are either perennial streams or intermittent (seasonal). Water typing does not directly affect the compliance cost of businesses. Water typing indirectly impacts businesses through riparian habitat management and the establishment of riparian buffers.

Riparian habitat management includes separate requirements for western and eastern Washington². Riparian Management Zones (RMZ) are identified according to state location, stream type, site class of adjacent land, management harvest options and stream size.

Western Washington RMZ requirements:

For fish-bearing streams (Type S and F waters), a three-zone buffer is required. The buffer is measured horizontally from the bankfull width or the channel migration zone (CMZ), whichever is greater, and the total width must extend out to the site potential tree height (SPTH). The SPTH is the potential height of the dominant conifer measured at 100 years, which varies by site class. The three zones are as follows (see Figure 1).

1. **Core zone.** A 50 feet buffer in width where no timber harvest is allowed.

2. **Inner zone.** A buffer zone immediately outside the core zone from 10 to 100 feet, the width of which varies with stream size, site class, and management options. Thinning is allowed in this zone only if minimum basal area requirements are met. Stand requirements vary by site class and consider the desired future condition target basal area per acre. When the conditions are not met, no harvesting is permitted in the inner zone. If harvesting is permitting due to surplus basal area consistent with the stand requirement, one of two options can be considered: thinning from below or leaving trees closest to the water. When the required stand basal area cannot be met within the sum of the areas in the inner and core zones due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be

made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement.

3. *Outer zone.* This zone extends from the outer edge of the inner zone out to full SPTH. Harvest is permitted in this zone, but 20 riparian leave trees per acre must be left. This number may be reduced under specific circumstances described in the Forest and Fish report.

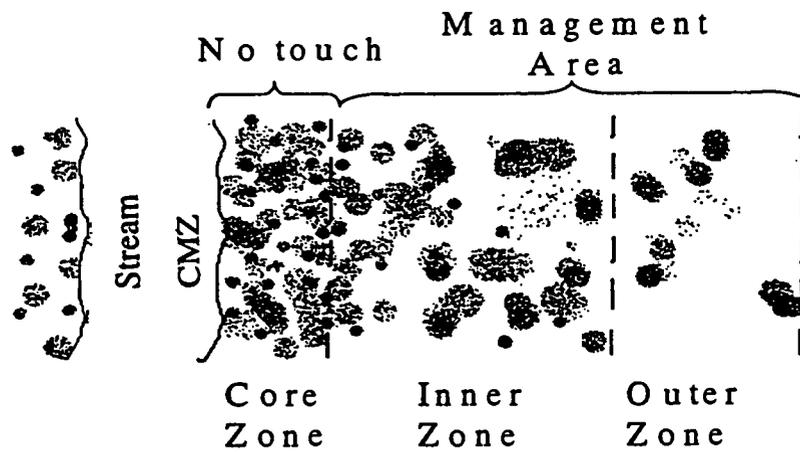
For non-fish bearing perennial streams (Type N waters), a non-contiguous 50-foot no-touch buffer is required for at least 50% of the total length of the stream (see Figure 2). The buffer must include the first 300-500 feet (depending on the length of the stream) above the confluence of a fish-bearing stream, and it must also include sensitive sites such as seeps or springs. In addition, there is a 30-foot equipment limita-

tion zone along the entire length of the stream. Mitigation is required if forest practices disturb more than 10% of the equipment limitation zone.

For non-fish bearing seasonal streams (type N waters), there is a 30-foot equipment limitation zone. "Seasonal stream" means streams that are not perennial but are physically connected by a defined channel system to downstream waters so that water or sediment initially delivered to these waters may eventually be delivered to a type S or F Water. Harvesting may occur and mitigation is required if forest practices disturb more than 10% of the equipment limitation zone.

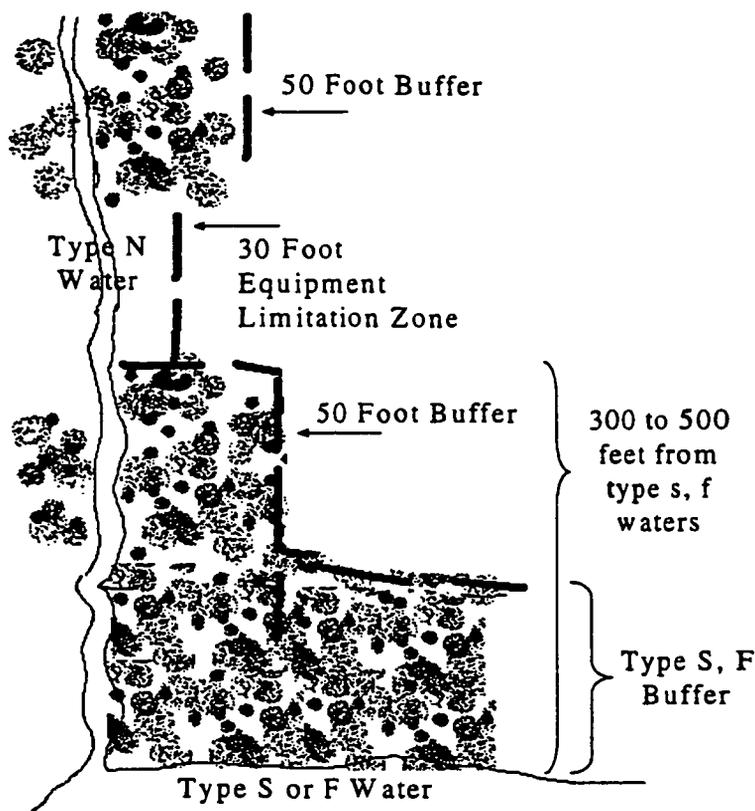
Current rules have RMZ up to 100 feet depending on the water type, stream width and the bed material for Water Types 1, 2, and 3. RMZ are not required for Type 4 and 5 waters.

PROPOSED



The Core Zone is 50 feet wide. The Inner Zone, which allows forest management when certain conditions are met, is of variable length for Type S and F waters and can range from 10 to 100 feet wide. The Outer Zone has a 20 tree riparian leave tree condition and can vary from 22 to 67 feet wide.

Figure 1. RMZ for Type S and F waters, western Washington



For Type N perennial waters a non-contiguous buffer of 50 feet is required for at least 50% of the total length of the stream and must include the first 300 to 500 feet above the confluence of a fish-bearing stream. For perennial and seasonal streams there is a 30 feet equipment limitation zone.

Figure 2. RMZ for type N streams, western Washington

Eastern Washington RMZ requirements:

For fish-bearing streams (type S and F waters), a three-zone buffer is required as follows (see Figure 3):

1. *Core zone.* This is a 30 feet wide buffer extending from the bankfull width or CMZ whichever is larger on both sides of the stream for all timber habitat types. No timber harvest is allowed in this zone.

2. *Inner zone.* This is an area of limited harvest that is measured from the outer edge of the core zone and extends 45 feet for streams less than or equal to 15 feet wide and 70 feet for streams greater than 15 feet wide. Harvest is allowed in this zone when specific basal area requirements are met. These requirements vary based on the timber habitat type.

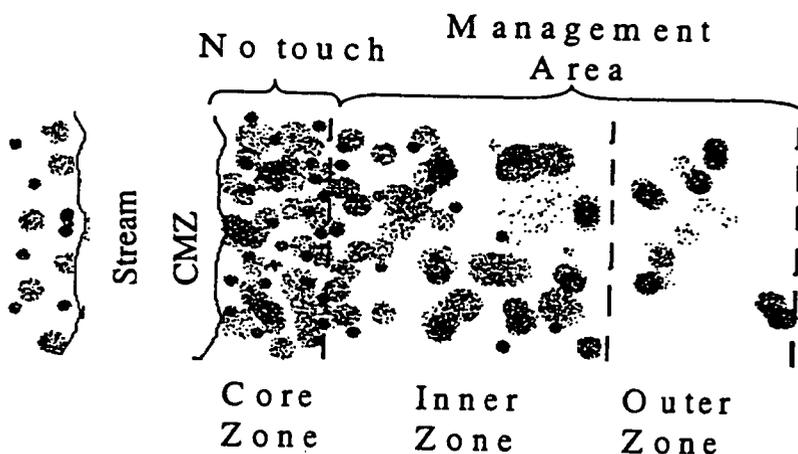
3. *Outer zone.* Measured from the outer edge of the inner zone, the width of this zone ranges from 0 to 55 feet, depending on the site class and the width of the stream. Harvest is permitted in this zone, but a certain number of leave trees must be left depending on the timber habitat type.

For non-fish bearing streams (type N waters), there is a 30-foot equipment limitation zone on either side of the stream. Mitigation is required if forest practices disturb more

than 10% of this zone. In addition, for perennial type N water harvest is limited within 50 feet of the bankfull width of the stream. Within this zone, landowners must choose a clear-cut or partial cut strategy, each of which is subject to certain restrictions.

Current rules require RMZ up to 300 feet for even-aged harvests and 50 feet for partial cutting harvests. The number of trees per acre required depends on the soil type. RMZ are not required along Type 4 and 5 waters.

PROPOSED



The Core Zone width is 30 feet. The Inner Zone, which allows forest management when certain conditions are met, is of variable length for Type S and F waters and can range from 45 to 70 feet wide. The Outer Zone has a width of 0 to 55 feet with a 10 to 15 tree riparian leave tree condition.

Figure 3. RMZ for Type S and F waters, eastern Washington

RMZ for Exempt 20-acre Parcels: On parcels of 20 contiguous acres or less, landowners with total parcel ownership of less than 80 forested acres are not required to leave the riparian buffers described above. These landowners are subject to the permanent riparian management zone rules and watershed analysis prescriptions in effect as of January 1, 1999, plus an additional 15% volume.

Unstable Slopes are specifically defined by slope gradient and geomorphic features. If, upon the application of the forest practices rules, unstable slopes are found, the landowner must submit a geo-technical evaluation prepared by a qualified expert of the unstable slopes. There is the potential for substantial compliance cost associated with unstable slopes, however, data to analyze the effect of unstable slopes is lacking at the time of this study.

Forest Roads and Wetlands: Changes to forest road management, design and construction have been made under the new proposed rules. Improved standards will be applied on Type N streams. Culverts must be designed or replaced to pass a 100-year flood rather than a 50-year flood. Ditch relief culverts must be spaced more closely. There is required erosion control for new roads where a potential for soil to enter a stream exists. Also road maintenance and abandonment plans will be required for all landowners. Landowners who own less than 500 hundred acres of land will have to submit a plan for their ownership with its first forest practices application. Those with more than 500 hundred acres of land must submit road plans for 20% of their lands each year for the next five years.

Under current rules road maintenance and abandonment plans are required based on watershed analysis prescriptions or Department of Natural Resources (DNR) request.

Increased protection of wetlands will be through refinements in wetland mapping as well as assessment of forested

wetland functions. Landowners will be required to map all forested wetlands that are three or more acres in size.

Watershed Analysis will continue to be voluntary for landowners and mandatory for DNR.

Adaptive Management: Consideration will be made by the FPB regarding the requirements and definition of an adaptive management process.

Forest Pesticides: The new proposed rule changes apply a zero-drift and zero entry of aerially-applied forest pesticides into water policy. No data is analyzed to determine the compliance cost of forest pesticides. However, the compliance cost associated with this practice is not considered significant relative to other costs.

Cultural Resources protection under current rules will still be in place. Incidental protection provided to cultural resources in riparian habitats and wetlands will be increased in proportion to the increase in the amount of area protected under the new proposed rule changes.

REQUIREMENTS FOR AN SBEIS

Regulatory Fairness Act

The present analysis is in response to the RFA (RCW 19.85), which requires that a SBEIS be prepared for proposed rules that will impose more than minor costs on businesses in an industry. To comply with the RFA the study identifies potentially affected industries, defines small and large businesses and determines the compliance cost for these businesses. The study analyzes the compliance cost of the proposed rules and compares the cost of compliance for small businesses with the cost of compliance for large businesses.

If there is a disproportionate economic impact on small businesses in comparison with large businesses, the RFA requires that the cost imposed by the rule on small businesses be reduced where legal and feasible in meeting the objective of the statutes upon which the rule is based. If steps are not taken to reduce the costs on small businesses, the agency must provide reasonable justification for not doing so.

The DNR has identified a sample of affected businesses to determine the compliance cost of small and large businesses. The Department has also appointed a steering com-

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mittee to assist in the accurate assessment of the costs of a proposed rule (RCW 19.85.030, 040).

Potentially Affected Industries

Businesses that own or control the cutting rights on forestland are the rule complying community. Aside from the landowner, the potentially affected industry includes loggers, mill owners and others holding timber cutting rights. Hence the complying community is defined broadly as those with the right to dispose of the timber. Even though forest landowners may have other aspects to their business such as agriculture, manufacturing, or other land-based businesses and may be classified as a different type of business than forest based, they comprise the potentially affected industries in this study. The study uses the term "forest business" to define this rule complying community in the study.

Small Businesses Versus Large Businesses

The RFA defines a "small business" as one with 50 or fewer employees. We apply this definition in our study using the business identification number associated with a land parcel to determine the number of employees associated with that business.

Compliance Cost for Businesses

Given the requirements to increase the riparian buffer requirements, forest businesses would incur a cost to comply with the rules when they decide to harvest their timber or sell their land assets. Such a cost results in a loss in current revenue, a loss in asset, and higher operating costs. The loss in asset reflects a loss in future timber revenue. In addition, these costs might trigger some other financial difficulties for small business owners and expose them to higher business risks. Even if the land is currently used for recreation or other non-timber uses, the business opportunities for the assets can be reduced due to the regulatory constraints.

Since forest-related assets have a long management cycle, the regulatory impacts will take place over a long period. The present value of compliance cost is used as an indicator of the regulatory impact. In other words, the regulatory impact is the difference between today's market value of a land asset with the proposed rules and today's market value without the new regulation in place.

In addition to the increased buffer requirements and their associated costs, forest businesses are also required to implement changes to forest road management, design and construction. The improved standards and the preparation of road maintenance and abandonment plans represent an additional cost for forest businesses to comply with the new proposed rule. As mentioned above, such a cost results in a loss in asset as well as higher operating costs. The present value of the cost of preparing and implementing new road standards is used as an estimate of the cost of compliance associated with changes to forest road management, design and construction under the new proposed rules.

Additional effort on the part of forest businesses is required to meet the requirements of the new proposed rules. Such efforts include, but are not limited to, hiring professionals to implement and gather the necessary information to submit a forest practice application. A successful forest practices application will require added cost to set up and implement a harvest. These additional activities will result in

higher operating costs for forest businesses, which is included in the calculation of compliance cost.

Involvement of Concerned Stakeholders

The RFA requires the SBEIS to include a description of how the agency will involve small businesses in the development of the rule. While Forest and Fish negotiations were not held in a public forum, key stakeholder groups did participate in the process, which resulted in a conceptual rule proposal. Also, the FPB has received regular status reports at its public meeting, which include opportunities for public comment³.

In addition, a Steering Committee comprised of general public members from various stakeholder groups was formed to act as advisors and reviewers for the SBEIS. A presentation of work-in-progress on the SBEIS was made to the Steering Committee during April and October 2000.

METHODS OF ANALYSIS

The study uses the cost per one hundred dollars of sales to estimate the effect of the rule changes and the payments under the Salmon Recovery Act (ESBH 2091)⁴ on forest businesses. The foregone present value of timber sales is calculated by multiplying the acres in RMZ for each timber type by the average value for recent timber sales by each county. Data on the number of acres affected under the new proposed rule changes, the value of timber sales per acre by county and the timber type by vegetation and age are used to calculate the foregone present value of timber sales.

The effect of the rule changes is reported as a net effect. The net effect is determined by subtracting the acres in stream buffers under rules existing prior to the current emergency rules from acres proposed for RMZ under the new proposed rule changes. Economically inaccessible acres are added to the net changes associated with the new proposed rule changes to determine the effect of the new proposed rule changes.

The parcel's timber value is determined using data on the average value per acre for the last three years of timber sales from each county. The present value for pole timber is determined using a 5.8% discount rate and 30 year maturity date. The present value calculation for recently cut areas (reproduction acres) uses a 5.8% discount rate and 50-year maturity date. In the RMZ, the present value for recently cut areas represents a sunk cost of recent planting expenditures that is carried forward with the intention of harvesting mature timber at rotation age. In addition to the foregone timber sale value, we calculate a bare land value for all acres by multiplying acres by an average, regional bare land value.

For timberland owners who fall under the 20 acres exemption rule, we calculate 15% of the volume of timber under current forest practice rules and multiply it by the county average value for recent timber sales.

The effect of rule changes on forest businesses in the lumber dependent economy is measured as the change in output, price and employment. The changes are calculated using the estimated timber volume in RMZ that is no longer available for harvest. The volume is determined by multiplying the net area in RMZ by average volume per acre for each vegetation type. The calculated timber volume is converted to

lost employment using an employee per thousand board foot multiplier.

The effect of compensation payments is determined using the established formula for small landowners. Since the definition of a small harvester is different for forest practices than the RFA, small landowners are identified using a potential harvest limit of two million board feet, as stipulated in the compensation program and defined by forest practices.

DATA

The study utilizes GIS and other data provided by the DNR. The DNR has collected detailed spatial information

for 158 random sections within Washington State. Ninety-two sections were sampled in western Washington and 66 sections were sampled in eastern Washington. Selection criteria were that the section must include private ownership; it must contain some forestland; and it must not be entirely within a habitat conservation plan area or an urban growth area.

The GIS data for the sections include section boundaries, parcel information from the county assessor's office, timber stand/land cover information from photo interpretation, buffer zones for the proposed new rules and current rules, new water type and road information (see Figure 4).

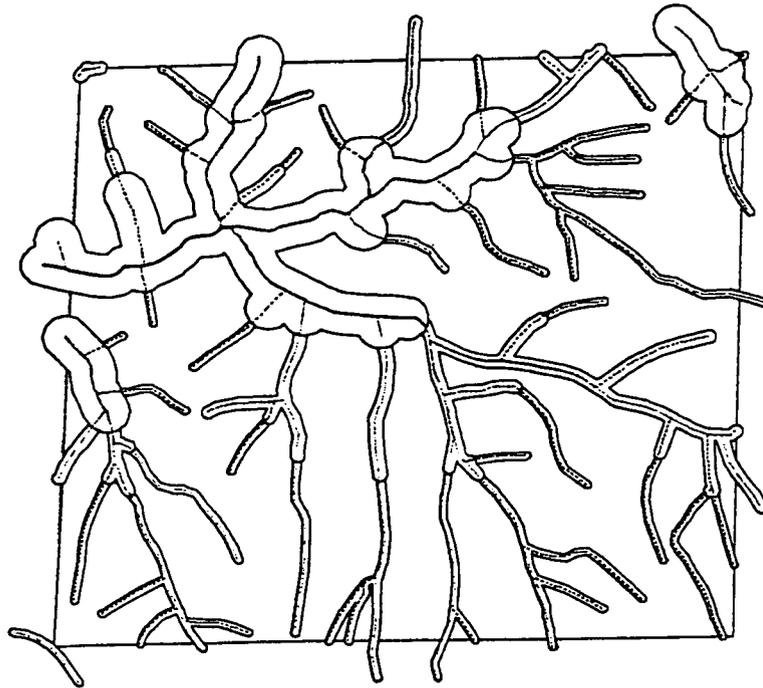


Figure 4. A sampled section with water and buffer information for a single ownership.

The assumptions on western Washington buffers were based on slope and water type. Buffer widths were digitized in GIS to reflect the riparian habitat management requirements summarized previously under the proposed new rules section. In western Washington, for Type S and F waters, a buffer width of 170 feet on each side was established. The 170-foot buffer corresponds to the core and inner zone width, which has a maximum width of 150 feet, plus 20 feet for the outer zone. The additional 20 feet of width assumes the 20 riparian leave trees per acre would cover an additional 20 feet of buffer on average. Type N waters received a 50-foot buffer stream for perennial streams and a 30-foot buffer for seasonal streams. There is a 50% allowance for harvest from perennial buffer. Harvesting is permitted in the seasonal stream buffer with appropriate mitigation.

In eastern Washington, for Type S and F waters, a buffer width of 100 feet on each side was established. The 100-foot buffer corresponds to the core and inner zone, which has a

maximum width of 100 feet. The width of the outer zone is 0 to 55 feet depending on site and stream width. In eastern Washington for Type N waters a 50-foot buffer stream was established for perennial streams and a 30-foot buffer was measured for seasonal streams.

Economically inaccessible acres were identified by visually examining each section to determine whether the proposed buffers alter accessibility to other areas in the parcel. The data on inaccessible acres was incorporated into the GIS database. To determine economic accessibility the study assumes forest businesses decide not to cross a stream under the new regulations because the area in question has a value lower than what it would cost to cross the stream. Selecting inaccessible areas was carried out by first assigning a technician the task of identifying potentially inaccessible areas using GIS software. A three-person team also evaluated the areas and determined if the areas would be classified as inaccessible. Several factors were considered when determining the accessibility of the areas. Size of the area in question was considered important. A small sliver that is cut from the rest of the parcel is more likely to be considered inaccessible than

if the whole parcel is cut off because of the larger value associated with harvesting a larger land area. The number and size of additional parcels the landowner must cross to get around the stream was also considered important. Ownership patterns were also considered, since the same owner may own neighboring parcels. Finally, roads outside the sample

section were consulted to determine whether areas bounded by the section boundary were inaccessible. In western Washington 219 acres were classified as inaccessible. In eastern Washington 209 acres were classified as inaccessible. Examples of inaccessible areas are pictured in Figure 5.

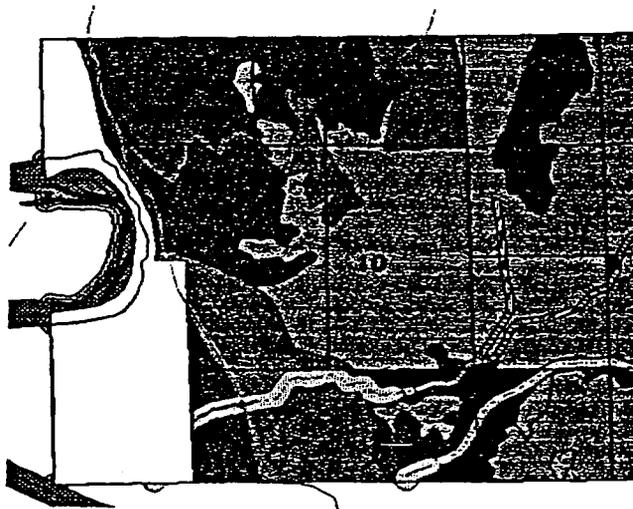


Figure 5. Economically inaccessible areas are indicated as brown (dark) triangles in the lower right portion of the chart.

Forest businesses with a total forestland ownership of less than eighty acres were identified from the parcel data collected from county records. Within this group, parcels that contained 20 acres or less were identified. These forest businesses, which meet both conditions, are deemed exempt from the new proposed rule changes and are also analyzed. They are subject to the permanent forest practices rules in effect as of January 1, 1999 plus increase protection equal to 15% of the total land area.

The timber stand/land cover information is classified into 11 categories based on earlier work by DNR (1997)⁵. Codes used for the forest-type are listed in parenthesis.

Brush/recent clear cut (eastern Washington data only) (B)	0 - 5 years
Reproduction(R)	5 - 15 years
Conifer Pole timber (CP)	15 - 30 years
Conifer Saw timber (CS)	30 - 100 years
Over Mature conifer timber (CL)	100+ years
Hardwood Pole timber (HP)	15 - 30 years
Hardwood Saw timber (HS)	30 - 60 years
Over Mature hardwood timber (HL)	60+ years
Mixed conifer/hardwood pole timber (MP)	(30% - 70%)
Mixed conifer/hardwood saw timber (MS)	(30% - 70%)

Brush/recent clear cut (eastern Washington data only) (B)	0 - 5 years
Mixed conifer/hardwood over mature timber (ML))	(30% - 70%)

The study uses the average value of timber sales per acre over the last three years aggregated for each county from the Department of Revenue (DOR). The average value of timber sales is calculated by using the total sales value divided by total acres, then aggregated by county to find an average county figure. This value is then matched to each parcel's county. To be able to use the DOR values we assume that the vegetation distribution for the average sale is similar to the vegetation distribution of RMZ acres and that the saw and mature timber stand types are harvestable. The advantage of using the value per acre parameter is that it permits calculating the timber asset value without introducing more complex assumptions on a species' volume distributions and their corresponding prices for each potential sale.

Table 1 illustrates the per acre values calculated for each county. We apply these values to the sum of acres in the pole timber type (CP, HP, MP), saw timber type (CS, HS, MS) and over-mature timber type (CL, HL, ML). In eastern Washington, Kittitas and Okanogan counties had less than \$1000 per acre values. In western Washington, Kitsap County had the lowest per acre values followed by Jefferson and Mason counties.

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Table 1. Per acre values based on Department of Revenue data on recent timber sales.

Eastside Counties		Westside Counties	
County	Per acre value ^a	County	Per acre value ^a
CHELAN	\$2,451.89	CLALLAM	\$10,560.76
COLUMBIA	\$4,642.83	CLARK	\$11,004.14
FERRY	\$1,058.02	COWLITZ	\$12,659.27
GARFIELD	\$2,451.89	GRAYS HAR-BOR	\$14,592.31
KITTITAS	\$778.47	JEFFERSON	\$6,238.56
KLICKITAT	\$3,499.87	KING	\$12,742.27
LINCOLN	\$2,451.89	KITSAP	\$3,721.30
OKANOGAN	\$786.73	LEWIS	\$13,034.25
PEND OREILLE	\$2,451.89	MASON	\$8,427.62
SPOKANE	\$3,500.00	PACIFIC	\$13,420.28
STEVENS	\$2,187.43	PIERCE	\$12,585.76
		SKAGIT	\$10,863.43
		SKAMANIA	\$13,206.64
		SNOHOMISH	\$13,365.47
		THURSTON	\$12,798.15
		WAHIAKUM	\$13,047.26
		WHATCOM	\$11,459.97

^a per acre average calculated using Department of Revenue timber sale data from July 1997 to March 2000.

The study assumes a value of future harvests on reproduction acres where there has been a cost incurred in the establishment of a new stand. To capture the future loss in revenues associated with this sunk cost, we calculate the NPV at a 5.8% discount rate using the DOR per acre values 50 years into the future. The sunk cost is an addition to the bare land value. Table 2 presents the county sunk cost estimate used to determine replanting investments associated with the reproduction timber type acres. The calculation assumes constant real prices will continue into the future.

Table 2. Reproduction acres sunk cost calculations.

Western Washington		Eastern Washington	
County	Per acre value	County	Per acre value
CLALLAM	\$ 630.10	CHELAN	\$ 146.29
CLARK	\$ 656.56	COLUMBIA	\$ 277.01
COWLITZ	\$ 755.31	FERRY	\$ 63.13
GRAYS HAR-BOR	\$ 870.64	GARFIELD	\$ 146.29
JEFFERSON	\$ 372.22	KITTITAS	\$ 46.45
KING	\$ 760.26	KLICKITAT	\$ 208.82
KITSAP	\$ 222.03	LINCOLN	\$ 146.29
LEWIS	\$ 777.68	OKANOGAN	\$ 46.94
MASON	\$ 502.83	PEND OREILLE	\$ 146.29
PACIFIC	\$ 800.72	SPOKANE	\$ 208.83
PIERCE	\$ 750.92	STEVENS	\$ 130.51
SKAGIT	\$ 648.16		
SKAMANIA	\$ 787.97		
SNOHOMISH	\$ 797.45		
THURSTON	\$ 763.60		
WAHIAKUM	\$ 778.46		
WHATCOM	\$ 683.75		

Source: Uses DOR per acre values discounted 50 years at 5.8%

The study utilizes land values published by Mason, Bruce & Girard, Inc. (1997)⁶. The average land value is \$452 per acre for western Washington and \$44 per acre for eastern Washington. The volume of timber is taken from an earlier SBEIS on water typing (DNR 1997)⁷. Table 3 replicates the data for western and eastern Washington.

Table 3. Estimated volume of board feet for the timber types

Timber Type	Western Washington	Eastern Washington
Non-Forest	0	0
Brush	n.a.	0
Reproduction	0	0
Conifer Pole	12,000	9,600
Conifer Saw	40,000	32,000
Conifer Large Saw	75,000	
Hardwood Pole	5,000	4,000
Hardwood Saw	20,000	16,000
Hardwood Large Saw	35,000	
Mixed pole	15,000	12,000
Mixed saw	30,000	24,000

Data on Uniform Business Identification (UBI) and employment from county records was collected by the DNR and incorporated into the GIS database. Each parcel was assigned to one of two categories depending on whether or not there were greater than 50 employees in the business.

The study uses GIS transportation information for each parcel in the sample to determine the compliance cost of road maintenance and stream crossings. The compliance cost is the present value of total road maintenance and stream crossing costs distributed evenly over a 15-year period. Table 4 presents the number of stream crossing by large and small businesses.

Table 4. Number of stream crossings

	Western Washington	Eastern Washington
Large Business		
Type S,F	161	18
Type N perennial	117	15
Type N seasonal	342	19
Small Business		
Type S,F	49	17
Type N perennial	7	0
Type N seasonal	2	3

Table 5 summarizes the road miles associated with large and small businesses in western and eastern Washington.

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Table 5. Number of road miles

	Western Washington		Eastern Washington	
	Large Business	Small Business	Large Business	Small Business
Road miles	202	44	30	15

Maintenance and repair costs assumptions are presented in Table 6. These estimates were derived from personal communications between DNR and representatives from large and small enterprises in western and eastern Washington.

Table 6. Per unit costs for stream crossings and road miles used in the analysis.

	Western Washington	Eastern Washington
Stream Crossing		
Type S,F	\$40,000	\$41,000
Type N perennial	\$5,933	\$5,267
Type N seasonal	\$1,500	\$3,200
Roads (per mile)	\$12,000	\$12,000

Stream miles are used to calculate setup costs. RMZ setup cost estimates were derived from personal communications between DNR and representatives from large and small enterprises. The estimates were broken down by water type. Table 7 categorizes stream miles by water types between large and small businesses for western and eastern Washing-

ton. RMZ setup costs associated with 1000 feet of stream are presented in Table 8.

Table 7. Stream length in 1,000 feet.

	Western Washington	Eastern Washington
Large Businesses		
S, F type	725.1	168.7
N type	975.4	593.9
Small Businesses		
S, F type	294.6	140.6
N type	40.2	23.3

Table 8. Setup costs per 1000 feet of stream

	Western and Eastern Washington	
	Large Business	Small Business
Type S,F	\$470	\$940
Type N	\$140	\$280

Employment data was gathered from the US Census, County Business Patterns for Washington. Table 9 presents employment multipliers used to calculate the effects of the volume reduction on employment in the lumber dependent economy. Significant changes in the employment multipliers have occurred since 1987. We use the 1997 figure to represent the current employment condition and do not incorporate any adjustments that might occur over time.

Table 9. Eastern Washington employment per million board feet

	SIC 8	SIC 24	SIC 26	SIC 241	SIC 242	SIC 243	SIC 503	SIC 511
1987	0.04	5.14	1.32	1.11	2.98	0.84	0.71	1.62
1988	0.10	5.42	0.89	1.29	3.08	0.68	0.65	0.50
1993	0.12	7.74	1.99	1.74	3.69	1.59	0.98	0.75
1994	0.21	8.51	2.23	1.89	3.67	1.83	1.20	0.84
1995	0.20	7.87	2.16	1.72	2.31	2.66	1.19	0.74
1996	0.11	6.09	1.99	1.29	1.75	2.40	1.09	0.80
1997	0.25	6.71	2.13	1.28	2.67	2.09	0.78	0.78
Averages								
87-93	0.09	6.10	1.40	1.38	3.25	1.04	0.78	0.95
94-97	0.20	7.29	2.13	1.55	2.60	2.24	1.07	0.79

Source: U.S. Census Bureau 1987-1997. County Business Patterns (SIC)

Table 10. Western Washington employment per million board feet.

	SIC 8	SIC 24	SIC 26	SIC 241	SIC 242	SIC 243	SIC 503	SIC 511
1987	0.42	5.13	1.89	1.56	1.57	1.33	0.84	0.47
1988	0.40	5.16	2.56	1.55	1.77	1.34	0.93	0.52
1993	0.59	8.01	4.54	2.28	2.55	2.20	1.70	1.14
1994	0.58	8.01	4.52	2.27	2.66	2.18	1.81	1.24
1995	0.57	7.44	4.38	2.04	2.49	2.02	1.98	1.13
1996	0.57	7.60	4.12	2.19	2.44	2.07	2.09	1.26
1997	0.57	7.87	4.21	2.06	2.64	2.19	1.98	1.38
Averages								
87-93	0.47	6.10	3.00	1.80	1.96	1.63	1.16	0.71
94-97	0.57	7.73	4.30	2.14	2.56	2.12	1.97	1.25

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Source: U.S. Census Bureau 1987-1997. County Business Patterns (SIC)

Total harvests for western and eastern Washington are 3.258 BBF and 0.999 BBF respectively for 1997*. The total harvest numbers are used to derive the wage losses for the state.

The study uses the long-term derived price elasticity of demand for sawlogs from Perez-Garcia and Kraley (2000)⁹ to analyze the medium and long-term effects of the new proposed rule changes. The elasticity estimate presented in that study ranges from -0.42 to -0.56.

DATA ANALYSIS

Data was imported into spreadsheets for analysis and determination of the compliance cost ratios. A first step in the data analysis is to identify the two study groups for the SBEIS. Businesses with 50 or more employees were classified as large businesses. All other businesses were classified as small businesses.

In western Washington 1,327 businesses were included in the sample. Twenty-five businesses are classified as large businesses. The study uses all of the largest businesses in the sample to describe the 10% of businesses that are the largest businesses required to comply.

In eastern Washington 624 businesses were included in the sample. Fourteen businesses are classified as large businesses. As in the case of western Washington, the study uses all of the largest businesses in the sample to describe the 10% of businesses that are the largest businesses required to comply.

Table 11. Acreage distribution for Washington sample.

	Western Washington	Eastern Washington
	Acreage ^a	Acreage ^a
Large Businesses ^b	26,860	5,597
Small Businesses ^c	19,040	23,142
> 20 acres ownerships	10,895	17,108
< 20 acres ownerships ^d	8,145	6,034
Grand Total	45,900	28,739

^a includes all timber type categories.

^b businesses with 50 or more employees.

^c all owners that are not classified as large businesses.

^d acres associated with owners under the 20 acre exemption rule.

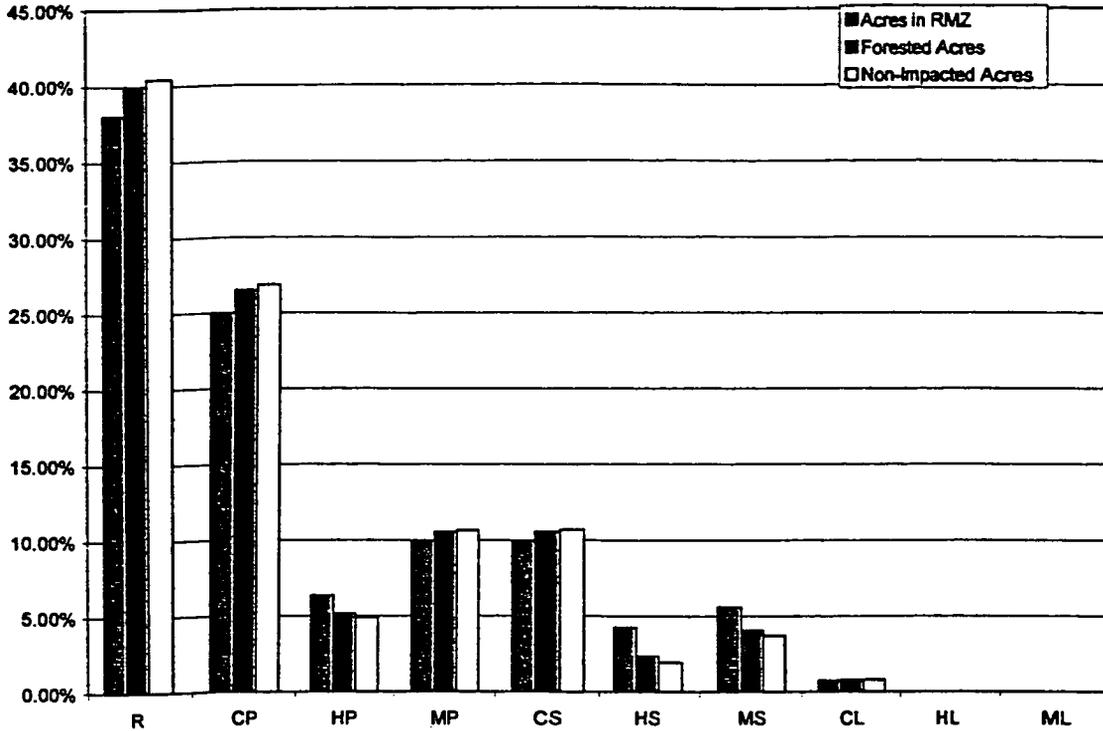
Table 11 displays the acreage distribution for western and eastern Washington. This distribution is important since it is the basis for calculating the timber parcel asset value and the foregone sales associated with the RMZ. In western Washington the majority of the acreage is owned by large businesses, while in eastern Washington the majority of the acreage is owned by small businesses. A significant number of businesses own less than 20 acres of land in western and eastern Washington. In western Washington 43% of the land

is owned in 20 acre or smaller parcels and in eastern Washington 16% of the land is owned in 20 acre or smaller parcels.

Figure 6 presents the percent of acres found in total forested acres, the acres affected by rule changes (proposed rules acres minus current buffer acres plus inaccessible acres), and non-impacted acres for the western Washington. The chart includes all acres in the sample except for those classified as non-forested, brush or grasslands. The percent is calculated as the acres in the timber type category divided by the total acres times 100%.

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Vegetation Distribution: Westside



Forest Type (see above for code definition)

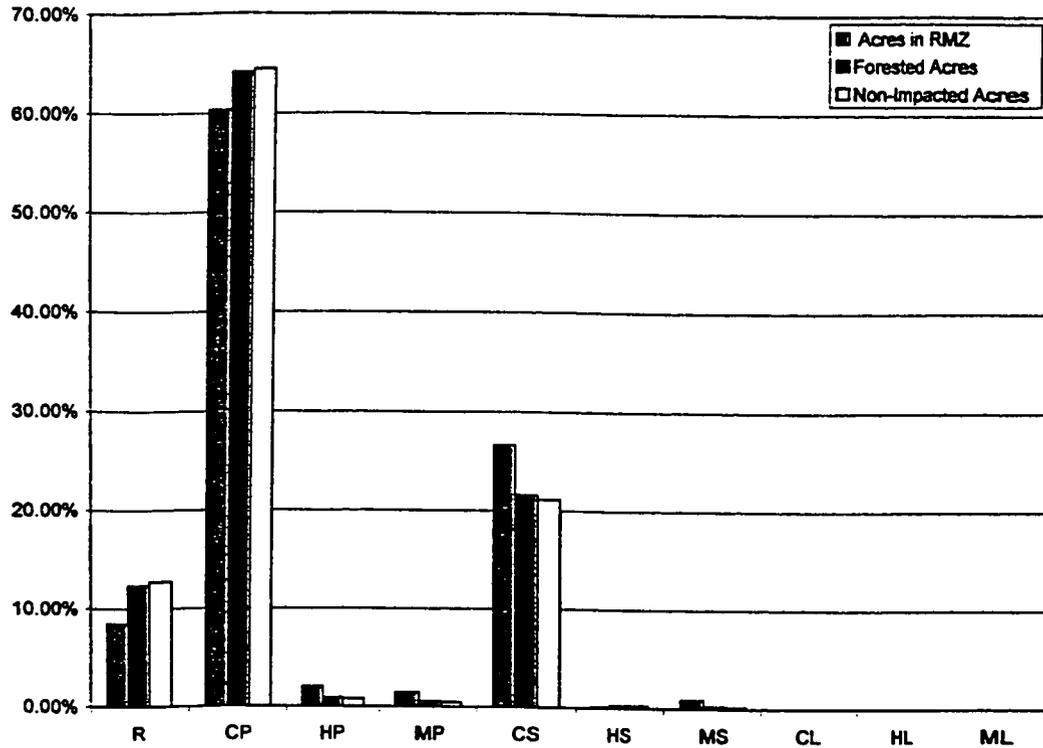
Figure 6. Western Washington acre distribution by forest types.

The vast majority of acres in the western Washington sample are in the reproduction stage (R) and coniferous pole timber (CP) categories, followed by mixed pole timber (MP) and conifer saw timber (CS). The three categories represent close to three-quarters of the acres in the sample. There is a lower percentage of acreage in reproduction, coniferous pole timber, mixed pole timber, and coniferous saw timber type in the RMZ acres than the non-impacted acres. There is also a higher percent of acres in the hardwood pole (HP), hardwood saw timber (HS) and mixed saw timber (MS) categories in RMZ buffer acres than non-impacted acres.¹⁰

The eastern Washington distribution of sampled acres by forest type is markedly different than the western Washington sample as illustrated by Figure 7. Most of the acres have an older structure with coniferous pole (CP) and saw timber (CS) representing over 80% of the acres. The riparian management acres also have a larger percentage of acres in coniferous saw timber (CS) than non-impacted acres. There is a lower percent of acres in the reproductive forest type category for the riparian management acres. Therefore, a larger percent of non-impacted acres are in the reproduction (R) forest-type categories. This situation is also true for the coniferous pole (CP) timber. For the conifer saw timber (CS), the regulated acres have a higher percent than the non-impacted acres.

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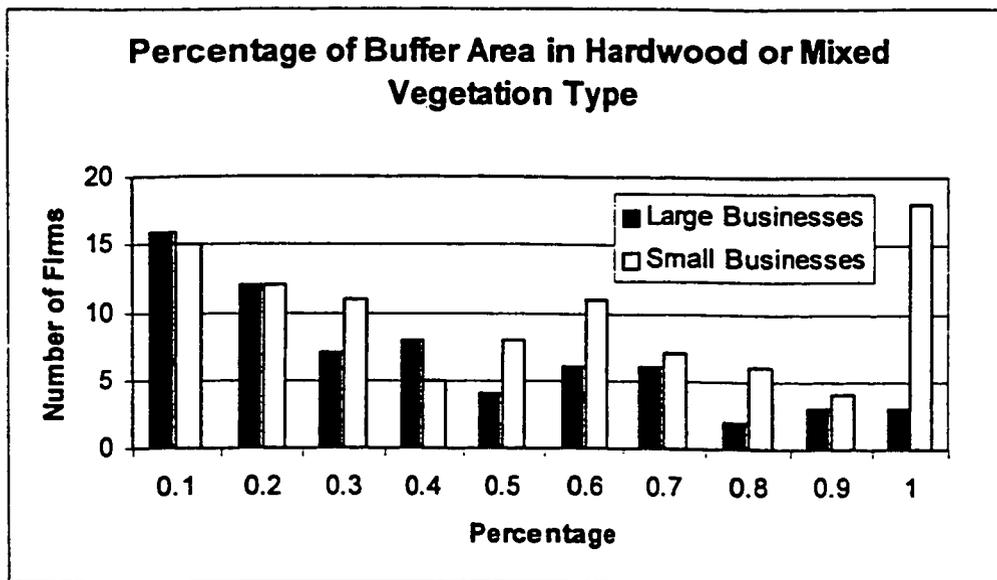
Vegetation Distribution: Eastside



Forest Type (see above for code definitions)

Figure 7. Eastern Washington acre distribution by forest types.

The next chart (Figure 8) describes the acreage distribution of hardwood vegetation in buffers among small and large businesses for those firms that have hardwood vegetation. The chart illustrates, for example, for those firms that have 20% of the buffer area in hardwood or mixed forest type, the remaining area would contain 80% of the conifer type. The figure suggests small firms have a higher percentage of their land area in buffers in hardwood or mixed vegetation types. The average percentage for small businesses is 49% versus 35% for large businesses.



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Figure 8. Percentage of Buffer Area in Hardwood or Mixed Vegetation Type

Table 12 below presents the distribution of acres under hardwood or mixed vegetation among stream types. A larger proportion of the acreage is found in buffers around fish bearing streams for small businesses. It implies that small businesses will have fewer management alternatives available to them since there are fewer options to harvest timber from fish bearing stream buffers.

Table 12: Percent of hardwood or mixed vegetation buffer acres under proposed rules by stream type

	Fish Bearing Streams	Non-fish Bearing Streams	
		Perennial	Seasonal
Large Businesses	82%	7%	10%
Small Businesses	97%	2%	1%

THE NET EFFECT OF PROPOSED NEW RULES ON FOREST BUSINESS VALUES

Table 13 presents the ratios required by the RFA (rows 6 and 12) examining the conditions before and after the new proposed permanent rule.

Table 13: The Effect of New Proposed Rules on Timber Asset Values

	1		2	
	Large Businesses	Ratio	Small Businesses	Ratio
Western Washington				
1	Total Parcel Asset Value	\$ 95,531,561	\$ 30,044,668	
2	RMZ foregone sales	\$ 10,603,826	\$ 5,736,794	19.1%
3	Road Maintenance and Stream Crossings	\$ 6,609,668	\$ 1,667,200	5.5%
4	Setup Cost	\$ 477,341	\$ 288,188	1.0%
5	Total Cost for Timber businesses (2+3+4)	\$ 17,690,835	\$ 7,692,182	25.6%
6	Ratio (5 / 1)	18.5%	25.6%	
Eastern Washington				
7	Total Parcel Asset Value	\$ 4,778,859	\$ 3,824,189	
8	RMZ foregone sales	\$ 199,695	\$ 467,858	12.2%
9	Road Maintenance and Stream Crossings	\$ 811,612	\$ 579,968	15.2%
10	Setup Cost	\$ 45,447	\$ 138,663	3.6%
11	Total Cost for Timber businesses (8+9+10)	\$ 1,056,754	\$ 1,186,489	31.0%
12	Ratio (11 / 7)	22.1%	31.0%	

Notes: RMZ foregone sales do not include cost associated for mitigation on seasonal Type N waters with equipment limitation zone. Fifty percent harvests occur on Type N perennial waters. RMZ foregone sales (row 2 and 8) assume forest management in inner and outer zones of Type S, and F buffers permits 50% of harvest for large businesses. BLV was taken from WF&PA estimate.

Table 13, rows 1 and 7 contain the total parcel asset value for western and eastern Washington respectively. They are determined by calculating the value of total acreage for each sampled business and then summing them to arrive at the sample total. The RMZ foregone sale values (rows 2 and

8 for western and eastern Washington, respectively) are determined by calculating the value of net acres under the new proposed rule changes for each sampled business, then summing it for the sample total. Road maintenance and stream crossings and RMZ setup costs are calculated in a similar manner. The total cost (rows 5 and 11) for western and eastern Washington is the sum of the RMZ foregone sales, road maintenance and stream crossing cost and setup cost.

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In western Washington, small businesses will bear a larger impact than large businesses, 25.6% versus 18.5%. In eastern Washington, small businesses will bear a larger impact than large businesses, 31.0% versus 22.1%.

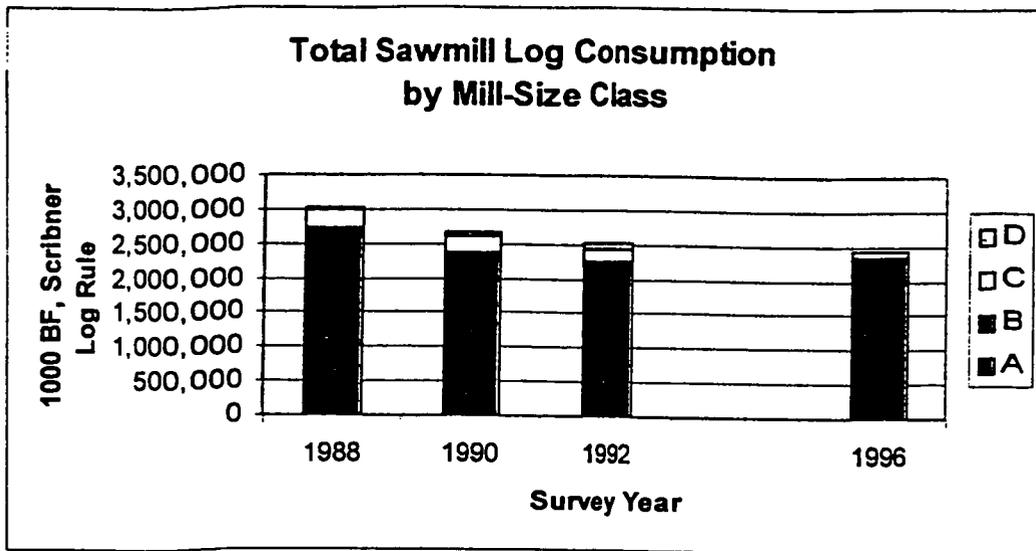
The major component of compliance cost in western Washington is the foregone sales associated with the establishment of riparian habitat buffers. The effect is disproportionately larger for small businesses (19.1%) versus large businesses (11.1%). Road maintenance and stream crossing cost add an additional 6.9% and 5.5% of the total asset value for large and small businesses respectively. The effect on large businesses is slightly larger than the impact on small businesses. RMZ setup costs add a smaller percentage to the new proposed rule compliance cost—0.5% and 1.0% for large and small businesses respectively.

The major component of compliance cost in eastern Washington is associated with road maintenance and stream crossings. For large businesses, it is more than three quarters of the compliance cost. For small businesses, road maintenance and stream crossings comprise nearly half of the com-

pliance costs. Small businesses also incur a substantial cost in the form of foregone sales associated with establishing RMZ. Twelve percent of the total parcel asset value for small businesses is compliance cost related to RMZ versus 4.2% for large businesses. RMZ setup costs are also three times as large for small businesses than large businesses.

EMPLOYMENT COSTS

The lost revenues presented above do not include losses in employment associated with reduced timber harvests. It is difficult to distinguish losses to large businesses from those of small businesses however. Based on the discussion presented below, it is likely that the smaller logging, saw milling, and mill working businesses will be adversely affected compared with the larger businesses in these categories. As with the case of sawmills discussed below, smaller mills in other sectors—forestry and logging, for example—are likely to absorb the majority of the impact from lower available timber volumes.



Source: Washington Mill Survey (various years). Class D mills are less than 40,000 board feet per lumber tally capacity per 8 hour shift; Class C mills are 40,000 to 79,999 bf; Class B mills are 80,000 to 119,999 bf; Class A mills are 120,000+ bf. (No survey was conducted in 1994)

Figure 9. Total sawmill log consumption by mill-size classes

Figure 9 illustrates log consumption by the four mill-size classes defined in the Washington Mill Survey. Timber harvests declined from a peak of 3 billion board feet (BBF) in 1988 to just under 2.5 BBF in 1996. Adjustments in the larger Type A mills occurred by 1990. Since then, including the period of reduced timber supply from federal lands, log consumption by the smaller-sized mills has declined. The chart suggests that the smaller mills reduced their consumption of saw logs during reduced harvests from public and private lands from environmental restrictions in the early 1990's more so than the largest mills.

Even though the full impact from the supply restrictions was alleviated in part by the diversion of log exports to domestic mills, the survey suggests that smaller mills were not able to compete with larger mills for these logs. A log export ban was implemented in the early 1990s restricting exports of logs produced from state lands. The reduction in the volume of logs consumed by the saw-milling sector from 1988 to 1992 is 17%. The volume reduction due to the new proposed rule changes is 16% on average across the state. A 16% reduction in saw log availability is equivalent to 0.4 BBF, about the consumption of Type D, C and B mills in 1996. As the size of the export log market continues to decline—and as a consequence the buffer of timber available to divert to the domestic market—competition among domestic mills for available logs will be greater. It is likely that the smaller mills will face stronger competition for their log supply. The effect of a tighter log market for smaller mills is likely to be delayed with a weakening in demand as is pro-

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jected for the 2001 calendar year. The implication is that further closures of small mills are likely to take place.

While data readily exists for the saw-milling sector (SIC 241) from the biennial mill survey, no such data is readily available for other sectors. It is likely that they will behave similarly, with the exception of SIC 26, Pulp and Paper. Forestry (SIC 08) is largely composed of units less than 50 employees in both eastern and western Washington (see

Appendix Table A1 for employment breakdown). Ninety-seven percent of the logging firms (SIC 241) are small businesses. They comprise 58% of the employment. Seventy-five percent of the western sawmills, plywood mills (SIC 242) are small businesses (less than 50 employees) employing 12% of the all SIC 242 employees for first quarter 2000. Sixty percent of the SIC 242 mills in eastern Washington are small businesses employing 11% of the workers in SIC 242.

Table 14. Employment Costs

Multiplier		1997 Employment	Reduced Employment	Lost Employment	1997 Avg. Salary	Lost Wages
Eastern Washington						
SIC_8	0.25	246	225	21	\$23,919	\$502,299
SIC_24	6.71	6513	5969	544	\$28,269	\$15,378,336
SIC_26	2.13	2068	1895	173	\$38,951	\$6,738,523
SIC_241	1.28	1246	1142	104	\$27,291	\$2,838,264
SIC_242	2.67	2595	2378	217	\$28,812	\$6,252,204
SIC_243	2.09	2034	1864	170	\$22,282	\$3,787,940
SIC_503	0.78	760	696	63	\$38,027	\$2,395,701
SIC_511	0.78	762	698	64	\$32,541	\$2,082,624
Western Washington						
SIC_8	0.57	1860	1491	369	\$22,885	\$8,444,565
SIC_24	7.87	25580	20509	5071	\$30,406	\$154,188,826
SIC_26	4.21	13676	10965	2711	\$45,253	\$122,680,883
SIC_241	2.06	6681	5356	1324	\$32,250	\$42,699,000
SIC_242	2.64	8588	6886	1702	\$33,235	\$56,565,970
SIC_243	2.19	7131	5717	1414	\$27,223	\$38,493,322
SIC_503	1.98	6451	5172	1279	\$33,774	\$43,196,946
SIC_511	1.38	4473	3586	887	\$25,274	\$22,418,038

Table 14 calculates lost wages associated with a reduction in harvest of 10% in eastern Washington and 20% in western Washington, by sector. Since timber has a long management cycle, the impact of lower timber harvests on employment will take place over time and depends on market conditions that are discussed below. Nevertheless, the lost employment from a reduced timber base suggests substantial wage losses and potentially large disproportionate impacts on small businesses. The losses amount to nearly \$16 million in eastern Washington for the forestry and saw-milling sectors (mostly assumed to impact small businesses) and nearly \$7 million for the pulp and paper sectors (mostly assumed to impact large businesses). In western Washington, the losses are over \$160 million for the saw-milling and forestry sectors (again assumed to be mostly small businesses) and \$123 million for the pulp and paper sectors.

Market conditions may potentially affect the impact of increased riparian habitat buffers on the timber asset values and employment losses through a price effect. In particular, potential price changes may influence the value of the timber that can be sold and hence reduce the cost of compliance for some forest businesses. The higher timber values would benefit timber owners while timber purchasers would face increased raw material costs to the extent that they cannot

pass on the increase to final consumers. Given the national and international nature of both the lumber and pulp and paper markets, Washington mills do not possess the market power to influence market prices, hence their ability to pass on the added costs to consumer is limited. Nevertheless, timberland owners may see an increase in value and this potential increase needs to be evaluated.

The price response depends on the percent substitution of foregone timber harvests and existing market demand conditions. The greater this substitution, the lower the effect on price, the less likely timber prices will change. Lower demand for wood products will also lower any upward price pressure from lower timber harvests. Over time, as demand recovers, the foregone timber will likely be substituted by harvests from other areas, which is likely to lessen any growth in the price of timber from reduced supplies. As a result the potential increase in value of timber that can be sold may not be very large due to substitution possibilities and reduced demand.

The potential reduction in timber volume for western Washington is estimated at 650 million board feet. The price elasticity of timber¹¹ suggests that unless demand declines and no substitute timber is available to fill in for the shortfall, prices may increase by 40%. However, there is likely to be a

decline in demand that will offset the projected timber shortage and prevent timber prices from climbing higher. That reduction in demand may be as large as a 2.5% drop in housing starts for next year, which would lower current log consumption by as much as 7.5% for 2001. This demand decline may be large enough to offset a substantial portion of the estimated 650 million board foot decline in timber supply. Harvests in the short-term from available non-impacted acres can further reduce the price effect from increased riparian buffer area. Therefore, in the short-term, prices may not rise due to these two factors that will offset and substitute for the reduced timber availability. With the recovery of lumber markets in 2002, renewed demand pressure will likely impose upward pressure on timber prices. Renewed upward price pressure over the medium and long term may occur. However, substitution from other areas where timber costs are lower may offset any substantial price increase associated with the reduced harvest in western Washington in the longer term. As a result, if a price increase results from reduced timber availability, it is likely to be short-term in nature and have a minimal impact on the cost of compliance.

The situation in eastern Washington is similar. The same decline in demand expected in the western region is also likely to reduce any immediate price increase in the timber markets. The projected reduction of 97 million board feet in timber would result in a price increase of nearly 20% if no reduction in demand or timber substitution were to occur. However, both the expected reduction in demand and the availability of non-impacted area timber in the short-term is likely to reduce any potential price increase to timber owners.

MITIGATION

In response to RFA, the FPB and the Washington State Legislature have taken steps to reduce the cost of the proposed new forest practices rules on small businesses. The steps include the following:

1) Delaying compliance timetables - Road maintenance and abandonment plans required by the new rules have different submittal deadlines for small landowners. Small landowners are allowed to submit the road maintenance and abandonment plan concurrent with an application so the landowners would be closer in time to realizing revenue from a harvest.

2) A riparian easement program was established for small landowners who harvest less than two million board feet of timber per year. This program acquires easements from small forest landowners along riparian and other areas of value to the State for protection of aquatic resources. The participants are compensated for trees that are required to be left after harvest in the riparian area.

The compensation program would pay an estimated \$0.68 on average for western Washington small landowners for every \$1.00 of lost sales resulting from new RMZ. The estimate is calculated using the sampled businesses, identifying small harvesters based on available timber for harvests in the short term¹². The total compensation package for the small businesses that were sampled for the study would total

\$3.9 million compared to the \$5.7 million in lost sales associated with the RMZ.

The compensation for eastern Washington is estimated at \$0.50 on average for small landowners for every \$1.00 of lost sales from the new RMZ. The total compensation for those businesses sampled amounts to \$233,000 compared to the \$467,000 in foregone sales. The difference in compensation between eastern and western Washington is due to the higher proportion of compliance cost associated with road maintenance and stream crossing in eastern Washington.

3) Small landowners who own less than 80 acres statewide (with a forest practices application on less than 20 acres) are not required to follow the new forest practices rules for riparian protection but are subject to the permanent riparian management zone rules and watershed analysis prescriptions in effect as of January 1, 1999, plus an additional 15% volume requirement where watershed analysis prescriptions are not in effect. These landowners will be allowed to harvest more timber than larger landowners under the new rules.

The mitigation for these small landowners is substantial. In western Washington, the mitigation reduces potential foregone sales from \$1.1 million to \$147,000. In eastern Washington the compliance cost is reduced by \$800,000 (the estimated value of lost sales).

4) Small landowners with timber harvests of less than 2 million board feet receive a 16% tax credit on taxes imposed under RCW 84.33.074 for complying with the new forest practices rules. The harvesters will pay a lower timber tax for timber harvested in compliance with the new proposed rules.

5) The DNR established a small forest landowner office to be a resource and focal point for small forest landowner concerns.

6) Other mitigation measures listed in the new proposed forest practices rules that available to all landowners include: alternate plans, multi-year permits, and Habitat Conservation Plan (HCP) exemptions. Alternate plans allow a landowner to develop an alternate method of protecting public resources that might better fit their particular situation, yet still provide equal or a greater level of protection of public resources. Those landowners that have unusual constraints that make it difficult to comply with the forest practices rules as written have an option to propose an alternate plan. Multi-year permits allow a landowner in a watershed analysis unit to instigate multiple forest practice actions for up to 5 years as opposed to the standard 2-year permit. Landowners with an approved HCP that provides for species protection under the forest practices rules are not subject to forest practices rules.

APPENDIX: SUPPLEMENTAL DATA

Table A1. Employment breakdown by sector

SIZE OF FIRM, FIRST QUARTER 2000
COVERED EMPLOYMENT AND PAYROLLS
FOR SELECTED SIC CODES

SIC	STATEWIDE				EASTERN WASH				WESTERN WASH			
	UNITS	EMP	UNITS	EMP	UNITS	EMP	UNITS	EMP	UNITS	EMP	UNITS	EMP
	<50	<50	>=50	>=50	<50	<50	>=50	>=50	<50	<50	>=50	>=50
081	115	481	*	*	10	16	*	*	105	465	*	*
241	921	3,812	24	2,717	243	743	*	*	678	3,069	*	*
242	180	1,555	67	11,317	26	267	17	2,164	154	1,288	50	9,153
243	235	2,737	45	6,951	41	427	10	1,964	194	2,310	35	4,987
26	78	1,079	57	14,418	15	197	10	1,931	63	852	47	12,487
5031	423	2,760	19	1,431	52	302	5	298	371	2,458	14	1,133
511	457	3,553	24	3,293	58	676	3	487	399	2,877	21	2,806
SIC												
081												
241	97%	58%	3%	42%								
242	73%	12%	27%	88%	60%	11%	40%	89%	75%	12%	25%	88%
243	84%	28%	16%	72%	80%	18%	20%	82%	85%	32%	15%	68%
26	58%	7%	42%	93%	60%	9%	40%	91%	57%	6%	43%	94%
5031	96%	66%	4%	34%	91%	50%	9%	50%	96%	68%	4%	32%
511	95%	52%	5%	48%	95%	58%	5%	42%	95%	51%	5%	49%

Source: Employment and Securities Data. An* indicates information withheld.

Table A2. Water type miles by old and new typing for western Washington

Water Body and Stream Miles

Western Washington		Code 1		1	Code 2		2	Code 3		3	Grand Total
		no	yes	Total	no	yes	Total	no	yes	Total	
WATER_TYPE	CNTY										
	1	CLALLAM	4.35	1.51	5.87						5.87
		CLARK	0.20		0.20						0.20
		COWLITZ	0.53	1.27	1.80						1.80
		GRAYS HARBOR	3.92	1.31	5.24						5.24
		JEFFERSON	4.02	0.24	4.25						4.25
		KING	6.58		6.58						6.58
		LEWIS	1.74	0.95	2.69						2.69
		MASON	5.13	3.05	8.18						8.18
		PACIFIC	0.28	4.51	4.79						4.79
		SKAGIT	0.73		0.73						0.73
		SKAMANIA	1.95	0.43	2.38						2.38
		SNOHOMISH	5.31		5.31						5.31
		THURSTON	2.97		2.97						2.97
	WAHIAKUM		0.05	0.05						0.05	
	WHATCOM	2.24		2.24						2.24	
1 Total		39.96	13.32	53.28						53.28	
2	CLALLAM	0.10	0.04	0.14							0.14
	GRAYS HARBOR	2.39	1.23	3.61							3.61
	KING	0.35		0.35							0.35
	MASON	0.43	1.39	1.82							1.82
	PACIFIC		0.86	0.86							0.86

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	SNOHOMISH	1.09		1.09						1.09	
	WHATCOM	0.33		0.33						0.33	
2 Total		4.68	3.51	8.19						8.19	
	3 CLALLAM	4.23	3.07	7.30						7.30	
	COWLITZ	0.08	2.25	2.32						2.32	
	GRAYS HARBOR	2.93	11.92	14.85						14.85	
	JEFFERSON	0.79		0.79						0.79	
	KING	3.91	2.17	6.08			0.06		0.06	6.14	
	KITSAP	2.20		2.20						2.20	
	LEWIS	2.56	4.41	6.96						6.96	
	MASON	2.58	4.88	7.46						7.46	
	PACIFIC	0.05	6.78	6.84						6.84	
	PIERCE	0.14	4.61	4.75						4.75	
	SNOHOMISH	2.79		2.79						2.79	
	THURSTON	0.19		0.19						0.19	
	WHATCOM	1.06		1.06						1.06	
3 Total		23.51	40.08	63.59			0.06		0.06	63.65	
	4 CLALLAM	1.23	1.08	2.31	0.00	0.30	0.31	0.30	0.45	0.75	3.36
	CLARK	1.25		1.25							1.25
	COWLITZ		3.82	3.82		3.41	3.41		0.69	0.69	7.92
	GRAYS HARBOR	0.59	3.27	3.87	0.00	0.28	0.28		0.10	0.10	4.25
	JEFFERSON	0.31		0.31							0.31
	KING	0.34	0.63	0.97	0.22	0.70	0.92	0.25	2.37	2.62	4.50
	KITSAP	0.31		0.31	0.66		0.66	0.13		0.13	1.10
	LEWIS	1.69	1.75	3.44		1.13	1.13		0.52	0.52	5.08
	MASON	2.91	0.43	3.33		0.51	0.51		0.86	0.86	4.70
	PACIFIC		4.66	4.66		2.71	2.71		2.05	2.05	9.42
	PIERCE	0.16	1.08	1.23							1.23
	SKAGIT	0.43		0.43							0.43
	SKAMANIA			0.00				0.04	0.65	0.69	0.69
	SNOHOMISH	1.64	0.15	1.79	0.12		0.12				1.91
	WAHKIAKUM		0.50	0.50		0.12	0.12		0.22	0.22	0.84
	WHATCOM	1.04		1.04							1.04
4 Total		11.90	17.36	29.25	1.01	9.15	10.16	0.72	7.90	8.62	48.03
	5 CLALLAM	5.02	3.91	8.93	1.61	0.44	2.05	3.51	1.89	5.40	16.38
	CLARK	0.61		0.61	0.81		0.81				1.42
	COWLITZ	0.04	2.12	2.16		6.74	6.74		11.39	11.39	20.28
	GRAYS HARBOR	4.82	14.95	19.77	0.25	9.50	9.76	0.35	6.05	6.40	35.93
	JEFFERSON	1.70	0.03	1.73	0.88	0.30	1.19	0.35		0.35	3.27
	KING	0.71	1.44	2.15	1.07	1.22	2.30	2.83	8.47	11.31	15.75
	KITSAP	2.62		2.62							2.62
	LEWIS	6.55	3.65	10.20	0.17	2.34	2.52	0.29	8.05	8.34	21.05
	MASON	1.31	3.50	4.81		0.69	0.69		3.18	3.18	8.68
	PACIFIC	0.60	6.75	7.36		7.21	7.21		10.82	10.82	25.39
	PIERCE		3.06	3.06		0.86	0.86		1.15	1.15	5.07
	SKAMANIA	0.00	0.17	0.17	0.09		0.09	0.21	0.31	0.52	0.77
	SNOHOMISH	1.92		1.92	0.58		0.58				2.50
	WAHKIAKUM	0.13	1.50	1.63		1.62	1.62	0.09	2.44	2.53	5.78
5 Total		26.02	41.09	67.11	5.46	30.94	36.40	7.64	53.74	61.38	164.88
	9 CLALLAM	0.16	0.21	0.37							0.37
	CLARK	3.18		3.18	0.14		0.14				3.32
	COWLITZ		0.44	0.44	0.18	2.01	2.19		6.40	6.40	9.04
	GRAYS HARBOR	1.17	2.84	4.00	0.82	2.67	3.49	0.10	3.10	3.20	10.69

JEFFERSON	0.52		0.52	0.73		0.73	0.11		0.11	1.36
KING	1.48	2.14	3.62	0.27	0.42	0.68	0.94	5.43	6.37	10.67
KITSAP	0.97		0.97							0.97
LEWIS	6.62	4.41	11.03	1.42	2.68	4.10	3.37	15.40	18.77	33.90
MASON	9.87	4.40	14.27	0.11	0.78	0.89	0.23	4.62	4.85	20.01
PACIFIC	0.76	5.53	6.28		7.61	7.61		24.39	24.39	38.28
PIERCE	1.02	0.71	1.73		0.08	0.08				1.81
SKAMANIA			0.00	0.05		0.05	1.00	0.28	1.27	1.33
SNOHOMISH	4.07	0.04	4.12		0.25	0.25				4.37
THURSTON	5.13		5.13	0.18		0.18	0.41		0.41	5.72
WAHKIAKUM	0.18	1.25	1.42		2.02	2.02		4.86	4.86	8.31
WHATCOM	1.72		1.72							1.72
9 Total	36.85	21.96	58.81	3.89	18.53	22.42	6.15	64.48	70.63	151.86
Grand Total	142.91	137.32	280.23	10.36	58.61	68.97	14.56	126.13	140.69	489.89

Notes: Yes indicates that the miles occur on large business holdings. No indicates that miles occur on small business holdings. New Code 1 indicates water type S and F. New Code 2 indicates water type N, perennial stream. New Code 3 indicates water type N, seasonal stream.

Table A3. Water type miles for eastern Washington

Water Body and Stream Miles

Eastern Washington WATER_TYPE CNTY	New Code 1		1 Total	New Code 2		2 Total	New Code 3		3 Total	Grand Total
	YES	NO		YES	NO		YES	NO		
1 CHELAN		0.64	0.64							0.64
FERRY		0.62	0.62							0.62
KITTITAS		0.82	0.82							0.82
OKANOGAN		5.57	5.57							5.57
SPOKANE		3.63	3.63							3.63
STEVENS		10.46	10.46							10.46
1 Total		21.73	21.73							21.73
2 KLICKITAT		2.53	2.53							2.53
OKANOGAN		1.98	1.98							1.98
SPOKANE		0.18	0.18							0.18
STEVENS	0.04	6.03	6.07							6.07
2 Total	0.04	10.71	10.76							10.76
3 CHELAN		0.33	0.33							0.33
FERRY	1.14	0.06	1.20							1.20
GARFIELD		1.22	1.22							1.22
KITTITAS	1.28	0.36	1.64							1.64
KLICKITAT	1.40		1.40							1.40
OKANOGAN		3.66	3.66							3.66
PEND OREILLE		0.19	0.19							0.19
SPOKANE		1.71	1.71							1.71
STEVENS	1.25	2.85	4.10							4.10
3 Total	5.06	10.38	15.44							15.44
4 CHELAN	1.03	2.98	4.01							4.01
COLUMBIA		1.03	1.03							1.03
FERRY							0.27		0.27	0.27
KITTITAS				0.22	0.80	1.02				1.02
KLICKITAT	0.60	5.81	6.41		0.36	0.36				6.77
OKANOGAN		3.69	3.69		1.22	1.22	0.21	0.21		5.11
PEND OREILLE		4.00	4.00							4.00
SPOKANE		2.49	2.49							2.49
STEVENS	0.97	9.11	10.08	0.05	0.73	0.78	0.91	0.91		11.77

4 Total		2.60	29.11	31.71	0.27	3.11	3.38	0.27	1.12	1.38	36.47
5	CHELAN	0.76	2.03	2.79	2.65	1.15	3.81	7.60	9.58	17.18	23.78
	COLUMBIA	0.30	1.55	1.85		0.44	0.44				2.29
	FERRY	0.04	0.04	0.07	0.24		0.24	2.55		2.55	2.87
	GARFIELD		0.51	0.51		0.88	0.88		0.59	0.59	1.98
	KITTITAS	0.12	1.06	1.17	0.82	0.24	1.06	1.40		1.40	3.63
	KLICKITAT	0.55	7.57	8.12		0.58	0.58		0.03	0.03	8.74
	LINCOLN		0.49	0.49							0.49
	OKANOGAN		6.73	6.73		7.35	7.35		1.15	1.15	15.23
	PEND OREILLE		4.53	4.53		1.57	1.57		2.77	2.77	8.87
	SPOKANE		3.52	3.52		0.14	0.14				3.66
	STEVENS	3.57	8.31	11.88	2.08	4.69	6.77	0.94	3.65	4.59	23.23
5 Total		5.34	36.32	41.67	5.79	17.05	22.84	12.49	17.77	30.26	94.77
Grand Total		13.05	108.26	121.31	6.06	20.16	26.22	12.76	18.88	31.64	179.17

¹ The 1999 Salmon Recovery Act, 1999 Laws, 1st Special Session, Chapter 4.

² Eastern Washington is defined as the area east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

³ November 12, 1997, February 11, 1998, April 2, 1998, May 13, 1998, and August 12, 1998, Jan 29, 1999, Feb 10, 1999, Mar 31, 1999, June 17, 1999, July 21, 1999, Aug 10-11, 1999, Sept 29, 1999, Nov 16, 1999, Jan 20, 1999, Mar 22, 1999, May 10, 1999. Some meetings were broadcast statewide on TV Washington.

⁴ The 1999 Salmon Recovery Act, 1999 Laws, 1st Special Session, Chapter 4.

⁵ Department of Natural Resources. (1997). Small Business Economic Impact Statement on Water Typing Rules.

⁶ Mason, Bruce & Girard, Inc. (1997). *Proposed Statutory Land Values for Purposes of Forest Land Taxation in State of Washington*

⁷ Department of Natural Resources. (1997). Small Business Economic Impact Statement on Water Typing Rules.

⁸ David Larson. 1998. Washington Timber Harvest 1997. Washington State Department of Natural Resources. Resource Planning and Asset, Olympia, Wa.

⁹ Perez-Garcia and Kralej. 2000. Long-term price elasticity of demand for timber from western and eastern Washington. Unpublished manuscript. University of Washington, College of Forest Resources, Seattle Wa.

¹⁰ Non-impacted acres are acres outside the RMZ in a parcel. The sum of acres in buffers and non-impacted acres is equal to forested acres.

¹¹ Perez-Garcia and Kralej. 2000. Long-term price elasticity of demand for timber from western and eastern Washington. Unpublished manuscript. University of Washington, College of Forest Resources, Seattle Wa.

¹² Small businesses are defined differently for the compensation program than under the RFA. However, the sampled businesses labeled as small are identical under both definitions.

A copy of the statement may be obtained by writing to Patricia Anderson, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012.

Section 201, chapter 403, Laws of 1995, applies to this rule adoption. Many of the proposed rules are significant legislative rules.

Hearing Location: Doubletree Hotel, 1507 North First Street, Yakima, WA, on April 24, 2001, at 3 p.m.; and at the Doubletree Hotel, 18740 Pacific Highway South, Seattle, WA, on April 25, 2001, at 3 p.m.

Assistance for Persons with Disabilities: Contact Rules Coordinator at (360) 902-1413, by April 16, 2001, TTY (360) 902-1125.

Submit Written Comments to: Patricia Anderson, Department of Natural Resources, Forest Practices Division, fax (360) 902-1789, by April 26, 2001, 5 p.m.

Date of Intended Adoption: May 17, 2001.

March 21, 2001

Doug Sutherland

Chair

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-08-020 Orientation and training. The department shall be responsible for a continuing program of orientation and training, relating to forest practices and ((regulation)) rules thereof, pursuant to RCW 76.09.250. Such program shall include:

(1) **Investigation of current** developments in and practical applications of forest resources and related technology.

(2) **Continuing training of** department personnel in the current status of forest resources technology and related disciplines.

(3) **Dissemination of information** on current forest practice technology to the public, in a manner determined by the department to be effective.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-08-030 Reporting procedures. The department shall:

(1) **Survey and identify** all silviculturally related non-point sources of pollution and related control programs in the state,

(2) **Prepare an analysis** of the above activities and programs, and

(3) **Report and recommend** to the forest practices board and to the governor additional rules ((and regulations)), procedures and/or methods necessary for the control of such sources to the extent feasible.

PROPOSED

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-08-035 Continuing review of forest practices ((regulations)) rules. *(1) Annual evaluations. The department, after consulting with affected state agencies, Indian tribes, forest landowners, fish and wildlife, natural resources, and environmental interest groups, shall beginning July 1, 1988, report annually to the forest practices board an assessment of how ((regulations)) the rules and voluntary processes are working.

*~~(2) Adaptive management program. ((The department is directed to report to the board on opportunities to modify these regulations when baseline data, monitoring, evaluation or the use of interdisciplinary teams show that such adaptive management will better meet the purposes and policies of the Forest Practices Act.))~~ The adaptive management program will be used to determine the effectiveness of forest practices rules in aiding the state's salmon recovery effort and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery. The program provides assurances that rules and guidance not meeting aquatic resource objectives will be modified in a streamlined and timely manner. The board may also use this program to adjust other forest practice rules and guidance in order to further the purposes of chapter 76.09 RCW. The specific components of the adaptive management program are set forth in WAC 222-12-045.

(3) Resource management plans. The department is directed to develop a method for cooperative voluntary resource management planning among forest landowners, governmental agencies, affected Indian tribes, and environmental groups which would result in the development of plans which might be used as an alternative to the forest practice ((regulations)) rules in achieving the purposes and policies set forth in the act. This should be done through pilot projects, at least one of which should be located on the east side of the Cascade summit and one on the west side of the Cascade summit.

AMENDATORY SECTION (Amending Order 429, Resolution No. 8-8-84, filed 8/29/84, effective 10/1/84)

WAC 222-10-010 Policies and authorities. (1) **This chapter** is promulgated pursuant to the authority granted in RCW 76.09.010, 43.21C.120 and chapter 197-11 WAC.

(2) **The forest practices board**, according to RCW 76.09.040, possesses the authority to promulgate forest practices ((regulations)) rules establishing minimum standards for forest practices and setting forth necessary administrative provisions.

(3) **The forest practices board** adopts by reference the policies of SEPA as set forth in RCW 43.21C.020.

(4) **A ((Class IV Special)) forest practices ((approval)) application or notification** which requires a threshold determination will be conditioned when necessary to mitigate specific adverse impacts which are identified in the environmental documents prepared under SEPA. An application ((for a Class IV Special forest practice)) or notification will be denied when the proposal would result in sig-

nificant adverse impacts identified in a final or supplemental environmental impact statement prepared under SEPA, and reasonable mitigation measures are insufficient to mitigate the identified impacts and denial is consistent with all provisions of the acts cited in subsection (1) of this section.

(5) **SEPA policies** and procedures ((required for administration of Class IV Special forest practices)) shall be implemented by the department of natural resources.

NEW SECTION

WAC 222-10-030 *SEPA policies for potentially unstable slopes and landforms. In addition to SEPA policies established elsewhere in this chapter, the following policies apply to forest practices described in WAC 222-16-050 (1)(d) relating to construction or harvest on potentially unstable slopes or landforms.

(1) In order to determine whether such forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit the following additional information, prepared by a qualified expert. The expert must describe the potentially unstable landforms in and around the application site, and analyze:

(a) The likelihood that the proposed forest practices will cause movement on the potentially unstable slopes or landforms, or contribute to further movement of a potentially unstable slope or landform;

(b) The likelihood of delivery of sediment or debris to any public resources, or in a manner that would threaten public safety; and

(c) Any possible mitigation for the identified hazards and risks.

(2) The department's threshold determination will include an evaluation of whether the proposed forest practices:

(a) Are likely to increase the probability of a mass movement on or near the site;

(b) Would deliver sediment or debris to a public resource or would deliver sediment or debris in a manner that would threaten public safety; and

(c) Such movement and delivery are likely to cause significant adverse impacts.

If the department determines that (a), (b) and (c) of this subsection are likely to occur, then the forest practice is likely to have a probable significant adverse impact.

(3) The department will evaluate the proposal, using appropriate expertise and in consultation with other affected agencies and Indian tribes.

(4) Specific mitigation measures or conditions must be designed to avoid accelerating rates and magnitudes of mass wasting that could deliver sediment or debris to a public resource or could deliver sediment or debris in a manner that would threaten public safety.

(5) Qualified expert for the purposes of this section means a person with a master's degree in geology or geomorphology or a related field, or a significant amount of post-graduate course or thesis work or other training in geomorphology or mass movement, and an additional 3 years of field

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experience in the evaluation of relevant problems in forested lands.

NEW SECTION

WAC 222-10-035 *Watershed analysis SEPA policies. When the department considers a watershed analysis for approval as in WAC 222-22-080, the department will perform a review under SEPA as a nonproject proposal. When making the threshold determination for a watershed analysis, the department shall only make a determination of significance if, when compared to rules or prescriptions in place at the time of the analysis or the 5-year review, the prescriptions will cause a probable significant adverse impact on elements of the environment other than those addressed in the watershed analysis process.

AMENDATORY SECTION (Amending WSR 96-12-038, filed 5/31/96, effective 7/1/96)

WAC 222-10-041 Northern spotted owls. The effective date of this section is July 1, 1996. The following policies shall apply to forest practices subject to SEPA if the forest practices may cause adverse impacts to northern spotted owls.

(1) **In SOSEAs or areas of SOSEAs where the goal is demographic support,** suitable spotted owl habitat should be maintained either to protect the viability of the owl(s) associated with each northern spotted owl site center or to provide demographic support for that particular SOSEA as described in the SOSEA goals.

(2) **In SOSEAs or areas of SOSEAs where the goal is dispersal support,** either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or dispersal habitat should be managed, over time, to provide the dispersal support for that particular SOSEA as described in the SOSEA goals. Dispersal support is provided by a landscape which includes dispersal habitat at the stand level interspersed with areas of higher quality habitat. Stands of dispersal habitat should be managed to reduce gaps between stands and to maintain a sufficient level of dispersal habitat to meet the SOSEA goals over time.

(3) **In SOSEAs or areas of SOSEAs where the goal is a combination of dispersal support and demographic support,** either suitable spotted owl habitat should be maintained to protect the viability of the owl(s) associated with each northern spotted owl site center or a variety of habitat conditions should be provided which in total are more than dispersal support and less than demographic support. This can be accomplished by providing:

(a) Dispersal support as described in subsection (2) of this section;

(b) Areas of suitable spotted owl habitat that contain some opportunities for nesting as well as roosting and foraging habitat; and

(c) Connectivity between areas of SOSEAs designated for demographic support or adjacent federal lands which are

designated as late successional reserves, congressionally reserved areas, or administratively withdrawn areas.

(4) **Within SOSEAs,** the following amounts of suitable habitat are generally assumed to be necessary to maintain the viability of the owl(s) associated with each northern spotted owl site center, in the absence of more specific data or a mitigation plan, as provided for in subsections (6) and (7) of this section respectively:

(a) All suitable spotted owl habitat within 0.7 mile of each northern spotted owl site center;

(b) Including the suitable spotted owl habitat identified in (a) of this subsection:

(i) For the Hoh-Clearwater/Coastal Link SOSEA - A total of 5,863 acres of suitable spotted owl habitat within the median home range circle (2.7 mile radius).

(ii) For all other SOSEAs - A total of 2,605 acres of suitable spotted owl habitat within the median home range circle (1.8 mile radius).

The department shall first identify the highest quality suitable spotted owl habitat for this purpose. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable habitat. Suitable spotted owl habitat identified outside 0.7 mile of a northern spotted owl site center may support more than one median home range circle.

Suitable spotted owl habitat harvested by a landowner shall continue to be counted as part of the total acres necessary under (b) of this subsection for other landowners within the median home range circle if the harvest is conducted pursuant to agreements or plans approved under subsection (6) of this section or WAC 222-16-080 (1)(h)(iv), (6)(a), (b), or ((e)) (f).

(5) **Outside SOSEAs,** during the nesting season (between March 1 and August 31), seventy acres of the highest quality suitable spotted owl habitat surrounding a northern spotted owl site center should be maintained. The seventy acres for one site center shall not be utilized for meeting suitable habitat needs of any other site center.

(6) The assumptions set forth in subsection (4) of this section are based on regional data. Applicants or others may submit information that is more current, accurate, or specific to a northern spotted owl site center, proposal, or SOSEA circumstances or goals. The department shall use such information in making its determinations under this section where the department finds, in consultation with the department of fish and wildlife, that the information is more likely to be valid for the particular circumstances than the assumptions established under subsection (4) of this section. If the department does not use the information, it shall explain its reasons in writing to the applicant.

(7) The department shall consider measures to mitigate identified adverse impacts of an applicant's proposal. Mitigation measures must contribute to the achievement of SOSEA goals or to supporting the viability of impacted northern spotted owl site centers.

NEW SECTION

WAC 222-10-125 Exemption from RCW 43.21C.030

(2)(c). Decisions pertaining to the following are not subject to any procedural requirements implementing RCW 43.21C.030 (2)(c): Approval of forest road maintenance and abandonment plans, approval of future timber harvest schedules involving east-side clear cuts, acquisitions of forest lands in the riparian open space program; and acquisitions of conservation easements pertaining to forest lands in riparian zones under the forest riparian easement program.

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-12-010 Authority. These forest practices ((regulations)) rules are adopted pursuant to chapter 76.09 RCW, RCW 76.13.100 through 76.13.130, and RCW 77.85.180 through 77.85.190. Where necessary to accomplish the purposes and policies stated in the act, the board is authorized to promulgate forest practices ((regulations establishing minimum standards for forest practices and setting forth necessary administrative provisions;)) rules pursuant to chapter ((34.04) 34.05 RCW and in accordance with the procedures enumerated in the act. These rules establish minimum standards for forest practices, provide procedures for the voluntary development of resource management plans, set forth necessary administrative provisions, establish procedures for the collection and administration of forest practice fees, allow for the development of watershed analyses, and establish the riparian open space program. The board also establishes which forest practices will be included within each class and is authorized to adopt rules under RCW 76.09.055, 76.09.370, and 76.13.120(9).

Promulgation of all forest practices ((regulations)) rules shall be accomplished so that compliance with such forest practices ((regulations)) rules will achieve compliance with the water quality laws.

Those ((regulations)) rules marked with an asterisk (*) pertain to water quality protection; pursuant to RCW 76.09.040 they ((will also be adopted by the department of ecology and)) can be amended only by agreement between the board and the department of ecology.

Forest practices ((regulations)) rules shall be administered and enforced by the department except as otherwise provided in the act. Such ((regulations)) rules shall be administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-12-020 ((Regulation) Rule sections. These ((regulations)) rules are organized as follows:

- Chapter 222-08 WAC Practices and procedures.
- Chapter 222-10 WAC State Environmental Policy Act Guidelines.
- Chapter 222-12 WAC Policy and organization.
- Chapter 222-16 WAC Definitions.

- Chapter 222-20 WAC Application and notification procedures.
- Chapter 222-21 WAC Small forest landowner forestry riparian easement program.
- Chapter 222-22 WAC Watershed analysis.
- Chapter 222-23 WAC Riparian open space program.
- Chapter 222-24 WAC Road construction and maintenance.
- Chapter 222-30 WAC Timber harvesting.
- Chapter 222-34 WAC Reforestation.
- Chapter 222-38 WAC Forest chemicals.
- Chapter 222-42 WAC Supplemental directives.
- Chapter 222-46 WAC Consultation and enforcement.
- Chapter 222-50 WAC Relationship to other laws and ((regulations)) rules.

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

WAC 222-12-030 Classes of forest practices. Forest practices are divided into four classes as specified by RCW 76.09.050. In certain emergencies, as defined in RCW 76.09.060(7), the application or notification may be submitted within 48 hours after commencement of the practice.

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices ((regulations)) rules.

(2) **Class II forest practices** require a notification to the department, and may begin 5 calendar days (or such lesser time as the department may determine) after receipt of a notification by the department ((of the notification)).

(3) **Class III forest practices** ((require an application which)) must be approved or disapproved within 30 or fewer calendar days of receipt of an application by the department. The department is directed to approve or disapprove within 14 calendar days Class III applications not requiring additional field review. Multiyear applications must be approved or disapproved within 45 days of receipt of an application by the department.

(4) **Class IV forest practices** are divided into "Class IV - special," and "Class IV - general," and ((require an application to the department which)) must be approved or disapproved within 30 calendar days of receipt of an application by the department, except that if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-12-040 *Alternate plans—Policy. ((All forest practice operations must comply with the act and further with the rules promulgated pursuant to the act, unless an alternate plan has been approved by the department. An applicant may submit an alternate plan for any or all of the activities described in the application. The department may

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approve an application which departs from the specific provisions of chapters 222-22 through 222-38 WAC, provided that the plan must, in the determination of the department, equal or exceed the protection of public resources as provided in the Forest Practices Act and rules and regulations. The department shall provide an opportunity for comment to the departments of fish and wildlife, ecology, other state agencies, and affected Indian tribes prior to approval of any alternate plan.)) All forest practice operations must comply with both the act and the rules promulgated pursuant to the act, unless an alternate plan has been approved by the department.

(1) The alternate plan process can be used as a tool to deal with a variety of situations, including where the cumulative impacts of regulations disproportionately impact a landowner. In some instances an alternate plan may be used to make minor on-the-ground modifications, which result in significant operation efficiencies. The alternate plan process may be used to address circumstances where a landowner has an economically inaccessible unit. The alternate plan process may also be used to facilitate voluntary landscape, riparian or stream restoration. In all cases, the alternate planning process will result in a plan that provides protection to public resources at least equal in overall effectiveness as provided by the act and rules while seeking to minimize constraints to the management of the affected lands.

(2) The legislature has found in RCW 76.13.100(2) that small forest landowners should also have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. These alternate plans are intended to provide flexibility to small forest landowners that will still provide protection of riparian functions based on specific field conditions or stream conditions on the landowner's property.

(3) Alternate plans do not replace other rules that recognize different types of landowner plans. See e.g., WAC 222-08-035(3), 222-12-041, 222-16-080(6), 222-16-100(1), and 222-16-105.

(4) Landowners are encouraged to communicate with the departments of ecology, fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service and other interested parties prior to submission of an application accompanied by an alternate plan.

NEW SECTION

WAC 222-12-0401 *Alternate plans—Process. (1) Application. A landowner may submit an alternate plan that departs from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application. Alternate plans must be submitted with either a two-year or multiyear application. Alternate plans may support a single forest practices application or multiple applications if the sites included in the plan have sufficient common physical characteristics and elements to justify being considered together. See *Alternate Plan Board Manual* for guidance. WAC 222-12-020(21).

(2) Plan preparation. The landowner is responsible for preparing and submitting an alternate plan. Small forest

landowners may wish to seek the assistance of the small forest landowner office. See WAC 222-12-0402.

(3) Contents of alternate plans. Alternate plans must contain all of the following:

(a) A map of the area covered at a scale acceptable to the department showing the location of any affected streams and other waters, wetlands, unstable slopes, and existing roads. The map must also show the location of proposed road construction, timber harvest, and other forest practices;

(b) A description of how the alternate plan provides public resource protection to meet the approval standard, including a description of the proposed alternate management strategy, prescriptions, and where applicable, aquatic resource enhancements;

(c) A list of the forest practices rules that the alternate management plan is intended to replace;

(d) Where applicable, descriptions of monitoring and adaptive management strategies, including landowner plans for annual performance reviews;

(e) Where applicable, descriptions of an implementation schedule; and

(f) When multiple forest practices applications are submitted with the same alternate plan or when an alternate plan has been used for previous applications, justification that the sites included in the plan share sufficient common physical characteristics and elements to be considered together.

(4) Review of proposed plan. Upon receipt of a forest practices application together with an alternate plan, the department will do all of the following:

(a) Appoint an interdisciplinary team.

(b) Establish a deadline for completion of the interdisciplinary team review that is consistent with the requirements of subsection (5) of this rule; and

(c) Within 5 business days of receipt of an application with an alternate plan, provide copies of the application and alternate plan to the departments of ecology and fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other parties that have expressed an interest in alternate plans in the area of the application. If the landowner is a small forest landowner under WAC 222-21-010(11), copies should also be provided to the small forest landowners office.

(5) Interdisciplinary team.

(a) The department will determine the members invited to participate on an interdisciplinary team. Teams will include members with the qualifications necessary to evaluate the alternate plan. A representative of any affected Indian tribe, and departments of ecology and fish and wildlife will be invited to participate. Each team will include a representative of the landowner and a professional forester employed by the department and shall be led by a department employee.

(b) The interdisciplinary team will conduct a site visit and submit a recommendation to the department at least 3 days prior to the expiration of the application time limit in WAC 222-20-020. The interdisciplinary team may submit a recommendation without a site visit if a small forest landowner under WAC 222-21-010(11) submitted the alternate plan using a template contained in the *Alternate Plan Board Manual* and is a low impact alternate plan and the team deter-

mines a visit is not necessary to evaluate the site specific application of a template or a low impact alternate plan.

(c) The recommendation of the interdisciplinary team shall indicate whether the alternate plan meets the approval standard, or what revisions are necessary to meet the approval standard. The team is intended to work with the landowner in an attempt to reach consensus on the efficacy of the alternate plan. In the absence of consensus, the team will forward reports reflecting the majority and minority opinions, or the landowner may elect to withdraw or revise the proposal.

(6) Approval standard. An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules.

(7) Approval, conditions, or disapproval. Upon receipt of the interdisciplinary team's recommendation, the department shall determine whether to approve, disapprove, or condition the application based on the approval standard. The department shall give substantial weight to the recommendations of the interdisciplinary team in cases where a consensus recommendation is forwarded. If the department disapproves or conditions a forest practices application with an alternate plan, the department will provide a written statement to the landowner explaining why the application was conditioned or denied.

NEW SECTION

WAC 222-12-0402 *Assistance available for small forest landowners. (1) The small forest landowner office has been established within the department to be a resource and focal point for small forest landowner concerns and policies. A small forest landowner is defined in WAC 222-21-010(11). The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest landowner's economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature has directed that office to assist small forest landowners in preparing alternate plans appropriate to small forest landowners. See RCW 76.13.100 and 76.13.110(3).

(2) Small forest landowners interested in alternate plans are encouraged to contact the small forest landowner office for assistance in preparing an alternate plan. The office may provide technical assistance in understanding and using the *Alternate Plan Board Manual*, assistance in developing an individualized alternate plan for the small forest landowner and facilitation of small forest landowner interactions with the department, other state agencies, federal agencies, affected Indian tribes and the interdisciplinary team that may review the small forest landowner's alternate plan.

NEW SECTION

WAC 222-12-0403 *Cooperative development of Alternate Plan Board Manual. The department will develop the *Alternate Plan Board Manual* (WAC 222-12-090(21)) to submit to the board in cooperation with representatives of the

small forest landowner office and advisory committee, the departments of ecology and fish and wildlife, United States Fish and Wildlife Service, National Marine Fisheries Service, and affected Indian tribes.

The manual should include:

(1) As required by RCW 76.13.110(3), the small forest landowner office recommendations for alternate plans or alternate harvest restrictions that meet riparian functions while generally requiring less costly regulatory prescriptions;

(2) The effectiveness of strategies for meeting resource objectives and protecting public resources;

(3) Template prescriptions designed to meet resource objectives to address common situations that are repeatedly addressed in alternate plans or strategies to simplify the development of future plans or strategies, including low impact situations and site-specific physical features;

(4) Appropriate recognition or credit for improving the condition of public resources; and

(5) Criteria to assist the department in determining whether a small forest landowner alternate plan qualifies as a low impact alternate plan.

NEW SECTION

WAC 222-12-0404 *Cooperation for effective alternate planning. The department will work cooperatively with associations representing the interests of large and small forest landowners to develop more efficient alternate planning guidance and processes. In pursuing greater efficiency and technical assistance, the department will consider:

(1) Successful alternate plans, and small forest landowner alternate management strategies and processes that can be used by other small forest landowners as examples of the plan development and approval process;

(2) Auditing and monitoring results;

(3) Maintaining a list of technical experts available to landowners in preparing such plans; and

(4) Partnerships between the department and organizations supporting forest land stewardship principles.

NEW SECTION

WAC 222-12-0405 *Auditing and monitoring. (1) Audits. The department will conduct audits of landowner's compliance with the terms of alternate plans. The department will specifically review and approve each landowners scheduled performance reports by checking the reports themselves or by implementing a more extensive audit involving field verification. The department audit program for alternate plans will be designed to be consistent with the terms of any agreements with the federal government regarding fish and water quality.

(2) The small landowners office is required by RCW 76.13.110(3) to evaluate the cumulative impact of alternate plans for small forest landowners on essential riparian functions at the subbasin or watershed level. The department will provide the result of this evaluation to the board.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-12-046 Cumulative effects. The purpose of this section is to identify how the forest practices rules address changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices. This interaction is referred to as "cumulative effects." The following approaches have been taken:

(1) Title 222 WAC establishes minimum standards for all forest practices, regardless of the class of forest practice application.

(2) Forest practices which have a potential for a substantial impact on the environment are classified as Class IV-Special or Class IV-General by WAC 222-16-050 and receive an evaluation as to whether or not a detailed statement must be prepared pursuant to chapter 43.21C RCW.

(3) Certain rules are designed to focus on specific aspects of cumulative effects of forest practices. For example:

(a) WAC 222-08-035 requires continuing review of the forest practices regulations and voluntary processes and adopts the concept of adaptive management. WAC 222-12-045 also adopts adaptive management.

(b) WAC 222-12-040 through 222-12-0404 allows alternate plans that ~~((equal or exceed the protection of public resources as provided in the act and rule))~~ provide protection to public resources at least equal in overall effectiveness to the protection provided in the Forest Practices Act and rules.

(c) WAC ~~((222-24-050(1)))~~ 222-24-051 allows the department to require road maintenance and abandonment plans ~~((for those drainages or road systems the department determines based on physical evidence to have a potential to damage public resources)).~~

(d) WAC 222-30-025 addresses harvest unit size and separation requirements.

(e) Chapter 222-22 WAC addresses cumulative effects on the public resources of fish, water, and capital improvements of the state or its political subdivisions.

(f) Chapter 222-46 WAC establishes the enforcement policy for forest practices.

~~(((4) The board is considering measures to further protect cultural resources and wildlife resources. The board shall continue consultation with the departments of ecology, fish and wildlife, natural resources, forest landowners, and federally recognized tribes on these resource issues.))~~

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-12-050 Notices to comply—Stop work orders. (1) **Violations.** When a forest practice has been completed, the department may issue a notice to comply requiring the operator or landowner to correct or compensate for damage to public resources where there was:

(a) A violation of the act, or these rules, or

(b) A deviation from the approved application, or

(c) A willful or negligent disregard for potential damage to a public resource.

(2) **Other required action.** When a forest practice has not yet been completed, the department may issue either a notice to comply to the operator and/or landowner, or a stop work order to the operator, requiring him/her to prevent potential or continuing damage to a public resource where:

(a) The need for additional actions or restrictions has become evident, and

(b) The department determines that a specific course of action is needed to prevent potential or continuing damage to public resources, and

(c) The damage would result or is resulting from the forest practices activities, whether or not the activities involve any violation, unauthorized deviation or negligence.

(3) **No notice to comply** shall be issued to require a person to prevent, correct, or compensate for any damage to public resources which occurs more than 1 year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules: Provided, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules ~~((and regulations))~~ pertaining to providing continuing road maintenance.

(4) **No notice to comply** to recover money damages shall be issued more than 2 years after the date the damage involved occurs.

(5) **In emergency action**, where the department requires the operator or landowner to do immediate work in the bed of the stream the department shall first seek approval from the department of fish and wildlife.

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-12-070 Enforcement policy. Procedures for enforcement of these ~~((regulations))~~ rules by the department are provided in chapter 222-46 WAC. Where the department of ecology determines that a person has failed to comply with the forest practices ~~((regulations))~~ rules relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof in writing. If the department of natural resources fails to take authorized enforcement action within 24 hours, under RCW 76.09.080, 76.09.090, 76.09.120 or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within 48 hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or a notice to comply or impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

NEW SECTION

WAC 222-12-041 Use of approved state and federal conservation agreements for aquatic resources. (1) Forest practices consistent with an agreement described in subsec-

tion (3) below are exempt from the forest practices rules in chapters 222-22 through 222-38 WAC if the following criteria are met:

(a) The forest practices rule pertains to a species included within aquatic resources and that species is covered by an agreement listed in subsection (3) below; and

(b) The primary risk(s) to public resources addressed by the forest practice rules (e.g., delivery of sediment to waters from roads, harvest activities, or mass wasting events; chemical contamination of waters; inadequate recruitment of large woody debris; delivery of thermal energy to waters) is addressed in the agreement. The agreement may address the risk using different prescriptions, approaches, or timing than the forest practice rule.

(2)(a) When the landowner submits an application or notification, the landowner must include a proposed list of specific rules replaced.

(b) The department will review and confirm whether the rules identified by the landowner meet the criteria identified in subsection (1) above.

(c) At the request of the department, the landowner will confer in good faith with the department and provide the department and other interested parties with information necessary to assist the department in implementing this section.

(3) This section applies to landowners who are operating consistent with one of the following agreements that covers a species included within aquatic resources provided that the agreement has received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq., the Endangered Species Act, 16 U.S.C. section 1531 et seq., or the State Environmental Policy Act, chapter 43.21C RCW;

(a) A habitat conservation plan and incidental take permit approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. section 1539(a);

(b) An incidental take statement issued by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. 1536(b);

(c) An "unlisted species agreement" approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(d) A candidate conservation agreement or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection.

For any agreement with a formal application date after July 1, 2001, the landowner must have made a good faith effort to involve the department of fish and wildlife, the department of ecology, department of natural resources, and affected Indian tribes in the development of the related plan or management strategy.

NEW SECTION

WAC 222-12-044 Cooperative opportunities. The forest practices board recognizes and encourages collaborative efforts to build solutions to pressing forest practices issues. The forest practices board may at any time use this method to assist in assessing and recommending solutions to issues. The benefits of this method lie in the ability of disparate groups to use consensus processes to bring recommenda-

tions to the forest practices board. The board will continue to utilize collaborative efforts, such as the Timber, Fish, and Wildlife (TFW) or similar forum. Participants would ideally consist of representation by timber interests, environmental interests, state agencies, local government, federal agencies, tribal governments and other interested parties so long as the collaborative effort utilizes a consensus approach to resolving or addressing issues.

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

WAC 222-12-045 *Adaptive management program.

~~((In order to further the purposes of chapter 76.09 RCW the board has adopted a policy of adaptive management designed to modify these regulations and their application based on cooperative research, monitoring, and evaluation. Such adaptive management shall include the measures set out in WAC 222-08-035.))~~ In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based adaptive management program, as stated in WAC 222-08-035(2).

(1) Purpose: The purpose of an adaptive management program is to provide scientifically based information to the forest practices board when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve the desired resource goals and objectives. The board may also use this program to adjust other rules and guidance. The forest practices board will set overall priorities for action as guided by information developed through the adaptive management program. The desired outcomes for this program are assurances that there will be certainty of change as needed in order to protect targeted resources; predictability and stability of the process of change so that landowners, regulators and interested members of the public can anticipate and prepare for change; and application of quality controls to study design and execution, and to interpret the results.

(2) Program elements: Forest practices will be managed to maintain and recover desired forest conditions and processes through understanding of the relationship between forest practices and desired resource conditions. The adaptive management program shall incorporate scientific methods and best available information, including protocols, standards, and quality control/quality assurance processes. The program will include research, monitoring, and an independent scientific peer review process. The adaptive management program will be responsible for monitoring the relationship and evaluating the effectiveness of achieving the target forest conditions and processes, and ensuring that desired forest practices are being implemented on the ground. The adaptive management program shall be approached in a consensus-based manner. If consensus cannot be reached, results will go through a dispute resolution process, as outlined in the board manual (section 22). The forest practices board will make the final determination subject to all rights of appeal.

(3) Resource objectives: The forest practices board establishes resource objectives to guide the activities of the adaptive management program. Resource objectives are

PROPOSED

defined in terms of desired forest conditions and processes, including agreed upon biological, chemical, and physical criteria which (a) meet the Endangered Species Act standard and (b) are consistent with the federal Clean Water Act. These will involve measures of habitat productivity and may include, but are not limited to, state water quality standards and indices of resource conditions as defined in watershed analysis. Resource objectives may include the delineation of time frames in which particular biological, chemical and physical standards can be attained. Specific resource objectives are defined in the board manual (section 22).

(4) **Participants:** The forest practices board will manage the adaptive management program and has empowered the following to participate in the adaptive management program: The Cooperative Monitoring Evaluation and Research Committee (CMER), the TFW policy committee (or similar collaborative forum), the adaptive management program administrator, and peers to conduct independent scientific review.

(a) **CMER.** By this rule, the board establishes a Cooperative Monitoring Evaluation and Research (CMER) Committee to conduct research and validation and effectiveness monitoring to facilitate achieving the resource objectives. The purpose of CMER is to advance the science needed to support the adaptive management program for aquatic resources, and ongoing responsibilities to continue research and education in terrestrial resource issues. The CMER committee will be made up of members that have expertise in a scientific discipline that will enable CMER to be most effective in addressing forestry, fish, wildlife, and landscape process issues, and who represent timber landowners, environmental interests, state agencies, county governments, federal agencies and tribal governments from a scientific standpoint, not a policy view. CMER will strive to operate by consensus. CMER members will be recognized by the board. However, this will not preclude others from participating in the CMER process or its subcommittees. CMER's structure, duties, and reporting requirements are outlined in the board manual (section 22).

(b) **TFW policy committee.** TFW, or a similar collaborative forum, is managed by a policy committee. Membership of the committee is self-selecting, and at a minimum should include representatives of the following caucuses: Timber landowners (industrial and nonindustrial private landowners); environmental community; tribal governments; county governments; state departments (including fish and wildlife, ecology, and natural resources); and federal agencies (including national Marine Fisheries Service, Fish and Wildlife Service, Environmental Protection Agency and Forest Service). TFW may, be consulted in the hiring of the adaptive management program administrator, make recommendations on the management of the independent scientific peer review process, and may recommend adaptive management program priorities to the forest practices board and make recommendations on the use of program results.

(c) **Adaptive management program administrator.** The department will employ a full-time independent administrator to oversee the adaptive management program and support CMER. The adaptive management program admin-

istrator will have credentials as a program manager, scientist, and researcher. The administrator will be responsible for ensuring that the board's guidance and priorities are honored and that the information and results produced by the adaptive management program are effectively and regularly communicated to the board. The administrator will facilitate appropriate involvement of the independent scientific peer review process. The administrator will present all proposed research projects to the forest practices board for its approval.

(5) **Independent scientific peer review process.** By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address adaptive management research are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a peer-reviewed journal. Other products that may require review include work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports. The process for review is outlined in the board manual (section 22).

(6) **Process:** The process to initiate proposals for consideration in the adaptive management program can be made by any of the empowered participants listed in this rule, or by the general public at forest practices board meetings. All project proposals will be prioritized by the forest practices board. Once a project has been approved for study, it will be systematically implemented by the program administrator through CMER and the independent scientific peer review process. Timely recommendations, based on the results of the study, will be forwarded from the TFW policy committee, or a similar collaborative forum, by the program administrator to the board for the appropriate action. Program process structure and requirements are outlined in the board manual (section 22).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-12-090 Forest practices board manual.

When approved by the board the manual serves as an advisory technical supplement to these forest practices ((~~regulations~~)) rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) **The standard methods** for measuring ((~~channel width, stream gradient and flow which are used in the water typing criteria WAC 222-16-030~~)) physical parameters of streams and channel migration zones.

(3) ((~~A chart for establishing recommended permanent culvert sizes and associated data~~)) **Guidelines** for forest roads.

- (4) **Guidelines** for clearing slash and debris from Type ((4)) Np and ((5)) Ns Waters.
- (5) **Guidelines** for landing location and construction.
- (6) **Guidelines** for determining acceptable stocking levels.
- (7) **Guidelines** for ~~((calculating average widths of))~~ riparian management zones.
- (8) **Guidelines** for wetland delineation.
- (9) **Guidelines** for wetland replacement or substitution.
- (10) A list of nonnative wetland plant species.
- (11) The standard methodology, which shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.
- (12) **Guidelines** for forest chemicals.
- (a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).
- (b) **Guidelines** for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.
- (13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-030.
- (14) **Survey protocol for marbled murrelets.** The Pacific seabird survey protocol in effect March 1, 1997, shall be used when surveying for marbled murrelets in a stand. Surveys conducted before the effective date of this rule are valid if they were conducted in substantial compliance with generally accepted survey protocols in effect at the beginning of the season in which they were conducted.
- (15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:
- (a) A sampling method to determine platforms per acre in the field;
- (b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and
- (c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.
- (16) **Guidelines** for evaluating potentially unstable slopes and landforms.
- (17) **Guidelines** for the small forest landowner forestry riparian easement program.
- (18) **Guidelines** for riparian open space program.
- (19) **Guidelines** for hardwood conversion program.
- (20) **Guidelines** for financial assurances program.
- (21) **Guidelines** for alternate plan program.
- (22) **Guidelines** for adaptive management program.

(23) Guidelines for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) Guidelines for interim guidelines for modification of bull trout habitat overlay.

(25) Guidelines for bull trout habitat field survey protocol.

(26) Guidelines for placement strategy for woody debris in streams.

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these ~~((regulations))~~ rules:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the forest practices appeals board established in the act.

"**Aquatic resources**" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's salamander (*Plethodon vandyke*), the Tailed frog (*Ascaphus truei*) and their respective habitats.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"**Bankfull depth**" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the floodplain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual for measuring guidelines.)

"**Bankfull width**" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual for measuring guidelines).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For salt water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

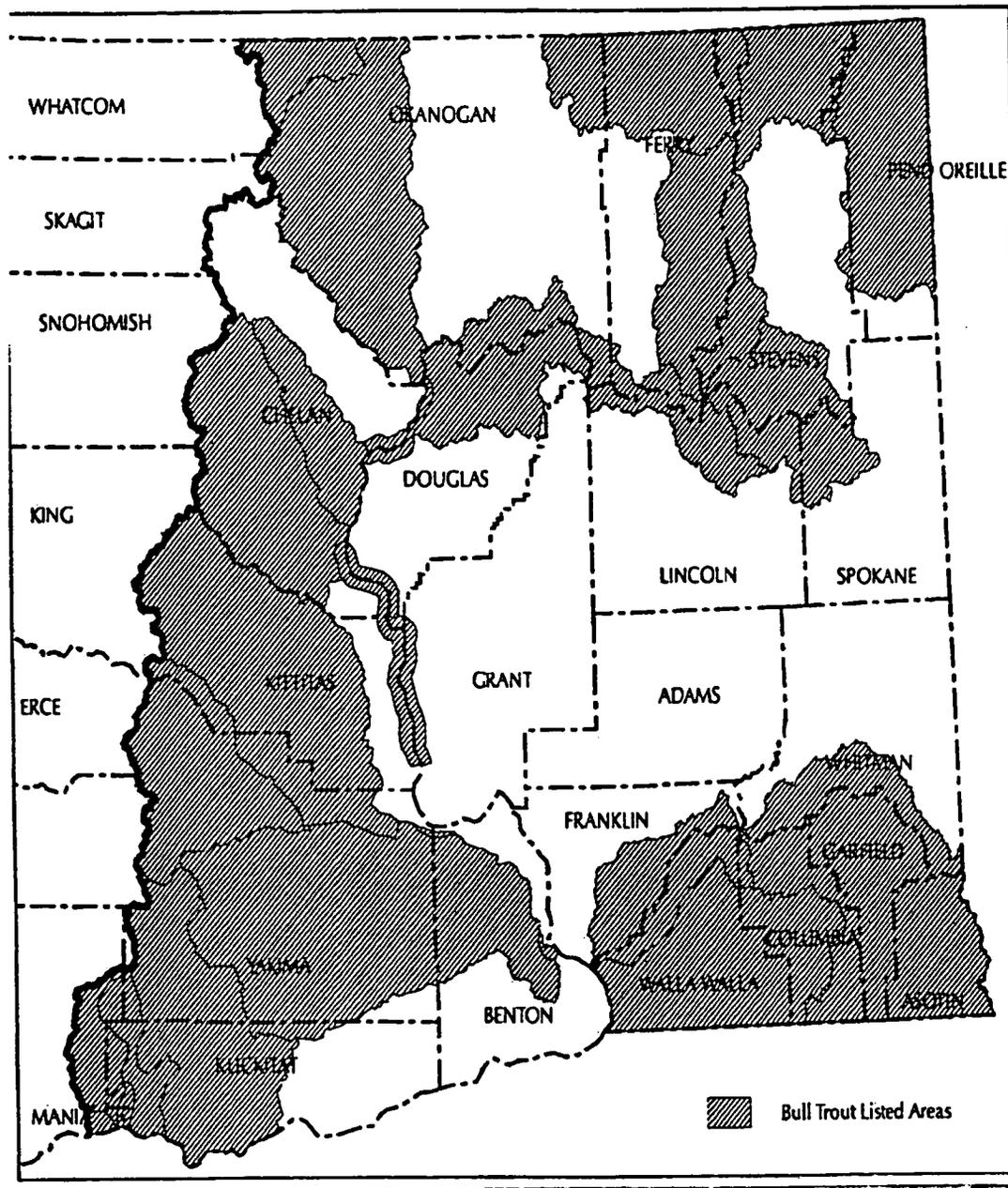
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western Hemlock, lodgepole pine, cedar, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. See the *Forest Practices Board Manual*.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



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"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream. (See the board manual for descriptions and illustrations of CMZs, delineation guidelines, except as modified by a permanent levee or dike.) For this purpose, near-term means the time scale required to grow a mature forest.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation.

Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

nic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical ((wildlife)) habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cross drains" means a drainage structure to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A cross drain is not intended to carry any typed water. Cross drains include structures such as; relief culverts, ditch diversions, and water bars.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat

found within RMZs, WMZs or other required and voluntary leave areas.

"Eastern Washington" means ((the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania Klickitat County line to Oregon Washington)) the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge

line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

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Eastern Washington Definition Map



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"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

<u>Timber Habitat Types</u>	<u>Elevation Ranges</u>
<u>ponderosa pine</u>	<u>0 - 2500 feet</u>
<u>mixed conifer</u>	<u>2501 - 5000 feet</u>
<u>high elevation</u>	<u>above 5000 feet</u>

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that when exposed or displaced by a forest practice operation, ((that)) would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
- Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC ((222-30-010(2))) 222-34-010 or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities. (~~Fill does not include the growing or harvesting of timber including, but not limited to, slash burning, site preparation, reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.~~)

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

~~("Flood level - 50 year." For purposes of field interpretation of these regulations, the 50 year flood level shall be considered to refer to a vertical elevation measured from the ordinary high water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50 year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.)~~ **"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

OPTION 1

"Fish passage" No definition

OPTION 2

"Fish passage" means conditions at a road crossing structure that allow upstream and downstream movement of all fish to useable habitat at all life stages at any time of the year.

"Flood level - 100 year." Is a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

- Flow information from gauging stations;
- Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being

actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: Provided, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices or forest management activities such as fire control. "Forest roads" does not include skid trails, highways, or county roads except when the county is a forest landowner or operator.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: Provided, That Christmas trees are forest trees and: Provided further, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Groundwater recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Horizontal distance" means the distance between two points measured at a 0% slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.

"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- | | |
|-----------|--|
| Status 1: | Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young. |
| Status 2: | Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements. |
| Status 3: | Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area). |

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or
- (c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(4) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or
- (c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(5) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines

or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

<u>Ponderosa pine habitat type</u>	<u>Mixed conifer habitat type</u>
<u>all hardwoods</u>	<u>all hardwoods</u>
<u>ponderosa pine</u>	<u>western larch</u>
<u>western larch</u>	<u>ponderosa pine</u>
<u>Douglas-fir</u>	<u>western red cedar</u>
<u>western red cedar</u>	<u>white pine</u>
	<u>Douglas-fir</u>

PROPOSED

Ponderosa pine habitat type **Mixed conifer habitat type**
lodgepole pine

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

~~("Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.)~~

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) For Western Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

<u>Site Class</u>	<u>Western Washington Total RMZ Width</u>
<u>I</u>	<u>200'</u>
<u>II</u>	<u>170'</u>
<u>III</u>	<u>140'</u>
<u>IV</u>	<u>110'</u>
<u>V</u>	<u>90'</u>

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the bankfull width or the CMZ, whichever is greater (see table below); and

<u>Site Class</u>	<u>Eastern Washington Total RMZ Width</u>
<u>I</u>	<u>130'</u>
<u>II</u>	<u>110'</u>
<u>III</u>	<u>90' or 100*</u>
<u>IV</u>	<u>75' or 100*</u>
<u>V</u>	<u>75' or 100*</u>

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) For exempt 20 acre parcels, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) For Western Washington, the 50 foot buffer of a Type S or F Water, measured horizontally from the edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) For Eastern Washington, the 30 foot buffer of a Type S or F Water, measured horizontally from the edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) For Western Washington, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) For Eastern Washington, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means the establishment of any new sub-grade including widening, realignment, or modification of an existing road prism, with the exception of replacing or installing cross drains, or relief culverts, for the purposes of managing forest land under Title 222 WAC.

"Road maintenance" means any road work specifically related to maintaining water control or road safety and visibility (such as; grading, spot rocking, resurfacing, roadside vegetation control, water barring, ditch clean out, replacing

PROPOSED

or installing relief culverts, cleaning culvert inlets and outlets) on existing forest roads.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water means one of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means an erosional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select

the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

<u>Site class</u>	<u>50-year site index range</u> (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

<u>Site class</u>	<u>100-year site index range</u> (state soil survey)	<u>50-year site index range</u> (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	<60	<44

For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demo-

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graphic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Spotted owl dispersal habitat**" see WAC 222-16-085(2).

"**Spotted owl special emphasis areas (SOSEA)**" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"**Stop work order**" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

OPTION 1

"**Stream-adjacent parallel roads**" means roads (including associated right-of-way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

OPTION 2

"**Stream-adjacent parallel roads**" means roads within a riparian management zone or within an average of 200 feet of any typed water on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"**Sub-mature habitat**" see WAC 222-16-085 (1)(b).

"**Suitable marbled murrelet habitat**" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"**Suitable spotted owl habitat**" see WAC 222-16-085(1).

"**Temporary road**" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"**Threaten public safety**" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"**Threatened or endangered species**" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"**Timber**" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"**Unconfined avulsing stream**" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"**Water bar**" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"**Watershed administrative unit (WAU)**" means an area shown on the map specified in WAC 222-22-020(1).

"**Watershed analysis**" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"**Weed**" is any plant which tends to overgrow or choke out more desirable vegetation.

"**Western Washington**" means the ~~((lands of the state lying west of the administrative line described in the definition of))~~ geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"**Wetland**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrig-

gation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-030 Water typing system. ~~((*)~~ Until the fish habitat water type maps described below are adopted by the board, the Interim Water Typing System established in WAC 222-16-031 will continue to be used. The department in cooperation with the departments of fish and wildlife, and ecology, and in consultation with affected Indian tribes ~~((shall))~~ will classify streams, lakes and ponds ((and)). ~~The department will prepare ((stream classification))~~ The department will prepare ((stream classification)) water type maps showing the location of Type ((1, 2, 3 and 4)) S, F, and N (Np and Ns) Waters within the ((various)) forested areas of the state. ((Such maps shall be available for public inspection at region offices of the department. The waters will be classified using the following criteria.)) The maps will be based on a multiparameter, field-verified geographic information system (GIS) logistic regression model. The multiparameter model will be designed to identify fish habitat by using geomorphic parameters such as basin size, gradient, elevation and other indicators. The modeling process shall be designed to achieve a level of statistical accuracy of 95% in separating fish habitat streams and nonfish habitat streams. Furthermore, the demarcation of fish and nonfish habitat waters shall be equally likely to over and under estimate the presence of fish habitat. These maps shall be referred to as "fish habitat water typing maps" and shall, when completed, be available for public inspection at region offices of the department.

Fish habitat water type maps will be updated every five years where necessary to better reflect observed, in-field conditions. Except for these periodic revisions of the maps, on-the-ground observations of fish or habitat characteristics will generally not be used to adjust mapped water types. However, if an on-site interdisciplinary team using nonlethal methods identifies fish, or finds that habitat is not accessible due to naturally occurring conditions and no fish reside above the blockage, then the water type will be immediately changed to reflect the findings of the interdisciplinary team. The finding will be documented on a water type update form provided by the department and the fish habitat water type map will be updated as soon as practicable. If a dispute arises concerning a water type the department shall make available informal conferences, as established in WAC 222-46-020 which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted water types. ((These conferences shall be established under procedures established in WAC 222-46-020.))

The waters will be classified using the following criteria.

*~~(1)~~ **"Type ((1)) S Water"** means all waters, within their ~~((ordinary high water mark))~~ bankfull width, as inventoried as "shores of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW((; but not including those waters' associated wetlands as defined in chapter 90.58 RCW)) including periodically inundated areas of their associated wetlands.

*~~(2)~~ **"Type ((2)) F Water"** ~~((shall))~~ means segments of natural waters which are ((not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which)); Within the bankfull widths of

defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

(a) Waters, which are diverted for domestic use by more than ((100)) 10 residential or camping units or by a public accommodation facility licensed to serve more than ((100)) 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type ((2)) F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

(c) Waters, which are within a federal, state, local, or private campground having more than ((30)) 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

~~((e))~~ Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater in width between the ordinary high water marks and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water; or

~~(d) Are used by salmonids for off-channel habitat. These areas are critical to the maintenance of optimum survival of juvenile salmonids. This habitat shall be identified based on the following criteria)~~ (d) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a ((stream-bearing salmonids)) fish habitat stream and accessible during some period of the year; and

(ii) The off-channel water must be accessible to ((juvenile salmonids through a drainage with less than a 5% gradient)) fish.

~~((3))~~ (3) "Type ((3) Water" shall mean segments of natural waters which are not classified as Type 1 or 2 Water and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:

(i) Stream segments having a defined channel of 5 feet or greater in width between the ordinary high water marks; and having a gradient of less than 12 percent and not upstream of a falls of more than 10 vertical feet.

(ii) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to an anadromous fish stream.

(c) Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:

(i) Stream segments having a defined channel of 10 feet or greater in width between the ordinary high water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than 12 percent.

(ii) Ponds or impoundments having a surface area greater than 0.5 acre at seasonal low water; or

(d) Are highly significant for protection of downstream water quality. Tributaries which contribute greater than 20 percent of the flow to a Type 1 or 2 Water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 Water or until their drainage area is less than 50 percent of their drainage area at the point of confluence, whichever is less.

* (4) "Type 4 Water" classification shall be applied to segments of natural waters which are not classified as Type 1, 2 or 3, and for the purpose of protecting water quality downstream are classified as Type 4 Water upstream until the channel width becomes less than 2 feet in width between the ordinary high water marks. Their significance lies in their influence on water quality downstream in Type 1, 2, and 3 Waters. These may be perennial or intermittent.

* (5) "Type 5 Water" classification shall be applied to all natural waters not classified as Type 1, 2, 3 or 4; including streams with or without well defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainage ways having short periods of spring or storm runoff.

* (6) "Np Water" means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np Waters

include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual, section 13), then Type Np Waters begin at a point along the channel where the contributing basin area is:

(a) At least 13 acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);

(b) At least 52 acres in other locations in Western Washington;

(c) At least 300 acres in Eastern Washington.

(4) "Type Ns Water" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

*~~(5)~~ For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

~~(c) ("Resident game fish" means game fish as described in the Washington game code that spend their life cycle in fresh water. Steelhead, searun cutthroat and Dolly Varden trout are anadromous game fish and should not be confused with resident game fish.~~

~~(d))~~ "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

~~((e))~~ ~~(d)~~ "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

~~((f))~~ ~~(e)~~ "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

~~((g))~~ ~~(f)~~ "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

~~((h))~~ ~~(g)~~ "Intermittent streams" means those segments of streams that normally go dry.

(h) "Fish habitat" means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered

by restoration or management and includes off-channel habitat.

NEW SECTION

WAC 222-16-031 Interim water typing system. Until the fish habitat water type maps mentioned above are available, waters will be classified according to the interim water typing system described below. If a dispute arises concerning a water type, the department shall make available informal conferences, which shall include the departments of fish and wildlife, ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

For the purposes of this interim water typing system see the following table:

Water Type Conversion Table

Permanent Water Typing	Interim Water Typing
Type "S"	Type 1 Water
Type "F"	Type 2 and 3 Water
Type "Np"	Type 4 Water
Type "Ns"	Type 5 Water

*~~(1)~~ **"Type 1 Water"** means all waters, within their ordinary high-water mark, as inventoried as "shoreslines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, but not including those waters' associated wetlands as defined in chapter 90.58 RCW.

*~~(2)~~ **"Type 2 Water"** means segments of natural waters which are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and only considered Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type 2 Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type 2 Water designation provided by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

PROPOSED

(c) Are within a federal, state, local or private campground having more than 30 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit.

(d) Are used by fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water; or

(e) Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a fish bearing stream and be accessible during some period of the year; and

(ii) The off-channel water must be accessible to fish through a drainage with less than a 5% gradient.

* (3) **"Type 3 Water"** means segments of natural waters which are not classified as Type 1 or 2 Waters and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

OPTION 1

(b) Are used by fish for spawning, rearing or migration. The requirements for determining fish use are described in the board manual section 13. If fish use has not been determined:

OPTION 2

(b) Are used by fish for spawning, rearing or migration.

(i) Waters having the following characteristics are presumed to have fish use:

(A) Stream segments having a defined channel of 2 feet or greater within the bankfull width in Western Washington; or 3 feet or greater in width in Eastern Washington; and having a gradient of 16 percent or less.

(B) Stream segments having a defined channel or 2 feet or greater within the bankfull width in Western Washington; or 3 feet or greater within the bankfull width in Eastern Washington, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size in Western Washington or greater than 175 acres contributing basin size in Eastern Washington, based on hydrographic boundaries;

(C) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream;

(D) Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.

(ii) The department shall waive or modify the characteristics in (i) of this subsection where:

(A) Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;

(B) Snowmelt streams have short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1; or

(C) Sufficient information about a geomorphic region is available to support a departure from the characteristics in (i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes and interested parties.

OPTION 1

* (4) **"Type 4 Water"** means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np Waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see board manual, section 13), then Type Np Waters begin at a point along the channel where the contributing basin area is:

(a) At least 13 acres in the Western Washington coastal zone (which corresponds to the Sitka spruce zone defined in Franklin and Dyrness, 1973);

(b) At least 52 acres in other locations in Western Washington;

(c) At least 300 acres in Eastern Washington.

* (5) **"Type 5 Waters"** means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of the year and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

OPTION 2

* (4) **"Type 4 Water"** classification shall be applied to segments of natural waters which are not classified as Type 1, 2, or 3, and for the purpose of protecting water quality downstream are classified as Type 4 Water upstream until the channel width becomes less than 2 feet bankfull width. Their significance lies in their influence on water quality downstream in Type 1, 2, and 3 Waters. These may be perennial or intermittent.

* (5) **"Type 5 Waters"** include all segments of natural waters less than 2 feet bankfull width and are not Type 1, 2, 3, or 4 Waters and which are nonfish bearing streams.

* (6) For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(d) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(e) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(f) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-035 Wetland typing system. *The department in cooperation with the departments of fish and wildlife, and ecology, and affected Indian tribes shall classify wetlands. The wetlands will be classified in order to distinguish those which require wetland management zones and those which do not. Wetlands which require wetland management zones shall be identified using the following criteria. ~~((Accurate delineation of wetlands in accordance with the manual shall be required only where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10) and shall be limited to the area of wetland proposed to be filled. For the purposes of determining acreage to classify or type wetlands under this section, approximate determination using aerial photographs and maps, including the national wetlands inventory, shall be sufficient. In addition, the innermost boundary of the wetland management zone on Type A or B wetlands may be determined by either of two methods: Delineation of the wetland edge, or identifying the point where the crown cover changes from less than 30% to 30% or more. Except where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10), accurate delineation shall not be required under this Title 222 WAC for activities regulated by these rules, including but not limited to the location of roads, landings, culverts, and cross drains. Landowners are encouraged to leave vegetation in these forested wetlands in undisturbed leave areas where possible. When so requested by any~~

~~affected landowners, applicant or aggrieved person, the department shall make available informal conferences, which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted wetland types. These conferences shall be established under procedures established in WAC 222-46-020.))~~

*~~(1) "Nonforested wetlands"~~ means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of less than 30 percent.

~~(a) "Type A Wetland"~~ classification shall be applied to all nonforested wetlands which:

~~(i) Are greater than 0.5 acre in size, including any acreage of open water where the water is completely surrounded by the wetland; and~~

~~(ii) Are associated with at least 0.5 acre of ponded or standing open water. The open water must be present on the site for at least 7 consecutive days between April 1 and October 1 to be considered for the purposes of these rules; or~~

~~(b) "Type B Wetland"~~ classification shall be applied to all other nonforested wetlands greater than 0.25 acre.

*~~(2) "Forested wetland"~~ means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of 30 percent or more.

*~~(3) "All forested and nonforested bogs" greater than 0.25 acres shall be considered Type A Wetlands.~~

*~~(4) For the purposes of determining acreage to classify or type wetlands under this section, approximate determination using aerial photographs and maps, including the national wetlands inventory, shall be sufficient. In addition, the innermost boundary of the wetland management zone on Type A or B Wetlands may be determined by either of two methods: Delineation of the wetland edge, or identifying the point where the crown cover changes from less than 30 percent to 30 percent or more.~~

NEW SECTION

WAC *222-16-036 Wetland mapping. Wetlands mapping is required in connection with any forest practices application where the proposed activities relate to timber harvest or road construction.

*~~(1) Landowners must map all forested wetlands and Type A and B Wetlands where more than one-tenth (0.1) acre of such wetlands will be impacted by filling and where mitigation for such filling is required.~~

*~~(2) Landowners must make an approximate determination of the boundaries and map all forested wetlands (regardless of size) that are in a riparian management zone, including those parts of the forested wetlands that lie within the harvest unit but outside of the riparian management zone. Mapping is not required if entry within the riparian management zone is not proposed as part of the harvest application.~~

*~~(3) Landowners must make an approximate determination of the boundaries and map all forested wetlands 3 acres or more in size within the boundaries of the land to be covered by the application.~~

*~~(4) All such mapping must be performed to the wetland delineation and mapping standards outlined in the board manual, section 8.~~

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC *222-16-050 Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices ((regulations)) rules.

(1) "**Class IV - special.**" Application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*~~(a)~~ Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as:

(i) Critical ~~((wildlife))~~ habitat (state) of threatened or endangered species~~((or~~

~~((ii) Critical habitat (federal) of threatened or endangered species except those excluded by the board under WAC 222-16-080(3))).~~

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than 5 MBF within any developed park recreation area and park managed salvage of merchantable forest products.

~~*~~(d)~~ ((Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on slide prone areas as defined in WAC 222-24-020(6) and field verified by the department, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, when such slide prone areas occur on an uninterrupted slope above water typed pursuant to WAC 222-16-030, Type A or Type B Wetland, or capital improvement of the state or its political subdivisions where there is potential for a substantial debris flow or mass failure to cause significant impact to public resources.~~

~~*~~(e)~~ Timber harvest in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, on slide prone areas, field verified by the department, where soils, geologic structure, and local hydrology indicate that canopy removal has the potential for increasing slope instability, when such areas occur on an uninterrupted slope above any water typed pursuant to WAC 222-16-030, Type A or Type B Wetland, or a capital improvement of the state or its political subdivisions where there is a potential for a substantial debris flow or mass failure to cause significant impact to public resources.~~

~~((f))~~ Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety,

and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See the board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than 35° (70%);

(B) Toes of deep-seated landslides, with slopes steeper than 33° (65%);

(C) Ground water recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application/notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with an approved prescription from the watershed analysis (or as modified through the 5-year review process); and

(C) The applicable prescription is specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

~~*~~(e)~~ Timber harvest, in a watershed administrative unit ((that has)) not ((undergone a)) subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.~~

~~((g))~~ (f) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state office of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

~~((h))~~ *~~(g)~~ Forest practices subject to ((a)) an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis

which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

~~(*)~~(h) Filling or draining of more than 0.5 acre of a wetland.

(2) "**Class IV - general.**" Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special." Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the State Environmental Policy Act pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a 30-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030(2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with State Environmental Policy Act.

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, or on lands being converted to another use.

(b) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development. (See WAC 222-16-060 and 222-34-050.)

(3) "**Class I.**" Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*~~(b)~~ Road maintenance except: (i) Replacement of bridges and culverts across Type ~~((1, 2, 3))~~ S, F or flowing Type ~~((4))~~ Np Waters; or (ii) movement of material that has a direct potential for entering Type ~~((1, 2, 3))~~ S, F or flowing Type ~~((4))~~ Np Waters or Type A or B Wetlands.

*~~(c)~~ Construction of landings less than 1 acre in size, if not within a shoreline area of a Type ~~((+))~~ S Water, the riparian management zone of a Type ~~((2 or 3))~~ F Water, the ~~((ordinary high water mark))~~ bankfull width of a Type ~~((4))~~ Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*~~(d)~~ Construction of less than 600 feet of road on a side-slope of 40 percent or less if the limits of construction are not within the shoreline area of a Type ~~((+))~~ S Water, the riparian management zone of a Type ~~((2 or Type 3))~~ F Water, the ~~((ordinary high water mark))~~ bankfull width of a Type ~~((4))~~ Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*~~(e)~~ Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type ~~((+))~~ S Water and does not involve disturbance of the beds or banks of any waters.

*~~(f)~~ Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*~~(n)~~ Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding 40 percent or off-road use of tractors within the shorelines of a Type 1 Water, the riparian management zone of any Type 2 or 3 Water, or the ordinary high-water mark of a Type 4 Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*~~(o)~~ Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

*~~(p)~~ Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than 40 contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within 100 feet of lands used for farming, or within 200 feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*~~(r)~~ Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type ~~((+))~~ S Water or the riparian management zone of a Type ~~((2 or 3))~~ F Water, the ~~((ordinary high water mark))~~ bankfull width of a Type ~~((4))~~ Np Water or flowing Type ~~((5))~~ Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on active and inactive roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) "**Class II.**" Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: *Provided*, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 75.20.100) or is within a "shorelines of the state," or involves ~~((a bond in lieu of landowners signature))~~ owner of perpetual timber rights

subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, or on lands being converted to another use. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practice application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary 5-year review of the watershed analysis.

* (c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type ((2 or 3)) E Water, within the ((~~ordinary high water mark~~)) bankfull width of a Type ((4)) Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than 1 acre.

* (d) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type ((2 or 3)) E Water, within the ((~~ordinary high water mark~~)) bankfull width of a Type ((4)) Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

Salvage of logging residue.

* (e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type ((2 or 3)) E Water, within the ((~~ordinary high water mark~~)) bankfull width of a Type ((4)) Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of 40 percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of 5,000 board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than 40 percent of the total timber volume is removed in any 12-month period.

(iv) Any harvest on less than 40 acres.

(v) Construction of 600 or more feet of road, provided that the department shall be notified at least 2 business days before commencement of the construction.

(5) "Class III." Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 75.20.100).

* (b) Those within the shorelines of the state other than those in a Class I forest practice.

* (c) Aerial application of insecticides, except where classified as a Class IV forest practice.

* (d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

* (e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

* (f) All road construction and reconstruction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

* (h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type ((1, 2, 3)) S, F or flowing Type ((4)) Np Waters; or

(ii) Movement of material that has a direct potential for entering Type ((1, 2, 3)) S, F or flowing Type ((4)) Np Waters or Type A or B Wetlands.

(i) Operations involving ((~~an applicant's bond in lieu of a landowner's signature~~)) owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding 19 acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

* (n) Any filling of wetlands, except where classified as Class IV forest practices.

* (o) Multiyear permits.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-070 Pesticide uses with the potential for a substantial impact on the environment. *To identify forest practices involving pesticide uses that have the potential for a substantial impact on the environment, the department shall apply the process prescribed in this section. See WAC 222-16-050 (1)(a).

(1) Pesticide list - The department shall maintain a list of all pesticides registered under chapter 15.58 RCW for use in

forest practices. The department shall conduct, in consultation with the departments of ecology, health, agriculture, and fish and wildlife, an annual review of the list for the purpose of including new pesticides and/or removing those pesticides which have been prohibited from use. The list shall be available to the public at each of the department's offices. A list of the department's offices and their addresses appears at WAC 332-10-030. In preparing the pesticide list, the department shall include information on the following characteristics:

- (a) Active ingredients, name brand or trade mark, labeled uses, pesticide type, EPA-registration number;
- (b) Toxicity of the pesticide based on the Environmental Protection Agency (EPA) label warning under 40 C.F.R. 156.10 (h)(1), listed as "caution," "warning," "danger," or "danger - poison" except as modified to consider aquatic or mammalian toxicity; and
- (c) Whether the pesticide is a state restricted use pesticide for the protection of ground water under WAC 16-228-164(1).

(2) Key for evaluating applications. To determine whether aerial application of a pesticide has the potential for a substantial impact on the environment, the department shall apply the following analysis:

KEY FOR EVALUATION OF SITE SPECIFIC USE OF AERIALLY APPLIED ((CHEMICALS)) PESTICIDES

Question	Question	Resp	Action
1 (a)	Is the pesticide on the pesticide list (WAC 222-16-070(1))?	Yes No	go to 2 go to 1(b)
1 (b)	Is the pesticide being used under a Dept of Agriculture Experimental Use Permit (WAC 16-228-125)?	Yes No	Class III Class IV Sp
2	Is the toxicity rating for the pesticide to be used "Danger - Poison" as designated in the pesticide list (WAC 222-16-070(1)(b))?	Yes No	Class IV Sp go to 3(a)
3 (a)	Is <i>Bacillus thuringiensis</i> (BT) the only pesticide being used on this application?	Yes No	go to 3(b) go to 4(a)
3 (b)	Is there a Threatened or Endangered species or the critical habitat (Federal) or critical ((wildlife)) habitat (State) of a species within the application area that is susceptible to the BT strain being used?	Yes No	Class IV Sp Class III
4 (a)	Is this operation occurring over ground water with a high susceptibility to contamination as specified in EPA 910/9-87-189 or in documentation provided by the department of ecology?	Yes No	go to 4(b) go to 5(a)
4 (b)	Is this pesticide a state restricted use pesticide for the protection of ground water under WAC 16-228-164 (1)?	Yes No	Class IV Sp go to 5(a)
5 (a)	Is the operation adjacent (within 100 ft.) of surface water?	Yes No	go to 5(b) go to 5(e)

KEY FOR EVALUATION OF SITE SPECIFIC USE OF AERIALLY APPLIED ((CHEMICALS)) PESTICIDES

Question	Question	Resp	Action
5 (b)	Determine the toxicity rating from the pesticide list: *Is the toxicity rating "Caution" or "Warning"? *Is the toxicity rating "Danger"?	Yes Yes	go to 5(c) go to 5(d)
5 (c)	Is there a Group A or B water surface water system (WAC 246-290-020) intake OR a fish hatchery intake within one half mile downstream of the operation?	Yes No	Class IV Sp go to 5(e)
5 (d)	Is there a Group A or B water surface system intake OR a fish hatchery intake within 1 mile downstream of the operation?	Yes No	Class IV Sp go to 5(e)
5 (e)	Is the operation within 200 feet of the intake of a Group A or B spring water system?	Yes No	Class IV Sp go to 5(f)
5 (f)	Is the operation applying a pesticide in a Type A or B wetland?	Yes No	Class IV Sp go to 6(a)
6 (a)	Does any portion of the planned operation cover 240 or more contiguous acres? Pesticide treatment units will be considered contiguous if they are separated by less than 300 feet or treatment dates of adjacent units are less than 90 days apart.	Yes No	Class IV Sp go to 6(b)
6 (b)	Is there a Threatened or Endangered species or the critical habitat (Federal) or critical ((wildlife)) habitat (State) of a species within the application area?	Yes No	Class IV Sp go to 6(c)
6 (c)	If there is a special concern identified for this pesticide in the Board manual, does it apply to this application?	Yes No	Class IV Sp Class III

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(3) Special concerns (see WAC 222-16-070 (2)6(c)) shall be evaluated by the department of agriculture. Information regarding special concerns shall be presented to the board for review. Approved special concerns shall be included in the board's manual. Special concerns shall include situations where use of pesticides has the potential for a substantial impact on the environment, beyond those covered specifically in the key in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-080 Critical ((wildlife)) habitats (state) ((and critical habitat (federal))) of threatened and endangered species. (1) Critical ((wildlife)) habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

- (a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25

mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of fish and wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of fish and wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of fish and wildlife.

(h) Northern spotted owl (~~the following shall apply through June 30, 1996: Harvesting, road construction, or aerial application of pesticides on the most suitable 500 acres of nesting, roosting, and foraging habitat surrounding the northern spotted owl site center. The most suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife, tribes, and others with applicable expertise. Consideration shall be given to habitat quality, proximity to the activity center and contiguity in selecting the most suitable 500 acres of habitat.~~)

Beginning July 1, 1996, the following shall apply for the northern spotted owl:)

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site

center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.**

Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical (~~wildlife~~) habitat (state) for northern spotted owls.

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet.

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat within a marbled murrelet detection area.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 7 platforms per acre outside a marbled murrelet detection area.

(iv) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction outside a marbled murrelet detection area within a marbled murrelet special landscape and within suitable marbled murrelet habitat with 5 or more platforms per acre.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand stem density of 75 trees per acre greater than 6 inches in dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches in dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as the average of 300 feet is maintained.

(vi) Except that the following shall not be critical (~~wildlife~~) habitat (state):

(A) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site; or

(B) Where a protocol survey (see WAC 222-12-090(14)) has been conducted and no murrelets were detected. The landowner is then relieved from further survey requirements. However, if an occupied marbled murrelet site is established, this exemption is void.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior or Commerce, or specific forest practices within those habitats, have been determined to (~~not~~) have the potential for a substantial

impact on the environment and therefore are designated as critical habitats (state) of threatened or endangered species:

~~((Marbled murrelet critical habitat 50 C.F.R. §17.95(b), 61 Fed. Reg. 26256 as a result of provisions of the state's marbled murrelet rule.))~~

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior or Commerce, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical ~~((wildlife))~~ habitats (state) of threatened or endangered species. This list shall be submitted to the board within ~~((45))~~ 30 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical ~~((wildlife))~~ habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)~~((+))~~.

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior or Commerce which ~~((do not))~~ have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for ~~((exclusion from))~~ inclusion in Class IV - special forest practices. The department shall submit the list to the board within ~~((420))~~ 30 days of the date the United States Secretary of the Interior or Commerce publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats ~~((excluded))~~ included by the board ~~((from))~~ in Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b)~~((+))~~.

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical ~~((wildlife))~~ habitats (state) of threatened and endangered species and specific forest practices designated in subsections (1) and (2) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission and by the United States Secretary of Interior or Commerce.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical ~~((wildlife))~~ habitat (state) (WAC 222-16-080~~((+))~~ or critical habitat (federal)) WAC 222-16-050 (1)(b)~~((+))~~ for a species, if the forest practices are consistent with one or more of the following ~~((proposed for protection of the species))~~:

OPTION 1

(a) ~~((A habitat conservation plan and permit or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. §1536 (b) or 1539 (a); an "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or a "no take letter" or other cooperative or conservation agreement entered into with a federal or state fish and wildlife agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species and that is subject to review under the National Environmental Protection Act, 42 U.S.C. §4321 et seq., or the State Environmental Policy Act, chapter 43.21C RCW, as applicable;)) Documents addressing the needs of the affected species provided such documents have been reviewed under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.:~~

OPTION 2

(a) Documents addressing the needs of the affected species provided such documents are in compliance with the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.:

(i) A habitat conservation plan and incidental take permit; or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. § 1536 (b) or 1539 (a); or

(ii) An "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(iii) Other conservation agreement entered into with a federal agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species; or

(iv) A rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for the conservation of an affected species pursuant to 16 U.S.C. section 1533(d); or

(b) Documents addressing the needs of the affected species so long as they have been reviewed under the State Environmental Policy Act;

(i) A landscape management plan; or

(ii) Another cooperative or conservation agreement entered into with a state resource agency pursuant to its statutory authority for fish and wildlife protection;

PROPOSED

~~((A rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d);))~~

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1); ~~((or))~~

(f) A cooperative habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-105; or

(g) A take avoidance plan issued by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service prior to March 20, 2000.

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical ~~((wildlife))~~ habitat (state) ~~((or critical habitat (federal)))~~ for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

AMENDATORY SECTION (Amending WSR 97-15-105, filed 7/21/97, effective 8/21/97)

WAC 222-16-100 Planning options for the northern spotted owl. (1) **Landowner option plans for the northern spotted owl.** Landowner option plans (LOPs) are intended to provide landowners with a mechanism, entered into voluntarily, to contribute to the protection of northern spotted owls by considering the needs of overall population maintenance or dispersal habitat across a defined geographic area. Forest practices applications that are in an area covered by an LOP, and that are consistent with the LOP, will not be classified as Class IV-Special on the basis of critical ~~((wildlife))~~ habitat (state) or critical habitat (federal) for the northern spotted owl. This does not preclude classification as Class IV-Special because of the presence of other factors listed in WAC 222-16-050(1).

(a) **Required elements of LOPs.** The level of detail to be included in a LOP will depend on the area of ownership involved, the time period for which the plan will be in effect, and the complexity of the management strategy. Neverthe-

less, each plan shall contain the elements set forth in this subsection.

(i) **Goals and objectives.** The specific goals and objectives for the landowner's contributions proposed under the LOP shall be developed by the landowner and approved by the department in consultation with the department of fish and wildlife based on the following:

(A) Mitigation under the plan must be reasonable and capable of being accomplished;

(B) To the maximum extent practicable, the plan must minimize and mitigate significant adverse impacts caused by, and identified in, the plan on individual northern spotted owl site centers or the ability of the SOSEA to meet SOSEA goals. Specific short (one to five-year) and long (greater than five-year) term goals and objectives for the LOP should be clearly stated, where applicable; and

(C) LOPs should be designed to achieve an appropriate contribution from nonfederal lands toward meeting SOSEA goals and are intended to be an efficient and effective alternative to site-by-site management planning. In Eastern Washington, LOPs must also consider the need to protect the forests from catastrophic loss from wildfire, insects, and diseases.

(ii) **Other required elements:**

(A) A description of the planning area. The LOP planning area shall include a sufficient amount of the landowner's forest land within the SOSEA to meet the goals and objectives of the plan.

(B) A description of the physical features in the planning area (e.g., geology, topography, etc.).

(C) The current habitat status. Suitable spotted owl habitat should be categorized and mapped as old forest, submature, young forest marginal, or dispersal.

(D) The current species status. All status 1, 2, and 3 northern spotted owl site centers and the associated median home range circles that overlap any of the landowner's ownership within the LOP boundary must be mapped.

(E) Management proposals and relevant operations plans.

(F) Projected suitable habitat development.

(G) A plan for training.

(H) A monitoring program.

(I) Reporting standards.

(J) The conditions under which the LOP may be modified.

(K) The term of the LOP and conditions for termination. The term of the LOP shall be sufficient to meet its goals and objectives. The conditions of the LOP run with the land unless the LOP specifies alternative means to achieve the LOP goals and objectives upon mid-term sale or transfer. In addition to any other termination provisions in the LOP, plans may be terminated by mutual agreement of the landowner and the department.

(b) **Approval of LOPs.** Upon receipt of a landowner option plan, the department shall circulate the plan to the department of fish and wildlife, affected Indian tribes, local government entities, other forest landowners in the SOSEA, and the public for a thirty-day review and comment period. The department may extend this review period for up to thirty

additional days. Within ninety days of receipt of the plan, the department shall review the comments and approve or disapprove the plan or submit the plan to the landowner to revise as appropriate. The department, after consultation with the department of fish and wildlife, shall approve the plan if:

- (i) The plan contains all of the elements required under this section;
- (ii) The plan is expected to be effective in meeting its goals and objectives;
- (iii) The plan will not have a probable significant adverse impact on the ability of the SOSEA to meet its goals; and
- (iv) The plan will not appreciably reduce the likelihood of the survival and recovery of the northern spotted owl in the wild.

In making its determination under this subsection, the department shall consider the direct, indirect, and cumulative effects of the plan; both the short-term and long-term effects of the plan; and whether local, state, or federal land management, regulatory, or nonregulatory requirements will mitigate identified significant adverse impacts. If the department does not approve the plan, or approves it over the objections of the department of fish and wildlife, the department shall set forth in writing a concise explanation of the reasons for its action.

(c) **Enforcement of LOPs.** The department shall review all applications and notifications from the landowner, proposed within the plan area, for consistency with the plan. Any applications or notifications found to be inconsistent with the plan shall be returned to the landowner for modification. After landowner review, applications and notifications which are not consistent with the plan shall be classified as Class IV-Special.

(2) See WAC 222-16-105 for CHEAs.

AMENDATORY SECTION (Amending WSR 97-15-105, filed 7/21/97, effective 8/21/97)

WAC 222-16-105 Cooperative habitat enhancement agreements. (1) **Purpose.** A cooperative habitat enhancement agreement (CHEA) is intended to remove disincentives for landowners who create, enhance, or maintain habitat for the northern spotted owl or marbled murrelet by providing them with protection against future spotted owl or marbled murrelet (~~(regulation)~~) rules caused by their enhancement activities. A CHEA is an agreement between the department and a landowner, developed in cooperation with the department of fish and wildlife, for the purpose of creating, enhancing, or maintaining northern spotted owl habitat and/or marbled murrelet habitat. The agreement will apply only to forest land identified by the landowner:

- (a) For northern spotted owls, outside of the median home range circles of northern spotted owl site centers in existence at the time of implementation.
- (b) For marbled murrelets, any current unoccupied or potential future habitat.

(2) **Authority.** Outside of the median home range circles of northern spotted owls or an occupied marbled murrelet site, the department, in consultation with the department of fish and wildlife, may enter into agreements with nonfederal landowners to create, enhance, or maintain habitat that

the northern spotted owl and/or the marbled murrelet can be expected to utilize. During the term of these agreements, forest practices covered by the agreements shall not be classified as Class IV-Special on the basis of critical ((wildlife)) habitat (state) or critical habitat (federal) for the northern spotted owl or the marbled murrelet. This does not preclude classification as Class IV-Special because of the presence of other factors listed in WAC 222-16-050(1).

(3) **Baseline.**

(a) Each agreement shall identify a baseline level of habitat, and the department shall not permit forest practices that reduce the habitat below the baseline during the term of the agreement.

(b) For northern spotted owls, the baseline may range from zero habitat to the overall levels of suitable spotted owl habitat and dispersal habitat that existed across the land in question at the time the agreement is entered into.

(c) For marbled murrelets, the baseline may range from zero habitat to the overall levels of suitable marbled murrelet habitat that existed across the land in question at the time the agreement is entered into.

(d) The department shall determine, working with the landowner and in consultation with the department of fish and wildlife, the appropriate baseline, taking into consideration:

- (i) The size of the landowner's ownership and the ability of the landowner to maintain habitat conditions across the landscape in question over time;
- (ii) The overall benefits of the agreement to the northern spotted owl or marbled murrelet including both the proposed measures to create, enhance, or maintain habitat and the proposed baseline levels; and
- (iii) The term of the agreement.

(4) **Form and content of CHEAs.**

(a) The department shall, in consultation with the department of fish and wildlife, have the authority to define the form and content of CHEAs. The form and content may vary among agreements, but each must provide sufficient information for the department, the public, and other reviewers to understand and evaluate the agreement against the standards established under this section.

(b) For northern spotted owls, in addition to the elements required by the department, each agreement shall include a plan to avoid harvesting, road construction, or the aerial application of pesticides, between March 1 and August 31, on the seventy acres of highest quality suitable spotted owl habitat surrounding any known northern spotted owl site centers on lands covered by the agreement.

(5) **Approval of a CHEA.** Upon receipt of a CHEA, the department shall circulate the agreement to the department of fish and wildlife, affected Indian tribes, local government entities, other forest landowners in the SOSEA (if the CHEA is in a SOSEA), and the public for review and comment. Within sixty days of receipt of the agreement, the department shall review the comments and approve or disapprove the agreement or submit the agreement to the landowner to revise as appropriate. The department, after consultation with the department of fish and wildlife, may approve the agreement

if the agreement will create, enhance, or maintain habitat conditions for:

(a) The northern spotted owl in a manner that provides a measurable contribution toward meeting the goals of the SOSEA or a measurable benefit to northern spotted owls outside SOSEAs.

(b) The marbled murrelet in a manner that provides a measurable benefit to the species.

(6) **Enforcement of CHEAs.** The department shall review all applications and notifications from the landowner, proposed within the agreement area, for consistency with the agreement. Any applications or notifications found to be inconsistent with the agreement shall be returned to the landowner for modification. After landowner review, applications and notifications which are not consistent with the agreement shall be classified based on the rules in effect at the time of application and without any of the benefits of the agreement.

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND ((REGULATIONS)) RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Except as provided in subpart (4) below, applications and notifications** ((for operations not converting to another use)) shall be signed by the landowner, the timber owner and the operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)). ((Where the application is not signed by the landowner, the department shall, provided all the other requirements contained in chapter 222-20 WAC are met, approve the application without the signature of the landowner if:

(a) ~~The operator or timber owner provides legal evidence of timber rights, ownership, or other legal rights;~~

(b) ~~The timber owner or operator posts a bond, in an amount determined by and a form acceptable to the department, securing compliance with the requirements of the forest practices regulations; and~~

(c) ~~The operator or timber owner provides evidence of reasonably advance notification to the landowner of the pro-~~

~~posed forest practice and that the landowner has been requested to sign the application, a copy of which has been made available to the landowner. Provided, That in lieu of such evidence the applicant may submit a sworn statement indicating inability to locate the landowner after a reasonable good faith attempt to locate and notify the landowner of the proposed forest practice.))~~

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

((5)) (6) **Transfer of the approved application or notification** to a new landowner, timber owner or operator requires written notice by the original landowner or applicant to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices ((regulations)) rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

((6)) (7) **Applications and notifications** must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.

((7)) (8) **Applications and notifications** shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application. A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the CRGNSA special management area guidelines is necessary information for an application or notifica-

tion within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within 45 days. An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications. A local government entity clearing and/or grading permit is necessary information for all Class IV applications on lands that will be converted to a use other than commercial timber production or on lands which have been platted after January 1, 1960, if the local government entity has jurisdiction and has an ordinance requiring such permit. If a notification or application is delivered in person to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.

(9) An operator's name, if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within 48 hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070(1). Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

(10) Financial assurances may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

NEW SECTION

WAC 222-20-015 Multiyear permits. (1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080, landowner(s) may apply for a multiyear permit. The information provided and level of detail must be comparable to that required for a two-year permit. At a minimum, the application must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) A landowner may apply for a multiyear permit to perform road maintenance or abandonment if the landowner has an approved road maintenance and abandonment plan where the schedule for implementing the plan is longer than two years. The information provided and level of detail must be comparable to that required for two-year permits under WAC 222-24-050.

(3) A landowner may apply for a multiyear permit to perform an approved alternate plan.

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

WAC 222-20-020 Application time limits. (1) **A properly completed application** shall be approved, conditioned or disapproved within 30 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 60 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 10 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 platted after January 1, 1960, or lands to be converted, the applicable time limit shall be no less than 14 business days from transmittal to the county unless the county has waived its right to object or has consented to approval of the application.

(2) **Unless the county** has waived its rights under the act or consents to approval, the department shall not approve an application involving lands platted after January 1, 1960, in the process of being platted or proposed to be converted to another use until at least 14 business days from the date of transmittal to the county.

(3) **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 (~~regulations~~) **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 5 days from receipt by the department of the notification.

(4) **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: Provided, That this provision shall not apply where:

(a) The county objects and the application involves lands platted after January 1, 1960, or lands to be converted where the county's right of objection is 14 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.

(5) **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.

(6) An application for a multiyear permit must be approved, conditioned or disapproved by the department within 45 days of receiving a complete application.

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-20-040 Approval conditions. (1) **Whenever an approved** application authorizes a forest practice 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 on the approved application, notify the department 2 business days before the commencement of actual operations.

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

(3) Local government entity conditions.

(a) RCW 76.09.240(1) allows a local government entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local government 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 Class IV general applications on lands that will be converted to a use other than commercial timber production or to Class IV general applications on lands which have been platted after January 1, 1960.

(c) The department shall transmit the applications to the appropriate local government entity within two business days from the date the department receives the application.

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

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

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

(e) The local government 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) Local government entity conditions shall be filed with the department within twenty-nine days of the filing of the application with the department or within fourteen business days of the transmittal of the application to the local government entity or one day before the department acts on the application, whichever is later.

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

(h) Any exercise of local government 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 SEPA. (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 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 (i) twenty-nine days of the receipt of the application by the department, (ii) fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local government entity; or (iii) 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 deny the application or require an EIS. (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 deny the application.

(5) 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 ((regulations)) 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 Southeast and Southwest 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 an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 91-23-052, filed 11/15/91, effective 12/16/91)

WAC 222-20-050 Conversion to nonforest use. (1) If an application to harvest signed by the landowner indicates that within 3 years after completion, the forest land will be converted to a specified active use which is incompatible with timber growing, the reforestation requirements of these ((regulations)) rules shall not apply and the information relating to reforestation on the application form need not be supplied. However, if such specified active use is not initiated within 3 years after such harvest is completed, the reforestation requirements (See chapter 222-34 WAC) shall apply and such reforestation shall be completed within 1 additional year.

(2) For Class II, III, and IV special forest practices, if a landowner wishes to maintain the option for conversion to a use other than commercial timber operation the landowner may request the appropriate local government entity to approve a conversion option harvest plan. This plan, if approved by the local government entity and followed by the landowner, shall release the landowner from the six-year moratorium on future development, but does not create any other rights. The conversion option harvest plan shall be attached to the application or notification as a condition. Violation of the conversion option harvest plan will result in the reinstatement of the local government entity's right to the six-year moratorium. Reforestation requirements will not be waived in the conversion option harvest plan. Reforestation ((regulations)) rules shall apply at the completion of the harvest operation as required in chapter 222-34 WAC. Nothing herein shall preclude the local government entity from charging

a fee to approve such a plan. (See RCW 76.09.060 (3)(b)(i).)

(3) If the application does not state that any land covered by the application will be or is intended to be converted to a specified active use incompatible with commercial timber operations and except as provided in subsection (2) of this section, the local government entity may, for six years after the date of the application, refuse to accept, process, or approve any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of the land subject to the application. (See RCW 76.09.060 (3)(b)(i).)

NEW SECTION

WAC 222-20-055 Continuing forest land obligations. Continuing forest land obligations include reforestation, road maintenance and abandonment plans, and harvest strategies on perennial nonfish habitat waters in Eastern Washington.

(1) Prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the Forest Practices Act and rules, the seller must notify the buyer of the existence and nature of such a continuing obligation and the buyer must sign a notice of continuing forest land obligation indicating the buyer's knowledge of the obligations. The notice must be:

- (a) On a form prepared by the department;
- (b) Sent to the department by the seller at the time of sale or transfer of land or perpetual timber rights; and
- (c) Retained by the department.

(2) If the seller fails to notify the buyer about the continuing forest land obligation, the seller must pay the buyer's costs related to continuing forest land obligations, including all legal costs and reasonable attorneys' fees incurred by the buyer in enforcing the continuing forest land obligation against the seller.

(3) Failure by the seller to send the required notice to the department at the time of sale will be prima facie evidence in an action by the buyer against the seller for costs related to the continuing forest land obligation prior to sale.

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-20-070 Emergency forest practices. No prior notification or application shall be required for emergency forest practices necessitated by and commenced during or immediately after fire, flood, windstorm, earthquake, structural failure or other catastrophic event. Within 48 hours after commencement of such practice, the operator shall submit an application or notification to the department with an explanation why emergency action was necessary. Such emergency forest practices are subject to these ((regulations)) rules: Provided, however, That the operator may take any reasonable action to minimize damage to forest lands, timber or public resources from the direct or indirect effects of the catastrophic event and: Provided further, The operator shall comply with any requirements of a notice to comply or stop work order as if conducted pursuant to an approved application.

PROPOSED

AMENDATORY SECTION (Amending WSR 92-23-056, filed 11/17/92, effective 12/18/92)

WAC 222-20-080 Application and notification expiration. The approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval, with the exception of multiyear permits. Multiyear permits are effective for up to five years. The multiyear permit is not renewable if a five-year watershed analysis review is found necessary by the department and has not been completed. A notification is also effective for a term of two years from the date of receipt.

AMENDATORY SECTION (Amending WSR 87-23-036 (Order 535), filed 11/16/87, effective 1/1/88)

WAC 222-20-100 Notice to parks and OAHP. (1) **Notice to parks.** The department shall send to the affected agency, within 2 business days of receipt, a copy of any notification or application for forest practices within 500 feet of the boundary of any park entity registered according to subsection (2) of this section.

(2) **Parks register.** The department shall establish and update every 5 years a parks register listing all publicly owned parks where the affected owner has filed a written request with the department for inclusion on such register. The department shall notify owners of all public parks inventoried on the state comprehensive outdoor recreation plan (SCORP) of the opportunity to register.

(3) **DNR to provide information to OAHP.** The department shall provide the office of archaeology and historic preservation (OAHP) with copies of all applications and notifications for forest practices to be conducted on lands known to contain historic sites or archaeological resources as identified by OAHP.

Chapter 222-21 WAC

SMALL FOREST LANDOWNER FORESTRY RIPARIAN EASEMENT PROGRAM

NEW SECTION

WAC 222-21-005 Policy. The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.

NEW SECTION

WAC 222-21-010 Definitions. The following definitions apply to this chapter:

(1) **"Commercially reasonable harvest unit"** means a harvest area that meets the requirements of WAC 222-21-060.

(2) **"Completion of harvest"** means that the trees have been harvested from an area under an approved forest practices application and that further entry into that area by any type of logging or slash treating equipment or method is not expected.

(3) **"Danger tree"** means any qualifying timber reasonably perceived to pose an imminent danger to life or improved property.

(4) **"Easement premises"** means the geographic area designated in a forestry riparian easement, including the areas in which qualifying timber is located. Easement premises may be categorized as follows:

(a) **Riparian area easement premises** means riparian areas and areas upon which qualifying timber associated with riparian areas are located.

(b) **Other easement premises** means areas of land required to be left unharvested under rules adopted under RCW 76.09.055 or 76.09.370 including areas upon which other qualifying timber outside riparian areas is located and areas of land upon which uneconomic qualifying timber is located.

(5) **"Forestry riparian easement"** means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(6) **"Hazardous substances"** means hazardous substances as defined in RCW 70.102.010(5), and 70.105D-.020(7), and solid waste as defined in RCW 70.95.030(22).

(7) **"High impact regulatory threshold"** means the threshold where the value of qualifying timber is greater than 25.6% (for timber in Western Washington) or 31% (for timber in Eastern Washington) of the value of the harvested timber and qualifying timber under the approved forest practices application covering the qualifying timber. This threshold will be revised after preparation of the final small business economic impact statement (SBEIS) prepared under chapter 19.85 RCW.

(8) **"Qualifying timber"** means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under rules adopted under RCW 76.09.055 or 76.09.370 or that are made uneconomic to harvest by those rules, and for which the small forest landowner is willing to grant the state a forestry riparian easement. Qualifying timber is timber within or bordering a commercially reasonable harvest unit. Qualifying timber is categorized as follows:

(a) **Permanent qualifying timber** includes trees that shall not be harvested or damaged or removed from the easement premises during the term of the easement.

(i) Where permanent qualifying timber is in areas in which no harvest may take place, the easement shall describe the boundaries of the areas. No harvest of any tree within this area shall take place during the term of the easement.

(ii) Where permanent qualifying timber is located in areas in which selective harvest may take place, the perma-

ment qualifying timber must be tagged for the duration of the easement.

(b) **Reserve qualifying timber** includes trees that may be harvested and removed but only in compliance with the terms of the easement. Reserve qualifying timber shall be identified separately from the permanent qualifying timber.

(c) **Replacement qualifying timber** includes trees which, in the future, will be substituted for the reserve qualifying timber before the reserve qualifying timber may be harvested or removed from the property. Replacement qualifying timber will be selected from time to time pursuant to the provisions of the easement and will be subject to the terms and protections of the easement.

(d) **Uneconomic qualifying timber** includes trees made uneconomical to harvest. The trees are considered permanent qualifying timber and may not be harvested or otherwise damaged during the term of the easement.

(e) **Other qualifying timber outside riparian areas** includes trees that may not be harvested under forest practices rules adopted under RCW 76.09.055 or 76.09.370 for reasons other than protection of riparian functions. It includes without limitation trees that are unharvestable because of public safety concerns. The trees are considered permanent qualifying timber and may not be harvested or otherwise damaged during the term of the easement.

(9) **"Riparian areas"** include the areas designated in a forestry riparian easement. Riparian areas include without limitation all riparian and other special management zones required by the forest practices rules for protection of aquatic resources and includes associated qualifying timber.

(10) **"Riparian function"** includes bank stability, recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic systems conditions.

(11) **"Small forest landowner"** means a forest landowner meeting all of the characteristics in (a) of this subsection unless any of the exceptions in (b) of this subsection are met.

(a) As of the date a forest practices application is received for which the forestry riparian easement is associated, the forest landowner:

(i) Is an individual, partnership, corporate, or other non-governmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section;

(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is received;

(iii) Has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the forest landowner as a small timber harvester under RCW 84.33.073(1); and

(iv) Certifies at the time the forest practices application is received that it does not expect to harvest from its own

lands more than the volume allowed by RCW 84.33.073(1) during the ten years following receipt of the application.

(b) At the time the forest practices application is received, a forest landowner whose prior three-year average harvest exceeds the limit of RCW 84.33.073(1), or who expects to exceed this limit during the ten years following receipt of the forest practices application, may still qualify as a small forest landowner if that landowner establishes to the small forest landowner office reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses. (Note: The small forest landowner office will establish a board manual governing these exceptions.)

(12) **"Small forest landowner office"** is an office within the department described in RCW 76.13.110, and it shall be a resource and focal point for small landowner concerns and policies and shall have significant expertise regarding the management of small forest holdings and government programs applicable to such holdings, and the forestry riparian easement program.

(13) **"Uneconomic to harvest"** means that a harvest area meets the requirements of WAC 222-21-065.

NEW SECTION

WAC 222-21-020 Criteria for accepting riparian easement. (1) All of the following criteria must be met before the small forest landowner office may acquire a forestry riparian easement:

(a) The easements must include qualifying timber within riparian areas and may include other qualifying timber;

(b) The small forest landowner must be willing to sell or donate such easements to the state;

(c) The small forest landowner office has received an application for a forestry riparian easement;

(d) The small forest landowner has provided a litigation guarantee or similar report from a title company for the property;

(e) Acceptable documents necessary for creation of the easement have been prepared; and

(f) The easement is not subject to unacceptable liabilities in subsection (3) of this section.

(2) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises, qualifying timber, and the riparian functions provided by the qualifying timber during the term of the easement must execute the easement documents or otherwise subordinate their interest to the easement interest being acquired by the state. This includes tenants in common, joint tenants, holder of reversionary interests, lien holders, and mortgages.

(3) Unacceptable liabilities for the state include, but are not limited to, the following:

(a) Potential liability exposure due to the presence of hazardous substances;

(b) Where the department does not have satisfactory access to the easement premises, the landowner must desig-

nate the access route on the forest practice application base map;

(c) Existing uses of the property that may jeopardize the protection of the easement premises, qualifying timber, and riparian functions;

(d) Any other liability where the liability may jeopardize the protection of the easement premises, qualifying timber, and its riparian functions.

NEW SECTION

WAC 222-21-030 Document standards. (1) Riparian easement. The riparian easement document must be substantially in the following form, but may be modified by the small forest landowner office wherever necessary to accomplish the purposes of RCW 76.13.120.

(This version assumes ownership of land and trees)

FORESTRY RIPARIAN EASEMENT

THIS GRANT OF A FORESTRY RIPARIAN EASEMENT is made on this ____ day of ____, 20__, by _____ [a _____ corporation, limited liability company, partnership, limited partnership, limited liability partnership] [husband and wife] [individual][or others as appropriate] having an address at _____ ("Grantor"), to and in favor of the State of Washington, acting by and through the Department of Natural Resources ("Grantee").

1.0 RECITALS AND PURPOSE

1.1 This Easement is intended to implement the goals of the Forest Practices Salmon Recovery Act, ESHB 2091, sections 501 through 504, chapter 4, Laws of 1999 ("Salmon Recovery Act"). The goals include avoiding the further erosion of the small forest landowners' economic viability and willingness or ability to keep the lands in forestry use which would reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, through the establishment of a forestry riparian easement program to acquire easements from small forest landowners along riparian and other areas of value to the state for protection of aquatic resources.

1.2 This Easement is intended to protect the Qualifying Timber and riparian functions associated with the qualifying timber located on the Easement Premises as provided by the terms of this Easement as set forth in Exhibit B while preserving all lawful uses of the Easement Premises by Grantor consistent with the Easement objectives, and to provide Grantee with the ability to enforce the terms thereof.

1.3 The Easement Premises and Qualifying Timber are located, as described in **Exhibit A**; that the encumbrances, if any, are as set forth in **Exhibit A**; that all Exhibits referenced herein and attachments thereto are incorporated into this Easement as part of this Easement; and that the Grantor wishes to execute this Forestry Riparian Easement.

2.0 CONVEYANCE AND CONSIDERATION

2.1 In consideration of the mutual covenants contained herein, including without limitation the monetary consideration set forth in subsection 2.2 below, the Grantor does hereby voluntarily warrant and convey to the Grantee a Forestry Riparian Easement under the Salmon Recovery Act, which Easement shall remain in full force and effect from the date hereof until it expires on (month, date, year) [50 years from the date the complete and accurate forest practices application is submitted], which Easement shall consist of the rights and restrictions expressly set forth herein.

2.2 In consideration of this Easement, Grantee shall pay to Grantor the sum of _____ dollars (\$____.00).

IN WITNESS WHEREOF Grantor and Grantee have executed this instrument on the day and year written.

GRANTOR:

_____ Date: _____

By: _____

PROPOSED

GRANTEE:

State of Washington

By and Through the Department of Natural Resources

_____ Date: _____

(Title)

(insert form of acknowledgement, as appropriate)

EXHIBIT A

A1 DESCRIPTION AND LOCATION OF QUALIFYING TIMBER

The Qualifying Timber includes the following categories of trees located within the Easement Premises:

[List the categories relevant to particular Easement, i.e., Permanent, Reserve, Replacement, Uneconomic, or Other Qualifying Timber.] The Qualifying Timber is located as shown in the documentation attached hereto as Attachment A-1.

A2 DESCRIPTION AND LOCATION OF EASEMENT PREMISES

The Easement Premises is *[insert description using the standards developed under Section 504(9)(b) of the Salmon Recovery Act including the categories relevant to particular Easement, i.e., Riparian Area and Other Easement Premises]* as shown in the documentation attached hereto as Attachment A-2 and is located in *[insert legal subdivision/lot, etc., in which the Easement Premises exists.]*

A3 BASELINE IDENTIFICATION, DESCRIPTION AND DOCUMENTATION OF PROPERTY, EASEMENT PREMISES AND QUALIFYING TIMBER

The parties agree that the current use, condition of the Easement Premises and the condition of the Qualifying Timber are documented in the inventory of their relevant features and identified in Attachment A-3 ("Baseline Documentation"), and that this documentation provides, collectively, an accurate representation at the time of this grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

EXHIBIT B

FORESTRY RIPARIAN EASEMENT TERMS AND CONDITIONS

B1 DEFINITIONS

The terms used in this Easement, including without limitation the following, are defined by the forest practices rules incorporated in Attachment B-1 to this Exhibit.

"Danger Tree"

PROPOSED

"Danger Tree"

"Easement Premises"

"Qualifying Timber"

"Hazard Substances"

"Riparian Areas"

"Riparian Function"

B2 RIGHTS OF GRANTEE ***[Subsection B2.4 should be included only for multiple entry Easements.]***

To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Easement:

B2.1 To enforce the terms of this Easement as provided in subsection **B9**.

B2.2 To enter upon the Easement Premises, or to allow Grantee's agents or any experts consulted by Grantee in exercising its rights under this Easement to enter upon the Easement Premises in order to evaluate Grantor's compliance with this Easement, and to otherwise enforce the terms of this Easement.

B2.3 To convey, assign, or otherwise transfer Grantee's interests herein to another agency of the State of Washington, as provided for and limited by Section 504 of the Salmon Recovery Act.

B2.4 Where harvest of Reserve Qualifying Timber is allowed during the term of this Easement, to approve Replacement Qualifying Timber that will be protected by this Easement as provided in subsection **B3.5**.

B3 RESTRICTIONS ON GRANTOR ***[Subsection B3.6 should be included only for multiple entry Easements.]***

B3.1 Inconsistent Uses of Riparian Easement Premises

Any use of, or activity on, the Easement Premises inconsistent with the purposes and terms of this Easement, including without limitation converting to a use incompatible with growing timber, is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity.

B3.2 Property Outside the Easement Premises

Grantor may change its use of the property on which the Easement lies to any lawful use. Grantor shall provide Grantee sixty (60) days notice prior to changing the use of the property as a courtesy to Grantee.

B3.3 Qualifying Timber

Grantor shall not engage in any activity which would result in the cutting of Qualifying Timber or the removal of that timber from the Easement Premises, except as provided in this Easement. The parties further agree that use, harvest, and treatment of the Qualifying Timber are restricted according to the forest practices rules in Attachment B-1.

B3.4 Danger Trees and Salvage

Grantor may cut a Danger Tree, which shall be left in place within the Easement Premises or moved by Grantor inside the Easement Premises. Grantor shall notify DNR within seven (7) days that a Danger Tree has been felled. Grantor shall not engage in any activities pertaining to salvage of Qualifying Timber including without limitation blowdown except as provided for in the forest practices rules.

B3.5 Harvest of Reserve Qualifying Timber and Designation of Replacement Qualifying Timber on Riparian Area Easement Premises

Grantor shall not, during the term of this Easement, harvest or remove any Reserve Qualifying Timber except as permitted under the applicable forest practices rules. Grantor shall give Grantee at least thirty (30) days written notice prior to harvest or removal of Reserve Qualifying Timber, except that where a permit or approval is required from any governmental entity, such notice shall be given thirty (30) days before submission of the application for such permit or approval. Grantor shall mark Reserve Qualifying Timber and Replacement Qualifying Timber, where Replacement Qualifying Timber is required, for review by Grantee. Grantor's thirty (30) days written notice to Grantee is effective only after both Reserve Qualifying Timber and Replacement Qualifying Timber (if required) are marked. If Grantee does not object by giving Grantor written notice within thirty (30) days of receipt of Grantor's notice, Grantor may proceed to harvest and remove the Reserve Qualifying Timber. If Grantee does object and gives Grantor written notice thereof within thirty (30) days of receipt of Grantor's notice, Grantor shall not harvest or remove Reserve Qualifying Timber until the objection is resolved. If Reserve Qualifying Timber is to be removed but Replacement Qualifying Timber is required to be left standing for the balance of the term of this Easement, then Grantor shall mark the Replacement Qualifying Timber and, if approved by Grantee, such Timber shall be considered Qualifying Timber under this Easement. A new Exhibit A shall be prepared along with a supplement to this Easement, executed by Grantor and Grantee, and recorded.

B3.6 Multiple Entry Easements

Grantor shall not, during the term of this Easement, make multiple entry harvests except as permitted under the applicable forest practices rules. Grantor shall give Grantee at least thirty (30) days written notice prior to harvest or removal of timber, except that where a permit or approval is required from any government entity, such notice shall be given thirty (30) days before submission of the application for such permit or approval. Grantor shall mark timber to be removed for review by Grantee. Grantor's thirty (30) day written notice to Grantee is effective only after the timber to be removed is marked. If Grantee does not object by giving Grantor written notice within thirty (30) days of receipt of Grantor's notice, Grantor may proceed to harvest. If Grantee does object and gives Grantor notice thereof within thirty (30) days of receipt of Grantor's notice, Grantor shall not harvest until the objection is resolved. Valuation methodology for multiple entry easements shall be in accordance with WAC 222-21-045(3).

B4 RESERVED RIGHTS

Other than specifically provided herein, Grantor is not restricted in its use of the Easement Premises.

B5 PUBLIC ACCESS

No right of public access to or across, or any public use of, the Easement Premises or the property on which it lies is conveyed by this Easement.

B6 COSTS, LIABILITIES, TAXES, AND INDEMNIFICATION

B6.1 Costs, Legal Requirements, and General Liabilities

Except as is expressly placed on Grantee herein, Grantor retains full responsibility for the Qualifying Timber and Easement Premises. Grantor shall keep the Qualifying Timber and Easement Premises free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor remains responsible for obtaining all permits required by law.

PROPOSED

B6.2 Taxes and Obligations

Grantor shall remain responsible for payment of taxes or other assessments imposed on the Easement Premises or the Qualifying Timber. Grantor shall furnish Grantee with satisfactory evidence of payment upon request.

B6.3 Hold Harmless**B6.3.a Grantor**

To the extent permitted by law, Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its employees, agents, and assigns from and against all liabilities, penalties, costs, charges, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with: (a) Injury or death of any person or any physical damage to property resulting from any act or omission, or other matter occurring on or relating to the Easement Premises or Qualifying Timber, caused solely by Grantor; (b) a breach by Grantor of its obligations under subsection B3; (c) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law or requirement by Grantor in any way affecting, involving, or relating to the Easement Premises or the Qualifying Timber; (d) the release or threatened release onto the Easement Premises of any substance now or hereinafter classified by state or federal law as a hazardous substance or material caused solely by Grantor.

B6.3.b Grantee

To the extent permitted by law, Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and its employees, agents, and assigns from and against all liabilities, penalties, costs, charges, losses, damages, expenses, causes of action, claims, demands, orders, judgments or administrative actions, including without limitation reasonable attorneys' fees arising from or in any way connected with: (a) Injury or death of any person or any physical damage to property resulting from any act or omission, or other matter occurring on or relating to the Easement Premises or Qualifying Timber, caused solely by Grantee; or (b) the release or threatened release onto the Easement Premises of any substance now or hereinafter classified by state or federal law as a hazardous substance or material caused solely by Grantee.

B7 SUBSEQUENT TRANSFERS**B7.1 Grantee**

Grantee may assign, convey, or otherwise transfer its interest as evidenced in this Easement, but only to another agency of the State of Washington under any circumstances in which it determines, in its sole discretion, that such transfer is in the best interests of the state. Grantee shall give written notice to Grantor of the same within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).

B7.2 Grantor

Grantor may assign, convey, or otherwise transfer without restriction its interest in the Easement Premises or the Qualifying Timber identified in Exhibit A hereto. Grantor agrees to incorporate the restrictions of the Easement in any deed or other legal instrument by which Grantor divests itself of all or a portion of its interests in the Easement Premises or Qualifying Timber. Grantor shall give written notice to the Grantee of the assignment, conveyance, or other transfer of all or a portion of its interest in the Easement Premises or the Qualifying Timber within thirty (30) days of such conveyance, assignment, or transfer (provided that failure to give such notice shall not affect the validity of the assignment, conveyance, or transfer).

B7.3 Termination of Grantor's Rights and Obligations

The Grantor's personal rights and obligations under this Easement terminate upon transfer of the Grantor's interest in the property on which the Easement lies or the Qualifying Timber, except that liability under the Easement for acts or omissions occurring prior to transfer shall survive transfer.

B8 DISPUTE RESOLUTION

The parties may at any time by mutual agreement use any nonbinding alternative dispute resolution mechanism with a qualified third party acceptable to Grantor and Grantee. Grantor and Grantee shall share equally the costs charged by the third party. The existence of a dispute between the parties with respect to this Easement, including without limitation the belief by one party that the other party is in breach of its obligations hereunder, shall not excuse either party from continuing to fully perform its obligations under this Easement. The dispute resolution provided for in this subsection is optional, not obligatory, and shall not be required as a condition precedent to any remedies for enforcement of this Easement.

B9 ENFORCEMENT**B9.1 Remedies**

Either party may bring any action in law or in equity in the superior court for the county in which the Easement Premises are located or in Thurston County (subject to venue change under law) to enforce any provision of this Easement, including without limitation, injunctive relief (permanent, temporary, or ex parte, as appropriate) to prohibit a breach of this Easement, enforce the rights and obligations of this Easement, restore Qualifying Timber cut or removed in violation of this Easement or for damages. Grantee may elect to pursue some or all of the remedies provided herein.

B9.1.a Damages and Restoration

If Grantor cuts or removes (or causes another to cut or remove) Qualifying Timber from the Easement Premises in violation of this Easement, Grantee shall be entitled to damages, or restoration. Damages for the cutting of Qualifying Timber or the removal of Qualifying Timber from the Easement Premises in violation of the terms of this Easement may be up to triple stumpage value times the proportion of the original compensation. The maximum amount of damages shall be calculated according to the following formula:

Where:

S_v = The stumpage value of the Qualifying Timber that is cut or removed from the Easement Premises at the time the damage was done;

C = The compensation paid by the state to the Grantor at the time the Easement became effective;

V_q = The original value of Qualifying Timber at the time the Easement became effective as calculated in WAC 222-21-050.

Maximum Damages = $3 * S_v * (C / V_q)$

In addition the Grantor shall pay interest on the amount of the damages at the maximum interest rate allowable by law.

Grantee's rights to damages under this section shall survive termination. Restoration of Qualifying Timber may include either replanting or replacing trees or both, as determined by Grantee, in its sole discretion, to be appropriate. Replanting shall be by nursery transplant seedlings approved by Grantee with subsequent silvicultural treatment including without limitation weed control and fertilization approved by Grantee. Replacing trees shall be accomplished by designation of replacement trees of the size and species acceptable to Grantee. If replacement trees are designated to replace the Qualifying Timber cut or removed in violation of the terms of this Easement, the designated trees shall be thereafter treated as Qualifying Timber under this Easement.

B9.1.b Injunctive Relief. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate and that Grantee may be entitled to injunctive relief, both prohibitive and mandatory, in addition to other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies.

B9.1.c Relationship to Remedies in Other Laws. The remedies provided for in this section are in addition to whatever other remedies the state may have under other laws including without limitation the Forest Practices Act. Nothing in this Easement shall be construed to enlarge, diminish or otherwise alter the authority of the state to administer state law.

B9.2 Costs of Enforcement

The costs, including reasonable attorneys' fees, of enforcing this Easement shall be borne by Grantee unless Grantee prevails in a judicial action to enforce the terms of this Easement, in which case costs shall be borne by Grantor, provided that nothing herein shall make Grantor liable for costs incurred by Grantee in taking enforcement actions pursuant to other state laws.

B9.3 Forbearance/Waiver

Enforcement of this Easement against the Grantor is at the sole discretion of the Grantee, and vice versa. Any forbearance by either party to exercise its rights hereunder in the event of a breach by the other party shall not be deemed a waiver by the forbearing party of the term being breached or of a subsequent breach of that term or any other term or of any other of the forbearing party's rights under this Easement.

B9.4 Waiver of Certain Defenses

Grantor hereby waives any defense of laches, estoppel, or prescription.

B9.5 Acts Beyond Grantor's Control

Nothing herein shall be construed to entitle Grantee to bring any action or claim against Grantor on account of any change in the condition of the Easement Premises or of the Qualifying Timber that was not within Grantor's control, including without limitation fire, flood, storms, insect and disease outbreaks, earth movement, or acts of trespassers, that Grantor could not reasonably have anticipated and prevented, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Premises or Qualifying Timber resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

B10 CONSTRUCTION AND INTERPRETATION**B10.1 Controlling Law**

Interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B10.2 Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumptively construed against either party.

B10.3 Captions

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

B11 AMENDMENT

This Easement may be jointly amended. The amendments shall be in writing and signed by authorized representatives. Grantee shall record any such amendments in a timely fashion in the official records of _____ County, Washington. All amendments shall be consistent with the purposes of this Easement.

B12 TERMINATION

Grantee may unilaterally terminate this Easement if it determines, in its sole discretion, that termination is in the best interest of the State of Washington. Grantee shall provide thirty (30) days written notice to Grantor of such termination.

B13 EXTINGUISHMENT

If circumstances arise that render the purpose of this Easement impossible to accomplish, this Easement can only be extinguished, in whole or in part, by mutual agreement of the parties or through judicial proceedings brought by one of the parties. Grantee shall be entitled to the value of the Easement as such value is determined pursuant to forest practices rules governing extinguishment or eminent domain, if no rule for extinguishment exists.

B14 CONDEMNATION

If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantee shall be entitled to compensation in accordance with the forest practices rules.

B15 NOTICE

Notices given pursuant or in relation to this Easement shall be in writing and delivered personally or by first class mail (postage pre-paid), addressed as follows:

(a) If to Grantor:

(b) If to Grantee:

Washington State Department of Natural Resources
 Small Forest Landowner Office
 DNR-Forest Practices Division
 P.O. Box 47012
 Olympia, WA 98504-7012

If either party's address changes during the term of this Easement, that party shall notify the other party of the change.

Any notice required to be given hereunder is considered as being received: (i) If delivery in person, upon personal receipt by the person to whom it is being given; or (ii) if delivered by first class U.S. mail and properly addressed, three (3) days after deposit into the U.S. mail; or (iii) if sent by U.S. mail registered or certified, upon the date receipt is acknowledged by the recipient.

B16 RECORDATION

Grantee shall record this instrument in timely fashion in the official records of _____ County, Washington and may re-record it at any time as may be required to preserve its rights in this Easement.

B17 GENERAL PROVISIONS

B17.1 Severability

If any provision in this Easement, or the application hereof to any person or circumstance, is found to be invalid, the remainder of this Easement, or the application hereof to other persons or circumstances shall not be affected thereby and shall remain in full force and effect.

B17.2 Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Easement. This instrument supercedes all other and prior discussions, negotiations, understandings, or agreements of the parties. No alteration or variation of this instrument shall be binding unless set forth in an amendment to this instrument consistent with subsection **B11**.

B17.3 Successors and Assigns

The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the Grantor, Grantee, and their respective successors and assigns and shall continue as a servitude running with the property on which the Easement lies for the term of this Easement set forth in subsection **2.1**.

PROPOSED

B17.4 No Forfeiture

Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

B17.5 Counterparts

The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original as against the party that has signed it. In the event of any disparity between counterparts produced, the recorded counterpart shall be controlling.

B17.6 References to Statutes and Rules

Except as otherwise specifically provided, any references in this Easement to any statute or rule shall be deemed to be a reference to such statute or rule in existence at the time the action is taken or the event occurs.

B17.7 Adherence to Applicable Law

Any activity pertaining to or use of the Easement Premises or Qualifying Timber shall be consistent with applicable federal, state, or local law including chapter 76.09 RCW, the Forest Practices Act, chapter 36.70A RCW, the Growth Management Act, chapter 90.58 RCW, the Shoreline Management Act, chapter 75.20 RCW, Construction Projects in State Waters Act ("Hydraulics Code"), the Endangered Species Act (16 U.S.C. Sec. 1531, et seq.), and the Clean Water Act (33 U.S.C. Sec. 1251, et seq.), and rules adopted pursuant to these statutes (including all rules adopted under Section 4(d) of the Endangered Species Act).

(2) **Forestry riparian easement application.** The following items are required for a complete forestry riparian easement application:

(a) A certification by the small forest landowner that he or she meets the qualifications of a small forest landowner;

(b) The small forest landowners' timber tax identification number and permission to access harvest information at the department of revenue;

(c) All forest practices application numbers for the commercially reasonable harvest units and the associated qualifying timber on the property;

(d) The dates and areas of all planned future harvest entries on the easement premises;

(e) A preliminary litigation guarantee or similar report from a title company for the tax parcels that contain the easement premises;

(f) A description of past and current uses of the easement premises;

(g) Any information not specifically listed that the small forest landowner office needs to evaluate the easement and eligibility of the small forest landowner.

(3) **Baseline documentation.** The baseline documentation must describe the features and current uses on the easement premises and the qualifying timber. The information provided by the small forest landowner in subsection (2) of this section is considered part of the baseline documentation. In addition, the department will provide documentation that includes, but is not limited to:

(a) Cruise information consistent with the standards and methods in WAC 222-21-040;

(b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement (see the board manual on procedures for conducting assessment); and

(c) A description of the easement consistent with WAC 222-21-035.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 222-21-035 Description of easement. The easement premises and qualifying timber must be described as follows:

(1) Range, township, section, and parcel number;

(2) Forest practice base map of proposed harvest, other forest practice activities and easement;

(3) 1:400 map of the easement premises indexed either to (1) legal land survey point or (2) geospatial system points; and

(4) Traverse of the easement premises tied to subsection (3) of this section. (See the board manual for standards of traverse.)

NEW SECTION

WAC 222-21-040 Timber cruises. (1) This section is designed to establish methods and standards for cruises of qualifying timber for the proposed forestry riparian easements for purposes of establishing the compensation. It applies only to the department, small forest landowners, and

the small forest landowner office in connection with the forestry riparian easement program.

(2) The following standards will be used for the timber cruises:

(a) The purpose of the timber cruise is to determine the volume by species and grade sufficient to value the qualifying timber.

(b) Additional trees left voluntarily by the small forest landowner may be noted, but are not included in the cruise volume.

(c) The cruise method will be a 100 percent inventory of qualifying timber on the proposed easement premises. The inventory will include species, diameter class, grade, and any other information necessary to determine valuation of the easement. (See the board manual for specific cruise standards.)

(d) A sampling cruise method may be used for easement premises under certain circumstances. (See the board manual for standards for sampling cruise method.)

NEW SECTION

WAC 222-21-045 Valuation. (1) This section is designed to establish methods and standards for valuation of forestry riparian easements for purposes of establishing the compensation. It applies only to the department, small forest landowners, and the small forest landowner office in connection with the forestry riparian easement program.

(2) The small forest landowner office will calculate the fair market value of the forestry riparian easement using a method based on combining predefined log sort prices from a log price reporting service designated by the small forest landowner office, after consultation with the small forest landowner advisory committee established under RCW 76.13.110(4) and the department of revenue.

A log price of each species will be determined and published by the small forest landowner office using the selected log price value minus the default harvest and marketing deduction defined in WAC 458-40-610(9), to arrive at a stumpage value to be used as the qualifying timber value (see board manual for details). The small forest landowner must indicate whether valuation will be determined in method (a) or (b) of this subsection:

(a) Date of receipt of the forest practices application associated with the qualifying timber; or

(b) Official notification date of start of harvest. The small forest landowner must notify the department in writing, prior to harvest. Failure to do so will cause the valuation to be determined using method (a) of this subsection.

(3) Recalculated valuation.

(a) For an easement that allows one or more harvests of qualifying timber during the term of the easement, a small forest landowner has the option of requesting up to two additional recalculations of the qualifying timber associated with any traditional harvest entry.

(b) Variables to be recalculated include:

(i) The 21 largest trees in the inner zone;

(ii) The 29 or more additional trees in the inner zone;

(iii) Outer zone leave trees;

(iv) Other regulatory requirements.

(c) The harvest at the time of recalculation is not required to meet the requirements found under WAC 222-21-060 (5) and (6).

(d) See the *Forest Practices Board Manual*, Section 17 for the recalculation formula.

NEW SECTION

WAC 222-21-050 Payment of compensation. (1) The compensation offered to the small forest landowner will be 50% of the fair market value of the qualifying timber established under the process described in WAC 222-21-045, subject to the following exceptions:

(a) If the high impact regulatory threshold is exceeded for an area covered by an approved forest practices application, then the compensation offered will be increased to 100% for the value of the qualifying timber where the high impact regulatory threshold is exceeded. Use the following calculation:

Where:

Vq = value of qualifying timber;

Vh = value of harvested timber;

t = high impact of regulatory threshold (25.6% for Western Washington, 31% for Eastern Washington);

TV = total value of all timber covered under FPA = Vq + Vh; and

HIO - high impact override = (Vq/TV)-t;

$$\text{Compensation for easement} = (\text{HIE} * \text{TV}) + \left(\frac{t * \text{TV}}{2} \right)$$

See Section 17 of board manual for example.

(2) All compensation is subject to available funding.

(3) If funding is not available, the small forest landowner office will maintain a priority list for compensation. Priority will be based on (a) date of receipt of forest practice application and (b) date of receipt of completed postharvest questionnaire.

(4) The small forest landowner office will send the small forest landowner a notice of compensation decision within 60 days of completion of the timber cruise.

(5) Compensation will not be paid until:

(a) The department has documented completion of harvest;

(b) The department has verified that there has been compliance with the rules requiring leave trees in the easement area;

(c) Any dispute over the amount of compensation or eligibility or other matter involving the forestry riparian easement has been resolved; and

(d) The forestry riparian easement has been executed and delivered to the department.

NEW SECTION**WAC 222-21-060 Commercially reasonable harvest.**

The small forest landowner office will use the following criteria to determine if an area covered by a forest practices application involves a commercially reasonable harvest. The proposed harvest must meet all of the following requirements:

- (1) The harvest unit includes or borders a riparian area;
- (2) The application is for a Class III or Class IV Special forest practice or a Class II that is a renewal of a Class III or Class IV Special;
- (3) The harvest is not a Class IV General conversion or covered by a conversion option harvest plan;
- (4) The landowner is not eligible for the 20 acre exemption under WAC 222-30-023;
- (5) The value of the timber in the harvest unit, excluding qualifying timber, is equal to or exceeds the minimum required by department of revenue for taxing purposes (\$1000); and
- (6) The taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045, unless otherwise approved by the small forest landowner office. (See the board manual.)

NEW SECTION

WAC 222-21-065 Uneconomic to harvest. The small forest landowner office will use the following criteria to determine whether timber is qualifying timber because it is rendered uneconomic to harvest by rules adopted under RCW 76.09.055 or 76.09.370:

- (1) The timber could have been included in a commercially reasonable harvest unit by the small forest landowner if there were no additional requirements imposed by rules adopted under RCW 76.09.055 or 76.09.370.
- (2) The area is not reasonably accessible because of requirements imposed by rules adopted under RCW 76.09.055 or 76.09.370.
- (3) The unit must have no reasonable unit size alternative which if used would make the area economical to harvest.
- (4) The cost to access the harvest unit plus the cost to harvest must equal or exceed 35% of the stumpage value in the portion of the unit considered to be uneconomic. The small forest landowner office will determine costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester method to calculate stumpage values and allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred, as part of the cost calculations.

NEW SECTION

WAC 222-21-070 Blowdown and salvage. After execution of a forestry riparian easement, qualifying timber may not be salvaged, including removal of blowdown, without prior written permission from the department. Prior to removal, the small forest landowner office and the small forest landowner must negotiate the terms of removal and reim-

bursement to the state, if any. Qualifying timber that blows down off the easement premises that presents a nuisance may be moved back onto the easement premises without permission from the department.

NEW SECTION

WAC 222-21-080 Eminent domain. If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, the state will receive compensation for its remaining interest in the easement based upon the following formula:

Where:

C - Is the compensation to the department for the state's remaining interest in the easement;

O - Is the original compensation for the easement paid to the small forest landowner by the state;

P - Is the proportion of the forestry riparian easement extinguished or terminated;

CPIo - Is the U.S. Consumer Price Index all urban consumers as published by the Bureau of Labor Statistics for the month in which the original compensation was determined;

CPIc - Is the U.S. Consumer Price Index all urban consumers as published by the Bureau of Labor Statistics for the most recent month available at the time the easement is terminated or extinguished;

I - Is the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;

R - Is the number of years remaining on the easement at the time of extinguishment or termination.

$$C = O * P * (CPIc / CPIo) * (1 - (1 / (1 + I)^R)) / (1 - (1 / (1 + I)^50))$$

NEW SECTION

WAC 222-21-090 Internal department of natural resources review of small forest landowner office compensation decisions. Within 30 days after the date of the notice of compensation decision, the small forest landowner may submit a written request for review to the supervisor of the department or his or her designee. The request for review must identify the issue being raised and provide any supporting documentation. The supervisor will issue a written response within 30 days.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-070 Prescription recommendation. *(1) For each WAU for which a watershed analysis is undertaken, the department, or forest land owner acting under WAC 222-22-040(3), shall assemble a team of field managers qualified

under WAC 222-22-030(1). The team shall include persons qualified in the disciplines indicated as necessary in ~~((the methodology))~~ watershed analysis methods, and shall generally include persons qualified in:

- (a) Forest resource management;
- (b) Forest harvest and road systems engineering;
- (c) Forest hydrology; and
- (d) Fisheries science or management.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

*(2) Each forest land owner in a WAU shall have the right to submit to the department or the forest land owner conducting the watershed analysis prescriptions for areas of resource sensitivity on its land. If these prescriptions are received within the time period described in subsection (4) of this section, they shall be considered for inclusion in the watershed analysis.

*(3) For each identified area of resource sensitivity, the field managers' team shall, in consultation with the level 1 and level 2 teams, if any, select and recommend to the department prescriptions. These prescriptions shall be reasonably designed to minimize, or to prevent or avoid, as set forth in table 1 in WAC 222-22-050 (2)(d), the likelihood of adverse change and deliverability that has the potential to cause a material, adverse effect to resource characteristics in accordance with the following:

(a) The prescriptions shall be designed to provide forest land owners and operators with as much flexibility as is reasonably possible while addressing the area of resource sensitivity. The prescriptions should, where appropriate, include, but not be limited to, plans for road abandonment, orphaned roads, and road maintenance and plans for applying prescriptions to recognized land features identified in the WAU as areas of resource sensitivity but not fully mapped;

(b) Restoration opportunities may be included as voluntary prescriptions where appropriate;

(c) Each set of prescriptions shall provide for an option for an alternate plan under WAC 222-12-040, which the applicant shows meets or exceeds the protection provided by the other prescriptions approved for a given area of resource sensitivity; and

~~((e))~~ (d) ~~((regulation))~~ rules of forest practices and cumulative effects under this chapter shall not require mitigation for activities or events not regulated under chapter 76.09 RCW. Any hazardous condition subject to forest practices identified in a watershed analysis requiring corrective action shall be referred to the department for consideration under RCW 76.09.300 et seq.

(e) The forests and fish riparian permanent rules, when effective, supersede all existing watershed analysis riparian prescriptions with the exception of riparian management zones for exempt 20-acre parcels, when watershed analysis prescriptions were in effect before January 1, 1999. (See WAC 222-30-021, 222-30-022, and 222-30-023.) No new riparian prescriptions will be written after completion of the riparian management zone assessment report during a watershed analysis.

*(4) The field managers' team shall submit the recommended prescriptions to the department within 30 days of the submission to the department of the level 2 assessment under WAC 222-22-060 or within 21 days of the submission to the department of the level 1 assessment under WAC 222-22-050.

NEW SECTION

WAC 222-22-075 Monitoring. *In connection with any watershed analysis that is not a revision (WAC 222-22-090(4)), the monitoring module will be required to be completed but implementation of monitoring recommendations would be voluntary unless otherwise required by existing laws and rules, or required by an HCP implementation agreement. Implementation of the monitoring recommendations will be encouraged when needed as part of the statewide effectiveness monitoring program.

NEW SECTION

WAC 222-22-076 *Restoration. Restoration opportunities will also be identified based on the watershed resource assessment. Implementation of restoration opportunities will be voluntary.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-22-080 *Approval of watershed analysis. (1) Upon receipt of the recommended prescriptions resulting from a level 2 assessment under WAC 222-22-060 or a level 1 assessment under WAC 222-22-050 where a level 2 assessment will not be conducted, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology, fish and wildlife, affected Indian tribes, local government entities, forest land owners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the prescriptions, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

*(2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, and capital improvements of the state or its political subdivisions.

*(3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual

could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) For the prescriptions, that they will not accomplish the purposes and policies of this chapter and of the Forest Practices Act, chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090(3).

* (4) If the department does not approve the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

(5) All watershed analyses must be reviewed under SEPA on a nonproject basis. SEPA review may take place concurrently with the public review in subsection (1) of this section. (See WAC 222-10-035.)

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-22-090 Use and review of watershed analysis. *(1) Where a watershed analysis has been completed for a WAU under this chapter:

(a) Any landowner within the WAU may apply for a multiyear permit to conduct forest practices according to the watershed analysis prescriptions. This permit is not renewable if a five-year review is found necessary by the department and has not been completed.

(b) Nonmultiyear forest practices applications and notifications submitted to the department shall indicate whether an area of resource sensitivity will be affected and, if so, which prescription the operator, timber owner, or forest land owner shall use in conducting the forest practice in the area of resource sensitivity;

~~((b))~~ (c) The department shall assist operators, timber owners, and forest land owners in obtaining governmental permits required for the prescription (see WAC 222-50-020 and 222-50-030);

~~((e))~~ (d) The department shall confirm that the prescription selected under (a) of this subsection was one of the prescriptions approved for the area of resource sensitivity under WAC 222-22-080 and shall require the use of the prescription; and

~~((d))~~ (e) The department shall not further condition forest practice applications and notifications in an area of resource sensitivity in a WAU where the applicant will use a prescription contained in the watershed analysis nor shall the department further condition forest practice applications and notifications outside an area of resource sensitivity in a WAU, except for reasons other than the watershed processes and fish, water, and capital improvements of the state or its political subdivisions analyzed in the watershed analysis in the WAU, and except to correct mapping errors, misidentification of soils, landforms, vegetation, or stream features, or other similar factual errors.

* (2) Pending completion of a watershed analysis for a WAU, the department shall process forest practices notifications and applications in accordance with the other chapters of this title, except that applications and notifications received for forest practices on a WAU after the date notice is mailed under WAC 222-22-040(4) commencing a watershed

analysis on the WAU shall be conditioned to require compliance with interim, draft, and final prescriptions, as available.

Processing and approval of applications and notifications shall not be delayed by reason of review, approval, or appeal of a watershed analysis.

* (3) The board encourages cooperative and voluntary monitoring. Evaluation of resource conditions may be conducted by qualified specialists, analysts, and field managers as determined under WAC 222-22-030. Subsequent watershed analysis and management strategies in response to areas where recovery is not occurring shall be conducted in accordance with this chapter.

* (4) Where the condition of resource characteristics in a WAU are fair or poor, the department shall evaluate the effectiveness of the prescriptions applied under this chapter to the WAU in providing for the protection and recovery of the resource characteristic. If the department finds that the prescriptions are not providing for such protection and recovery over a period of 3 years, the department shall repeat the watershed analysis in the WAU. Aside from the foregoing, once a watershed analysis is completed on a WAU, it shall be revised in whole or in part upon the earliest of the following to occur:

(a) Five years after the date the watershed analysis is final, if necessary;

(b) The occurrence of a natural disaster having a material adverse effect on the resource characteristics of the WAU;

(c) Deterioration in the condition of a resource characteristic in the WAU measured over a 12-month period or no improvement in a resource characteristic in fair or poor condition in the WAU measured over a 12-month period unless the department determines, in cooperation with the departments of ecology, fish and wildlife, affected Indian tribes, forest land owners, and the public, that a longer period is reasonably necessary to allow the prescriptions selected to produce improvement; or

(d) The request of an owner of forest land in the WAU, which wishes to conduct a watershed analysis at its own expense.

Revision of an approved watershed analysis shall be conducted in accordance with the processes, methods, and standards set forth in this chapter, except that the revised watershed analysis shall be conducted only on the areas affected in the case of revisions under (b) or (c) of this subsection, and may be conducted on areas smaller than the entire WAU in the case of revisions under (a) and (d) of this subsection. The areas on which the watershed analysis revision is to be conducted shall be determined by the department and clearly delineated on a map before beginning the assessment revision. Forest practices shall be conditioned under the current watershed analysis pending the completion of any revisions.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-100 Application review prior to watershed analysis. *The watershed analysis system established in this chapter is a principal methodology for assessing the effects on fish, water, and capital improvements of the state or its political subdivisions of two or more forest practices.

Recognizing that it will not be possible to achieve state-wide implementation of the analysis process for all WAUs for some time, the board hereby establishes certain interim regulatory measures pending watershed analysis on a given WAU. These measures are designed to ensure use of the best available analysis techniques and existing authorities to protect fish, water, and capital improvements of the state or its political subdivisions.

* (1) The department shall continue to use its implementation and enforcement authority to prevent damage to fish, water, and capital improvements of the state or its political subdivisions. See chapter 222-46 WAC.

~~((a) The department shall continue to concentrate and exercise its authority in implementing the use of existing road construction, maintenance, and abandonment rules where there is evidence of road-related damage to fish, water, and capital improvements of the state or its political subdivisions. The applicable road construction and maintenance rules can be found in chapter 222-24 WAC.~~

~~(b) The department shall report to the board each quarter the results of its road construction, maintenance, and abandonment enforcement program. No later than October 31 of each year, the board shall report on results and recommendations for regulatory change as needed to protect fish, water, and capital improvements of the state or its political subdivisions.)~~

* (2) The department shall condition the size of clearcut harvest applications in the significant rain-on-snow zone where the department determines, using local evidence, that peak flows have resulted in material damages to public resources. The department may prepare conditioning guidelines to assess and condition applications located in a significant rain-on-snow zone.

(a) Each year not later than August 31, the department shall provide a summary report of actions taken under rain-on-snow conditioning or conditioning guidelines to the appropriate board committee.

(b) Such conditioning authority shall expire upon completion of watershed analysis in a WAU.

(c) Nothing in this section shall require a watershed analysis to develop harvest size recommendations.

NEW SECTION

WAC 222-23-010 Policy and definitions. (1) Policy. The legislature determined that it is in the public interest to acquire (by purchase or donation) an interest in lands within unconfined avulsing channel migration zones that are offered for acquisition by the landowner, and therefore established a riparian open space program in RCW 76.09.040 to be administered by the department. The purpose of the acquisition is to provide for ecological protection and fisheries enhancement. The department may acquire either the fee interest in or a permanent conservation easement over such lands. This chapter implements the riparian open space program.

(2) Definitions. As used in this chapter, the following terms shall have the following meanings:

(a) "Qualifying CMZ land(s)." See WAC 222-23-020(1).

(b) An "unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone and are considered a part of the channel migration zone. The unconfined avulsing channel migration zone does not include areas that are permanently restricted from channel movement by a dike or levee.

(c) An "unconfined avulsing stream" is defined in WAC 222-16-010.

NEW SECTION

WAC 222-23-020 Submitting and processing of applications for the riparian open space program. (1)

Qualifying CMZ land(s). Lands that qualify for the riparian open space program are those lands located within an unconfined avulsing channel migration zone and are, as of the date an application is submitted to the department under this section, identified in records of the applicable county assessor as being classified or designated as forest land under chapter 84.33 RCW or as being subject to current use taxation as forest land under chapter 84.34 RCW. Qualifying CMZ lands may be placed in the riparian open space program whether they represent all or just a portion of the lands within the channel migration zone along a particular stream segment. That is, the lands to be placed in the program may include all of a landowner's lands located within the channel migration zone up to the boundary between that zone and the RMZ core area, or lands to be included may include only a portion of a landowner's lands within an unconfined avulsing channel migration zone of a given stream segment. Likewise, where more than one landowner owns land within the channel migration zone of a given stream segment, any landowner may elect to participate in the riparian open space program without regard to participation of neighboring landowners.

Land does not qualify for the riparian open space program where the department has determined that:

(a) The lack of legal access to the land is likely to materially impair the department's ability to administer the riparian open space program with respect to the land;

(b) All persons having an interest of any description in the land, including, but not limited to, joint tenancy, tenancy in common, holder of easement, or holder of lien or security interest, have not agreed to convey or subordinate such interests to the state to the extent deemed necessary by the state to transfer the fee or easement free of or superior to any such interest;

(c) The land is subject to unacceptable liabilities as defined in WAC 222-23-20(4); or

(d) There is any other circumstance making the land unsuitable for fisheries enhancement or ecological protection.

(2) **Application.** An owner or owners of qualifying CMZ lands may apply to the department to place the lands within the riparian open space program. Applications for the riparian open space program may, at the landowners' option, be submitted at the same time as a forest practices application

for adjoining or nearby forestlands, or may be submitted separately (and without reference to or the requirement of a current forest practices application). The application for the riparian open space program shall be in writing on a form provided by the department and shall contain the following information:

(a) Name, address, and telephone number of applicant(s);

(b) Contact name and telephone number for questions concerning the application;

(c) Location and description of the land proposed for inclusion in the program, including estimated acreage, a description of the methods used by the landowner to determine that the land is qualifying CMZ land and a map showing the approximate boundary between the channel migration zone and the adjoining RMZ core area (and in situations where the latter is not applicable, a description of the process the landowner used to determine that the qualifying CMZ land is within an unconfined avulsing stream channel migration zone);

(d) Tax parcel identification number(s) that contain the qualifying CMZ land;

(e) List of all persons having any right or interest in the land covered by the application for the riparian open space program and a description of such right or interest;

(f) The stumpage value area and hauling zone in which the qualifying lands lie (see map at WAC 458-40-640).

(g) A map of the qualifying CMZ land;

(h) A statement indicating the landowner's desire to place the land covered by the application within the riparian open space program and whether the landowner wishes to convey the qualifying land in fee or convey only a conservation easement;

(i) Whether the landowner wishes to receive the statutory compensation for the conveyance or wishes to donate the qualifying CMZ land;

(j) Whether the landowner representative submitting the application is aware of the presence of any hazardous substances on the lands;

(k) Description and documentation of the legal and physical access to the land being acquired;

(l) The type of boundary description proposed by landowner (survey or other description); and

(m) Any other information DNR determines is necessary to assess whether the land qualifies for the riparian open space program.

(3) **Review and processing of application.** Within ninety days of receipt of a complete and accurate application for the riparian open space program, the department shall preliminarily determine (and advise the applicant) whether lands proposed for the riparian open space program appear to meet the requirements of this chapter and of RCW 76.09.040 (3) and (4), and, if so, whether there is funding available for the purchase. This determination is subject to subsequent confirmation of all information required for the program and eligibility of the land as qualifying for the program. If the preliminary determination is that the land qualifies for the program and if funding is available for the proposed purchase, then the following shall occur within the ninety days following notice to the landowner of the preliminary determination:

(a) The landowner, in cooperation with the department, shall delineate on the ground the boundary line between the CMZ and the RMZ core area; following which,

(b) The department shall verify the appropriateness of that delineation, determine the standards for the boundary description (i.e., a survey or other), make a final determination whether there are any unacceptable liabilities on the lands proposed for inclusion in the program, and communicate the foregoing to the landowner.

If the department determines there are no unacceptable liabilities on the lands, the landowner shall mark the boundary (as verified) using tree tags or other long-term boundary marking methods specified by the department.

(4) **Unacceptable liabilities.** As used in this section, unacceptable liabilities are created by the presence of hazardous substances on the qualifying CMZ lands or by other condition that creates such a liability to the department that may jeopardize the department's ability to maintain fisheries enhancement or the ecological protection of the qualifying CMZ lands, and with respect to which liability the applicant is unwilling or unable to provide reasonable indemnification to the department. If the department finds unacceptable liabilities with respect to qualifying CMZ lands, the department may reject the landowner's application.

(5) **Preparation of conveyance documents.** Within ninety days following placement in the field of the long-term boundary between the CMZ and the RMZ core area as provided for in subsection (3) of this section, the following shall occur:

(a) The landowner shall:

(i) Traverse the boundary to determine the acreage of the qualifying lands;

(ii) Either perform a legal land survey or otherwise document the boundaries consistent with the requirements of WAC 222-23-030(3), as applicable; and

(iii) Prepare a map of the qualifying CMZ lands suitable for recording.

(b) The department shall:

(i) Conduct and finalize a cruise of the timber on the qualifying CMZ lands;

(ii) Determine the statutory compensation to be paid to the landowner;

(iii) Prepare conveyance documents consistent with this chapter; and

(iv) Prepare any other documents necessary for closing and recording the conveyance, including without limitation a real estate excise tax affidavit.

(6) **Timber cruise.** The timber cruise will be conducted by the department using a cruiser acceptable to the department and the landowner and using generally accepted cruise methodology and sampling intensity acceptable to both parties. The timber cruise shall measure all trees within the lands to be conveyed that contain measurable log volume and develop all information (species and grade) with respect to those trees necessary to apply the stumpage tables developed by the department of revenue pursuant to RCW 84.33.091; this includes volume by species and grade sufficient to apply the department of revenue stumpage tables in WAC 458-40-640, 458-40-650 and 458-40-660 (1) and (2). The depart-

ment will provide the cruise data to the landowner; within thirty days thereafter, the landowner shall advise the department whether the cruise results are acceptable. The landowner or the department may, at their option, perform a check cruise.

(7) **Compensation for conveyances.** RCW 76.09-040(3) specifies the compensation the department shall pay for purchases of qualifying CMZ lands, unless the landowner chooses to donate the property in fee or donate a conservation easement.

(a) **Fee interests.** For conveyances of fee interests, the department shall pay for both the land value and the timber value, as determined in this subsection. The land value component shall be the acreage of qualifying CMZ lands to be conveyed multiplied by the average per acre value of all commercial forest land in Western Washington or the average for Eastern Washington, whichever average is applicable to the qualifying CMZ lands. The department shall determine the Western and Eastern Washington averages based on the land value tables established by RCW 84.33.120 and revised annually by the department of revenue (see WAC 458-40-540). The timber value component of the compensation shall be based on the cruise volume multiplied by the appropriate department of revenue stumpage values from the stumpage value table for the applicable stumpage value area and hauling distance zone. The stumpage value tables to be applied are those found in WAC 458-40-660(2). Except as provided in (c) of this subsection, the tables applied shall be those in effect as of the date the application under this section is submitted to the department by the landowner.

(b) **Conservation easements.** Conservation easements shall be perpetual and not for a term of years. For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation shall only include the timber value component, determined as set forth in subsection (7)(a) of this section. For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation shall include the timber value component plus such portion of the land value component as determined just and equitable by the department.

(c) **Adjustment in compensation.** Where the department does not complete its duties as required in subsections (3) through (5) of this section within the required time period or the department is unable to complete the acquisition because of a lack of funds or other reason, the landowner has the option to require that the department recompute the compensation based on the most recently published land value and stumpage value tables.

(8) **Alternative management options.** In any circumstance where qualifying CMZ lands are not acquired by the department in fee or through a conservation easement, the landowner may elect to develop an alternative management option for the lands in cooperation with the department, other agencies and affected Indian tribes.

NEW SECTION

WAC 222-23-025 Priorities for conveyances—Use of lands conveyed.

OPTION 1

(1) **Priorities for conveyances.** The department shall assign a priority for funding to the applications under this section based on the order applications are received by the department, provided that applications for which specially designated project-based or other funding is available (for example, where state or federal funds are available to the department for use in a manner that includes acquiring riparian open space but the funding vehicle restricts expenditures to a particular locale) may be processed and the conveyances consummated (using that funding), irrespective of the "first-come, first-served" priority system otherwise to be applied to applications. If funding is or becomes unavailable to consummate a conveyance with respect to otherwise qualifying CMZ lands, the application may (at the landowner's option) be kept on file at the department pending the future availability of funding, and the landowner's application shall retain its "priority" for processing when funds become available.

OPTION 2

(1) **Priorities for conveyances.** The department shall assign a priority for funding to the applications under this section based on fisheries enhancement or ecological protection. If funding is or becomes unavailable to consummate a conveyance with respect to otherwise qualifying CMZ lands, the application may (at the landowner's option) be kept on file at the department pending the future availability of funding. The department will convene an annual meeting for the purpose of ranking qualifying lands for conservation easement or acquisition under the riparian open space program. The department will invite representatives of the tribal government, department of fish and wildlife, and department of ecology to the meeting, and will use criteria such as the following to maximize fisheries enhancement or ecological protection benefits to aquatic resources: Number of aquatic ESA listed species, presence and abundance of sensitive sites, health of qualifying lands, threat of development or conversion to nonforestry uses, water quality benefits, the order in which the application is received, and matching funds. The department will make copies of landowner applications available to meeting participants at least two weeks prior to the meeting.

(2) **Use and management of lands and easement interests acquired under riparian open space program.** Subject to the exceptions set forth in this subsection (or as otherwise provided in the conveyance or easement documents), the lands conveyed or subject to the conservation easements under this chapter shall be managed by the department only in a manner necessary for ecological protection or fisheries enhancement. The conveyance of lands under the riparian open space program shall not create a right of public access to the conveyed lands across adjoining or other lands owned by the landowner conveying property or an easement under the riparian open space program.

(3) Transfer of fee or easement interest or management responsibility. After acquisition of a fee or easement interest in qualifying CMZ lands, the department may transfer its interest in such lands by a recorded instrument to another state agency, a local government within which the lands lie, or a private nonprofit nature conservation corporation (as defined in RCW 64.04.130). Alternatively, the department may contract with one or more of the foregoing entities to exercise the department's management authority over the qualifying CMZ lands. Any such contract will include provisions fully advising the contracting party of the rights of the landowner under this chapter and the conveyance instrument. The department shall notify the landowner of any transfer of its interest in the qualifying CMZ lands or any transfer of management responsibilities over those lands, provided that failure to so notify the landowner shall not affect the validity of the transfer.

NEW SECTION

WAC 222-23-030 Conveyance forms and procedure.

(1) **Fee interest.** Conveyance of a fee interest in qualifying lands shall be by deed with limited warranties. Deeds will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved and shall be in a form acceptable to the department and the landowner. Prior to closing, the landowner shall procure a title report or title history for the lands being conveyed, provided that in the case of qualifying CMZ land being donated to the department, the department shall pay the cost of the report.

(2) **Conservation easement.** Conveyances of a conservation easement shall be through execution by the landowner and the department of a conservation easement in a form acceptable to the department and the landowner. The easement will include terms reasonably necessary and appropriate to the circumstances of the particular lands involved. Prior to closing, the landowner shall procure a litigation guarantee or title history from a title company, provided that in the case of an easement being donated to the department, the department shall pay the cost of the guarantee or other report.

(3) **Description standards.** The description of the qualifying lands being conveyed shall be a legal land survey description or, if a survey is not being performed, the description shall include the township, range, section, and legal subdivision, and utilize a map at a scale of 1:400 indexed either to one legal land survey point or two geospatial system points plus a GPS traverse of the boundary between the CMZ and the RMZ core area, tied to one legal land survey point or two geospatial system points, or other description acceptable to the department.

(4) **Closing and recording.** Upon execution of the conveyance documents and other documents required for closing, the department shall pay any compensation owed to the landowner and record the conveyance documents. The department shall pay the recording fees. No compensating taxes under chapters 84.33 and 84.34 RCW shall be owed. Any real estate excise tax owed shall be paid by the landowner conveying the property or easement.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-24-010 Policy. *(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

*~~(2) ((All road and landing construction within wetlands shall be conducted so that choices are made in the following descending order of preference:~~

~~(a) Avoid impacts by selecting the least environmentally damaging landing location, road location and road length; or~~

~~(b) Minimize impacts by such things as reducing the sub-grade width, fill acreage and spoil areas; or~~

~~(c) Restore affected areas by removing temporary fills or road sections upon the completion of the project; or~~

~~(d) Reduce or eliminate impacts over time by preserving or maintaining areas; or~~

~~(e) Replace affected areas by creating new wetlands or enhancing existing wetlands.~~

~~*~~(3) An accurate delineation of wetland boundaries shall not be required under this section except where necessary to determine acreage of road or landing construction which fills or drains more than 0.5 acre of a wetland. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long term.~~~~

~~*~~(4))~~ To protect water quality and riparian habitat, roads must be constructed and maintained in a manner that will prevent potential or actual damage to public resources. This will be accomplished by constructing and maintaining roads so as not to result in the delivery of sediment and surface water to any typed water in amounts, at times or by means, that preclude achieving desired fish habitat and water quality by:~~

~~• Providing for fish passage at all life stages;~~

~~• Preventing mass wasting;~~

~~• Limiting delivery of sediment and surface runoff to all typed waters; and~~

~~• Avoiding capture and redirection of surface or ground water. This includes retaining streams in their natural drainages and routing subsurface flow captured by roads and road ditches back onto the forest floor;~~

~~• Divert most road runoff to the forest floor;~~

~~• Provide for the passage of some woody debris;~~

~~• Protect stream bank stability;~~

~~• Minimizing the construction of new roads;~~

~~• Assure that there is no net loss of wetland function.~~

~~The road construction and maintenance rules in this chapter must be applied in achieving these goals. Additional guidance is identified in the board manual, section 3. If these goals are not achieved using the rules and the applied guidance, additional management strategies must be employed.~~

~~*~~(3) Extra protection is required during road construction and maintenance to protect ((these)) public resources and~~~~

timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate ~~((to develop))~~ in the development of road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

~~((*(5)))~~ *** (4)** This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and ~~((regulations))~~ rules and/or permit requirements may apply. See chapter 222-50 WAC.)

NEW SECTION

WAC 222-24-015 Construction in wetlands. *** (1)** In order to assure that there is no net loss of wetland function, all road and landing construction near or within wetlands must be conducted so that selection of choices are made in the following order with avoidance being the most preferred and replacement being the least preferred alternative:

(a) Avoid impacts by selecting the least environmentally damaging landing location, road location and road length. Landowners must attempt to minimize road length concurrently with the attempt to avoid wetlands; or

(b) Minimize impacts by reducing the subgrade width, fill acreage and spoil areas; or

(c) Restore affected areas by removing temporary fills or road sections upon the completion of the project; or

(d) Reduce or eliminate impacts over time by preserving or maintaining areas; or

(e) Replace affected areas by creating new wetlands or enhancing existing wetlands.

*** (2)** **An accurate delineation** of wetland boundaries will not be required under this section except where necessary to determine acreage of road or landing construction which fills or drains more than (0.1) one tenth acre of a wetland. All such mapping must follow the delineation and mapping standards outlined in the board manual, section 8.

*** (3)** Approximate determination of wetland boundaries, following the guidelines in the board manual, shall be required for the purpose of avoidance during design and construction of roads. Landowners must attempt to minimize road length concurrently with the attempt to avoid wetlands. Delineation, following the guidelines in the board manual, shall be required to determine the length of road constructed within a wetland in order to determine acreage when replacement by substitution or enhancement of a wetland is required. The requirement for accurate delineation shall be limited to the area of the wetland proposed to be filled.

*** (4)** **Filling or draining** more than 0.5 acre of a wetland requires replacement by substitution or enhancement of the lost wetland functions. (See the board manual, section 9.) The objective of successful replacement by substitution of lost wetland area will be generally on a two-for-one basis and of the same type and in the same general location. The objective of enhancing wetlands function is to provide for an

equivalent amount of function to replace that which is lost. See WAC 222-16-050 (1)(h).

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-24-020 Road location and design. (1) **Fit** the road to the topography so that a minimum of alterations to the natural features will occur.

~~* (2) ((Minimize roads along or within narrow canyons, riparian management zones, wetlands and wetland management zones.~~

~~(a))~~ Except ~~((where))~~ for crossings ~~((are necessary))~~, new stream-adjacent parallel roads shall not be located within natural drainage channels, channel migration zones and riparian management zones when there would be substantial loss or damage to fish or wildlife habitat unless the department has determined that other alternatives will cause greater damage to public resources. Proposals with new stream-adjacent parallel roads will require an on-site review by an interdisciplinary team. The appropriate federal representative(s) will be invited to attend the interdisciplinary team to determine if the proposal is in compliance with the Endangered Species Act.

~~((b) Roads shall not be located in wetlands when there would be substantial loss or damage to wetland functions or acreage unless the department has determined that alternatives will cause greater damage to public resources.~~

~~(c) Approximate determination of wetland boundaries shall be required for the purpose of avoidance during design and construction of roads. Landowners should attempt to minimize road length concurrently with the attempt to avoid wetlands. Delineation shall be required to determine the length of road constructed within a wetland in order to determine acreage when replacement by substitution or enhancement of a wetland is required. The requirement for accurate delineation shall be limited to the area of the wetland proposed to be filled.)~~

*** (3)** Roads shall not be constructed in bogs or low nutrient fens.

*** (4)** Roads shall not be located in wetlands if there would be substantial loss or damage to wetland functions or acreage, unless the department has determined that alternatives will cause greater damage to public resources.

*** (5)** **Minimize** the number of stream crossings.

~~((*(4)))~~ *** (6)** Where stream crossings are necessary:

(a) Design stream crossings to minimize alterations to natural features;

(b) Locate and design culverts to minimize sediment delivery; and

(c) Whenever practical, cross streams at right angles to the main channel.

~~((*(5)))~~ *** (7)** **Avoid duplicative** roads by keeping the total amount of construction to a minimum. Use existing roads whenever practical and avoid isolating patches of timber which, when removed, may require unnecessary road construction.

~~((*(6) Where feasible, do not locate roads on excessively steep or unstable slopes or known slide prone areas as~~

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determined by the department. The department shall determine whether slopes are unstable using available soils information, or from evidence of geologically recent slumps or slides, or where the natural slope exceeds the angle of repose for the particular soil types present, or where springs or seeps may indicate unstable conditions are present in or above the construction site.

Essential road construction will be accomplished by end hauling, over hauling, or other special road construction techniques unless the department determines there is potential for damage to public resources under WAC 222-16-050 (1)(e).)

*(8) All new road construction on side slopes that exceed 60 percent which have the potential to deliver sediment to any typed water or wetland must utilize full bench construction techniques, including end hauling, over hauling or other special techniques. The department may waive the full bench construction requirement if a site review is conducted and the absence of delivery potential to any typed water or wetlands is determined.

(9) Use the minimum design standard that produces a road sufficient to carry the anticipated traffic load with reasonable safety.

*(10) Subgrade width should average not more than 32 feet for double lane roads and 20 feet for single lane roads, exclusive of ditches, plus any additional width necessary for safe operations on curves and turnouts. Where road location in wetlands is unavoidable (see WAC 222-24-015 (1)(b)), minimize subgrade width.

(11) Balance excavation and embankments so that as much of the excavated material as is practical will be deposited in the roadway fill sections. Where full bench construction is necessary, design suitable embankments so that the excavated material may be end hauled to appropriate deposit areas.

(12) Cut and fill slopes must be designed and constructed in a manner that will assure a high likelihood of remaining stable throughout the life of the road.

*(13) All roads shall be outsloped or ditched on the uphill side and appropriate surface drainage shall be provided by the use of adequate drainage structures such as: Cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.

*(14) Drainage structures shall not discharge onto erodible soils, or over fill slopes unless adequate outfall protection is provided.

*(15) Relief culverts installed on forest roads shall meet the following minimum specifications: (See the board manual, section 3 for culvert spacing.)

(a) Be at least 18 inches in diameter or equivalent in western Washington and 15 inches in diameter or equivalent in eastern Washington.

(b) Be installed in a manner that efficiently captures ditchline flow and passes it to the outside of the road.

*(16) Ditch diversion. Where roadside ditches slope toward any typed water, or Type A or B Wetland, a ditch relief structure must be located as close to the stream crossing or wetland as possible so it drains off before reaching the stream. The relief structure must allow the sediment to be

deposited onto the forest floor and not carry surface water or sediment into the stream channel or wetland.

*(17) Outslope the road surface where practical. Where outsloping is not practical, provide a ditch with cross drains on the inside of the road, except where roads are constructed in rock or other materials not readily susceptible to erosion.

*(18) Crown or slope the road to prevent the accumulation of water on the road surface.

*(19) Install rock armor headwall inlets on all stream-crossing culverts where the stream gradient above the crossing is greater than 6 percent.

*(20) Install rock armored headwalls and rock armored ditchblocks for cross drain culverts located on erodible soils or where the affected road has a gradient greater than 6 percent.

*(21) Install drainage structures at locations where seeps and springs are known or discovered during construction to route accumulated surface water across the road prism. The water from the seeps and springs must be returned to the forest floor as close to the point of origin as reasonably practicable.

*(22) The department may require additional information for proposed road construction as part of a complete application, including:

(a) A map with detailed topographic information showing the location and alignment of the road in relation to all typed water and wetlands as required in WAC 222-16-035;

(b) Location, size, alignment and number of water crossing and drainage structures;

(c) Detailed plans for bridges, large culverts or other complex elements of the proposal; and

(d) Other information identified by the department.

NEW SECTION

WAC *222-24-026 Temporary roads. Temporary roads as defined in WAC 222-16-010 shall:

(1) Be constructed in a manner to facilitate closure and abandonment when the intended use is completed.

(2) Be designed to provide the same level of protection for public resources as provided by the rules during the length of its use.

(3) Be identified on the forest practices application or notification, along with an abandonment date. Abandonment must be accomplished under WAC 222-24-052*(3) to the specifications approved by the department by the date specified in the approved forest practices application.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-030 Road construction. (1) **Right of way timber** (~~Merchandise right of way timber~~) shall be removed or decked in suitable locations where the decks will not be covered by fill material or act as support for the fill or embankment.

~~*(2) Debris burial.~~

(a)) In permanent road construction, do not bury:

~~((#)) (a) Loose stumps, logs or chunks ((containing)) if they will contribute more than 5 cubic feet in the load-bearing portion of the road((, except as puncheon across wetlands or for culvert protection)).~~

~~((#)) (b) Any significant amount of organic debris within the top 2 feet of the load-bearing portion of the road((, except as puncheon across wetlands or for culvert protection)).~~

~~((#)) (c) Excessive accumulation of debris or slash in any part of the load-bearing portion of the road fill((, except as puncheon across wetlands or for culvert protection)).~~

~~((b) In the cases where temporary roads are being constructed across known areas of unstable soils and where possible construction failure would directly impact waters, the requirements in (a), (i), (ii) and (iii) of this subsection shall apply. A temporary road is a roadway which has been opened for the purpose of the forest practice operation in question, and thereafter will be an inactive or abandoned road.))~~

(3) Compact fills. During road construction, fills or embankments shall be built up by layering. Each layer shall be compacted by operating the tractor or other construction equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with WAC 222-38-020.

*** (4) Stabilize soils.** ~~((When soil, exposed by road construction, appears to be unstable or erodible and is so located that slides, slips, slumps, or sediment may reasonably be expected to enter Type 1, 2, 3 or 4 Water and thereby cause damage to a public resource, then such exposed soil areas shall be seeded with grass, clover, or other ground cover, or be treated by erosion control measures acceptable to the department. Avoid introduction of nonnative plant species, as listed in the board manual, to wetlands and wetland management zones.))~~ Erodible soil disturbed during road construction and located where it could reasonably be expected to enter the stream network must be seeded with noninvasive plant species. The use of local area native species, adapted for rapid revegetation is preferred. Treatment with other erosion control measures may be approved by the department.

*** (5) Channel clearance.** Within 50 feet upstream from a culvert inlet clear stream channel of all debris and slash generated ((during)) by the operations that reasonably may be expected to plug the culvert prior to the removal of equipment from the vicinity, or the winter season, whichever is first. (See the board manual, section 4 for debris removal guidelines.)

*** (6) Drainage.**

(a) All required ditches, culverts, cross drains, drainage dips, water bars, and diversion ditches shall be installed concurrently with the construction of the roadway.

(b) Uncompleted road construction to be left over the winter season or other extended periods of time shall be drained by outsliping or cross draining. Water bars and/or dispersion ditches may also be used to minimize eroding of the construction area and stream siltation. Water movement within wetlands must be maintained.

*** (7) Moisture conditions.** Construction shall be accomplished when moisture and soil conditions are not likely to

result in excessive erosion and/or soil movement, so as to avoid damage to public resources.

*** (8) End haul/sidecasts.** End haul or overhaul construction is required where significant amounts of sidecast material would rest below the ~~((50-year))~~ 100-year flood level of ~~((a Type 1, 2, 3, or 4))~~ any typed water, within the boundary of a Type A or Type B Wetland or wetland management zones or where the department determines there is a potential for mass soil failure from overloading on unstable slopes or from erosion of side cast material causing damage to the public resources.

*** (9) Waste disposal.** When spoil, waste and/or other debris is generated during construction, this material shall be deposited or wasted in suitable areas or locations and be governed by the following:

(a) Spoil or other debris shall be deposited above the ~~((50-year))~~ 100-year flood level of ~~((Type 1, 2, 3, or 4 Waters))~~ any typed waters or in other suitable locations ~~((so as))~~ to prevent damage to public resources. The material shall be stabilized ~~((by erosion control measures as necessary to prevent the material from entering the waters))~~ using the recommended schedule and procedures found in the board manual, section 3.

(b) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands. (See WAC 222-24-015, Construction in wetlands.)

(10) Disturbance avoidance for northern spotted owls. Road construction, operation of heavy equipment and blasting within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets.

(a) Road construction and operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season; and

(b) Blasting shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season.

(c) Provided that, these restrictions shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-24-035 Landing location and construction.

*** (1) Landing location:**

Locate landings to prevent potential or actual damage to public resources. Avoid excessive excavation and filling. Landings shall not be located within natural drainage channels, channel migration zones, RMZ core and inner zones, Type Np RMZs, sensitive sites, and Type A or B Wetlands or their wetland management zones. Minimize placement and size of landings within forested wetlands. (~~Landings shall not be located in Type A or B Wetlands or their wetland management zones.~~) (See WAC 222-24-015, Construction in wetlands.)

(2) Landing construction.

(a) Landings requiring sidecast or fill shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

* (b) Where the (~~average general~~) slopes exceed (~~65~~) 60 percent, fill material used in construction of landings shall be free from loose stumps and excessive accumulations of slash and shall be mechanically compacted where necessary and practical in layers by tractor to prevent soil erosion and mass soil movement. Chemical compacting agents may be used in accordance with WAC 222-38-020.

* (c) Truck roads, skid trails, and fire trails shall be out-sloped or cross drained uphill of landings and the water diverted onto the forest floor away from the toe of any landing fill.

* (d) Landings shall be sloped to minimize accumulation of water on the landing.

* (e) Excavation material shall not be sidecast where there is high potential for material to enter Type A or B Wetlands or wetland management zones or (~~below~~) within the (ordinary high water mark) bankfull width of any stream or the (~~50-year~~) 100-year flood level of (~~Type 1, 2, 3, or 4 Water~~) any typed water.

* (f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands. (See WAC 222-24-015, Construction in wetlands.)

*** (3) Temporary landings.**

(a) A temporary landing is intended for use during the life of an approved application/notification.

(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shut-down, whichever is sooner.

(c) It must be designed to provide the same level of protection for public resources as provided by the rules during the length of its intended use.

(d) Temporary landings must be identified on the forest practices application or notification, along with an abandonment date.

(e) Temporary landings must be abandoned to the specifications approved by the department by the date specified on the approved forest practices application.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-040 Water crossing structures. * (1) (~~Bridge construction~~) General provisions for all typed waters.

In addition to the applicable general provisions below, installation, maintenance and removal of water crossing structures in or across the bankfull width of Type S or F Waters are subject to hydraulic code rules, chapter 220-110 WAC, and require hydraulic project approval (HPA) issued by the department of fish and wildlife. HPAs may be required on Type Ns and Np Waters.

(a) Bridges are required for new crossings (~~of any Type 1 or 2 Waters~~) and reconstructed crossings of any typed waters regularly used for recreational boating.

(b) (~~Permanent bridges shall not constrict clearly defined channels and shall be designed to pass the 50-year flood level or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure.~~) Structures containing concrete must be sufficiently cured prior to contact with water.

(c) One end of each new or reconstructed permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within 10 vertical feet of the (~~50-year~~) 100-year flood level.

(d) (~~Excavation for bridges, placement of sills or abutments, and the placement of stringers or girders shall be accomplished from outside the ordinary high water mark of all waters, except when such operations are authorized by a hydraulic project approval.~~)

(e) Earth embankments constructed for use as bridge approaches shall be protected from erosion by high water. Some examples of protection are: Planted or seeded ground cover, bulkheads, rock riprap, or retaining walls. Alterations or disturbance of the stream bed, bank or bank vegetation must be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in the board manual. This requirement may be modified or waived by the department, in consultation with the department of fish and wildlife, if precluded by engineering or safety factors.

(~~(f)~~) (e) When earthen materials are used for bridge surfacing, only clean sorted gravel may be used, a geotextile lining must be installed and curbs of sufficient size shall be installed to (~~be~~) a height above the surface material (~~and~~) to prevent (~~such~~) surface material from falling into the stream bed.

* (2) Bridges over Type Np and Ns Waters. In addition to the applicable general provisions above, installation, maintenance, and removal of permanent bridges in or across Type Np and Ns Waters are subject to the following:

(a) Permanent bridges must not constrict clearly defined channels and must be designed and installed to pass the 100-

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year flood. The bridge and its associated embankments and fills must provide sufficient erosion protection to withstand a 100-year flood event.

(b) Excavation for and placement of the bridge foundation and superstructure must be located and conducted from outside the outer edge of the bankfull width. This requirement may be waived by the department, in consultation with the department of fish and wildlife, if it can be demonstrated that these activities may be conducted in such a manner to prevent damage to public resources.

(c) Earthen embankments constructed for use as bridge approaches must be provided with sufficient erosion protection to withstand a 100-year flood event.

***(3) Culvert installation for Type Np and Ns Waters.**

In addition to applicable general provisions above, installation, maintenance and removal of permanent culverts in or across Type Np and Ns Waters are subject to the following provisions:

(a) All permanent culverts ((installed in forest roads shall be of a size that is adequate to carry the 50-year flood or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure. Refer to "Recommended culvert sizes" in the forest practices board manual for the size of permanent culverts recommended for use in forest roads.)) must be designed to pass the 100-year flood event with consideration for the passage of debris likely to be encountered.

(b) The culvert and its associated embankments and fills must have sufficient erosion protection to withstand the 100-year flood event. Erosion protection may include armored overflows or the use of clean coarse fill material.

(c) If the department determines that because of unstable slopes the culvert size shown ((on that table is)) in the board manual, section 3, "Determining Culvert Size, Method A" would be inadequate to protect public resources, it may require a larger culvert ((sizes in accordance with the nomograph (chart) contained in the forest practices board manual or with other)) designed using generally accepted engineering principles.

((a)) (d) No permanent culverts shall be installed that are smaller than:

(i) ((24 inches in diameter or the equivalent for anadromous fish streams or wetlands where anadromous fish are present:

(ii) 18 inches or the equivalent for resident game fish streams:

(iii) 18 inches or the equivalent for all other water or wetland crossings in western Washington.

(iv) 15 inches or the equivalent for all other water or wetland crossings in eastern Washington.

(b)) 24 inches for Type Np Waters.

(ii) 18 inches for Type Ns Waters in western Washington.

(iii) 15 inches for Type Ns Waters in eastern Washington.

(e) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

((e) When fish life is present, construct the bottom of the culvert at or below the natural stream bed at the inlet and outlet.

(d) Terminate culverts on materials that will not readily erode, such as riprap, the original stream bed (if stable), or other suitable materials.

(e) If water is diverted from its natural channel, return this water to its natural stream bed via culvert, flume, spillway, or the equivalent.

(f) When flumes, downspouts, downfall culverts, etc., are used to protect fill slopes or to return water to its natural courses, the discharge point shall be protected from erosion by: (i) Reducing the velocity of the water, (ii) use of rock spillways, (iii) riprap, (iv) splash plates, or (v) other methods or structures demonstrated to be equally effective.

(g)) (f) Culverts must be designed and installed so they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the project.

(g) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake in consultation with the department of fish and wildlife.

(h) Fill associated with culvert installation must have sufficient erosion protection to withstand the 100-year flood.

(i) Stream beds shall be cleared for a distance of 50 feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

((h)) (j) The entrance of all culverts ((should)) shall have adequate catch basins and headwalls to minimize the possibility of erosion or fill failure.

((*(3) Culverts in anadromous fish streams. In addition to the requirements of subsection (2) of this section, in streams used by anadromous fish:

(a) Culverts shall be either open bottomed or have the bottom covered with gravel and installed at least 6 inches below the natural stream bed at the inlet and outlet.

(b) Closed bottom culverts shall not slope more than 1/2 percent; except as provided in (c) of this subsection; open bottom culverts shall not slope more than the natural slope of the stream bed.

(c) Where multiple culverts are used, one culvert shall be at least 6 inches lower than the other(s).

(d) Culverts shall be set to retain normal stream water depth throughout the culvert length. A downstream control may be required to create pooled water back into the culvert and to insure downstream stream bed stability.

(e) Closed bottom culverts, set at existing stream gradients between 1/2 percent and 3 percent slope shall be designed with baffles for water velocity control, or have an approved designed fishway.

(f) The department, after consultation with the department of fish and wildlife, shall impose any necessary limitations on the time of year in which such culverts may be

~~installed to prevent interference with migration or spawning of anadromous fish.~~

~~(g) Any of the requirements in (a) through (f) of this subsection may be superseded by a hydraulic project approval.)~~

*** (4) Temporary water crossings in Type Np and Ns Waters.** In addition to the applicable general provisions above, installation, maintenance and removal of temporary bridges or other structures in or across Type Np and Ns Waters are subject to the following:

(a) A temporary water crossing is intended for use during the life of an approved application/notification.

(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shut-down, whichever is sooner.

(c) Temporary water crossings must be identified on the forest practices application or notification, along with an abandonment date.

~~((a)) (d) Temporary (bridges and culverts, adequate to carry the highest anticipated flow in lieu of carrying the 50-year flood,) water crossings may be used:~~

(i) In ~~((the westside region))~~ western Washington if installed after June 1 and removed by September 30 of the same year.

(ii) In ~~((the eastside region))~~ eastern Washington if installed after the spring runoff and removed prior to ~~((the snow buildup which could feed a heavy runoff))~~ October 15th.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal.

~~((b)) (e) Temporary water crossings must be designed to pass the highest peak flow event expected to occur during the length of its intended use.~~

~~(f) When the department determines that installing a culvert in a flowing stream will result in excessive siltation and turbidity, and siltation and turbidity would be reduced if stream flow were diverted, the department shall require the stream flow be diverted using a bypass flume or culvert, or by pumping the stream flow around the work area. This may include culvert installations that are within 0.25 miles of a Type S or F Water or within two miles of a hatchery intake, in consultation with the department of fish and wildlife.~~

~~(g) Temporary (bridges and culverts) water crossings shall be promptly removed (upon completion of use,) and (the approaches) abandoned to the specifications approved by the department upon completion of use or by the date specified in the approved forest practices application, whichever is earlier. Approaches to the crossing shall be water barred and stabilized at the time of the crossing removal. The department may waive removal of the water crossing if the applicant secures an amended forest practices application, and the structure and its approaches meet all of the requirements of a permanent water crossing structure.~~

~~((e)) (h) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.~~

~~(i) Temporary water crossings must be designed to provide the same level of protection for public resources as provided by rules during the length of its use.~~

* (5) Properly prepared and maintained fords may be used in Type Np and Ns Waters during periods of low water ((providing a hydraulic permit is acquired)).

(a) Entry and exit points for each ford must be located as close to perpendicular along the stream as possible, but will not exceed 100 feet upstream or downstream of each other. Approaches to the ford will not run adjacent to the stream.

(b) Ford locations must be shown on the forest practices application.

(c) Best management practices for construction, maintenance and use will be utilized as appropriate or as required by conditions on the approved forest practices application.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-050 *Road maintenance and abandonment. The goals for road maintenance are established in WAC 222-24-010. All forest roads must be improved and maintained to the standards of this chapter within 15 years of the effective date of these rules. Guidelines for how to meet these goals and standards are in the board manual, section 3. Work performed toward meeting the standards must generally be even flow over the 15-year period with priorities for achieving the most benefit to public resources early in the period. Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification if they have been properly maintained and are capable of passing fish, until the end of the culvert's functional life.

* ~~((+))~~ **Road maintenance and abandonment plan.** All forest roads must be maintained to meet road construction standards in chapter 222-24 WAC within 15 years of the effective date of this rule.

~~((a) The landowner when notified by the department shall submit a plan for road maintenance and abandonment for those drainages or road systems the department determines based on physical evidence to have a potential to damage public resources. The plan is subject to annual review and shall include:~~

~~(i) Ownership maps showing the road or road system;~~

~~(ii) Road status, whether active, inactive, abandoned or planned for abandonment;~~

~~(iii) Maintenance schedule and priorities for the year; and~~

~~(iv) Plan for further maintenance and reconstruction beyond the current year for repair of extensive damage.~~

~~(b) The plan shall be submitted to the department region office on or before June 30, 1988, and each June 30th thereafter unless the department agrees that no further plans are necessary.~~

~~(c) The department will review the plan annually with the landowner to determine whether it will be effective and is being implemented.~~

~~(d) Such plans shall also be reviewed with departments of ecology, fish and wildlife, and affected Indian tribes, any of whom may request an informal conference with the landowner.~~

~~*(2) **Active roads.** An active road is a forest road being actively used for hauling of logs, pulpwood, chips, or other major forest products or rock and other road building materials. To the extent necessary to prevent damage to public resources, the following maintenance shall be conducted on such roads:~~

~~(a) Culverts and ditches shall be kept functional.~~

~~(b) Road surface shall be maintained as necessary to minimize erosion of the surface and the subgrade.~~

~~(c) During and on completion of operations, road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills.~~

~~*(3) **Inactive roads.** An inactive road is a forest road on which commercial hauling is discontinued for 1 or more logging seasons, and the forest landowner desires continuation of access for fire control, forest management activities, Christmas tree growing operations, occasional or incidental use for minor forest products harvesting or similar activities on such inactive roads:~~

~~(a) Before the first winter rainy season following termination of active use, nonfunctional ditches and culverts shall be cleared and the road surface shall be crowned, outsloped, water barred or otherwise left in a condition not conducive to accelerated erosion or interrupt water movement within wetlands; and~~

~~(b) Thereafter, except as provided in (c) of this subsection, the landowner shall clear or repair ditches or culverts which he/she knows or should know to be nonfunctional and causing or likely to cause material damage to a public resource.~~

~~(c) The landowner shall not be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by public use, unless he/she fails to make repairs as directed by a notice to comply.~~

~~*(4) **Additional culverts/maintenance.** If the department determines based on physical evidence that the above maintenance has been or will be inadequate to protect public resources and that additional measures will provide adequate protection it shall require the landowner or operator to either elect to:~~

~~(a) Install additional or larger culverts or other drainage improvements as deemed necessary by the department; or~~

~~(b) Agree to an additional road maintenance program. Such improvements in drainage or maintenance may be required only after a field inspection and opportunity for an informal conference.~~

~~*(5) **Abandoned roads.** An abandoned road is a forest road which the forest landowner has abandoned in accordance with procedures of (a) through (c) of this subsection. Roads are exempt from maintenance only after (c) of this subsection is completed:~~

~~(a) Roads are outsloped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands; and~~

~~(b) Ditches are left in a suitable condition to reduce erosion; and~~

~~(c) The road is blocked so that four wheel highway vehicles can not pass the point of closure at the time of abandonment; and~~

~~(d) Bridges, culverts, and fills on all waters are removed, except where the department determines other measures would provide adequate protection to public resources.~~

~~(e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it shall within thirty days notify the landowner in writing that the road is officially abandoned.~~

~~*(6) **Brush control.** Chemical control of roadside brush shall not be done where chemicals will directly enter any Type 1, 2, or 3 or flowing Type 4 or 5 Water or Type A or B Wetlands. Refer to WAC 222-38-020 for additional information.~~

~~*(7) **Road surface treatment.**~~

~~(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours. Use of waste oil is subject to RCW 70.951.060(5).~~

~~(b) Water the road surface prior to application of oil to assist in penetration.~~

~~(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.~~

~~(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.~~

~~(e) When cleaning out chemical storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water.~~

~~(f) The use of dry road chemicals shall be in compliance with WAC 222-38-020.)~~

NEW SECTION

WAC *222-24-051 Road maintenance schedule. All forest roads must be covered under an approved road maintenance and abandonment plan within 5 years of the effective date of this rule or by December 31, 2005. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

* (1) Landowners with 500 acres or more of forest land in a DNR region must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

* (2) Landowners with less than 500 acres of forest land in a DNR region must submit with their first forest practice application or notification a road maintenance and abandonment plan covering the roads that will be used by the application. Within one year of the date of submittal of the first forest practices application or notification or before the end of 2005, whichever comes first, the landowner must submit a road maintenance and abandonment plan for the rest of their ownership in that region. Once the plan is approved, the landowner must attach or reference the approved road main-

tenance and abandonment plan when submitting subsequent applications.

(3) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by the end of calendar year 2015. See the board manual section 3 for road maintenance and abandonment plan outline.

* (4) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential benefit to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

* (5) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

(a) Roads that block fish passage;

(b) Roads or ditchlines that intercept ground water; and

(c) Roads that deliver surface water to any typed waters.

* (6) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads' planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition; and

(b) Detailed description of the first five years work with a schedule to complete the entire plan within fifteen years; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

* (7) Priorities for road maintenance work within plans are:

(a) Removing blockages to fish passage beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

* (8) Initial plans for landowners with 500 acres or more of forest land in a DNR region must be submitted to the department during the year 2001 as scheduled by the department.

* (9) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the previous year and submit to the department a detailed description of the upcoming year's work including modifications to the existing work schedule.

The department's review and approval will be conducted in consultation with the department of ecology, the department of fish and wildlife, affected tribes and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

* (10) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the department of fish and wildlife, the department of ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

* (11) A forest practice application with a detailed one to five year work plan associated with a submitted road maintenance and abandonment plan will be treated as a multiyear permit. The application will be reviewed, approved, conditioned and/or disapproved within 45 days of acceptance. The application will be reviewed in consultation with the depart-

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ment of ecology, department of fish and wildlife, affected tribes and interested parties.

*(12) Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

*(13) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

*(14) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for review and approval a plan or plans for those drainages or road systems within the area identified by the department.

NEW SECTION

WAC 222-24-052 Road maintenance. *(1) **Forest roads.** Forest roads are defined in WAC 222-16-010. To the extent necessary to prevent potential or actual damage to public resources, the following maintenance shall be conducted on forest roads, except as addressed in subsections *(5) and *(6) of this section:

(a) Drainage structures shall be kept functional.

(b) Ground water that has been captured by ditchline must be diverted onto stable portions of the forest floor by using ditchouts, culverts or drivable dips.

(c) Road surface must be maintained as necessary to:

(i) Minimize erosion of the surface and the subgrade; and

(ii) Minimize direct delivery of surface water to typed water; and

(iii) Minimize sediment entry to typed water; and

(iv) Direct any ground water that is captured by the road surface onto stable portions of the forest floor.

(d) During and on completion of the following operations, the road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills:

(i) Log, pulp, chip, or specialized forest product haul;

(ii) Rock haul; and

(iii) Road building.

(e) Before the first winter rainy season following termination of operations, drainage structures must be cleared and the road surface must be crowned, outsloped, water barred or

otherwise left in a condition which prevents accelerated erosion, interruption of water movement within wetlands, mass wasting, or direct delivery of water or sediment to a typed water. (See the board manual section 3 for specific guidance.)

(f) Thereafter, except as provided in (d) of this subsection, the landowner must clear or repair ditches or drainage structures that are known or should be known to be nonfunctional and causing or likely to cause material damage to a public resource.

(g) The landowner will not be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by public use, unless the landowner fails to make repairs as directed by a notice to comply.

*(2) **Additional drainage structure maintenance.** If the department determines, based on a field inspection and physical evidence, that the above road maintenance has been or will be inadequate to protect public resources, and that additional measures will provide adequate protection, the department will require the landowner or operator to install additional or larger drainage structures or other drainage improvements identified as necessary by the department.

*(3) **Abandoned roads.** An abandoned road is a road which the forest landowner has abandoned in accordance with procedures of (a) through (e) of this subsection. Roads are exempt from maintenance under this section only after (e) of this subsection is completed.

(a) Roads are outsloped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands and natural drainages;

(b) Ditches are left in a suitable condition to reduce erosion;

(c) The road is blocked so that four wheel highway vehicles cannot pass the point of closure at the time of abandonment;

(d) Water crossing structures and fills on all typed waters are removed, except where the department determines other measures would provide adequate protection to public resources; and

(e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it must notify the landowner in writing within thirty days that the road is officially abandoned.

*(4) **Orphaned roads.** An orphaned road is a road or railroad grade that the forest landowner has not used for forest practices activities since 1974. Many of these roads are overgrown or closed off, but have not satisfied the abandonment process.

(a) An inventory and assessment, of the risk to public resources, or public safety must be completed by the landowner in conjunction with the road maintenance and abandonment plan.

(b) Five years after the effective date of this rule, when the extent of any problems associated with the orphaned roads is known, the hazard-reduction statute will be evaluated to determine if it is still needed and if funds for cost-sharing are needed to effect repair or abandonment of orphan roads. See RCW 76.09.300.

(c) Landowners are not obligated under this rule to repair or abandon such roads before the end of the five year period, but they can voluntarily take this action.

***(5) Brush control.** Chemical control of roadside brush will be done in accordance with WAC 222-38-020.

***(6) Road surface treatment.**

(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours. Use of waste oil is subject to RCW 70.951.060(5).

(b) Water the road surface prior to application of oil to assist in penetration.

(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.

(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.

(e) Dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water when cleaning out chemical storage and application equipment tanks used for storage and application of road treatment materials.

(f) Comply with WAC 222-38-020 when using dry road chemicals.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-24-060 Rock quarries, gravel pits, borrow pits, and spoil disposal areas. Not covered by the Surface Mine Reclamation Act of 1971 (chapter 78.44 RCW).

***(1) Location of pits.** Except as approved by the department, rock quarries and gravel pits opened after January 1, 1975 shall be located above the ~~((50-year))~~ 100-year flood level.

***(2) Location of spoil disposal areas.** Except as approved by the department, spoil disposal areas shall be located:

(a) Above the ~~((50-year))~~ 100-year flood level.

(b) Where the final slope after disposal will be no steeper than 1 1/2:1.

(c) Where practical, on areas having low potential timber productivity.

(d) Where the risk of sediment delivery from soil erosion and/or mass soil movement is minimal.

(e) All spoils shall be placed to allow drainage without additional water ponding.

(f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands. (See WAC 222-24-015.)

***(3) Pit drainage.** During construction and use of rock quarries, gravel pits, or borrow pits, runoff water shall be either diverted onto ~~((the))~~ a stable forest floor or be passed through one or more settling basins as approved by the department.

***(4) Rehabilitation required.** All rock quarries, gravel pits, spoil disposal areas and borrow pits used after January 1, 1975 shall be reclaimed within 2 years from the time the rock or gravel source is either exhausted or abandoned.

***(5) Rehabilitation standards.** Where rehabilitation is required:

(a) Remove all deleterious material that has potential for damaging the public resource, the soil productivity, or that would prevent reforestation of an otherwise plantable area.

(b) Grade slopes to less than the angle of repose unless otherwise approved.

(c) Reforest in accordance with chapter 222-34 WAC to the extent practical.

(d) Seed ~~((unreforested))~~ nonforested exposed erodible soils with grass, clover or other ground cover.

***(6) Major spoil disposal operations.** Where a spoil disposal operation involves more than 1,000 cubic yards of spoils:

(a) The spoils shall be placed to provide drainage onto the forest floor without water ponding within the disposal area;

(b) The site shall be reforested in accordance with chapter 222-34 WAC to the extent practical; and

(c) If significant erosion of the spoils develops, the eroding areas shall be water barred and any unreforested areas shall be matted, mulched, or seeded with grass or ground cover.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 222-24-025 Road design.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-010 Policy—Timber harvesting. ***(1)** This ~~((section))~~ chapter covers all removal of timber from forest lands in commercial operations, commercial thinning, salvage of timber, relogging merchantable material left after prior harvests, postharvest cleanup, and clearing of merchantable timber from lands being converted to other uses. It does not cover removal of incidental vegetation or removal of firewood for personal use. To the extent ~~((practical))~~ practicable, the department shall coordinate ~~((the))~~ activities ~~((on))~~ using a multiple disciplinary planning approach. ~~((The riparian management zone requirements specified in this section are designed to provide protection for water quality and fisheries and wildlife habitat through ensuring present and future supplies of large organic debris for streams, snags, canopy cover, and a multistoried diverse forest adjacent to Type 1, 2 and 3 Waters.))~~

***(2) The goal of riparian rules is to protect aquatic resources and related habitat to achieve restoration of riparian function; and the maintenance of these resources once they are restored.**

***(3) The rules provide for the conversion and/or treatment of riparian forests which may be understocked, over-**

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stocked or uncharacteristically hardwood dominated while maintaining minimum acceptable levels of function on a landscape scale. The diversity of riparian forests across the landscapes is addressed by tailoring riparian prescriptions to the site productivity and tree community at any site.

* (4) Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems. The wetland management zone and wetland requirements specified in this ((section)) chapter are designed to protect these wetland functions when measured over the length of a harvest rotation, although some of the functions may be reduced until the midpoint of the timber rotation cycle. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term. Other laws or regulations and/or permit requirements may apply. See chapter 222-50 WAC.

(Note: Other laws or ((regulations)) rules and/or permit requirements may apply. See chapter 222-50 WAC.)

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC *222-30-020 Harvest unit planning and design.

(1) **Logging system.** The logging system should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these ((regulations)) rules.

* (2) **Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

* (3) **Western Washington riparian management zones.** ~~((These zones shall be measured horizontally from the ordinary high water mark of Type 1, 2 or 3 Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than 25 feet in width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.~~

~~(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.~~

~~(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.~~

~~(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for in~~

~~the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.~~

Western Washington Riparian Leave Tree Requirements

Water Type/ Average Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/ Minimum Size Leave Trees	# Trees/1000 ft. each side	
			Gravel/ Cobble < 10" Diameter	Boulder/Bedrock
1 & 2 Water 75' & over	100'	representative of stand	50 trees	25 trees
1 & 2 Water under 75'	75'	representative of stand	100 trees	50 trees
3 Water 5' & over	50'	2 to 1/ 12" or next largest available	75 trees	25 trees
3 Water less than 5'	25'	1 to 1/ 6" or next largest available	25 trees	25 trees

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"Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified. Ponds or lakes which are Type 1, 2 or 3 Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and the harvest unit is a clearcutting of 30 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection.) (See WAC 222-30-021 and 222-30-023.)

*** (4) Eastern Washington riparian management zones.** ((These zones shall be measured horizontally from the ordinary high water mark of Type 1, 2 or 3 Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting—The riparian management zone width shall be a minimum of 30 feet to a maximum of 50 feet on each side of the stream.

Other harvest types—The riparian management zone shall average 50 feet in width on each side of the stream with a minimum width of 30 feet and a maximum of 300 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type 1, 2 or 3 Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

~~(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and~~

~~(C) Leave 16 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and~~

~~(D) Leave 3 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees/acre 20 inches or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and~~

~~(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.~~

~~(iii) Minimum leave tree requirements per acre for Type 1, 2 and 3 Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.~~

~~(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.~~

~~(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 135 trees/acre 4 inches dbh or larger.~~

~~(C) On lakes or ponds the minimum leave tree requirement shall be 75 trees/acre 4 inches dbh or larger.~~

~~Note: (See the Forest Practices Board Manual for assistance in calculating trees/acre and average RMZ widths.)~~

~~(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and either the harvest unit is a clearcutting of 30 acres or less or the harvest unit is a partial cutting of 80 acres or less, leave not less than 50 percent of the trees required in (e) of this subsection. (See WAC 222-16-010 "Partial cutting.") (See WAC 222-30-022 and 222-30-023.)~~

~~*(5) Riparian leave tree areas. ((The department will require trees to be left along Type 4 Water where such practices are necessary to protect public resources. Where such practices are necessary leave at least 25 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 25 feet of the stream. The leave trees may be arranged to accommodate the operation.)) (See WAC 222-30-021, 222-30-022, and 222-30-023.)~~

~~*(6) Forested wetlands. Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.~~

~~(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (30 to 70%) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones~~

where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) Where riparian associated wetlands are present in the outer zone of a RMZ, trees may be left in the zone to maximize wetland function. See WAC 222-30-021 *(1)(c)(ii).

(d) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)((e))) (d) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than 1000 feet from a wildlife reserve tree and green recruitment tree retention area.

((d)) (e) Approximate determination of the boundaries of forested wetlands greater than ((5)) 3 acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

((e)) (f) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

*(7) **Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

*(a) Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

PROPOSED

Wetland Management Zones

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

*For bogs, both forested and non-forested acres are included.

PROPOSED

Wetland Management Zones

<u>Wetland Type</u>	<u>Acres of Nonforested Wetland*</u>	<u>Maximum WMZ Width</u>	<u>Average WMZ Width</u>	<u>Minimum WMZ Width</u>
<u>A (including bogs)</u>	<u>Greater than 5</u>	<u>200 feet</u>	<u>100 feet</u>	<u>50 feet</u>
<u>A (including bogs)</u>	<u>0.5 to 5</u>	<u>100 feet</u>	<u>50 feet</u>	<u>25 feet</u>
<u>A (bogs only)</u>	<u>0.25 to 0.5</u>	<u>100 feet</u>	<u>50 feet</u>	<u>25 feet</u>
<u>B</u>	<u>Greater than 5</u>	<u>100 feet</u>	<u>50 feet</u>	<u>25 feet</u>
<u>B</u>	<u>0.5 to 5</u>			<u>25 feet</u>
<u>B</u>	<u>0.25 to 0.5</u>	<u>No WMZ required</u>	<u>No WMZ required</u>	

*For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of 75 trees per acre of WMZ greater than 6 inches dbh in Western Washington and greater than 4 inches dbh in Eastern Washington, 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed 100 feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than 200 feet. Landowners

are encouraged to concentrate leave trees within the WMZ to the wetland edge.

*(e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

*(f) When 10% or more of a harvest unit lies within ~~((any combination of))~~ a wetland management zone ~~((or a riparian management zone of Type 1, 2, or 3 Waters))~~ and either the harvest unit is a clearcut of 30 acres or less or the harvest unit is a partial cut of 80 acres or less, leave not less than 50% of the trees required in (b) of this subsection.

*(8) **Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or

forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

(9) **Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(10) **Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical ((wildlife)) habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to insure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(11) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

OPTION 1

(a) For the purposes of this subsection the following defines eastern and western Washington boundaries for wildlife reserve tree management. Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to the SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to the SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to the SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest boundary,

Thence south along forest boundary to the SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to the SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington.

OPTION 2

(a) For the purposes of this subsection the following townships (T) and ranges (R) are included in western Washington:

Chelan County: T28N R16 and 17E; T27N R15 and 16E; T26N R13 through 16E;

Kittitas County: T23N R13 through 15E; T22N R11 through 16E; T21N R11 through 14E; T20N R11 through 14E; T19N R11 through 15E; T18N R11 through 15E;

Yakima County: T15N R12 and 14E; T14N R13 and 14E; T13N R12 through 14E; T12N R12 and 13E; T11N R12 and 13.

Skamania County: T04N R09E; T03N R9 and 10E.

(b) In Western Washington, for each acre harvested 3 wildlife reserve trees, 2 green recruitment trees, and 2 down

logs shall be left. In Eastern Washington for each acre harvested 2 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than 2 green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

~~((b))~~ (c) In Western Washington, only those wildlife reserve trees 10 or more feet in height and 12 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees 10 or more feet in height and 10 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, 10 or more inches dbh and 30 or more feet in height and with at least 1/3 of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to 12 inches and a length greater than or equal to 20 feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

~~((e))~~ (d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

~~((d))~~ (e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than 800 feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

~~((e))~~ (f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree, which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (d) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

*(12) Channel migration zones. No harvest, construction or salvage will be permitted within the boundaries of a channel migration zone except for the construction and maintenance of road crossings in accordance with applicable rules and the creation and use of yarding corridors consistent with WAC 222-24-020(2), 222-30-060(1), and 222-30-045(2).

(13) Bankfull width. No harvest or construction will be permitted within the bankfull width of any Type S or F Water or any buffered length of Type Np Water, except for the construction and maintenance of road crossings in accordance with applicable rules and creation and use of yarding corridors consistent with WAC 222-30-020 *(5)(a), 222-24-060(1), and chapter 220-110 WAC. No salvage may take place within the bankfull width of any typed water (see WAC 222-30-045).

NEW SECTION

WAC *222-30-021 Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See the board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See the board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined

inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is 140 years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	285 sq. ft.
II	275 sq. ft.
III	258 sq. ft.
IV	224 sq. ft.
V	190 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(ii) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(A) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

(I) Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));

(II) There are fewer than 57 conifer trees per acre 8 inches or larger dbh in the conversion area;

(III) There are fewer than 100 conifer trees per acre larger than 4 inches dbh in the conversion area;

(IV) There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;

(V) The landowner owns 500 feet above and below the harvest unit;

(VI) The core and inner zones contain no stream adjacent parallel roads;

(VII) Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a 75-foot buffer with trees at least 40 feet tall on both sides of the stream for 500 feet above and below the proposed harvest unit (or the length of the stream, if less);

(VIII) The landowner has performed post-harvest treatment to the satisfaction of the department on previously converted hardwood-dominated stands.

(B) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

(I) Each continuous conversion area is not more than 500 feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

(II) Type S and F (Type 1, 2, or 3) Water: Up to 50% of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall or:

- The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall.

(III) Not more than 25% of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(C) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

(I) Conifer trees larger than 20 inches dbh shall not be harvested;

(II) Not more than 10% of the conifer stems greater than 8 inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

(III) The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than 8 inches dbh.

(D) Following harvest in conversion areas, the landowner must:

(I) Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

(II) Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of 150 conifer trees greater than 8 inches dbh per acre.

(III) Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(E) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the

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potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(iii) **Harvest options.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bank-full width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(iv) If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(A) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

(I) Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a tra-

jectory to desired future condition. See board manual section 7 for guidelines.

(II) Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

(III) Thinning cannot decrease the proportion of conifer in the stand.

(IV) Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of 75 feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

(V) The number of residual conifer trees per acre in the inner zone will equal or exceed 57.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bank-full width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10 feet wide and RMZs in site class I and II for streams greater than 10 feet wide. Harvest must comply with the following:

(I) Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10 feet wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10 feet wide;

(II) Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a tra-

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jectory to desired future condition. See board manual section 7 for calculating stand requirements;

(III) A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below 20 for any reason.

(IV) Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

(V) If (I) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)					
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint..

(VI) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than 10 trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be

reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 7 for guidelines.

(VII) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(VIII) **Outer zones.** Timber harvest in the outer zone must leave 20 riparian leave trees per acre after harvest. "Outer zone riparian leave trees" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the over-story including both hardwood and conifer	8" dbh or greater

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The 20 riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of 12 inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of 12" dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be 8 inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- Seeps and springs;
- Forested wetlands;
- Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- Areas where riparian leave trees may provide windthrow protection;
- Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).
- Archeological or historical sites registered with the Washington state office of archeology and historic preservation. See WAC 222-16-050 (1)(g); or
- Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(g).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of 12 inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in the board manual section 7. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of 10 trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than 6" dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than 10" dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than 10" dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a 30-foot wide zone measured horizontally from the outer edge of bankfull width of a Type Np or Ns Water where equipment is limited. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than 10% of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect sensitive sites as detailed below:

(i) A 50-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water.

(ii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

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(iii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a 56-foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a 56-foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3).

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least 50% of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of 100 feet in length. If an operating area is located more than 500 feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than 1,000 feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional 2-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than 20% in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an

existing stream-adjacent parallel road within a designated priority area buffer.

(E) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

NEW SECTION

WAC 222-30-022 *Eastern Washington riparian management zones. For eastside forests, riparian management is intended to provide stand conditions that vary over time. It is designed to mimic eastside disturbance regimes within a range that meets functional conditions and maintains general forest health. These desired future conditions are a reference point on the pathway to restoration of riparian functions, not an end point of riparian stand development. These rules apply to all typed waters on forest land in Eastern Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in the following section.

Eastern Washington RMZ for streams with bankfull width of less than or equal to 15 feet wide

Site Class	Total RMZ Width	Core Zone Width <small>From outer edge of bankfull width or outer edge of CMZ, whichever is greater</small>	Inner Zone Width	Outer Zone Width
I	130'	30'	45'	55'
II	110'	30'	45'	35'
III	90'	30'	45'	15'
IV	75'	30'	45'	0'
V	75'	30'	45'	0'

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Eastern Washington RMZ for streams with bankfull width of greater than 15 feet wide

Site Class	Total RMZ Width	Core Zone Width <small>From outer edge of bankfull width or outer edge of CMZ, whichever is greater</small>	Inner Zone Width	Outer Zone Width
I	130'	30'	70'	30'
II	110'	30'	70'	10'
III	100'	30'	70'	0'
IV	100'	30'	70'	0'
V	100'	30'	70'	0'

***(1) Eastern Washington RMZs on Type S and F Waters** have three zones: The core zone is nearest to the edge of the bankfull width or outer edge of the CMZ, whichever is greater. The inner zone is the middle zone, and the outer zone is furthest from the water. Permitted forest practices vary by timber habitat type and site class.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in accordance with WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in accordance with WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See the board manual, section 1.

(a) **Core zones.** The core zone extends 30 feet measured horizontally from the edge of the bankfull width or outer edge of the CMZ, whichever is greater, for all timber habitat types. No harvest or construction is allowed in the core zone except as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors must be left on site. Any trees cut as a result of road construction to cross a stream may be removed from the site unless used as part of a large woody debris replacement strategy.

(b) **Inner zones.** Width and leave tree requirements of the inner zone vary by timber habitat type as outlined below.

(i) Ponderosa pine timber habitat type.

(A) The width of the inner zone is 70 feet measured horizontally from the outer edge of the core zone on streams greater than 15 feet bankfull width or 45 feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of 15 feet or less.

(B) No harvest is allowed in the inner zone except as described in (C) or (D) below, and as allowed for stream crossings and yarding corridors as described above in subsection (1).

(C) **Stands with a high basal area:** Harvest is permitted in the inner zone if the basal area in the inner zone is greater than 110 square feet per acre for conifer and hardwood trees equal to or greater than 6 inches dbh. The harvest must leave at least 50 trees per acre AND subject to subclause (III) below, a basal area of at least 60 square feet per acre. The trees to be left shall be selected as follows:

- (I) The 21 largest trees per acre must be left; and
- (II) An additional 29 trees per acre that are 10-inch dbh or greater must be left. If there are less than 29 10-inch dbh or greater trees per acre, leave the 29 largest trees. If there are more than 29 10-inch dbh or greater trees per acre, leave 29 10-inch dbh or greater trees per acre based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;

- Trees that are evenly distributed across the inner zone.

(III) If more than 50 trees per acre are needed to meet the minimum basal area of 60 square feet per acre, then all trees greater than 6-inch dbh must be left. The minimum basal area to be left in the inner zone will be 60 square feet per acre provided that if the minimum basal area cannot be met with fewer than 100 trees of at least 6 inches dbh, then no more than 100 trees per acre will be required to be left regardless of the basal area.

(D) Stands with low basal areas and high density:

Thinning is permitted if the basal area of all species is less than 60 square feet per acre AND there are more than 100 trees per acre. The thinning must leave a minimum of 100 trees per acre. The trees to be left must be selected as follows:

- (I) The 50 largest trees per acre must be left; and

(II) An additional 50 trees per acre that are greater than 6 inches dbh must be left. If there are not 50 6-inch dbh or greater trees per acre, then all 6-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal 50 trees per acre. Select the additional 50 trees based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010;
- Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, at least twelve tons of down wood per acre must be left following harvest as follows:

(I) Six pieces greater than 16 inches diameter and 20 feet in length; and

(II) Four pieces greater than 6 inches in diameter and 20 feet in length.

(III) Landowner/operator is not required to create down wood.

(F) See **stream-adjacent parallel roads for all timber habitat types** in (iv) of this subsection if there is a stream-adjacent parallel road in this zone.

(ii) Mixed conifer timber habitat type.

(A) The width of the inner zone is 70 feet measured horizontally from the outer edge of the core zone on streams greater than 15 feet bankfull width or 45 feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of 15 feet or less.

(B) No harvest is allowed in the inner zone except as described in (C) or (D) below, and as allowed for stream

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crossings and yarding corridors as described above in subsection (I).

(C) **Stands with a high basal area:** Harvest is permitted in the inner zone if the combined conifer and hardwood basal area for trees greater than 6 inches dbh is:

- Greater than 110 square feet per acre on low site indexes (site index less than 90); or
- Greater than 130 square feet per acre on medium site indexes (site index between 90 and 110); or
- Greater than 150 square feet per acre on high site indexes (site index greater than 110).

The harvest must leave at least 50 trees per acre AND a basal area of at least:

- 70 square feet per acre on low site indexes; or
- 90 square feet per acre on medium site indexes; or
- 110 square feet per acre on high site indexes.

The trees to be left shall be selected as follows:

- (I) The 21 largest trees per acre must be left; and
- (II) An additional 29 trees per acre that are 10-inch dbh or greater must be left. If there are less than 29 10-inch dbh or greater trees per acre, leave the 29 largest trees. If there are more than 29 10-inch dbh or greater trees per acre, leave 29 10-inch dbh trees per acre based on the following priority order:

- Trees that provide shade to water;
- Trees that lean towards the water;
- Trees of the preferred species, as defined in WAC 222-16-010; or
- Trees that are evenly distributed across the inner zone.

(III) If more than 50 trees per acre are needed to meet the minimum basal area for the site index, then all trees greater than 6 inches dbh must be left. The minimum basal area to be left in the inner zone will be 60 square feet per acre provided, that if the minimum basal area cannot be met with fewer than 100 trees at least 6 inches dbh, then no more than 100 trees per acre will be required to be left regardless of the basal area.

(D) **Stands with low basal areas and high density:** Thinning is permitted if the basal area of all species is less than the minimum requirements for the site index in (C) of this subsection AND there are more than 120 trees per acre. The thinning must leave a minimum of 120 trees per acre. The trees to be left shall be selected as follows:

- (I) The 50 largest trees per acre must be left; and
- (II) An additional 70 trees per acre greater than 6 inches dbh must be left. If there are not 70 6-inch dbh or greater trees per acre, then all 6-inch dbh or greater trees per acre must be left plus the largest remaining trees to equal 70 trees per acre. Select the additional 70 trees based on the following priority order:
- Trees that provide shade to water;
 - Trees that lean towards the water;
 - Trees of the preferred species, as defined in WAC 222-16-010; or
 - Trees that are evenly distributed across the inner zone.

(E) To the extent down wood is available on site prior to harvest, 20 tons of down wood per acre is required to be left following harvest as follows:

- (I) 8 pieces greater than 16 inches diameter and 20 feet in length; and

(II) 8 pieces greater than 6 inches in diameter and 20 feet in length.

(III) Landowner/operator is not required to create down wood.

(F) **See stream-adjacent parallel roads for all timber habitat types** in (iv) of this subsection if there is a parallel road in this zone.

(iii) **High elevation timber habitat type.**

(A) The width of the inner zone is 45 feet measured horizontally from the outer edge of the core zone on streams equal to or less than 15 feet bankfull width or 70 feet measured horizontally from the outer edge of the core zone on streams with a bankfull width of greater than 15 feet.

(B) Follow stand requirements for Western Washington riparian management zones, WAC 222-30-021 (1)(b).

Note: Option 2 is not permitted for eastside use, because of the minimum floor (100') constraint..

(C) To the extent down wood is available prior to harvest, 30 tons per acre of down wood per acre must be left following harvest as follows:

(I) 8 pieces greater than 16 inches diameter and 20 feet in length; and

(II) 8 pieces greater than 6 inches in diameter and 20 feet in length.

(III) Landowner/operator is not required to create down wood.

(D) **See stream-adjacent parallel roads for all timber habitat types** in (iv) of this subsection if there is a parallel road in this zone.

(iv) **Stream-adjacent parallel roads for all timber habitat types in the inner zone.** The shade rule, WAC 222-30-040, must be met whether or not the inner zone includes a stream-adjacent parallel road. Where a stream-adjacent parallel road exists in the inner zone and the minimum required basal area cannot be met due to the presence of the road, then the location of the road determines the allowable operations as follows:

(A) For streams with a bankfull width that is greater than 15 feet:

(I) If the edge of the road closest to the stream is 75 feet or more from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater, **no harvest is permitted in the inner zone.** This includes trees within the inner zone on the uphill side of the road.

(II) If the edge of the road closest to the stream is less than 75 feet from the outer edge of bankfull width of the stream or outer edge of CMZ, whichever is greater.

• **No harvest is permitted within the inner zone on the streamside of the road;**

• Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested. (See the board manual.)

• Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators may alternatively employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See board manual.)

(B) For streams with a bankfull width less than 15 feet:

(I) If the edge of the road closest to the stream is 50 feet or more from the outer edge of bankfull width or outer edge of CMZ, whichever is greater, **no harvest is permitted in the inner zone**. This includes trees within the inner zone on the uphill side of the road.

(II) If the edge of the road closest to the stream is less than 50 feet from the bankfull width or CMZ, whichever is greater.

• **No harvest is permitted within the inner zone on the stream side of the road;**

• Additional leave trees equal in total basal area to the trees lost due to the road must be left near the streams in or adjacent to the unit to be harvested. (See the board manual.)

• Where the additional leave trees providing fish habitat for water quality function are determined to be not available or not practical by the department, landowners and operators may alternatively employ site specific management activities to replace lost riparian functions that may include placement of large woody debris in streams. (See the board manual.)

(c) **Wildlife reserve trees.** Leave all wildlife reserve trees within the inner zone of the riparian management zone where operations in the vicinity do not violate the safety regulations (chapter 296-54 WAC and chapter 49-17 RCW administered by the department of labor and industries, safety division). Live wildlife reserve trees will contribute to the basal area requirements for inner zone leave trees and to leave tree counts if they are among the 21 largest trees per acre; or meet the requirement of an additional 29 leave trees per acre as per (b) above.

(d) **Outer zones.** This zone has three categories based on timber habitat type: Ponderosa pine, mixed conifer and high elevation. The width of this zone is 0 to 55 feet measured horizontally from the outer edge of the inner zone depending on the site class and stream width. (See WAC 222-16-010 definition of "RMZ outer zone.")

(i) Tree counts that must be left per acre, regardless of the presence of an existing stream-adjacent parallel road in the zone, are:

(A) Ponderosa pine habitat type - 10 dominant or codominant trees.

(B) Mixed conifer habitat type - 15 dominant or codominant trees.

(C) High elevation habitat type - See requirements for Western Washington RMZs in WAC 222-30-021 (1)(c).

(ii) Outer zone leave tree requirements in section (i) above may be reduced to 5 trees per acre in the ponderosa pine zone, 8 trees per acre in the mixed forest habitat type and 10 trees per acre in the high elevation habitat type, if the landowner voluntarily implements a LWD placement plan consistent with board manual section 7 part 5. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW-approved hydraulics project approval (HPA) permit.

***(2) Eastern Washington protection along Types Np and Ns Waters.**

(a) An **equipment limitation zone** is a 30-foot wide zone measured horizontally from the outer edge of bankfull

width of a Type Np or Ns Water where equipment is limited. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil more than 10% of the surface area of the zone:

(A) Ground based equipment;

(B) Skid trails;

(C) Stream crossings (other than existing roads); or

(D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions, especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) Type Np Waters.

Within 50 horizontal feet of the outer edge of bankfull width of the stream, the landowner must identify either a partial cut and/or clearcut strategy for each unit to be harvested:

• Once approved by the department, the selected strategy will remain in effect until July 1, 2051. If a landowner transfers title of the harvest unit, the landowner must provide written notice of this continuing obligation to the new owner and send a copy to the department. See WAC 222-20-055.

(i) For partial cuts:

(A) Basal areas requirements are the same as those specified for the timber habitat type in the Eastern Washington RMZ inner zone. See chart.

(B) Where a stream-adjacent parallel road exists, the basal area required in (I) of this subsection is required to be left. (See stream-adjacent parallel roads for Type Np Waters in (c) below.)

(C) The trees to be included in the basal area determination and left after harvest must include:

• The 10 largest trees per acre;

• Up to an additional 40 trees per acre greater than or equal to 10 inches dbh must be left. If all or some of the trees are not at least 10 inches dbh, then the largest of the remaining trees must be left. Select trees based on the following priority order:

» Provide streambank stability;

» Provide shade to water;

» Lean towards the water;

» Preferred species, as defined in WAC 222-16-010; or

» Evenly distributed; and

• If the basal area target has not been met with the trees required above, up to an additional 50 trees are required greater than 6 inches in dbh based on the above priority order.

(D) Side slope seeps must be protected with a 50-foot partial cut buffer that meets the basal area and leave tree requirements of (A), (B), and (C) above. The buffer shall be measured from the outer perimeter of the perennially saturated soil zone.

(ii) For clearcuts:

When the clearcut strategy in this subsection is selected, the landowner must simultaneously designate a 2-sided no-

harvest 50-foot buffer along the stream reach in the harvest unit that:

- Is equal in total length to the clearcut portion of the stream reach in the harvest unit; and

- Meets the upper end of basal area requirements for each respective timber habitat type in the Eastern Washington RMZ inner zone. See WAC 222-30-022 (1)(b)(i), (ii) or (iii).

(B) The streamside boundary of all clearcuts must:

- Not exceed in total 30% of the length of the stream reach in the harvest unit;

- Not exceed 300 continuous feet in length;

- Not be located within 500 feet of the intersection of a Type S or F Water; and

- Not occur within 50 feet of the following sensitive sites as defined in WAC 222-16-010:

- » The outer perimeter of a soil zone perennially saturated from a headwater seep;

- » The outer perimeter of a soil zone perennially saturated from a side-slope seep;

- » The center of a headwater spring;

- » An alluvial fan;

- » The center point of intersection of two or more Type Np Waters.

(c) **Stream-adjacent parallel roads for Type Np Waters.** If a road exists in a Type Np RMZ and the basal area required to be left cannot be met within 50 horizontal feet of the outer edge of bankfull width of the stream measured horizontally due to the presence of the road, then the distance of the road to the stream determines the allowable operations as follows:

(i) A road that is within 30 to 49 feet measured horizontally from the outer edge of bankfull width of the stream requires:

(A) A total of 100 horizontal feet of riparian zone (both sides of the stream count towards the total) must be left in a manner to provide maximum functions for nonfish use streams. If harvest is taking place on only one side of the stream, then 50' of RMZ width must be left, regardless of presence of a stream-adjacent parallel road. The width of the road is not counted as part of the total width of the RMZ.

(B) The location of the riparian zone required in (A) of this subsection shall be based on the following priority order:

(I) Preferred: The area between the stream and the stream side edge of the road.

(II) The area that provides the most shade to the channel.

(III) The area that is most likely to deliver large woody debris to the channel.

(ii) A road that is within less than 30 feet from the outer edge of bankfull width of the stream measured horizontally requires, in addition to (c)(i)(A) and (B) of this subsection, that all trees between the stream and the streamside edge of the road must be left.

NEW SECTION

WAC 222-30-023 Riparian management zones for exempt 20-acre parcels.

Note: Compliance with this section does not insure compliance with the federal Endangered Species Act or the Clean Water Act.

On parcels of 20 contiguous acres or less, landowners with total parcel ownership of less than 80 forested acres shall not be required to leave the riparian buffers described in WAC 222-30-021 and 222-30-022. As required by RCW 76.13.130, these landowners are subject to the permanent riparian management zone rules and watershed analysis prescriptions in effect as of January 1, 1999, plus an additional fifteen percent volume requirement where watershed analysis prescriptions are not in effect.

***(1) Western Washington RMZs for exempt 20-acre parcels.** Riparian management zones are measured horizontally from the outer edge of bankfull width of a Type S or F Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but must not be less than 29 feet in width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these rules, including those rules relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, trees shall be left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.

**Western Washington Riparian Leave Tree Requirements
For exempt 20-acre parcels**

Water Type/Average Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/ Minimum Size Leave Trees	# Trees/1000 ft. each side	
			Gravel/Cobble <10" Diameter	Boulder/Bedrock
S or F Water 75' & over	115'	representative of stand	58 trees	29 trees
S or F Water under 75'	86'	representative of stand	115 trees	60 trees
F Water 5' & over	58'	2 to 1/12" or next largest available*	86 trees	29 trees
F Water less than 5'	29'	1 to 1/6" or next largest available*	29 trees	29 trees

* "Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified.

Ponds or lakes which are Type S or F Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) Landowners must meet shade rule in effect January 1, 1999, (WAC 222-30-040).

(e) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(f) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type S or F Waters or a wetland management zone and the harvest unit is a clearcutting of 20 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection.

***(2) Eastern Washington riparian management zones for exempt 20-acre parcels.** These zones shall be measured horizontally from the outer edge of bankfull width of Type S or F Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these rules, including those rules relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, trees shall be left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 35 feet to a maximum of 58 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 58 feet in width on each side of the stream with a minimum width of 35 feet and a maximum of 345 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type S or F Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 18 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 4 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees/acre 20 inches or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and

(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.

PROPOSED

(iii) Minimum leave tree requirements per acre for Type S and F Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 155 trees/acre 4 inches dbh or larger.

(C) On lakes or ponds, the minimum leave tree requirement shall be 86 trees/acre 4 inches dbh or larger.

Note: See the board manual for guidelines for calculating trees/acre and average RMZ widths.

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type S or F Waters or a wetland management zone and the harvest unit is 20 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010 "Partial cutting.")

***(3) Riparian leave tree areas for exempt 20-acre parcels.** The department will require trees to be left along Type Np Water where such practices are necessary to protect public resources. Where such practices are necessary, leave at least 29 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 29 feet of the stream. The leave trees may be arranged to accommodate the operation.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-025 Even-aged harvest—Size and timing. Except as provided in WAC 222-30-110, unit size and timing of timber harvesting by even-aged harvest methods is subject to the following requirements:

(1) Timber harvest which would result in an area larger than one hundred twenty acres and smaller than or equal to two hundred forty acres harvested by even-aged harvest methods on land owned or controlled by one landowner shall be reviewed by an interdisciplinary team, if the department determines that review is necessary. The area harvested by even-aged harvest methods, for the purposes of this subsection, shall be determined in accordance with subsection (3) of this section.

(2) Timber harvest which would result in an area larger than two hundred forty acres harvested by even-aged harvest methods on land owned or controlled by one landowner shall be prohibited. The area harvested by even-aged harvest method for the purposes of this subsection shall be determined in accordance with subsection (3) of this section.

(3) In calculating areas harvested by even-aged harvest methods, the area harvested by even-aged harvest methods shall include the acreage of that harvest unit and, all contiguous acreage harvested by even-aged harvest methods which is owned or controlled by the same landowner, except that acreage harvested by even-aged harvest methods sharing 10% or less of the common perimeter with the harvest unit under consideration shall not be considered contiguous for the purposes of this section.

(4) Harvest units shall be designed so that each harvest unit meets at least one of the following criteria:

(a) At least thirty percent of the unit's perimeter is in stands of trees that are thirty years of age or older;

(b) At least sixty percent of the unit's perimeter is in stands of trees that are fifteen years of age or older; or

(c) At least ninety percent of the unit's perimeter is in stands of trees that have survived on site a minimum of five growing seasons or, if not, have reached an average height of four feet.

Evaluation of unit perimeters is subject to the conditions specified in subsection (6) of this section.

(5) The requirements of subsections (2), (3), and (4) of this section shall apply only to timber harvest by even-aged harvest methods and shall not apply to timber harvest to salvage timber damaged by wind, disease, insects, fire, or other natural causes or to forest practices involving the clearing of land of brush or understocked hardwoods to convert to managed hardwoods or conifers.

(6) In evaluating the perimeters of harvest units pursuant to subsection (4) of this section, the following conditions shall apply:

(a) The following shall be treated as fully stocked, mature stands that will not be counted as contiguous acreage harvested by even-aged methods for the purposes of subsections (1) and (2) of this section and which will be counted as thirty-year-old stands for the purposes of subsection (4) of this section:

(i) In Western Washington, a (~~riparian management zone or~~) wetland management zone that is twice the width (~~(with twice the tree count)~~) required by WAC (~~(222-30-020(3))~~) 222-30-022 and 222-30-023(1) along Type (~~(1, 2,)~~) S or (~~(3)~~) F Waters;

(ii) In Eastern Washington, (~~a riparian management zone or~~) wetland management zone that is the width required by WAC (~~(222-30-020(4))~~) 222-30-022 and 222-30-023(2);

(iii) Designated upland management areas;

(iv) Lands in a shoreline of state-wide significance where harvest is limited under RCW 90.58.150;

(v) The portions of a perimeter consisting of land in uses other than forest land, such as land in agricultural or residential use and natural openings, and land not owned or controlled by the landowner who has proposed the harvest unit subject to the application under consideration;

* (vi) Along Type S and F Waters, a continuous buffer meeting the requirements of WAC 222-30-021 and 222-30-022;

* (vii) Along Type Np Waters, a continuous 50-foot wide no-harvest, no-salvage buffer.

(b) A stand of trees other than those described in (a) of this subsection shall be treated as a certain age class only if the stand is at least three hundred feet wide;

(c) Timber harvest units subject to an approved application or a notification for timber harvesting shall be treated as if the timber harvesting operation proposed in the application or notification were completed and regeneration not yet established.

(7) This section shall not apply to notifications or applications approved before July 1, 1992, or to one renewal of

those applications, and shall not apply to timber that the landowner or operator demonstrated to the department is subject to a cutting right created by written contract before July 1, 1992, which cutting right would expire before all the timber subject to it could reasonably be harvested.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-30-040 Shade requirements to maintain ~~((stream))~~ water temperature. ~~*((1))~~ Within the bull trout overlay, all available shade will be retained within 75 feet of the outer edge of the CMZ (whichever is greater) along Type S or F Waters. (See board manual, section 1.)

~~*((2))~~ Determination of adequate shade outside the bull trout overlay. The temperature prediction method mentioned in subsections (2) and (3) of this section shall be used to determine appropriate shade levels (~~((for flowing))~~ along Type ~~((1,2))~~ S and ~~((3))~~ F Waters to prevent excessive water temperatures, which may have detrimental impact on aquatic resources. No tree may be harvested within 75 feet of the bankfull channel edge or the outer edge of the CMZ (whichever is greater) of any Type S or F Water if, according to the methodology, that tree is providing shade to the stream necessary to maintain compliance with temperature standards. If a landowner elects to remove any tree within 75 feet of any Type S or F Water, the landowner must demonstrate, using the methods in the board manual section 1, that the removal of the tree would not be contrary to the restrictions of this subsection.

~~*((2))~~ **(3) Temperature prediction method.** In addition to the riparian management zone requirements, leave trees shall be retained in riparian management zones on ~~((flowing))~~ Type ~~((1,2))~~ S and ~~((3))~~ F Waters as provided by the method described in the board manual which includes the following considerations:

- (a) Minimum shade retention requirements; and
- (b) Regional water temperature characteristics; and
- (c) Elevation; and
- (d) Temperature criteria defined for stream classes in chapter 173-201A WAC.

~~*((3))~~ **(4) Leave tree requirements for shade.** The method described in subsection ~~((2))~~ (3) of this section ~~((shall))~~ must be used to establish the minimum required shade cover based on site specific characteristics. When site specific data indicate that preharvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed.

~~((4))~~ ***((5)) Shade requirements must be satisfied whether or not the inner zone includes a stream-adjacent parallel road. Nothing will preclude or limit the harvest of shade trees in connection with the construction and maintenance of road crossings or the creation and use of yarding corridors. (See WAC 222-30-060(1).)**

***((6)) Waivers.** The department may waive or modify the shade requirements where:

~~((a))~~ The applicant agrees to a staggered setting program producing equal or greater shade requirements to maintain stream temperature; or

~~(b) The applicant provides alternative means of stream temperature control satisfactory to the department; or~~

~~(e))~~ The temperature method indicates that additional shade will not affect ~~((stream))~~ water temperature.

NEW SECTION

WAC 222-30-045 Salvage logging within riparian management zones. Salvage logging within a riparian management zone is based upon the zone (core, inner or outer) in which the tree was originally located, applicable riparian stand requirements and the extent of previous harvest activities in the zone.

***((1)) Salvage logging within the outer edge of bankfull width of any typed water.** No salvage may take place within the outer edge of bankfull width of any typed water.

(2) Salvage logging in a core zone or channel migration zone. No salvage may take place within the RMZ core zone or a channel migration zone, including any portion of those trees that may have fallen outside of these zones.

(3) Salvage logging in the inner zone. Salvage may not take place within the inner zone if the stand requirements cannot be met by the residual stand. If the proposed salvage involves down tree(s) that originated from the inner zone, salvage of down wood may only be permitted if the down wood was not needed to meet stand requirements in the inner zone. Salvage of any existing down wood may not take place if the unremoved balance of down wood is insufficient to meet the regional down wood guidelines in (a) and (b) of this subsection. Salvage within the inner zone must be conducted to protect residual undamaged trees within the inner zone. Down wood guidelines for salvage in RMZ inner zones are:

(a) In Western Washington:

Logs with a solid core	< 1 foot diameter	1-2 foot diameter	> 2 foot diameter	Total
Number of logs/acre	85	83	26	194

(b) In Eastern Washington ponderosa pine, mixed conifer, and high elevation habitat types:

Follow the down wood requirements for each habitat type in WAC 222-30-022.

(4) Salvage logging in the outer zone. Salvage may not take place within the outer zone if the riparian leave tree requirements cannot be met by the residual stand. If the proposed salvage involves tree(s) that are down that originated from the outer zone, salvage may only be permitted of down wood if the down wood was not needed to meet riparian leave tree requirements in the outer zone.

(5) Salvage logging in sensitive sites or Type Np riparian management zones. No salvage may take place within a sensitive site or a Type Np RMZ.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-30-050 Felling and bucking. ***((1)) Falling along water.**

PROPOSED

(a) No trees will be felled into Type ~~((1,2))~~ S and ~~((3))~~ F Waters RMZ core zones, sensitive sites, or Type A or B Wetlands except trees which cannot practically and safely be felled outside ((the stream, lake or pond)) these areas using techniques in general use ((and these trees must then be removed promptly)).

Such felling and removing in Type ~~((1,2))~~ S or ~~((3))~~ F Waters shall comply with the hydraulic project approval of the department of fish and wildlife.

(b) Within ~~((riparian management))~~ RMZ inner and outer zones, and wetland management zones fall trees favorable to the lead consistent with safety standards to yard or skid away from the waters. The use of directional falling, lining, jacking and staged falling techniques are ((encouraged)) required.

(c) Trees may be felled into Type ~~((4))~~ Np Water if logs are removed as soon thereafter as practical. See forest practices board manual guidelines for clearing slash and debris from Type ~~((4))~~ Np and ~~((5))~~ Ns Water.

***~~((2))~~ Bucking ~~((in))~~ or limbing along water.**

~~((a))~~ No bucking or limbing shall be done on trees or portions thereof lying ~~((between the banks))~~ within the bank-full width of Type ~~((1,2 or 3))~~ S, F or Np Waters, in the RMZ core zones, in sensitive sites, or in open water areas of Type A Wetlands ((except as necessary to remove the timber from the water)). Such bucking or limbing in Type S or F Waters shall comply with the hydraulic project approval of the department of fish and wildlife.

~~((b))~~ Where bucking or limbing is done between the banks of a Type 4 Water, care shall be taken to minimize accumulation of slash in the water.

***~~((3))~~ Falling near riparian management zones, wetland management zones and setting boundaries.** Reasonable care shall be taken to avoid felling trees into riparian management zones, wetland management zones and areas outside the harvest unit.

(4) Falling in selective and partial cuts. Reasonable care shall be taken to fall trees in directions that minimize damage to residual trees.

(5) Disturbance avoidance for northern spotted owls. Felling and bucking within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31 provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(6) Disturbance avoidance for marbled murrelets. Felling and bucking shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-30-060 Cable yarding. ***~~((1))~~ Type ~~((1,2))~~ S and ~~((3))~~ F Waters.** No timber shall be cable yarded in or across ~~((a))~~ Type ~~((1,2))~~ S or ~~((3))~~ F Waters except where the logs will not materially damage the bed of waters, banks or riparian management zones ~~((and removals from Type 1, 2 or 3 Water have hydraulic project approval of the department of fish and wildlife))~~. If yarding across Type S or F Waters is permitted, then yarding is limited to cable or other aerial logging methods. Any work in or above Type S or F Waters requires a hydraulics project approval (HPA). Any work in or above a Type Np or Ns Water may require a HPA. Logs must be fully suspended above the water unless otherwise allowed in the applicable HPA. Yarding corridors must be no wider or more numerous than necessary to accommodate safe and efficient transport of logs. Generally, yarding corridors should be located no closer to each other than 150 feet (measured edge to edge) and should be no wider than 30 feet. Safety is a prime consideration in the location of yarding corridors. Total openings resulting from yarding corridors must not exceed 20% of the stream length associated with the forest practices application. When changing cable locations, care must be taken to move cables around or clear of the riparian vegetation to avoid damage to riparian vegetation.

***~~((2))~~ Type A or B Wetlands.** No timber shall be cable yarded in or across Type A or B Wetlands without written approval from the department.

***~~((3))~~ Deadfalls.** Any logs which are firmly embedded in the bed of a Type ~~((1,2,3))~~ S, F and ~~((4))~~ Np Waters shall not be removed or unnecessarily disturbed without approval of the department of fish and wildlife.

***~~((4))~~ Yarding in riparian management zones and wetland management zones.** Where timber is yarded from or across a riparian management zone, or wetland management zone reasonable care shall be taken to minimize damage to the vegetation providing shade to the stream or open water areas and to minimize disturbance to understory vegetation, stumps and root systems. Where practical and consistent with good safety practices, logs shall be yarded in the direction in which they lie and away from Type A or B Wetlands or Type ~~((1,2 and 3))~~ S or F Waters until clear of the wetland management zone or riparian management zone.

(5) Direction of yarding.

(a) Uphill yarding is preferred.

(b) Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils.

***~~((c))~~ When yarding parallel to a Type ~~((1,2))~~ S or ~~((3))~~ F Water channel below the 50-year flood level or within the riparian management zone, reasonable care shall be taken to minimize soil disturbance and to prevent logs from rolling into the stream, lake, pond, or riparian management zone.**

(6) Disturbance avoidance for northern spotted owls. The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31 provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(7) **Disturbance avoidance for marbled murrelets.** Yarding or operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-30-070 (~~Tractor and wheeled skidding~~) **Ground-based logging systems.** *(1) **Typed waters and wetlands.**

(a) (~~Tractor and wheeled skidders~~) Ground-based equipment shall not be used in Type ((1,2)) S or ((3)) F Water, except with approval by the department and with a hydraulic project approval ((of the)) issued by the department of fish and wildlife.

(b) (~~In order to maintain wetland water movement and water quality, and to prevent soil compaction, tractor or wheeled skidders shall not be used in Type A or B Wetlands without prior written approval of the department.~~

(c) ~~Within all wetlands, tractors and wheeled skidder systems shall be limited to low impact harvest systems. Ground-based logging systems operating in wetlands shall only be allowed within wetlands during periods of low soil moisture or frozen soil conditions.~~

(d) ~~Skidding across any flowing Type 4 Water shall be minimized and when done, temporary stream crossings shall be used, if necessary, to maintain stream bed integrity.~~

(e) ~~Whenever skidding in or across any type water, the direction of log movement between stream banks shall be as close to right angles to the stream channel as is practical.)~~ Yarding across Type S or F Waters is limited to cable or other aerial logging methods.

Ground-based transport of logs across Type Np and Ns Waters shall minimize the potential for damage to public resources. A hydraulic project approval issued by the department of fish and wildlife may be required for ground-based equipment in Type Np or Ns Waters.

(i) Skidding logs and driving ground-based equipment through defined channels with flowing water is not allowed.

(ii) Ground-based transport of logs to landings across any Typed Np or Ns Water shall minimize the potential to damage public resources.

(iii) Whenever skidding across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream.

OPTION 1

(c) In order to maintain wetland water movement and water quality, and to prevent soil compaction, ground-based

logging systems shall not be used in Type A or B wetlands without prior written approval of the department.

OPTION 2

(c) In order to maintain wetland water movement and water quality, and to prevent soil compaction, ground-based logging systems shall not be used in Type A or B wetlands.

(d) Within all wetlands, ground-based logging systems shall be limited to low impact harvest systems. Ground-based logging systems operating in wetlands shall only be allowed with wetlands during periods of low soil moisture or frozen soil conditions.

(e) Locations of temporary stream crossings to Np Waters shall be shown on the base map of the forest practices application. Whenever skidding in or across Type Np or Ns Waters, the direction of log movement between stream banks shall be designed to minimize sediment delivery to the stream. BMPs for stream crossings can be found in the board manual section 3.

* (2) Riparian management zone.

(a) Logging will be permitted within the riparian management zone subject to riparian management zone protection in chapter 222-30 WAC. However, any use of (~~tractors, wheeled skidders, or other~~) ground-based yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) (~~Where skidding~~) When transporting logs in or through the riparian management zone ((is necessary)) with ground-based, the number of ((skidding)) routes through the zone shall be minimized.

(c) Logs shall be (~~skidded~~) transported so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

* (3) Wetlands management zones.

(a) Logging will be permitted within wetland management zones subject to restrictions in WAC 222-30-020(7).

(b) Where feasible logs shall be skidded with at least (~~with~~) one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

(c) (~~Tractors, wheeled skidders, or other~~) Ground-based harvesting systems shall not be used within the minimum WMZ width ((without written approval of the department)) unless described in an approved forest practices application or otherwise approved in writing by the department.

* (4) **Deadfalls.** Repositioning of any logs firmly embedded in the bed or bank of Type ((1,2,3)) S or ((4)) F Waters ((shall not be removed or unnecessarily disturbed without hydraulic project approval of the departments of fisheries or wildlife)) and Type Np or Ns Waters where such activities may affect fish habitat or fish life must comply with hydraulic project approval.

* (5) **Moisture conditions.** (~~Tractor and wheeled skidders~~) (a) Ground-based logging systems shall not be used on exposed erodible soils or saturated soils ((when soil moisture content is so high that unreasonable soil compaction, soil dis-

~~turbance, or~~) if sediment delivery is likely to disturb a wetland, stream, lake or pond (~~sitation would result~~).

(b) when soil moisture is high and unrestricted operation of ground-based equipment would result in unreasonable soil compaction, operations shall be restricted to methods that minimized widespread soil compaction or, operations postponed until site conditions improve such that yarding may proceed without causing unreasonable soil compaction and the long-term impacts to soil productivity and moisture absorption capacity that can result.

(6) **Protection of residual timber.** Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

*** (7) Skid trail construction.**

(a) Skid trails shall be kept to the minimum (~~feasible~~) width.

(b) Reasonable care shall be taken to minimize the amount of sidecast required and shall only be permitted above the (~~50-year~~) 100-year flood level.

(c) Skid trails shall be outsloped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

(d) Skid trails running parallel or near parallel to streams shall be located outside the no-harvest zone of all typed waters and at least 30 feet from the outer edge of the bankfull width of the unbuffered portions of Type Np or Ns Water unless approved in writing by the department.

(e) Skid trails shall cross the drainage point of swales at an angle to minimize the potential for delivering sediment to a typed water or where channelization is likely to occur. See board manual section 3.

*** (8) Skid trail maintenance.**

(a) Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be water barred where necessary to prevent soil erosion.

(b) Skid trails located within 200 feet horizontal distance of any typed water that directly delivers to the stream network shall use waterbars, grade breaks, and/or slash to minimize sediment delivery to the stream. Waterbars shall be placed at a frequency to minimize gullyng and soil erosion. In addition to waterbarring, skid trails with exposed soil that is erodible and may be reasonably expected to cause damage to a public resource shall be seeded with a noninvasive plant species (preferably a species native to the state) and adapted for rapid revegetation of disturbed soil, or treated with other erosion control measures acceptable to the department.

~~* (9) Slope restrictions. ((Tractor and wheeled skidders))~~ Ground-based systems shall not be used on slopes where in the opinion of the department this method of operation would cause ((unnecessary or)) actual or potential material damage to a public resource.

(10) **Disturbance avoidance for northern spotted owls.** The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) **Disturbance avoidance for marbled murrelets.** Operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-30-100 Slash disposal or prescribed burning. (1) Slash disposal or prescribed burning are prohibited in the core zone.

(2) Slash disposal techniques:

OPTION 1

* (a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and ((riparian management)) RMZ core and inner zones, Type Np RMZs, sensitive sites, and on sites where the department determines that a particular method would cause unreasonable risk to leave trees, public resources or ((unreasonably damage)) site productivity. Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: Provided, That on land shown to have low productivity potential the landowner or operator shall obtain the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management inner zones, slash disposal shall be by hand, unless approved by the department. Slash disposal methods that employ machine piling, mechanical scatter and/or compaction, scarification or other techniques that result in soil disturbance shall not be allowed in equipment limitation zones. Scarification shall not be allowed within wetlands. Machine piling is ((discouraged)) not allowed in Type A and B Wetlands.

OPTION 2

(a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and RMZ core and inner zones, sensitive sites, Type Np RMZs, and equipment limitation zones, and on sites where the department determines that a particular method would cause unreasonable risk to leave trees, public resources or site productivity. Conventional methods of slash disposal include the following: Controlled broadcast burning; pile or windrow and burn; pile or windrow without burning; mechanical scatter and compaction; scarification; chip, mulch or lop and scatter; burying; and physical removal from the forest lands: Provided, That on land shown to have low productivity potential the land owner or operator shall obtain

the department's approval of its regeneration plan prior to utilizing controlled broadcast burning as a slash disposal technique. In riparian management inner zones, slash disposal shall be by hand, unless approved by the department. Scarification shall not be allowed within wetlands. Machine piling is not allowed in Type A and B Wetlands.

(b) All slash burning requires a burning permit from the department which provides for compliance with the smoke management plan and reasonable care to protect Type A and B Wetlands, wetland management zones, riparian management zones, equipment limitation zones, soil, residual timber, public resources, and other property.

~~((c) Location of slash piles. Except where burning will be completed before the next ordinary high water season, slash shall not be piled or windrowed below the 50-year flood level of any Type 1, 2, 3 or 4 Water or in locations from which it could be expected to enter any stream, lake or pond.~~

~~((2))~~ **(3) Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see chapter 332-24 WAC).

~~((3))~~ **(4) Slash disposal** is required where the forest landowner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

~~((4))~~ **(5) Removing slash and debris from streams.**

"Slash" or "debris" which can reasonably be expected to cause significant damage to the public resource shall be removed from Type ~~((1, 2, 3))~~ S, F or ~~((4))~~ Np Waters, to above the ~~((50))~~ 100-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substantial accumulations of slash exist below the ~~((50))~~ 100-year flood level of Type ~~((1, 2, 3))~~ S, F or ~~((4))~~ Np Waters, slash disposal is required. See the forest practices board manual for "Guidelines for clearing slash and debris from Type ~~((4))~~ Np and ~~((5))~~ Ns Waters."

~~((5))~~ **(6) Fire trails.**

(a) Construct dips, water bars, cross drainage and ditches as needed to control erosion.

(b) Reasonable care shall be taken to minimize excavation during fire trail construction and sidecast shall only be permitted above the 50-year flood level.

(c) Fire trails shall not be located within Type A or B Wetlands, wetland management zones, equipment limitation zones or riparian zones without prior written approval of the department. Hand constructed fire trails are preferred within forested wetlands. When machine built fire trails are necessary for control of burning, trail width and excavation shall be minimized.

~~((6))~~ **(7) Disturbance avoidance for northern spotted owls.** Burning within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

~~((7))~~ **(8) Disturbance avoidance for marbled murrelets.** Slash disposal or prescribed burning shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-110 Timber harvesting on islands. On an island:

(1) A landowner shall not harvest by clearcut so that more than forty contiguous acres of that landowner's forest land are in a clearcut condition;

(2) Forest land harvested by clearcut remains in the clearcut condition until it has reached canopy closure or it has been reforested for at least ten years;

(3) Clearcut harvest units are contiguous unless separated by a buffer at least two hundred feet wide that has reached canopy closure, has been reforested for at least ten years, or is in a land use other than timber production.

(4) Within two hundred feet of the ~~((ordinary high water mark))~~ bankfull width of saltwater timber harvest shall be by selective harvest only, so that no more than thirty percent of the merchantable trees are harvested in any ten-year period: Provided, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silvicultural practices necessary for regeneration render selective harvest ecologically detrimental: Provided further, That harvest by clearcut on lands being converted to another use may be approved.

(5) The requirements of this section shall not apply to timber harvest to salvage timber damaged by wind, disease, insects, fire, or other natural causes.

(6) This section shall not apply to notifications or applications approved before July 1, 1992, or to one renewal of those applications, and shall not apply to timber that the landowner or operator demonstrated to the department is subject to a cutting right created by written contract before July 1, 1992, which cutting right would expire before all the timber subject to it could reasonably be harvested.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 222-30-030 Stream bank integrity.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-34-040 Site preparation and rehabilitation. *(1) Heavy equipment. Heavy equipment shall not be used in connection with site preparation or rehabilitation work:

PROPOSED

(a) When, because of soil moisture conditions or the type of soils, undue compaction or unnecessary damage to soil productivity would occur or erosion would result in damage to water quality; or

(b) Within riparian management zones, Type A and B Wetlands, wetland management zones, or within ~~((10 feet of the ordinary high water mark))~~ equipment limitation zones of Type ~~((4))~~ Np and ~~((5))~~ Ns Waters on slopes of 30 percent or less. On slopes greater than 30 percent heavy equipment shall not operate within 50 feet of Type ~~((4))~~ S through ~~((5))~~ Ns Waters unless a site specific plan has been approved by the department.

*~~(2)~~ Surface water drainage. Where site preparation or rehabilitation involves contouring or terracing of slopes, drainage ditches, or similar work:

(a) The gradient of ditches or other artificial water courses in erodible soils shall not cause significant stream, lake, pond, or wetland siltation.

(b) Ditches and other artificial water courses shall not discharge onto any road, landing or fill.

(c) Ditches and other artificial water courses shall not be constructed to discharge onto the property of other parties without their consent.

*~~(3)~~ Stream channel ~~((alignment))~~ realignment. Where work involves deepening, widening, straightening or relocating the channel; or bulkheading, riprapping or otherwise stabilizing the banks of a Type ~~((1, 2 or 3))~~ S or F Water, a hydraulic project approval is always required, and the work shall be done only:

(a) After consultation with any party having an appropriation permit or registered right to appropriate waters from the affected stream segment in cases of streams used for domestic water supplies.

(b) Where no significant adverse effects on either the peak or minimum water levels or flows downstream can be expected.

(c) In a manner not expected to result in long-term damage to public resources or to adjacent or downstream property.

(NOTE: OTHER LAWS AND ~~((REGULATIONS))~~ AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-38-010 Policy—Forest chemicals. *~~(1)~~ Chemicals perform important functions in forest management. The purpose of these regulations is to regulate the handling, storage and application of chemicals in such a way that the public health, lands, fish, wildlife, aquatic habitat, wetland and riparian management zone vegetation will not be significantly damaged, and water quality will not be endangered by contamination. This section in no way modifies the state department of agriculture regulations governing chemicals.

*~~(2)~~ These rules are intended to implement best management practices designed to eliminate the direct entry of pesticides to water. Best management also includes minimizing the entry of forest chemicals into channel migration zones.

wetland management zones, sensitive sites, or the core or inner zones of riparian management zones and buffers on Type Np Waters. Significant damage for purposes of this section includes any damage that would inhibit or preclude the existing vegetation from protecting public resources.

(NOTE: OTHER LAWS AND ~~((REGULATIONS))~~ RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-38-020 Handling, storage, and application of pesticides. *~~(1)~~ No pesticide leakage, contamination, pollution.

Transportation, handling, storage, loading, application, and disposal of pesticides shall be consistent with applicable label requirements and other state and federal requirements.

*~~(2)~~ Mixing and loading areas.

(a) Mix pesticides and clean tanks and equipment only where any accidental spills would not enter surface water, channel migration zone or wetlands.

(b) Storage and loading areas should be located where accidental spillage of pesticides will not enter surface water or wetlands. If any pesticide is spilled, immediate appropriate procedures should be taken to contain it.

(c) Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.

*~~(3)~~ Riparian management ~~((zone))~~ and wetland management zones. Pesticide treatments within the ~~((riparian management zone))~~ RMZ core or inner zones, Type Np RMZs, sensitive sites or wetland management zones shall be by hand unless the department has approved a site specific plan with another method of treatment.

*~~(4)~~ ~~(Wetland management zone.~~ Pesticide treatment within the wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

*~~(5))~~ Aerial application of pesticides.

(a) To keep pesticides out of the water~~((, leave a 50 foot))~~ and wetlands, a buffer ~~((strip))~~ will be maintained during operations on all ~~((typed waters, except segments of Type 4 and 5 Waters with no surface water and other areas of open water, such as ponds or sloughs.))~~ Type S and F Waters and Type Np and Ns surface waters and Type A and B Wetlands, as set forth in (a)(i) of this subsection. To protect riparian vegetation, pesticides must not be applied to the core and inner zone, channel migration zone of any Type S or F Waters, to Type Np RMZ's, to sensitive site buffers, or to Type A or B Wetland management zones. In addition, operators must maintain an offset from the outer edge of the inner zone and wetland management zones as set forth in (a)(i) and (ii) of this subsection. (See the board manual, section 12 for a detailed example.) Where the buffer and offset widths overlap, the distance of offset must be whichever distance is greater from Type S or F Waters or Type A or B Wetlands for the applicable conditions. Aerial applications of pesticides in and around Type Np or Ns Waters with surface water and

Type B Wetlands must be buffered according to (a)(iii) of this subsection. (Note: These application requirements do

not apply to B.t. (*Bacillus thuringiensis*). When applying B.t., the operator must meet all label requirements.)

(i) Buffers on Type S and F Waters.

		DETERMINING WIND FACTOR (See the board manual section 12 for detailed examples.)			
		Favorable		Calm or Unfavorable	
NOZZLE TYPE	APPLICATION HEIGHT	BUFFER ON WATER	OFFSET FROM INNER ZONE	BUFFER ON WATER	OFFSET FROM INNER ZONE
Regular Nozzle*	Low (≤ 16 ft.)	Width of the inner zone	As needed for safety	100 ft., or the inner zone, whichever is greater	50 ft.
	Medium (17-50 ft.)	Width of the inner zone	As needed for safety	250 ft.	N/A
	High (51-65 ft.)	Width of the inner zone	As needed for safety	325 ft.	N/A
Raindrop Nozzle (or other nozzles that result in the same size spray droplets)**	Low (≤ 16 ft.)	Width of the inner zone	As needed for safety	Width of inner zone	20 ft.
	Medium (17-50 ft.)	Width of the inner zone	As needed for safety	Width of inner zone	20 ft.
	High (51-65 ft.)	Width of the inner zone	As needed for safety	125 ft. or the inner zone, whichever is greater	20 ft.

* Coarse spray droplets = approximately 9% of spray-droplet volume ≤ 150 u

** Ultra coarse spray droplets = approximately 1% of spray-droplet volume ≤ 150 u

(ii) Buffers on Type A and B Wetlands.

		DETERMINING WIND FACTOR (See the board manual section 12 for detailed examples.)			
		Favorable		Calm or Unfavorable	
NOZZLE TYPE	APPLICATION HEIGHT	BUFFER ON WET-LAND	OFFSET FROM WMZ	BUFFER ON WET-LAND	OFFSET FROM WMZ
Regular Nozzle*	Low (≤ 16 ft.)	Width of the WMZ	As needed for safety	150 ft.	N/A
	Medium (17-50 ft.)	Width of the WMZ	As needed for safety	250 ft.	N/A
	High (51-65 ft.)	Width of the WMZ	As needed for safety	325 ft.	N/A
Raindrop Nozzle (or other nozzles that result in the same size spray droplets)**	Low (≤ 16 ft.)	Width of the WMZ	As needed for safety	Width of WMZ	20 ft.
	Medium (17-50 ft.)	Width of the WMZ	As needed for safety	Width of WMZ	20 ft.
	High (51-65 ft.)	Width of the WMZ	As needed for safety	125 ft. or the width of the WMZ, whichever is greater	20 ft.

* Coarse spray droplets = approximately 9% of spray-droplet volume ≤ 150 u

** Ultra coarse spray droplets = approximately 1% of spray-droplet volume ≤ 150 u

PROPOSED

(iii) Buffers on Type Np or Ns Waters with surface water present and Type B Wetlands less than 5 acres.

DETERMINING WIND FACTOR (See the board manual section 12 for detailed examples.)		
	<u>Favorable</u>	<u>Calm or Unfavorable</u>
<u>Nozzle Type</u>	<u>Buffer</u>	<u>Buffer</u>
<u>Regular Nozzle</u>	<u>50 ft.</u>	<u>100 ft.</u>
<u>Raindrop Nozzle (or other nozzles that result in the same size spray droplets)*</u>	<u>50 ft.</u>	<u>70 ft.</u>

* Coarse spray droplets = approximately 9% of spray-droplet volume ≤ 150 u
 ** Ultra coarse spray droplets = approximately 1% of spray-droplet volume ≤ 150 u

PROPOSED

(b) ~~((Apply))~~ The initial swath of aerial pesticides must be applied parallel to the applicable buffer strip identified in (a) of this subsection unless a deviation is approved in advance by the department. Drift control agents shall be required adjacent to buffer strips. Operators applying aerial pesticides must avoid applications that might result in drift causing direct entry of pesticides into riparian management ((zones)) core and inner zones, channel migration zones, sensitive sites, Type A and B Wetlands, wetland management zones, and all typed waters, except segments of Type ((4)) Np and ((5)) Ns Waters with no surface water present.

(c) Operators applying aerial pesticides must use a bucket or spray device capable of immediate shutoff.

(d) Operators applying aerial pesticides must shut off spray equipment during turns and over open water.

(e) Operators applying aerial pesticides near residences or agricultural land must either:

(i) Leave at least a 200 foot no application buffer strip around residences and 100 foot no application buffer strip adjacent to lands used for agriculture ((unless such residence or farmland)); or

(ii) Apply the pesticides using the widest buffer for the applicable wind conditions as determined by the applicable tables in (a) of this subsection. These provisions do not apply where the residences or agricultural land that could be affected by drift from the aerial application of the pesticide is owned by the forest landowner or where the aerial application is acceptable to the resident or landowner.

(f) The landowner shall identify for the operator the units to be sprayed and the untreated areas within the units with appropriately marked aerial photos or detailed planimetric maps. Before application of the pesticide an over-flight of the area shall be made by the pilot with the marked photos or maps. Stream and wetland buffers required under (a) of this subsection must be clearly visible from the air. The department may require additional field delineation of buffers where the operation is dependent on the use of ground cover features to determine unit area locations and where such ground cover is not readily distinguished from the no spray buffer areas.

(g) Aerial chemical application areas shall be posted by the landowner by signing at significant points of regular access at least 5 days prior to treatment. Posting shall remain at least 15 days after the spraying is complete. The department may require an extended posting period in areas where human use or consumption of plant materials is probable. Posting at formal, signed trailheads that are adjacent to aeri-

ally treated units is required. The signs will contain the name of the product used, date of treatment, a contact telephone number, and any applicable restrictions.

~~((*(6)))~~ ***(5) Ground application of pesticides with power equipment.**

~~((Leave a 25-foot buffer strip on each side of Type A or B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.))~~ Ground application of pesticides with power equipment is prohibited within the core and inner zone, channel migration zone of Type S and F Waters, unless necessary to meet requirements for noxious weed control. In addition, operators shall maintain a 25 foot no application buffer strip around Type A or B Wetlands and on all sides of all other surface waters. Provided, however, That dry stream segments (i.e., channels with no surface water at the time of application) do not require a buffer.

~~((*(7)))~~ ***(6) Hand application of pesticides.**

~~((Apply only))~~ Pesticides being applied by hand must only be applied to specific targets, such as vegetation, trees, stumps, and burrows, or as bait or in traps. No pesticides may be applied by hand within the core zone, channel migration zone of Type S and F Waters unless necessary to meet requirements for noxious weed control.

~~((*(8)))~~ ***(7) Limitations on application.** Pesticides shall be applied only in accordance with all limitations:

(a) Printed on the United States Environmental Protection Agency container registration label, and/or

(b) Established by regulation of the state department of agriculture.

(c) Established by state and local health departments (in municipal watersheds).

(d) Established by the Federal Occupational Safety and Health Administration, or the state department of labor and industries, as they relate to safety and health of operating personnel and the public.

(e) The department or the department of agriculture may suspend further use of any equipment responsible for chemical leakage until the deficiency has been corrected to the satisfaction of the department suspending its usage.

~~((*(9)))~~ ***(8) Container disposal.** Pesticide containers shall be either:

(a) Removed from the forest and disposed of in the manner consistent with label directions; or

(b) Removed and cleaned for reuse in a manner consistent with any applicable regulations of the state department of agriculture or the state or local health departments.

~~((10))~~ ***~~(9)~~ Daily records - aerial application of pesticides.** On all aerial applications of pesticides, the operator shall maintain for 7 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.

~~((11))~~ ***~~(10)~~ Reporting of spills.** All potentially damaging chemical spills shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department's regional offices.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-38-030 Handling, storage, and application of fertilizers. ***~~(1)~~ Storage and loading areas.** Storage and loading areas should be located where accidental spillage of fertilizers will not enter surface water or wetlands. If any fertilizer is spilled, immediate appropriate procedures shall be taken to contain it.

***~~(2)~~ Riparian management zone and wetland management zone.** Fertilizer treatments within a riparian management zone or wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

~~*~~(3)~~ (~~Wetland management zone.~~ Fertilizer treatments within a wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.~~

~~*~~(4))~~ Aerial application of fertilizer.~~

(a) Proposed fertilization units shall be planned to avoid and to minimize the direct or indirect introduction of fertilizer into waters and wetlands.

(b) Leave a 25 foot buffer from the edge of the channel migration zone on all Type ~~((1, 2,))~~ S and ~~((3))~~ F Waters, except as noted in (f) of this subsection.

(c) When the helicopter flight path during fertilizer application is parallel to a water course or the WMZ edge, the centerline of the initial swath should be adjusted to prevent direct application within the buffers or WMZs.

(d) Leave at least a 200 foot buffer strip around residences and a 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.

(e) The landowner shall identify for the operator the units to be fertilized and the untreated areas within the units with appropriately marked aerial photos or detailed planimetric maps. Before application of the fertilizer, an over-flight of the area shall be made by the pilot with the marked photos or maps.

(f) Where the department has been provided information by the department of ecology indicating that water quality in downstream waters is likely to be impaired by entry of fertilizer into waters, such waters shall be protected by site specific conditioning.

~~((5))~~ ***~~(4)~~ Ground and hand application of fertilizers.** Prevent fertilizer from entering Type A and B Wetlands

and all typed waters, except segments of Type ~~((4))~~ Np and ~~((5))~~ Ns Waters with no surface water present.

~~((6))~~ ***~~(5)~~ Reporting of fertilizer spills.** All fertilizer spills involving streams, lakes, wetlands, or other waters of the state shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department's regional offices.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-38-040 Handling, storage, and application of other forest chemicals. ***~~(1)~~ Waters and wetlands.** Do not allow direct entry of other forest chemicals into any ~~((typed))~~ water ~~((s))~~ or Type A or B Wetlands, except segments of Type ~~((4))~~ Np and ~~((5))~~ Ns Waters with no surface water ~~((or Type A or B Wetlands))~~ present.

***~~(2)~~ Storage, mixing, and loading areas.**

(a) Mix other forest chemicals and clean tanks and equipment only where any accidental spills would not enter surface water or wetlands.

(b) Storage and loading areas should be located where accidental spillage of other forest chemicals will not enter surface water or wetlands. If any chemical is spilled, immediate appropriate procedures should be taken to contain it.

(c) Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.

(d) Water protection requirements in subsection (1) of this section may be waived when emergency use of fire retardants is necessary to control wildfire.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-46-030 Notice to comply. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator and/or landowner a notice ~~((which will)).~~ (1) The notice shall clearly set forth:

~~((1))~~ (a) **The specific** nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of the Forest Practices Act or of the forest practices ~~((regulations))~~ rules relating thereto;

~~((2))~~ (c) **The right** of the operator, landowner, or timber owner to a hearing before the department; and

~~((3))~~ (d) **The specific** course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

~~((4))~~ **(2) Local government entity conditions.** If the notice to comply involves a condition imposed pursuant to WAC 222-20-040(3), then the specific course of action ordered by the department shall include a requirement that the operator obtain approval of the local government entity of the action to be taken.

~~((5))~~ **(3) The department** shall mail a copy of the notice to comply to the forest landowner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. The department shall also mail a copy to the local government entity if a condition imposed pursuant to WAC 222-20-040(3) is involved.

(4) Such notice to comply shall become a final order of the department: Provided, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest landowner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. The local government entity shall participate in the hearing if a condition imposed pursuant to WAC 222-20-040(3) is involved. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest landowner, or timber owner appeals such final order to the appeals board. No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules: Provided, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules ~~((and regulations))~~ pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-46-040 Stop work orders. (1) **The department** shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of the Forest Practices Act or these regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) **The stop** work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource. The stop work order shall also set forth those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence. If the stop work order involves a condition imposed pursuant to WAC 222-20-040(3), then the specific course of action ordered by the department shall include a requirement that the operator obtain approval of the local government entity of the action to be taken.

(d) The stop work order shall also set forth the right of the operator to a hearing before the appeals board.

(3) The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest landowner at the addresses shown on the application. The department shall also mail a copy to the local government entity if a condition imposed pursuant to WAC 222-20-040(3) is involved.

(4) The operator, timber owner, or forest landowner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be a contested case within the meaning of chapter 34.05 RCW.

(5) The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

NEW SECTION

WAC 222-46-012 Representatives on inspections. In connection with any watershed analysis, any review of a pending application by an interdisciplinary team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department will invite representatives of other agencies necessary to provide specific expertise to resolve issues that have been raised, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts must be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-46-060 Civil penalties. (1) **Amount of penalty.** Every person who violates any provisions of RCW

PROPOSED

76.09.010 through 76.09.280 or of the forest practices rules adopted pursuant thereto, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for each such violation. Each and every such violation shall be a separate and distinct violation. In case of a failure to comply with a stop work order, every day's continuance thereafter shall be a separate and distinct violation.

(2) **Penalty assessments** shall consider the following:

- (a) Repairability of the adverse effect from the violation;
- (b) Whether the violation of the act or rules was intentional;
- (c) Cooperation with the department;
- (d) Previous violation history;
- (e) Severity of the impact or the potential for material damage to public resources; and
- (f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and did not receive substantial economic benefits from the violation.

(3) **Calculation of penalty.** The department shall evaluate any violation to determine if a civil penalty is warranted. When penalties are to be assessed they shall be calculated using the following process:

(a) Determine the base penalty; see WAC 222-46-065.

(b) The penalty may be adjusted using factors specific to the incident and the site. The following additional factors will be independently considered and added to the base penalty to calculate the civil penalty:

(i) **Repairability:**

Repairability shall be based on the length of time natural restoration or implementation of a restoration plan will take and whether repair can be achieved. The penalty will be substantially increased when natural restoration will not occur within three years and the damage cannot be effectively corrected. For this factor, up to double the base penalty may be added to the penalty.

(ii) **Intention:**

In making a determination of intent, the department shall consider, but not be limited to, the following considerations: The foreseeability of the violation; whether precautions were taken to avoid the violation; whether an informal conference or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added to the penalty.

(iii) **Cooperation:**

The department shall consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives shall determine if the penalty shall be increased. For this factor, up to double the base penalty may be added to the penalty.

(iv) **Previous violation(s):**

The department shall consider whether the violator has previous violations of a forest practice rule or regulation as documented in an enforcement action. The department may

consider company organizations and assignment of operational responsibilities when evaluating previous violations. A history of violations with adverse impacts or potential for adverse impacts or that shows a pattern of ignoring the rules or the act, shall result in a substantially larger penalty.

Enforcement actions for the purposes of this section shall include notices to comply, stop work orders, civil penalties, and criminal citations when those enforcement actions are associated with forest practice violations. For this factor, up to quadruple the base penalty may be added to the penalty.

(v) **Severity:**

The department shall adjust the penalty based on the extent and magnitude of the damage or potential damage to public resources. For this factor, up to quadruple the base penalty may be added to the penalty.

(vi) **Landowner involvement:**

If in the opinion of the department, the landowner exercised reasonable prudence in the development of timber sale contracts or supervision of the forest practice operations, was unaware of the forest practice violation, and the landowner received no substantial economic benefit from the violation, then the landowner generally would not be assessed a civil penalty.

(c) In accordance with RCW 76.09.170, the penalty may not exceed ten thousand dollars for each and every violation.

(d) The department shall determine whether all or a portion of the penalty should be assessed against the operator, landowner, and/or timber owner. The department should consider the responsible party, the degree of control, the sophistication of the party and whether different parties conducted different violations.

(4) **Other participants.** Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided for in this section.

(5) **Government employees.** No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board created by the act for any act or omission in his/her duties in the administration of the act or of these rules.

(6) **Written notice.** The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity.

(7) **Remission or mitigation.** Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the supervisor of the department (~~(the manager of the region in which the penalty was issued,)~~) or his or her designee for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper: Provided, That the department deems such remission or mitigation to be in the best interests of carrying out the purposes of the act. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as

they may deem proper. The reviewer may reduce, dismiss or not change the civil penalty. ~~((Within fifteen days of the completion of the regional review, the person incurring the penalty may apply in writing to the supervisor of the department for further review.))~~

(8) **Right of appeal.** Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation. Concurrently with the filing of any appeal to the forest practices appeals board as provided in this section, the appellant shall file a copy of the appeal with the department region from which the penalty was issued and a copy with the office of the attorney general.

(9) **Penalties due.** The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final order or decision confirming the penalty in whole or in part.

(10) **Enforcement.** If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in the Forest Practices Act. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(11) **Liens.** Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty. The department may collect such amounts in the same manner provided in chapter 60.04 RCW for mechanics' liens.

(12) Any person incurring a penalty is also responsible for the payment of all costs and attorneys' fees incurred with the penalty as well as interest accruing on the unpaid penalty amount.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93; effective 1/1/94)

WAC 222-46-070 Injunctions, civil suits, disapprovals. (1) **The department** may take any necessary action to enforce any final order or final decision ~~((and))~~.

(2)(a) The department may disapprove ((for up to one year)) any forest practices application or notification submitted by any person who has failed to comply with a final order or decision as set forth in RCW 76.09.080, 76.09.090, or 76.09.110, or has failed to pay any civil penalties as provided in RCW 76.09.170. This disapproval will last for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section, or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer.

(b) For purposes of this subsection, "validly issued" means a stop work order or notice to comply for which no appeal or request for hearing has been filed; or if appealed, it has not been declared invalid by a final order or decision and all appeals are exhausted.

(c) The department shall provide written notice of its intent to disapprove future applications or notifications, and shall forward copies of such notice to any affected landowner, timber owner or operator ((such written notice shall occur within ninety days of the failure to comply with a final order or decisions as set forth in RCW 76.09.080, 76.09.090, or 76.09.110, or has failed to pay any civil penalties as provided in RCW 76.09.170)). The disapproval period shall run from thirty days following the date of actual notice or from the date all appeals, if any, have been exhausted.

(d) Any person provided notice of intent to disapprove an application or notification may seek review from the forest practices appeals board within thirty days of the date of notice.

((2)) (e) While the notice of intent to disapprove is in effect, the violator(s) may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practices regulations or any final order of the department or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. A county may not commence injunctions, declaratory actions, or other actions for enforcement under this subsection unless the department fails to take appropriate actions after ten days' written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

NEW SECTION

WAC 222-46-090 Financial assurances. (1) The purpose in requiring financial assurances is to ensure that the

landowner or operator has sufficient resources to cover any penalties and mitigation measures, which might be assessed.

(2) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:

(a) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;

(b) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or

(c) Failed to pay any civil or criminal penalty.

(3) The department must deny any application or notification for failure to submit financial assurances as required.

(4) In deciding whether to require financial assurances, the department shall consider:

(a) The organizational size of the operator or landowner;

(b) Whether the violation was self-reported;

(c) The cooperation exhibited when the violation was discovered; and

(d) Any other factors the department believes indicate that financial assurances are, or are not, warranted.

(5) When the department determines that a financial assurance is required, a notice will be issued to the landowner or operator with violations listed above. The notice cannot be appealed. The financial assurances will be required with all future forest practices activities submitted within the time frame indicated in the notice. The notice shall include the following:

(a) A reference to subsection (6) of this section which identifies the criteria for establishing the amount of the financial assurance;

(b) The types of financial assurance which can be submitted;

(c) The time period during which financial assurances will be required with every future application **or notification**;

(d) A statement that the department must deny any application or notification from a landowner or operator who submits an application **or notification** without their required financial assurance;

(e) A statement that an application **or notification** can be appealed pursuant to RCW 76.09.220 (8)(a), and the requirement to submit financial assurances may be challenged at that time.

(6) The amount shall be set by the department within 10 days of receipt of a Class III or IV application, or within 3 days of receipt of a Class II notification. Applicants who have been notified of a financial assurance requirement are encouraged to use the early review process for applications outlined in WAC 222-20-090. In establishing the amount of the financial assurances to be required, the department shall begin with the following base amounts:

Class II Notifications - \$10,000

Class III Applications - \$30,000

Class IV General Applications - \$20,000

Class V Special Applications - \$50,000

The base amounts listed above are **based** on an estimate of the potential for civil penalties, fees and required mitigation that could result from noncompliance with forest practices rules and department directives on forest practices applications **or notifications** of that classification. The base amounts can be increased or decreased depending on application specific factors including, but not limited to, size of the proposed harvest area, miles of new road construction and road maintenance, proximity to water, proximity to unstable soils, proximity to threatened or endangered species, and types of violations committed by the applicant in the past. In addition, the department should consider the risk to the state of the applicant being unable to pay civil penalties or perform required mitigation work. In weighing this risk, the department should consider the applicant's past history of payment to the department, and any other financial information the applicant chooses to submit to the department. The base amount of financial assurance to be required may be increased or decreased depending on the department's assessment of this risk.

(7) The financial assurance provided shall protect the department and the state from the risk that the landowner or operator may be financially unable to pay civil penalties, fees and/or perform mitigation work required by the department, including mitigation work performed by the department pursuant to RCW 76.09.120, because of violations of the Forest Practices Act or rules. The department may, for any reason, refuse any financial assurance not deemed adequate. The financial assurance provided may be in the following form:

(a) Bank letter of credit;

(b) Cash deposit;

(c) Savings account assignment; **or**

(d) Corporate surety bond executed in favor of the department.

(8) The department may obtain compensation from a financial assurance whenever the landowner or operator has failed to pay a civil penalty that is due and owing or has failed to complete mitigation as required. Payment for a specific civil penalty or mitigation does not relieve the surety, operator or landowner of financial responsibility for any other civil penalty or mitigation.

(9) Liability under the financial assurance shall be maintained until all forest practices under the forest practices notification or application issued by the department are completed or until the notification or application expires, and all of the landowner or operator's obligations under the Forest Practices Act and rules are completed to the satisfaction of the department including payment of civil penalties and completion of required mitigation work. Liability under the financial assurance may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance of a substitute financial assurance.

(10) Financial assurances are estimates only. Nothing in this section shall be construed to limit the department's authority to assess and collect civil penalties and fees and to require mitigation work in amounts that exceed existing financial assurances.

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-50-010 Policy. A major policy of the Forest Practices Act and the board is to work toward a comprehensive, statewide system of laws and ((regulations)) rules for forest practices which avoids unnecessary duplication and provides for interagency input and cooperation to the extent that can be accomplished without interfering with the authority of the affected federal, state, regional and local agencies.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-50-020 Other agency requirements. (1) Many other laws and ((regulations)) rules apply to the conduct of forest practices. Other agencies administer some of these other regulatory programs. Permits may be required by such agencies prior to the conduct of certain forest practices. The department will maintain a list for distribution of state, regional and local regulatory programs that apply to forest practice operations. Affected parties are urged to consult with the specified agencies and independent experts with respect to the regulatory requirements shown on the list.

(2) **Hydraulics project approval law, chapter 77.55 RCW ((75.20-100)).** A hydraulics project approval must be obtained from the department of fish and wildlife prior to constructing any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds. See chapter 77.55 RCW ((75.20-100)) and WAC 232-14-010.

***(3) Compliance with the Shoreline Management Act,** chapter 90.58 RCW, is required. The Shoreline Management Act is implemented by the department of ecology and the applicable local governmental entity. A substantial development permit must be obtained prior to conducting forest practices which are "substantial developments" within the "shoreline" area as those terms are defined by the Shoreline Management Act.

(4) Nothing in these ((regulations)) rules is intended to interfere with any authority of the department of fish and wildlife to protect wildlife under any other statutes or regulations, or under any agreements with landowners.

(5) Federal Endangered Species Act, 16 U.S.C. 1531 et seq., and other federal laws. The federal Endangered Species Act and other federal laws may impose certain obligations on persons conducting forest practices. Compliance with the Forest Practices Act or these rules does not ensure compliance with the Endangered Species Act or other federal laws.

AMENDATORY SECTION (Amending WSR 91-23-052, filed 11/15/91, effective 12/16/91)

WAC 222-50-030 Interagency agreements. The board recommends that the department negotiate interagency agreements with other governmental agencies. The board further recommends that such agreements include, to the extent acceptable to the other agency, provisions specifying:

(1) **The law** and ((regulations)) rules covered;

(2) **Any geographical** or other limits on the authority and responsibility under the agreement;

(3) **Priorities** and standards for resolution of any conflicts between such laws and regulations and the act and these ((regulations)) rules;

(4) **Procedures** for administrative appeals of actions taken;

(5) **Provisions for** continuing cooperation between the department and the other agency or agencies regarding interpretation of the laws and regulations involved;

(6) **Procedures for** termination of the interagency agreement; and

(7) **Procedures for** processing applications and notifications.

The department is directed to provide copies of all such agreements to the board, and to make known to the public that such interagency agreements exist.

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-50-040 Safety and health. The forest practices ((regulations)) rules contained in chapters 222-24 through 222-38 WAC are automatically superseded to the extent inconsistent with any applicable safety regulations, or with any orders or directives having the force of law and based on any applicable safety regulations, including:

(1) **Chapter 296-54 WAC** (safety standards for logging operations, department of labor and industry's division of safety).

(2) **Chapter 296-24 WAC** (general safety and health standards, department of labor and industry's division of safety).

(3) **All applicable** Federal Occupational Safety and Health Administration regulations.

(4) **Regarding aircraft,** chapters 12-24, 12-28, and 12-32 WAC (Washington aeronautics commission).

(5) **Regarding explosives,** chapter 296-52 WAC (department of labor and industry) and all applicable federal regulations.

(6) **Regarding chemicals,** chapter 16-228 WAC (department of agriculture) and all applicable federal regulations.

(7) **All applicable** state and local sanitation regulations relating to municipal watersheds and sources of domestic water supply.

In such cases of conflict, the department is authorized to seek from other agencies such waivers or modifications in the applicable safety and health regulations as may be necessary for the department to be able to fully enforce the forest practices ((regulations)) rules contained in chapters 222-24 through 222-38 WAC.

Applicants are cautioned that there may be additional safety and health laws and regulations that may be applicable in addition to those specifically listed above.

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-50-050 Forest fire prevention and suppression. All laws and ~~((regulations))~~ rules relating to forest fire prevention and suppression apply in addition to these forest practices ~~((regulations))~~ rules and, in cases of conflict, supersede the forest practices ~~((regulations))~~ rules contained in chapters 222-24 through 222-38 WAC.

AMENDATORY SECTION (Amending Resolution No. 82-1, filed 8/3/82, effective 10/1/82)

WAC 222-50-060 Other regulatory programs administered by the department. The board recommends that, to the extent permitted by law and when necessary the department adopt ~~((regulations))~~ rules and policies under which approved applications and notifications can serve to eliminate or reduce the need for separate permits and approvals under regulatory programs administered by the department (such as the power driven machinery permits, RCW 76.04.275, dumping mill waste and forest debris permit, RCW 76.04.242, and surface mining permits, chapter 78.44 RCW) as applied to forest practices. The department is directed to notify the public of the existence of such ~~((regulations))~~ rules and policies.

PROPOSED



WSR 01-05-087
PERMANENT RULES
YAKIMA REGIONAL
CLEAN AIR AUTHORITY

[Filed February 20, 2001, 11:19 a.m., effective May 1, 2001]

Thomas W. Gasseling
 Chairperson

Jessie S. Palacios
 Member

Dale A. Olsen
 Member

John Puccinelli
 Member

Member

Date of Adoption: February 14, 2001.

Purpose: To demonstrate to the United States Environmental Protection Agency (EPA). The future maintenance of the carbon monoxide national ambient air quality standard in the Yakima carbon monoxide nonattainment area and request attainment status.

Statutory Authority for Adoption: Federal Clean Air Act Amendments (FCAAA) of 1990, Section 110.

Adopted under notice filed as WSR 00-24-075 on December 4, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 1, 2001.

February 16, 2001

Les Ornelas

Air Pollution Control Officer

Yakima Carbon Monoxide Nonattainment Area
Limited Maintenance Plan and Redesignation Request
Yakima County, Washington

Prepared by:

Yakima Regional Clean Air Authority

Washington State Department of Ecology, Air Quality Program

City of Yakima, WA, Public Works Department

Adoption History

Local Adoption

Adopted for local use and recommended to the State of Washington, Department of Ecology for the State Implementation Plan this 14th day of Feb., 2001 by the Board of Directors, Yakima Regional Clean Air Authority, Yakima, Washington. The Board of Directors requests the U.S. Environmental Protection Agency, Region 10 to grant attainment status for the Yakima Carbon Monoxide Nonattainment Area.

State Adoption

Adopted by the State of Washington, Department of Ecology at a State adoption hearing conducted at Yakima, WA on _____, _____, and recommended to the U.S. Environmental Protection Agency, Region 10 for inclusion in the State Implementation Plan and the granting of attainment status for the Yakima Carbon Monoxide Nonattainment Area.

 Designated Representative for the Governor

 Date

Federal Approval

Approved for inclusion in the State Implementation Plan and attainment status granted.

 Environmental Protection Agency, Region 10

 Date

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1.0 Summary

This is a limited maintenance plan which describes the maintenance of the carbon monoxide (CO) national ambient air quality standards (NAAQS) in the Yakima CO Nonattainment Area (NAA). A limited maintenance plan is a less extensive plan than a full maintenance plan because past CO monitor values have demonstrated that the chances of an exceedance of the NAAQS are much lower. This plan fulfills the Federal Clean Air Act requirements, and it is recommended to the U.S. Environmental Protection Agency (EPA), Region 10 for inclusion in the state implementation plan (SIP) with a request that this nonclassifiable CO NAA be granted attainment status. The SIP is the federally-enforceable plan which identifies how the state and local authorities will attain or maintain the NAAQS for CO.

The plan includes an analysis of weather and CO monitoring records which indicate that the highest CO levels occur during weekdays in the months of Dec. and Jan. during winter inversion periods. The CO monitoring data also shows that

Yakima has attained the CO NAAQS since 1988 and both the average and peak CO levels are declining.

A limited maintenance plan is required to include only the an emissions inventory for the base year which is 1999. Table 1.0 - 1 summarizes the base year emissions inventory for the NAA.

Table 1.0 - 1, Base Year Emissions Inventory Summary

Source Category	Annual		Typical Winter Day	
	Tons	%	Lbs.	%
Point sources	0	0	0	0
Area sources				
Residential wood heating	1,763	21	20,789	40
On road mobile	5,217	63	28,586	55
Non road mobile	1359	16	2,620	5
Subtotal area sources	8,339	100	51,995	100
Totals	8,339	100	51,995	100

The continued use of prevention of significant deterioration (PSD) requirements for point sources, control measures already in the SIP, and federal control measures, such as the motor vehicle control program should provide adequate assurance of maintenance of the NAAQS. This plan includes a CO air quality contingency measure which temporarily changes the existing traffic signal timing system during periods of high and rising CO monitor values to reduce the risk of values exceeding acceptable levels. The plan includes an optimized intersection mitigation measure which will permanently improve traffic flow through the central business district of the City of Yakima and further reduce CO emissions. In addition, the plan includes a public information mitigation measure to encourage voluntary efforts to reduce CO emissions. No other control, contingency, or mitigation measures are included in this plan. The plan does not include a transportation conformity CO budget.

2.0 General and Historical Information

2.01 Plan Preparation - This limited maintenance plan was developed by the Yakima Region Clean Air Authority (YRCAA) after consulting with the Washington State Department of Ecology, Air Quality Program (ECY); and the City of Yakima, Public Works Department (City PWD). In addition information needed for the plan was provided by numerous business, industry, and government representatives and interested citizens. The people who participated in this planning process are listed in Appendix L.

2.02 Disclaimer - During the planning process the past and current CO emissions from several industries within and close to the CO NAA were evaluated, and some of this information was used in this plan. It is not the purpose of this plan or intent of the agencies preparing the plan to make value judgments about the social and economic contributions of these industries to the community or to suggest future management actions for the companies.

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The emissions from these industries are only listed to show to their contributions to the total CO emissions in the CO NAA.

2.1 Planning Direction

- 2.11 EPA Direction - Because Yakima is a nonclassifiable CO NAA with a design value below 7.65 ppm, YRCAA can submit a limited maintenance plan.³ A full maintenance plan is not required because this area has achieved air quality levels well below the NAAQS without using control measures required for nonattainment areas with worse air quality. A limited maintenance plan does not require any of the following elements to demonstrate future maintenance of the air quality:
 - Modeling to project future CO emission changes with different control strategies;
 - Future CO inventories for the NAA; or
 - Additional control measures to reduce CO emissions which are adopted at the time the plan is submitted for SIP adoption.
- 2.12 Local Direction - The Board of Directors for the YRCAA approved the preparation of a limited maintenance plan for the Yakima CO NAA on May 10, 2000.⁴ This plan is being prepared according to the direction in the documents listed in Appendix A. A copy of the approved Technical Analysis Protocol (TAP) is in Appendix B, and the Inventory Preparation and Quality Assurance Plan is in Appendix C.
- 2.13 Effective Date - Except for the City of Yakima Resolution No. 2000 - 115 in Appendix K which is currently effective, this limited maintenance plan will be effective for local use on May 1, 2001.
- 2.14 Plan Duration - This plan is effective for ten years following the date of redesignation to attainment status for the Yakima CO NAA by EPA, Region 10 unless modified or rescinded by an appropriate authority.⁵

2.2 Location

The NAA is located in Central Washington State in Yakima County. It is 6.4 square miles in size, and the Cities of Yakima and Union Gap, and Yakima County are the local governmental jurisdictions. The NAA is a mix of established residential, commercial, and industrial properties. The area is bisected by major arterial streets which bring traffic from many parts of the Pacific Northwest into the NAA. Vehicle traffic is a major contributor to the CO air pollution.

The original CO NAA was fourteen square blocks in downtown Yakima bounded by Front, D, Third, and Walnut Streets.⁶ When the expanded and current NAA boundary was submitted to EPA on March 15, 1991, the largest source category in the CO emissions inventory was on-road mobile sources.^{7,8} The new boundary location was determined by analyzing traffic data for the downtown area and drawing a

boundary that enclosed the majority of the emissions from these mobile sources.⁹

Appendix D contains maps showing the CO NAA, PM₁₀ NAA, and the Wood Smoke Control Zone (WSCZ). Appendix E has the legal description for the CO NAA.

2.3 Air Quality Status

The NAAQS for CO is not more than one exceedance per year of an eight-hour average of 9 ppm.¹⁰ The second non-overlapping exceedance in a year at a monitoring site is a violation of the NAAQS. CO monitors normally measure concentrations to the nearest 0.1 ppm. The EPA rounding convention for CO is values ≥ 9.5 ppm exceed the CO NAAQS.¹¹

2.31 Air Quality History - From 1978 - 1986 Yakima experienced 25 non-overlapping exceedances of the eight-hour standard. These exceedances put the area in nonattainment status. There were three or four exceedances of the NAAQS in 1987, and the last violation of the NAAQS occurred on December 21, 1987 with a value of 11 ppm¹². Under the 1990 Federal Clean Air Act amendments, all CO nonattainment areas continued in nonattainment status. If an area did not violate the NAAQS in 1988 and 1989, the area could not be classified according to the degree of severity of nonattainment as required by the 1990 amendments.¹³ These nonclassified areas still remain as nonattainment areas and are subject to SIP requirements.

2.32 Recent Air Quality Trends - Since Jan. 1, 1988 the standard has been attained, and 1988 is the year of attainment. During this period there have been no violations of the NAAQS, three exceedances, and one exceptional event that was recognized by EPA. The details about these events are summarized in Table 2.32 - 1.

**Table 2.32 - 1,
Information about CO Monitor Values > 8 Hr. NAAQS
Since Jan. 1, 1988**

Date	Monitor		Comments
	ppm	Location	
Dec. 23, '88	10.1	Jade Tree	Exceedance
Dec. 19, '91	11.6	Jade Tree	Exceedance. Overlapping exceedance on Dec. 20, '91.
Dec. 21, '92	9.6	Jade Tree	Exceedance.
Jan. 18, '94	9.4	Jade Tree	Not an exceedance because the value is rounded to 9 ppm.
Feb. 7, '96	12.4 10.5	Jade Tree	Two non-overlapping events. Accepted by EPA, Region 10 as an exceptional event on March 6, 1998. ¹⁴
Jan. 10, '97	9.4	Courthouse	Not an exceedance because the value is rounded to 9 ppm.

Yakima is currently attaining the NAAQS for CO, and the annual high and average CO monitor values are dropping. Appendix J - 2 has a graph showing the CO monitor values since 1986.

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2.4 CO Monitoring

The Yakima CO monitor was located at the County Courthouse on the east side of North 1st Street from 1979 to 1989. After a saturation study, the monitor was moved in 1990 to the Jade Tree Restaurant on the south side of East Yakima Avenue. The Jade Tree Restaurant values were representative of the highest maximum concentrations in the NAA.¹⁵ Another CO saturation study done between December 1994 and March 1995 determined that the East Yakima Avenue corridor and the Jade Tree site had higher concentrations, and the monitor should remain at this site.¹⁶

During the winter of 1996 - 1997 the Jade Tree building was severely damaged by large snowstorms. This resulted in the deactivation of the monitor, the condemnation of the building, and the eventual building demolition. Later in 1997 the monitor was moved back to the Courthouse location. Because past studies had shown the Courthouse was not the optimal location for a CO monitor for downtown Yakima, a limited CO saturation study was done by ECY during February 1999. The results of the study were inconclusive for selecting a CO monitoring site, and a report was never published.¹⁷

During 1999 the Yakima County Courthouse CO monitor recorded 8512 hours with valid data and 97% of the data was determined to be valid.¹⁸ Because the NAA is small in size, Yakima has never had more than one operational CO monitor.

2.5 Design Value

Appendix F shows the five highest readings during each of the last four years. The greater of the second highest CO monitor values during 1998 and 1999 was 5.1 ppm, and this is the current CO design value.¹⁹ This value qualifies for a limited maintenance plan because it is less than 7.65 ppm or 85% of the CO NAAQS.²⁰ The 1988 - 1989 design value was 8.9 ppm.

2.6 Planning Area

The maintenance plan, emission modeling, and emission inventories are limited to the geographic limits of the NAA as shown in Appendix D - 1. EPA has determined that a stationary source that emits < 5,000 tons per year (TPY) of CO through stacks is not likely to produce concentrations in excess of the CO NAAQS,²¹ and there are no sources in the CO NAA or within two miles of the boundary which have CO emissions \geq 5,000 TPY. Therefore, the CO emissions from Boise Cascade are listed for information only, and other sources are not included in the plan or the inventory.

Any control or contingency strategies which are included in the plan will be designed for optimum effectiveness with an adequate safety margin for the monitored CO values to remain below 85% of the CO NAAQS. The geographic area subject to a strategy may be larger than the NAA depending on the nature of the measure.

2.7 Existing Control Strategies

The following control strategies exist and were used to reduce CO emissions in the NAA. Except for the voluntary programs in Subsection 2.74, these control strategies are all permanent and enforceable emission reductions:

2.71 Federal Requirements - Tier 1 Federal Motor Vehicle Emissions Standards for gasoline powered vehicles.²²

2.72 State Requirements

- Commute trip reduction programs by six employers within the CO NAA and six additional employers in the City of Yakima but outside of the NAA.^{23 24}
- Most of the state requirements included in the Washington Administrative Code (WAC) are also local requirements. The state and local citations are shown in Subsection 2.73.

2.73 Local Requirements - The following are local regulations which were included in Restated Regulation I and adopted into the SIP.^{25 26} These regulations were included in the SIP as PM₁₀ controls and are applicable to areas larger than the CO NAA. However, they also exert some control on CO emissions. They are also included in the new Regulation 1 which was filed for SIP adoption on August 22, 2000.²⁷

- Prohibition of outdoor and agricultural burning in the NAA;^{28 29 30}
- Prohibition of the installation of uncertified wood stoves;^{31 32 33}
- Prohibition of the use of pre-existing uncertified wood stoves during the first stage of an impaired air quality event unless it is the sole source of heat for a living area.^{34 35 36} A first stage impaired air quality event will be declared when the PM₁₀ values reach 60 $\mu\text{g}/\text{m}^3$ or the CO values reach 8 ppm; and^{37 38 39}
- Prohibition of the use of all wood stoves during a second stage of an impaired air quality event or an alert or higher stage of an air pollution episode except sole sources of heating for living areas, and the compliance patrols required by the SIP.^{40 41 42 43}

2.74 Voluntary Programs.

- Wood stove buy back programs in 1993 and 1994 removed 58 uncertified wood stoves from the WSCZ that surrounds the NAA. An estimated 34 of these stoves were in the NAA;
- The recently completed 2000 wood stove rebate program removed 52 uncertified stoves from homes in the WSCZ. Thirty-six of these stoves were in the PM₁₀ NAA and two were in the CO NAA⁴⁴; and
- Transit service offered by the City of Yakima.

2.8 Past Emissions Inventories

EPA determined that nonclassified areas are required to submit an emissions inventory.⁴⁵ This was submitted to EPA in March 1994 for the base year of 1992,⁴⁶ but EPA, Region 10

deferred action on this inventory until a maintenance plan was submitted. In December 1997 YRCAA submitted a CO emissions inventory update for 1996,⁴⁷ but this inventory was never approved by ECY or submitted to EPA. The 1992 inventory estimated the CO emissions as shown in Table 2.8 - 1.⁴⁸

Table 2.8 - 1, 1992 CO NAA Emissions Inventory Summary

Source Category	Annual		Typical Winter Day	
	Tons	%	Lbs.	%
Point sources				
Inside the CO NAA	0	0	0	0
Outside the CO NAA Boise Cascade ⁴⁹	(512)	(—)	(3,367)	(—)
Subtotal	0	0	0	0
Area sources				
Residential wood heating	2,094	17	33,644	39
All other area sources	177	1	1,203	1
Subtotal	(2,271)	(18)	34,847	(40)
Mobile sources				
On road	8,763	70	48,837	56
Non road	1,442	12	3,329	4
Subtotal	(10,205)	(82)	(52,166)	(60)
Total	12,476	100	87,013	100

The 1992 and 1996 CO emissions inventories for the NAA do not include the CO emissions from any of the point sources within or close to the CO NAA. However, the two inventories did list the CO emissions from Boise Cascade for information.

3.0 Risk of a Future Violation

There are a number of factors that can be reviewed to evaluate the potential for future violations of the NAAQS for CO in the Yakima area. The following data is provided to assist in evaluating the possible risk of a future violation of the standard and the imposition of a new nonattainment classification.

3.1 Growth Potential

3.11 Growth Projections - The NAA is a mix of urban area zoning classifications varying from Single-Family Residential (R1) to Heavy Industrial (M2)⁵⁰, and it has few large tracts of vacant land for new multiple housing units or large commercial developments. Most of the future growth is expected to occur from the conversion of existing single-family houses to multiple-family dwellings or small commercial buildings, or new construction on currently vacant lots in areas where the proposed changes are permitted by the zoning. The projected planning statistics and growth rates for the CO NAA, two cities within and adjacent to the NAA, and Yakima County are summarized in Table 3.1 - 1.^{51,52}

Table 3.11 - 1, Summary of Local Growth Statistics

Year	Jurisdiction	Statistic and Growth Factors		
		Population	Housing Units	Vehicle Miles Traveled/Day (VMT)
1999	CO NAA	---	---	468,234
2000	CO NAA	34,481	13,176	---
	City of Yakima	65,830	28,201	---
	City of Union Gap	5,430	2,254	---
	Yakima County	214,000	81,733	---
2005	CO NAA	36,570	13,974	528,492
	City of Yakima	69,819	29,910	---
	City of Union Gap	5,759	2,391	---
	Yakima County	226,968	86,686	---
2010	CO NAA	38,425	14,757	570,206
	City of Yakima	73,730	31,585	---
	City of Union Gap	6,082	2,524	---
	Yakima County	239,680	91,541	---
Annual Rate of Change in %				
2000 →2005	All Jurisdictions	+1.2%	+1.2%	+2.1%
2006 →2010	All Jurisdictions	+0.8%	+1.1%	+1.6%

The population and housing unit statistics assume no annexations of properties from the county into a city, and the 2005 and 2010 VMT are from the traffic modeling for the build scenario in the Regional and Metropolitan Area Transportation Plan.⁵³ The persons per household is projected to remain constant during the maintenance planning period.

3.12 Growth Data Interpretation - The population and housing unit growth rates for the NAA are consistent with those projected for the Cities of Yakima and Union Gap and other parts of the state, and offer no evidence that these growth rates will increase CO emission significantly. The VMT growth rate is almost twice the population growth rate which could indicate out-year increasing vehicle CO emissions. However, this is a situation that has been seen in other VMT projections made with traffic models where the predicted future VMTs growth rates are greater than the resulting future growth rates.

3.2 Potential for Dramatic Change

There is little potential for changes in the source mix for the CO emissions within the NAA. A dramatic change in this emissions inventory would have to be triggered by large increases in VMT or the construction of a major source emitting CO within the nonattainment area. If the projected VMT growth rates do happen and they are combined with a persistent winter inversion, higher CO levels could be expected. Based on four seasons of weather and CO monitor values, the

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analysis in Appendix J - 1 shows that 1% of the maximum daily CO monitor values between Nov. 1st and Feb. 29th are expected to be > 7.6 ppm. The Board and YRCAA consider this an acceptable level of risk for this plan.

3.3 Major Population or Source Distribution Changes

No major changes are expected in the spatial distribution of emissions in the NAA. Most of the industrial growth is occurring south and west of the NAA or in the area of the Valley Mall at the very southern extremity of the area. This growth could influence VMT inside and around the NAA. Large commercial projects which could generate additional VMT within or adjacent to the CO NAA will be requested to do CO hot spot modeling and analysis during the SEPA review and permitting process.

3.4 Impacts from Outside the NAA

Vehicle traffic originating outside the NAA is the main source that could affect CO emissions within the NAA. The emissions from these vehicles is included in the emissions modeling after they enter the area.

In the past Boise Cascade has proposed closing the plywood plant, but the current plans are for the plant to remain operational. A closure of all or part of the operations of this company would reduce the total CO emissions in the Greater Yakima Area. Because the winter prevailing winds are from the west and the Boise Cascade mill site is on the east side of the NAA, the net emissions change in the NAA would be small.

3.5 Reliance on Unproven Control Measures

The YRCAA is relying upon control measure cited in Section 2.7 that have been in place for a number of years and have effectively reduced CO emissions. The amount of reduction from each of these controls is unknown. Since past CO emissions inventories have indicated the largest amount of CO was from on-road mobile sources, it is reasonable to assume that the federal motor vehicle program emission standards have been the most effective in attaining the CO NAAQS.

3.6 Strength of Past Contingency Measures

Because this is a nonclassified area, contingency measures were not required in prior CO SIP submittals and none were included.

3.7 Meteorological and CO Monitor Data Analysis

An evaluation of historical National Weather Service data from the Yakima Airport and CO emission levels for the two monitor sites was done.

- 3.71 Analysis and Findings - High CO values normally occur between November 1st and February 29th during an atmospheric inversion with poor ventilation and normal winter temperatures. An analysis of the meteorological conditions for the five days per year with the highest CO monitor values from 1996 through 1999 documented in Appendix G determined the following:

- The highest CO values occurred on days with temperatures in normal ranges. The average temperature for high value days was only 3°F lower than the seasonal average for 1996 through 1999;
 - None of the highest values occurred on days with an average temperature < 15°F, and nine of the nineteen highest values occurred with an average temperature > 32°F;
 - 90% of the highest readings occurred on weekdays;
 - The highest 8 hr. values tended to occur either between 8 AM and 5 PM or at night between 10 PM and 2 AM;
 - 75% of the highest readings were two or three day events;
 - 75% of them occurred in the month of January; and
 - The average wind speed was lower than the seasonal average wind speed, and there were long periods during the day with winds \geq 4 mph.
- Another analysis documented in Appendix J - 1 looked at the occurrence of CO monitor values > 4.0 ppm and found the following:
- 1% of the maximum daily 8 hour CO monitor values during the season were > 7.6 ppm, and the seasonal range for these values was between 0 and 3%. These values all occurred during severe winter weather in Jan. 1997; and
 - 4% of the maximum daily 8 hour monitor values during the season were > 6.0 ppm.

These findings generally agree with the atmospheric conditions for high CO concentrations in the City of Spokane. Both Yakima and Spokane, WA have similar winter climatic conditions, and both cities have large areas in a valley bottom which traps cold air and concentrates CO levels during winter inversions.

- 3.72 Analysis Conclusions - The analysis of winter CO values and weather conditions documented in Appendices F, G, and J lead to the following conclusions about when high CO values are most likely to occur:

- The higher monitor values are strongly influenced by weekday vehicle traffic and to a lesser extent building heating emissions during inversion periods;
- They occur on weekdays during a winter inversion periods in December or January;
- They have rapidly rising CO monitor values, last for two or three days, and then drop quickly; and
- The probability of CO values > 7.65 ppm occurring in future years should diminish because of continuing vehicle replacements with lower emission rates and the completion of the optimized intersection mitigation measure described in Subsection 5.71 and Appendix I.

Appendix I contains some emission inventory and weather information that is slightly different than the plan and the

other appendices. When differences are found in weather and emission inventory information, the reader should use the information in the plan and other appendices.

4.0 State Implementation Plan (SIP) Requirements

4.1 Summary of Previous SIP Submittals

Restated Regulation I of 1995 was adopted into the SIP⁵⁴, and the newly adopted Regulation I was submitted to ECY for SIP adoption on August 22, 2000.⁵⁵ The only existing CO SIP submittal for Yakima is in Section 4.6.2.CO.1 approved by EPA on Sep. 14, 1981. This submittal predicted attainment of the CO NAAQS in 1982.⁵⁶ This did not happen.

Because Yakima is a not classified area under the 1990 Federal Clean Air Act Amendments, no SIP submittals were required.

4.2 Demonstration of Attainment

The data in Appendix F, and the narratives in Sections 2.3 and 2.5 show that 1998 and 1999 had no CO NAAQS exceedances or violations, and the CO NAAQS has been attained since 1986.

4.3 Adequacy of the Monitoring Network

See Sections 2.4 and 5.3 for discussions on past CO monitoring and the network.

4.4 Permanent and Enforceable Emission Reductions

The existing permanent and enforceable emission controls are listed in Section 2.7, and they will all remain in effect. The actual contribution of each control in the CO NAA is not known, but the federal motor vehicle emission standards have made the greatest reduction. The CO air quality contingency measure described in Subsection 5.62 has a companion City of Yakima adopted resolution in Appendix K.

The optimized intersection mitigation measure described in Subsection 5.71 is a permanent capital investment by the City of Yakima.

4.5 Transportation Conformity

Yakima is subject to transportation conformity by YVCOG and has been complying with the state and federal conformity regulations since they were adopted. Under the CO limited maintenance plan directions, regional conformity analysis on the metropolitan transportation plan and transportation improvement program is no longer necessary because there is no limit on motor vehicle emissions and thus no way to receive a negative conformity determination. Individual transportation projects must still continue to have a conformity analysis and receive a positive determination to obtain project approval. The project level analysis will continue to be done by the project sponsor in accordance with the existing state and federal requirements for planning and modeling.⁵⁷ YVCOG will work with the effected jurisdictions and interested parties to develop an evaluation criteria and process to meet the transportation conformity requirements.

The metropolitan transportation planning organizations with ozone and CO NAAs have agreed that Yakima can qualify for the minimum guaranteed allocation of congestion mitigation and air quality (CMAQ) funds when the YRCAA Board approves and submits either a Yakima CO or PM₁₀ maintenance plan to ECY which includes transportation elements.⁵⁸

4.6 Section 110 and Part D Requirements

The only applicable requirement is state transportation conformity regulations. While EPA has yet to approve the State of Washington regulations, EPA has determined that states are still bound by the federal regulation, and the absence of an EPA approval does not constitute an obstacle to redesignation.

EPA has approved the new source review rule in WAC 173-400-110 dated Aug. 20, 1993,⁵⁹ and the local rule in Restated Regulation 1, Section 4.02, dated Dec. 15, 1995⁶⁰.

5.0 Air Quality Maintenance Plan

The following sections document the planned strategies for maintaining the CO monitor values below the NAAQS and the 7.65 ppm level prior to being granted attainment status.

5.1 Maintenance Plan Emission Inventory

An annual and a typical winter day CO maintenance plan emission inventories was constructed for 1999 consistent with the EPA limited maintenance plan direction. 1999 was selected for the base year for this inventory because this is the base year for the traffic modeling done by YVCOG. These inventories also will fulfill the EPA requirement for a three year emissions inventory in the NAA.

The 1992 inventory was used as a reference for constructing the 1999 attainment inventory. However, major changes have occurred in residential home heating and the traffic modeling between the inventories. The 1999 inventory replaces the 1992 and 1996 CO NAA emissions inventories. Therefore, no comparisons with the previous inventories are necessary. The maintenance plan inventory including the inventory calculations, documentation, and quality control evaluations are in Appendix H. The inventory preparation and quality assurance plan is in Appendix C.

The inventory is limited to the CO NAA, and there is one air operating permit point source within the NAA. However, this source is only a major source for VOC emissions⁶¹, and the small level of CO emissions from the source are treated as an area source emission. The CO emissions from Boise Cascade are listed for information because they were included in previous CO NAA inventories, but they are not included in the inventory totals. Table 5.1 - 1 summarizes the maintenance plan inventory.

Table 5.1 - 1, 1999 Limited Maintenance Plan Inventory Summary of Actual Emissions⁶²

Source Category	Annual		Typical Winter Day	
	Tons	%	Lbs.	%
Point sources				
Inside the CO NAA	0	0	0	0
Outside the CO NAA Boise Cascade ⁶³	(955)	(-)	(5,457)	(-)
Subtotal	0	0	0	0
Area sources				
Residential wood heating	1,763	21	20,789	40
On road mobile	5,217	63	28,586	55
Non road mobile				
Locomotives	10	<1	67	0
Commercial equipment	342	4	1,873	4
Construction equipment	72	1	158	0
Industrial equipment	89	1	489	1
Lawn and garden equip- ment	846	10	33	0
Subtotal area sources	8,339	100	51,995	100
Totals	8,339	100	51,995	100

5.2 Maintenance Demonstration

The EPA direction for limited maintenance plans assumes that the CO emissions are at a low enough level, that even with future growth or unfavorable winter weather, a violation of the NAAQS will not occur. This is the expected situation in Yakima. Therefore, no modeling was done to construct out-year emissions inventories.

5.3 Monitoring Network

Because the NAA is small in size, and the one CO monitor has been acceptable, there is no need for a second monitor. ECY is currently working to relocate the CO monitor to a site on East Yakima Ave., but the specific location has not been finalized. In order to have continuous monitoring during the CO season, the monitor relocation needs to be done between March 1st and Oct. 1st of any year, or to continue the operation of the Courthouse monitor until a second CO monitor is fully installed, tested, and certified at the new site. After that the Courthouse monitor can be deactivated and the equipment returned to ECY. YRCAA and ECY plan to periodically review the adequacy of the monitor location. There are no current plans for a CO saturation study. However, ECY and YRCAA recognize the need for one and plan to schedule one for a future winter season.

5.4 Verification of Continued Attainment

YRCAA will annually review the monitored air quality data and assumptions supporting the plan to verify the continued attainment of the CO NAAQS. Every three years starting in 2003 for the year 2002, YRCAA and ECY will review the maintenance plan inventory and the factors used to construct the inventory to determine if there has been a significant change in CO emissions.⁶⁴ If a significant change in CO

emission levels is found, an emissions update will be prepared and submitted to EPA, Region 10.

Saturation studies will be scheduled and conducted as needed to evaluate the configuration of the monitoring network and the spatial changes in CO concentrations.

5.5 Control Measures

The control measures listed in Section 2.7 will all remain effective. No additional control measures are planned for this limited maintenance plan.

5.6 Contingency Plan and Measures

This plan contains one contingency measure described in the following subsections.

- 5.61 Rationale for Selection of a Contingency Measure - All past CO NAA emissions inventories have identified on-road, gasoline-powered vehicles as the largest source of CO in both the annual and typical winter day inventories. In addition, outdoor burning is prohibited in the NAA except for certain specific types of fires permitted by YRCAA, and the emission trend for home wood heating is declining. The analysis and conclusions in Section 3.7 show that the primary contingency measure for this plan needs to quickly stop rapidly rising winter CO emissions before the 7.65 ppm level is reached, but only needs to be implemented for short periods during the winter.

The CO NAA has 63 signalized traffic intersections, and the central business district within the NAA has 40 fixed-time traffic signals. These signals in the central business district are using old technology and do not optimize traffic movement. Converting all or part of these traffic signals to an alternative timing sequence by installing new technology has a great potential to move traffic more efficiently and reduce CO emissions. The City PWD has studied the traffic movement in the central business district, and it is documented in Appendix I.

Activation of an alternate traffic signalization program during a CO episode at levels > 5.5 ppm as described in Subsection 5.62 to reduce vehicle emissions on the major downtown arterial streets which lasts one to five days could make a significant difference in preventing a monitor value > 7.65 ppm. This should rapidly reduce the emission rate for the greatest single source category in the NAA. An alternate traffic signal program to control potentially very high values which is used an average of 6% of the time during a winter CO season should be much more acceptable to the public than other control measures.

- 5.62 CO Air Quality Contingency Measure - This plan includes in Appendix I an episodic CO air quality contingency measure which will change the timing on 40 signals in the central business district to favor the traffic on arterial streets and delay the lower traffic volumes on the cross streets during periods of predicted higher CO monitor values. This measure would move more traffic with less

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total delays and lower emissions, and give a high probability of stopping rising CO values. Traffic modeling using SYNCHRO 4.0 produced estimates for the afternoon peak traffic volumes and vehicle CO emissions which are shown in Table 5.62 - 1.⁶⁵

Table 5.62 - 1, Modeling Estimates for Peak Afternoon Hour Traffic Conditions in the Central Business District

Alternative	Average Vehicle Travel Speed - MPH	Fuel Consumption		CO Emissions	
		Gal.	Mi/Gal.	Lbs.	% Change
Existing Condition	14	824	9.4	127	0
CO Air Quality Contingency Measure	15	726	10.6	112	-12
Optimized Intersection Mitigation Measure	16	687	11.2	106	-17

The report prepared by the City PWD was independently reviewed by Brian Gardner and Cecilia Ho, Federal Highway Administration, to answer the following questions:

- Is this a proper application of the SYNCHRO 4.0 model?
- Does the modeling and assumptions support the conclusions, and;
- Is comparing the total relative emission levels between alternatives a viable way to select a contingency measure?

Their report showed the study is "a very reasonable approach to model development, calibration and application for a traffic control system study, and this methodology is adequate to evaluate the feasibility of the contingency measure".⁶⁶ A copy of their evaluation and the response to the evaluation from the City of Yakima is in Appendix I.⁶⁷

It is the decision of YRCAA to have the appropriate rules adopted before submitting the maintenance plan. Therefore, the City of Yakima Resolution No. 2000 - 115 for the CO air quality contingency measure is included in Appendix K. The YVCOG will include this contingency measure as an amendment to the State Transportation Implementation Plan (TIP).

5.63 Implementation of the Contingency Measure - The CO air quality contingency measure will be activated by the YRCAA from the 8 hour CO values at the local monitor that are posted on the ECY state air quality website under the following conditions:

- After local adoption of the limited maintenance plan - CO monitor values > 5.5 ppm and the monitor data indicates that the values are rising; or

- After EPA, Region 10 grants CO attainment status - CO monitor values > 7.0 ppm and the monitor data indicates that the values are rising.

It is expected that these conditions will exist one to three times each winter, and the duration of this contingency measure will be no longer than the next Saturday morning following the activation of the measure. Because activation of this contingency measure is intended for a short duration, the public should not significantly change their driving patterns to avoid the extended intersection delays on the local streets.

The City PWD has written detailed instructions for the procedures to convert the timing of the signals in the central business district to implement this contingency.⁶⁸

5.64 Continuing Use of the Contingency Measure - During and after the completion of the optimized intersection system mitigation measure described in Subsection 5.71, it will still be possible to convert the traffic signal system to the CO air quality contingency system to stop rising high CO values using the activation system identified in Subsection 5.63.

5.7 Mitigation Measures

The plan includes two non-enforceable mitigation measures which will reduce CO levels in addition to the existing control and contingency measures.

5.71 Optimized Intersection Mitigation Measure - The long term solution for more efficient traffic and pedestrian movement and CO emission reductions in the central business district is the installation of new traffic signal controls, detection and communication equipment, and the construction of left turn lanes at some intersections. This optimized intersection mitigation system is planned to be done by the City of Yakima over a several year period as funds become available, and it is documented in Appendix I. Part of the funding was granted from the Washington State Department of Transportation, and CMAQ funds are expected to be the other major source for the project. Table 5.62 - 1 shows the expected CO emissions reductions from the existing conditions.⁶⁹

5.72 Public Information Mitigation Measure - YRCAA is using news releases and interviews through the print, radio, and television media to inform the public of rising PM₁₀ and/or CO levels, and to request voluntary reductions in outdoor and agricultural burning, wood stove use, and trip reductions to prevent an exceedance of the PM₁₀ or CO NAAQS. These media releases will continue to the extent that funds are available. No estimates have been made of the effectiveness of this mitigation measure.

5.8 Additional Measures

If the control, contingency, and mitigation measures discussed in Sections 5.5, 5.6, and 5.7 are not successful in pre-

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venting a future violation of the CO NAAQS, the plan and SIP will be amended to incorporate additional measures and rules as needed.

5.9 Transportation Emission Budgets

Under a limited maintenance plan future emissions are not calculated and regional analysis of transportation plans and programs is not required. Therefore, no transportation emission budgets are developed.

1 Appendices A through J and L are considered part of this limited maintenance plan, but they were not filed with the Code Reviser for publication in the State Register. Appendix K is an adopted resolution and part of this plan.

2 Does not include tables in the appendices.

3 Paisie, Oct. 6, 1995.

4 Board Meeting Minutes, May 10, 2000, Pg. 2.

5 Calcagni, Sep. 8, 1992, Pg. 7.

6 Approved WA SIPS, Sec. 4.6.2CO.1, Sep. 9, 1981.

7 Carbon Monoxide Emissions Inventory for the Yakima Carbon Monoxide Nonattainment Area, Mar. 1, 1994, Pgs. 2 & 4.

8 Williams, Mar. 24, 1994.

9 Silva, Aug. 22, 2000.

10 40 CFR 50.8 (a)(1), Jul. 1, 1999.

11 40 CFR 50.8(d), Jul. 1, 1999.

12 EPA AIRS Data, Dec. 1987.

13 40 CFR 81.348, Jul. 1, 1998.

14 Frankel, Anita by Bonnie Thie, Mar. 6, 1998.

15 Schweiss and Miller, Nov. 1985.

16 Bennett and Miller, Sep. 1996, Pg. 7.

17 Billings, Aug. 24, 2000.

18 Rauh, Apr. 2000, Pg. 11.

19 Laxton, Jun. 18, 1990, Pg. 2.

20 Paisie, Oct. 6, 1995.

21 Laxton, May 13, Pg. 2.

22 40 CFR Part 86, Jul. 1, 1998.

23 RCW 70.94.531, undated.

24 Webster, Aug. 8, 2000.

25 Federal Register, Vol. 63, No. 21, Feb. 2, 1998, Pg. 5269→5272.

26 Approved WA SIPS, Sec. 3.YC.

27 Ornelas, Aug. 22, 2000.

28 Restated Reg. I, Sub. 5.03B, Pg. 5-3.

29 Regulation I, Sub. 3.03C1d, Pg. 3-12.

30 WAC 173-425-040 (1), Pg. 4.

31 Restated Reg. I, Sub. 9.04A, Pg. 9-1.

32 Regulation I, Sub. 3.04C4, Pg. 3-35.

33 WAC 173-433-100, Pgs. 3 & 4.

34 Restated Reg. I, Sub. 9.05A2, Pg. 9-3.

35 Regulation I, Table 3.05 - 2, Pg. 3-38.

36 WAC 173-433-150, Pgs. 7 & 8.

37 Restated Reg. I, Sub. 9.05A2, Pg. 9-3.

38 Regulation I, Table 3.05 - 1, Pg. 3-37.

39 WAC 173-433-140 (1)(b), Pg. 6.

40 Restated Reg. I, Sub. 9.05A3, Pg. 9-3.

41 Regulation I, Table 3.05-2, Pg. 3-38.

42 WAC 173-433-150, Pgs. 7 & 8.

43 SIP Supp. For PM₁₀ in Yakima, WA, Nov. 91, Pg. 9.

44 Ornelas, Nov. 14, 2000, Pg. 2.

45 Calcagni, Sep. 4, 1992, Pg. 8.

46 Williams, Mar. 4, 1994.

47 Carbon Monoxide Emissions Inventory Update - 1996 for the Yakima Nonattainment Area, Dec. 1997.

48 Carbon Monoxide Emissions Inventory for the Yakima Carbon Monoxide Nonattainment Area, Mar. 1, 1994, Pg. 4.

49 Carbon Monoxide Emissions Inventory for the Yakima Carbon Monoxide Nonattainment Area, Mar. 1, 1994, Pg. 7.

50 Yakima Co. GIS Dept., Jul. 17, 2000.

51 Davenport, Aug. 24, 2000.

52 Webster, Apr. 4, 2000.

53 RTP/MTP, Dec. 1999.

54 Federal Register, Feb/ 2, 1998, Pg. 5269 →5272.

55 Ornelas, Aug. 22, 2000.

56 Approved WA SIPS, Section 4.6.2CO.1, Sep. 9, 1981.

57 WAC 173-420-100, Aug. 25, 1995, Pg. 9.

58 Wyrick, Jun. 2000.

59 Approved WA SIPS, Sec. 2.2.

60 Approved WA SIPS, Sec. 3.YC.

61 Stansel, Jul. 6, 2000.

62 Yakima CO NAA Maint. Plan Emissions Inventory, Nov. 2000, Pg. C - 4.

63 Sandberg, May 22, 2000.

64 Calcagni, Sep. 4, 1992, Pg. 11.

65 City of Yakima, Washington Evaluation of Mobile Source Carbon Monoxide Emissions in the Yakima CBD, Sep. 8, 2000, Pg. 2.

66 Gardner, Sep. 11, 2000.

67 Davenport, Sep. 21, 2000.

68 Traffic Signal Program Instructions to Provide a Response to a Critical Carbon Monoxide Event, Oct. 1, 2000.

69 City of Yakima, Washington Evaluation of Mobile Source Carbon Monoxide Emissions in the Yakima CBD, Sep. 8, 2000, Pg. 2.

Appendix K, City of Yakima, Washington Adopted Resolution No. 2000 - 115

A RESOLUTION establishing a joint policy with the Yakima Regional Clean Air Authority for implementation of the Yakima CO Air Quality Transportation Contingency Measure.

WHEREAS, the City of Yakima and Yakima Regional Clean Air Authority have cooperated in the development of the Yakima CO Limited Maintenance Plan for attainment of Carbon Monoxide Air Quality Standards established by the Federal Clean Air Act of 1990; and

WHEREAS, the Yakima Valley is subject to winter seasonal temperature inversions which can create poor air quality conditions, sometimes resulting in periods of elevated Carbon Monoxide levels due primarily to vehicle traffic; and

WHEREAS, rising CO values during temperature inversions may be reduced by implementation a temporary and alternate signal timing plan, referred to as the "Yakima CO Air Quality Contingency Measure" which reduces vehicle idling on major arterial streets in the Yakima CBD; now, therefore,

BE IT RESOLVED BY THE
CITY COUNCIL OF THE CITY OF YAKIMA

Section 1: In order to reduce the Carbon Monoxide (CO) emissions in the Yakima CO Non-Attainment Area during as air quality advisory period, the City of Yakima agrees to establish an alternate and temporary signal timing plan (herein referred to as the CO Air Quality Contingency Measure) to give priority of traffic flow to the major arterial streets within the CBD core area, while traffic on the less busy side streets is delayed to create better overall system efficiency. Traffic will be held at the signalized intersections on the side streets for a longer period of time, while the main arterial street traffic is allowed to flow more effectively.

This alternative plan serves as the Yakima Transportation Contingency Measure (TCM) as required by the Federal Highway Administration and Environmental Protection Agency and by Section 176(c) of the Clean Air Act (CAA) [42 U.S.C. §7509]. Conformance of the TCM with the Washington State Implementation Plan (SIP) is required by Chapter 173-420 WAC.

Section 2: The Department of Ecology Carbon Monoxide monitoring device will be used to determine when an air quality advisory period is in effect which requires implementation for the TCM. The following thresholds will be used:

1. A Carbon Monoxide (CO) reading of greater than 5.5 parts per million (PPM), averaged over an 8-hour period until the Yakima CO Limited Maintenance Plan is approved by the Washington Department of Ecology and the Environmental Protection Agency grants attainment status for CO in Yakima;
2. A Carbon Monoxide (CO) reading of greater than 7.0 parts per million (PPM), averaged over an 8-hour period after the Environmental Protection Agency grants attainment status for CO in Yakima.

Section 3: If the threshold values described in Section 2 above are observed on or after 5:00 PM on a Friday, implementation of the TCM will be deferred 48 hours (until 5:00 PM, Sunday), pending a threshold reading at that time.

Section 4: Yakima Regional Clean Air Authority will provide notice to the City of Yakima Department of Public Works that an air quality advisory event is in effect. The Yakima Regional Clean Air Authority will provide public notice that an air quality advisory event is in effect and the CO Air Quality Contingency Measure is in effect for the Yakima CBD.

Section 5: The City of Yakima Public Works Department will respond with implementation of the TCM within 4 hours of the notice given by the Clean Air Authority. The TCM will be in effect until air quality conditions are below the threshold values in Section 2 above.

ADOPTED BY THE CITY COUNCIL this 19th day of September, 2000.

S/ MARY PLACE
Mary Place, Mayor

ATTEST:

/S/ KAREN S. ROBERTS, CMC
City Clerk

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Yakima Regional Clean Air Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 01-06-043
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)

[Filed March 5, 2001, 4:26 p.m., effective May 1, 2001]

Date of Adoption: March 5, 2001.

Purpose: The client eligibility rule on trusts has been rewritten to make it clearer and easier to understand. It is being relocated in new chapter 388-561 WAC, that includes new rules about annuities and life estates and how they affect a client's eligibility for medical assistance.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-505-0595.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, and 74.09.500.

Adopted under notice filed as WSR 00-17-126 on August 18, 2000.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-561-0001 Definitions.**

"**Annuity**" means a policy, certificate or contract that is an agreement between one or more parties and an insurer or similar body, licensed and approved to do business in the jurisdiction in which the annuity is established. It buys the right to receive income in a specific amount for a specific time period. The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable.

"**Disbursement/distribution**" means any payment from the principal or proceeds to the beneficiary or to someone on their behalf.

"**Irrevocable trust**" means ~~that the entity~~ the legal instrument cannot be changed or ~~cancelled~~ terminated in any way by anyone.

"**Life estate**" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner ~~does~~ may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"**Pooled trust**" means a trust ~~that meets~~ meeting all of the following conditions:

(1) ~~It was created on or after April 1, 1994;~~

(2) (1) It contains funds of more than one disabled individual, combined for investment and management purposes;

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~~(3)~~ (2) It is for the sole benefit of disabled individuals (as determined by SSA criteria) ~~under sixty-five years old;~~

(4) ~~(3)~~ It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;

~~(5)~~ (4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and

~~(6)~~ (5) It contains a provision that upon the death of the beneficiary individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of Medicaid paid on behalf of that individual.

"**Special needs trust**" means a trust ~~that meets~~ing all of the following conditions:

~~(1) It was created on or after April 1, 1994;~~

~~(2)~~ (1) It is for the sole benefit of disabled individuals (as determined by SSA criteria) under sixty-five years old;

~~(3)~~ (2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and

(4) (3) It contains a provision that upon the death of the individual, the state will ~~be the first beneficiary of all~~ receive the amounts remaining in the trust up to the total amount of Medicaid paid on behalf of the individual.

"**Testamentary trust**" means a trust created by a will from the estate of a deceased person. ~~The beneficiary has no control over establishment of the trust and the trust fund is not given to the beneficiary, but is paid out according to the will. The department does not consider the trust as a resource (see WAC 388-470-0005) or asset to the beneficiary, but payments from the trust are considered income.~~

"**Trust**" means legal title to property (such as a home, cash, stocks, or other assets) is ~~given~~ transferred to one party a trustee for the benefit of another party the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annuities, refer to WAC 388-561-0200.

"**Trustee**" means an individual, bank, insurance company, or any other entity (like a bank or insurance company) that manages and administers the trust for the beneficiary.

WAC 388-561-0100 Trusts.

~~(1) A trust owned by a client, a client's spouse, or a client's legal dependent affects a client's eligibility for medical programs in the following ways: The department determines how trusts affect eligibility for medical programs.~~

(2) The department disregards trusts established on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICFMR).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the largest amount of money (payments) allowed to be distributed under the terms of the trust for the client if all of the following conditions apply:

(i) The client could be the beneficiary of all or part of the payments from the trust;

(ii) The distribution of payments is determined by one or more of the trustees; and

(iii) The trustees are allowed discretion in distributing payments to the client.

~~This applies whether or not:~~

~~(iv) The trust is irrevocable;~~

~~(v) The trustees actually used the discretion allowed by the trust; or~~

~~(vi) (iv) The trust was established for purposes other than to establish eligibility for medical assistance.~~

(b) If an irrevocable trust doesn't meet the description under subsection (3)(a) ~~of this section~~ then it is considered either:

(i) ~~The trust is a~~ An unavailable resource if the client established the trust for a beneficiary other than the client or the client's spouse;

(ii) ~~The trust is a~~ An available resource in the amount of the trust's assets that:

(A) The client could access; or

~~(B)~~ The trustee of the trust distributes as actual payments to the client; and

~~(B) (iii) The department applies the transfer of asset rules of WAC 388-513-1365 for regulations concerning the transfer of assets.~~

(c) If a revocable trust doesn't meet the description under subsection (23)(a) ~~of this section:~~

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client; or

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of ~~the trust to which the client has access~~ money actually paid to the client from the trust is an available resource ~~of the client, if the~~ when the trust was established by: ~~a person other than the client or the client's spouse:~~

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

~~(iii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:~~

~~(A) The client's spouse, and the client did not live with the spouse; or~~

~~(B) A person other than the client or the client's spouse; and~~

~~(C) Payments were distributed by a trustee of the trust. The department considers the funds a resource, not income.~~

(4) For trusts established on or after August 11, 1993:

(a) The department ~~will~~ considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust's assets were contributed by any other person.

(c) The department ~~will not look at~~ does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under (3a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust other than payments described under (34)(d)(ii) of this section are a transfer of client assets.

(e) For an irrevocable trust established as described under (3a4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established, or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(45) The following trusts, established on or after August 11, 1993, are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust is managed by a nonprofit association which:

~~(i) Is managed by a nonprofit association which:~~

~~(A) Maintains separate accounts for each trust beneficiary; and~~

~~(B) (ii) May pool such separate accounts only for investment and fund management purposes; and~~

~~(C) (iii) Stipulates that either:~~

~~(A) The state will receive all amounts remaining in the client's trust account upon the death of the client, up to the amount of Medicaid spent on the client's behalf(-); or~~

~~(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.~~

~~(56) The department considers payments made from in subsection (45) above to be unearned income.~~

~~(67) The department will only count income from trusts and not the principal if:~~

~~(a) The beneficiary has no control over the trust; and~~

~~(b) It was established with funds of someone other than the client, spouse or legally responsible person.~~

~~(78) This section of WAC does not apply when a client establishes that undue hardship exists.~~

~~(8) (9) WAC 388-513-1365 applies when the department determines that a trust or a portion of a trust is a transfer of assets.~~

WAC 388-561-0200 Annuities.

~~An annuity owned by a client, a client's spouse, or a client's legal dependent affects a client's eligibility for medical programs in the following ways:~~

~~(1) The department determines how annuities affect eligibility for medical programs.~~

~~(1) (2) A revocable annuity is ~~counted~~ considered as an available resource.~~

~~(23) The income ~~received~~ from an irrevocable annuity, meeting the requirements of this section, is ~~counted~~ considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not counted as a resource or income.~~

~~(34) For ~~irrevocable~~ An annuityies established on or after January May 1, 2001 ~~or after~~ will be considered an available resource unless it:~~

~~(a) Is irrevocable;~~

~~(a) (b) When the annuity is paid out in equal monthly amounts throughout the actuarial life expectancy of the annuitant, ~~the department counts the payments as income.~~~~

~~(b) (c) When the annuity is paid out in any other way, ~~the department counts the principal as an available resource~~ Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and-~~

~~(e) (d) If the annuity is paid out other than in equal monthly payments, and will still be paid out within the actuarial life expectancy, in order for the annuity to be considered as income rather than a resource, a client may:~~

~~(i) Change the irregular or lump sum payments to equal monthly payments throughout the actuarial life expectancy of the annuitant; or~~

~~(ii) Allow the department to calculate and budget the payments as equal monthly payments throughout the actuarial life expectancy of the annuitant Names the department as the beneficiary of the remaining funds up to the total of Medicaid funds spent on the client during the client's lifetime.~~

This subsection only applies if the annuity is in the client's name.

~~(d) If the annuity is paid out in excess of the actuarial life expectancy of the annuitant, the excess amount beyond the life expectancy is a transfer of resources and the department will decide if there is a penalty.~~

~~(i) In the case of long term care benefits, there may be a period of ineligibility (see WAC 388-513-1365).~~

~~(ii) (i) In the case of other medical programs, there may be ineligibility in the month of application.~~

~~(5) For an annuity to be counted as income, the annuitant of an irrevocable annuity must be: An irrevocable annuity established on or after May 1, 2001 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:~~

~~(a) The client (a) The full pay out is within the actuarial life expectancy of the client; and;~~

~~(b) The spouse of the client; (b) The client;~~

~~(c) The blind or disabled child of the client; or~~

~~(d) A person designated to use the annuity for the sole benefit of the annuitant.~~

~~(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or~~

~~(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.~~

~~(6) If an annuity has a joint owner (co-annuitant) or an irrevocable beneficiary, who must agree before the policy may be cashed, and refuses to agree, the department does not consider the annuity as available **unless** the joint owner or irrevocable beneficiary is the community spouse. In that case, the department considers the cash surrender value of the annuity as an available resource and count it toward the maximum community spouse resource allowance.~~

An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

~~(7) An annuity is subject to the transfer of asset rules (See WAC 388-513-1365) unless it:~~

~~a. Is irrevocable;~~

~~b. Is issued by an insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;~~

~~c. Generates an equal monthly payment of interest and principal (the original purchase price) which pays out the principal throughout the actuarial life expectancy of the annuitant; and~~

~~d. Names the state of Washington's Department of Social and Health Services or its successor agency, as the beneficiary of funds remaining in the annuity, not to exceed the total of Medicaid funds spent on the client during the client's~~

~~lifetime, if the client is single or is married and the annuity is in the client's name~~

~~(7) An irrevocable annuity, established on or after May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:~~

~~(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).~~

~~(b) Other medical benefits will be ineligibility in the month of application.~~

~~(8) The dollar amount of resources from an annuity transferred without adequate consideration equals the difference between what will be paid out to the annuitant within the expected lifetime (based on the actuarial tables) and the principal of the annuity (original purchase price). The period of ineligibility is determined according to WAC 388-513-1365 for long term care (LTC):~~

~~(8) An irrevocable annuity is considered unearned income when the annuitant is:~~

~~(a) The client;~~

~~(b) The spouse of the client;~~

~~(c) The blind or disabled child of the client; or~~

~~(d) A person designated to use the annuity for the sole benefit of the client, the client's spouse, or a blind or disabled child of the client.~~

~~(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, **unless** the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.~~

WAC 388-561-0300 Life estates.

~~(1) A life estate owned by a client, a client's spouse, or a client's legal dependent affects a client's eligibility for medical programs in the following ways: The department determines how life estates affect eligibility for medical programs.~~

~~(4) (2) A life estate is an excluded resource if when either of the following conditions apply:~~

~~(a) The life estate owner is the client, the life estate is for the client's home and the client is living in or expresses an intent to return to the home; or~~

~~(b) It is property other than the home, which is essential to self-support or part of an approved plan for self-support; or~~

~~(c) (b) It cannot be sold due to refusal of joint life estate owner(s) to sell.~~

~~(2) (3) Only the client's proportionate interest in the life estate is considered if there is more than one owner of the life estate. Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC 388-513-1365.~~

~~(3) (4) A property owner, who transfers legal ownership to a property creating a life estate, is transferring a resource if the life estate cannot be excluded in subsection (1). Refer to WAC 388-513-1365 for transfer of resources. Only the cli-~~

Chapter 388-561 WAC

TRUSTS, ANNUITIES, AND LIFE ESTATES—
EFFECT ON MEDICAL PROGRAMSNEW SECTION

WAC 388-561-0001 Definitions. "Annuitant" means a person or entity that receives the income from an annuity.

"Annuity" means a policy, certificate or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time. The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable. The party guaranteeing payment can be an:

(1) Individual; or

(2) Insurer or similar body licensed and approved to do business in the jurisdiction in which the annuity is established.

"Beneficiary" means an individual(s) designated in the trust who benefits from the trust. The beneficiary can also be called the grantee. The beneficiary and the grantor may be the same person.

"Designated for medical expenses" means the trustee may use the trust to pay the medical expenses of the beneficiary. The amount of the trust that is designated for medical expenses is considered an available resource to the beneficiary. Payments are a third party resource.

"Disbursement" or "distribution" means any payment from the principal or proceeds of a trust, annuity, or life estate to the beneficiary or to someone on their behalf.

"Discretion of the trustee" means the trustee may decide what portion (up to the entire amount) of the principal of the trust will be made available to the beneficiary.

"Exculpatory clause" means there is some language in the trust that legally limits the authority of the trustee to distribute funds from a trust if the distribution would jeopardize eligibility for government programs including Medicaid.

"Grantor" means an individual who uses his assets or funds to create a trust. The grantor may also be the beneficiary.

"Income beneficiary" means the person receiving the payments may only get the proceeds of the trust. The principal is not available for disbursements. If this term is used, the principal of the trust is an unavailable resource.

"Irrevocable" means the legal instrument cannot be changed or terminated in any way by anyone.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

ent's proportionate interest in the life estate is considered when there is more than one owner of the life estate.

~~(4) (5) A person must receive fair market value (FMV) for the value of the property transferred when creating a life estate. A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer-of-resource penalties under WAC 388-513-1365.~~

~~(5) (6) If a person does not receive FMV for the property transferred, then the value of the uncompensated portion of the resource is combined with other non-excluded resources. When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:-~~

~~(a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other non-excluded resources; or~~

~~(b) For institutional medical, a period of ineligibility will be established according to WAC 388-513-1365.~~

~~(6) If the total in subsection (5) exceeds the resource standard (WAC 388-470-0005, 388-478-0070, and 388-478-0080) then:~~

~~(a) For CN/MN medical programs, the client is ineligible during the month of transfer; or~~

~~(b) For long-term care programs, a period of ineligibility will be established (see WAC 388-513-1365).~~

~~a. The transfer of a resource without adequate consideration is combined with other resources, and-~~

~~b. The total value cannot exceed the resource standard; or-~~

~~i. For CN/MN medical applications, the client is ineligible during the month of transfer; or~~

~~ii. For long-term care applications, a period of ineligibility will be established. (See WAC 388-513-1365.)~~

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 1.

Effective Date of Rule: May 1, 2001.

March 5, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

"Principal" means the assets that make up the entity. The principal includes income earned on the principal that has not been distributed. The principal is also called the corpus.

"Proceeds" means the income earned on the principal. It is usually interest, dividends, or rent. When the proceeds are not distributed, they become part of the principal.

"Pooled trust" means a trust meeting all of the following conditions:

- (1) It contains funds of more than one disabled individual, combined for investment and management purposes;
- (2) It is for the sole benefit of disabled individuals (as determined by SSA criteria);
- (3) It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;
- (4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and
- (5) It contains a provision that upon the death of the individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of Medicaid paid on behalf of that individual.

"Revocable" means the legal instrument can be changed or terminated by the grantor, or by petitioning the court. A legal instrument that is called irrevocable, but that can be terminated if some action is taken, is revocable for the purposes of this section.

"Special needs trust" means a trust meeting all of the following conditions:

- (1) It is for the sole benefit of a disabled individual (as determined by SSA criteria) under sixty-five years old;
- (2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and
- (3) It contains a provision that upon the death of the individual, the state will receive the amounts remaining in the trust up to the total amount of Medicaid paid on behalf of the individual.

"Testamentary trust" means a trust created by a will from the estate of a deceased person. The trust is paid out according to the will.

"Trust" means property (such as a home, cash, stocks, or other assets) is transferred to a trustee for the benefit of the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annuities, refer to WAC 388-561-0200.

"Trustee" means an individual, bank, insurance company or any other entity that manages and administers the trust for the beneficiary.

"Undue hardship" means the client would be unable to meet shelter, food, clothing, and health care needs if the department applied the transfer of assets penalty.

NEW SECTION

WAC 388-561-0100 Trusts. (1) The department determines how trusts affect eligibility for medical programs.

(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives

in an intermediate care facility for the mentally retarded (ICMR).

(3) For trusts established on or before August 10, 1993 the department counts the following:

(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:

- (i) The client could be the beneficiary of all or part of the payments from the trust;
- (ii) The distribution of payments is determined by one or more of the trustees; and
- (iii) The trustees are allowed discretion in distributing payments to the client.

(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:

- (i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or
- (ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC 388-513-1365.

(c) If a revocable trust doesn't meet the description under subsection (3)(a):

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under subsection (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-503-0510) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-503-0510), and the trust is managed by a nonprofit association which:

(i) Maintains separate accounts for each trust beneficiary; and

(ii) May pool such separate accounts only for investment and fund management purposes; and

(iii) Stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of Medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(6) The department considers payments made from trusts in subsection (5) to be unearned income.

(7) The department will only count income from trusts and not the principal, if:

(a) The beneficiary has no control over the trust; and

(b) It was established with funds of someone other than the client, spouse or legally responsible person.

(8) This section does not apply when a client establishes that undue hardship exists.

(9) WAC 388-513-1365 applies when the department determines that a trust or a portion of a trust is a transfer of assets.

NEW SECTION

WAC 388-561-0200 Annuities. (1) The department determines how annuities affect eligibility for medical programs.

(2) A revocable annuity is considered an available resource.

(3) The income from an irrevocable annuity, meeting the requirements of this section, is considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not considered a resource or income.

(4) An annuity established on or after May 1, 2001 will be considered an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the department as the beneficiary of the remaining funds up to the total of Medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(5) An irrevocable annuity established on or after May 1, 2001 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(6) An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined

according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

(7) An irrevocable annuity, established on or after May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ineligibility in the month of application.

(8) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, UNLESS the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

NEW SECTION

WAC 388-561-0300 Life estates. (1) The department determines how life estates affect eligibility for medical programs.

(2) A life estate is an excluded resource when either of the following conditions apply:

(a) It is property other than the home, which is essential to self-support or part of an approved plan for self-support; or

(b) It cannot be sold due to the refusal of joint life estate owner(s) to sell.

(3) Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC 388-513-1365.

(4) Only the client's proportionate interest in the life estate is considered when there is more than one owner of the life estate.

(5) A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer-of-resource penalties under WAC 388-513-1365.

(6) When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:

(a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other non-excluded resources; or

(b) For institutional medical, a period of ineligibility will be established according to WAC 388-513-1365.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-505-0595 Trusts.

**WSR 01-07-001
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Assistance Programs)**

[Filed March 7, 2001, 3:31 p.m., effective May 1, 2001]

Date of Adoption: March 7, 2001.

Purpose: Repeal WAC 388-400-0020 General assistance for pregnant women—General eligibility requirements. Clients who were previously served under this program now receive benefits through the temporary assistance for needy families (TANF) program.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-400-0020 General assistance for pregnant women—General eligibility requirements.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057.

Adopted under notice filed as WSR 01-03-120 on January 22, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Effective Date of Rule: May 1, 2001.

March 7, 2001
Bonita H. Jacques, Chief
Office of Legal Affairs

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-400-0020 General assistance for pregnant women—General eligibility requirements.

PERMANENT

WSR 01-07-015
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 01-32—Filed March 13, 2001, 11:41 a.m.]

Date of Adoption: February 10, 2001.

Purpose: Amend commercial fishing and wholesale dealing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-016, 220-47-301, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 01-02-085 on January 3, 2001.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-20-016, subsection [(1)](a), proposed amended language withdrawn and deletion restored; and subsection [(1)](d), added, "that may be lawfully retained."

WAC 220-69-240, subsection (7), title corrected and subsection (11), telephone numbers and e-mail address changed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 6, 2001

Russell W. Cahill, Chair
 Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 99-202, filed 11/19/99, effective 12/20/99)

WAC 220-20-016 Sale and purchase of commercial caught salmon. (1) It is unlawful for any person licensed to take salmon for commercial purposes as required under chapter ~~((75-28))~~ 77.65 RCW to:

~~((1))~~ (a) Retain for personal use more than the equivalent of one daily sport bag limit for the area being fished. All salmon taken under commercial license must be recorded on state of Washington fish receiving tickets. The daily limit and possession limit described in this subsection also apply to crew members of the licensed fishing vessel.

~~((2))~~ (b) Sell any salmon he takes under such license to anyone other than a licensed wholesale dealer located within or outside the state of Washington: Provided, That a person who is himself licensed as a wholesale dealer under the provisions of RCW ~~((75-28-300))~~ 77.65.280 may sell his catch to

individuals or corporations other than licensed wholesale dealers.

(c) Sell, barter or attempt to sell or barter chum salmon eggs that have been removed from the body cavity of chum salmon unless all carcasses from which eggs have been removed are sold to the same buyer.

(d) Discard chum salmon that may be lawfully retained.

(2) It is unlawful for any person licensed as a wholesale dealer as required under RCW 77.65.280 and acting in the capacity as an original receiver to purchase or attempt to purchase chum salmon eggs without also purchasing all male and female chum salmon taken by the fisher, including the salmon carcasses from which the eggs were removed.

AMENDATORY SECTION (Amending Order 97-124, filed 7/29/97, effective 8/29/97)

WAC 220-47-301 Puget Sound—Lawful gear—Purse seine. (1) Lawful purse seine salmon nets in Puget Sound shall not exceed 1,800 feet in length along the cork line while wet and purse seine and lead combined shall not exceed 2,200 feet. Neither shall contain meshes of a size less than 4 inches, nor shall the meshes of the seine and lead be lashed together to form one continuous piece of webbed gear. It shall be lawful as part of the purse seine to have a bunt not more than 10 fathoms long ~~((and 200 meshes deep))~~ which may contain mesh of a size not less than 3-1/2 inches.

(2) It shall be unlawful to take or fish for salmon with purse seine gear in Puget Sound which contains mesh webbing constructed of a twine size smaller than 210/30d nylon, 12 thread cotton or the equivalent diameter in any other material.

(3) It shall be unlawful for any purse seine vessel to carry an extra lead or portion thereof unless stowed below decks during the fishing operation, nor may an extra lead or portion thereof be carried aboard its skiff.

(4) Purse seine mesh size shall be defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh. Minimum mesh size is met if a wedge of legal size can be passed without undue force through the mesh while wet.

(5) A purse seine will not be considered to be fishing once both ends of the seine are attached to the primary vessel.

(6) It shall be unlawful to take or fish for salmon with purse seine gear in Puget Sound unless at least four sections, each measuring no less than 12 inches in length, along the corkline in the bunt and within 75 fathoms of the bunt have no corks or floats attached. These four sections must be spaced such that one section is along the corkline in the bunt, within 5 fathoms of the seine net, and the other three sections must be spaced at least 20 fathoms apart along the corkline within 75 fathoms of the bunt.

AMENDATORY SECTION (Amending Order 99-221, filed 12/20/99, effective 1/20/00)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) Every person originally receiving or purchasing fresh or iced food fish or shellfish or parts thereof, or frozen food fish or shellfish or parts thereof that have not

been previously landed in another state, territory, or country from fishermen, firms, or individuals, regardless of whether or not the receiver or purchaser holds a license as required under Title ((75)) 77 RCW, must immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket regarding each and every purchase or receipt of such commodities. Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its branch plant locations shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business or firm shall be responsible for the accuracy and legibility of all such documents initiated in its name. Each delivery must be recorded on a separate state of Washington fish receiving ticket.

(2) State of Washington fish receiving tickets are required for:

(a) Fresh food fish and shellfish landed in the state of Washington including fish or shellfish not purchased, which fish shall be recorded as weigh back or take home fish or shellfish.

(b) Fresh food fish and shellfish previously landed in another state, territory, or country and shipped or transported into the state of Washington to an original receiver.

(c) Frozen food fish or shellfish not previously landed in another state, territory, or country and shipped or transported into the state of Washington to an original receiver.

(3) State of Washington fish receiving tickets are not required for:

(a) Purchases or receipts made by individuals or consumers at retail.

(b) Purchases or receipts from any person possessing a valid Washington wholesale dealer's license except that a wholesale dealer purchasing fish from a commercial fisherman or shellfish gatherer shall complete the appropriate fish receiving ticket regardless of whether the commercial fisherman or shellfish gatherer possesses a wholesale dealer's license. It is the purchaser's responsibility to obtain the name, address, and Washington wholesale dealer's license number, together with such sales receipt documents or information as may be required, to show the deliverer's name, quantity of fish, and date of the transaction and retain these with the food fish or shellfish.

(c) Fresh or frozen food fish or shellfish that are in transit through the state of Washington, if no storage, handling, processing, or repackaging occurs within the state.

(d) Private sector cultured aquatic products.

(4) Fishermen, fishermen-wholesalers, and wholesalers shall determine the weight of baitfish contained in an average and normal brail and multiply the number of such brailers of baitfish by this weight factor and report such baitfish in both dozens and total weight: Provided, That it is lawful for such fishermen, fishermen-wholesalers, and wholesalers, when receiving herring, candlefish, anchovy, or pilchards for bait purposes, to delay completing that portion of the fish receiving ticket which indicates number of herring received, only if the herring, candlefish, anchovy, or pilchards are sold individually or counted as dozens. Such counts must be entered on the fish tickets immediately. An estimate of herring, can-

dlefish, anchovy, or pilchards caught but not sold due to mortality must be included on the fish ticket as "loss estimate."

(5) It is lawful for an original receiver, when receiving purse seine-caught herring taken from Areas 20A, 20B, 21A, and 21B during the period April 16 through May 31, to delay completing that portion of the fish receiving ticket which indicates the weight of herring received only until the herring are off-loaded from the original receiver's vessel. The herring must then be weighed and the weight immediately entered in the appropriate space on the ticket. A separate state of Washington fish receiving ticket must be initiated at the time of each individual receipt of herring from the purse seine catching vessel.

(6) The original receiver of herring taken from Puget Sound Marine Fish-Shellfish Catch Areas 20A, 20B, 21A, and 21B, during the period April 16 through May 31 must report each calendar day's receipts by noon of the following day to the Department of Fish and Wildlife, LaConner, Washington; telephone (360) 466-4345 ext. 243.

(7) It is unlawful for any person receiving or purchasing geoducks from fishermen, firms, or individuals, regardless of whether or not the purchaser or receiver holds a license as required under Title ((75)) 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual landing of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of landing.

(8) It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the landing. The exact weights of whiting, by grade, and all incidental species in the landing must be entered on the fish receiving ticket within twenty-four hours of the landing.

(9) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. Such report must be by telephone call to the Point Whitney Shellfish Laboratory or by facsimile transmission (FAX) to the Point Whitney Shellfish Laboratory. All reports must specify the total number of pounds caught by gear type, Marine Fish-Shellfish Management and Catch Reporting Area, and species. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect.

(10) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket immediately upon receipt of any portion of a commercial catch. Should the unloading of a catch take more than one day, the date that the unloading is completed shall be entered on the fish receiving ticket as the date of landing. If, for any purpose, the vessel leaves the unloading site, the original receiver must immediately enter the current date on the fish receiving ticket.

(11) During any fishery opening designated by rule as "quick reporting required," it is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report a summary of all purchases of salmon and sturgeon made on the previous calendar day. The summary must include dealer name and purchasing location, date of purchase, list of fish ticket numbers used on the purchasing date,

and the following summary catch data for each species purchased: Gear, catch area, species, number and total weight of fish. When quick reporting is required, it is unlawful to fail to comply with the following reporting requirements:

(a) Puget Sound summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) FAX transmission to (360) 902-2949

(ii) E-mail to psfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1279

(b) Coastal troll summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) FAX transmission to (360) 902-2949

(ii) E-mail to trollfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1279

(c) Grays Harbor and Willapa Bay summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) FAX transmission to (360) 664-0689

(ii) E-mail to harborfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1280

(d) Columbia River summary reports must be reported by 10:00 a.m. on the day after the purchase date by either:

(i) FAX transmission to (360) 906-6776 or (360) 906-6777

(ii) E-mail to crfishtickets@dfw.wa.gov or

(iii) Telephone to 1-866-791-1281

(12) It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. The report must be made by facsimile (FAX) transmission to (360) 586-8408 or by telephone to (360) 796-4601, extension 500. Additionally, it is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore.

WSR 01-07-016
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 01-36—Filed March 13, 2001, 11:41 a.m.]

Date of Adoption: February 10, 2001.

Purpose: Establish sardine emerging commercial fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-33-060 and 220-44-020.

Statutory Authority for Adoption: RCW 77.12.047

Adopted under notice filed as WSR 01-02-082 on January 2, 2001.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-88C-020, change statutory reference from RCW 75.28.125(2) to 77.65.210.

WAC 220-88C-040, change season opening from May 1 to May 15; and, "(3) The transfer of catch from one vessel to another vessel is prohibited." add "(4) Legal purse seine gear must be aboard the vessel making the landing."

WAC 220-88C-050(2), delete "Landings by vessels other than the permitted catcher vessel are prohibited."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 9, 2001

Debbie Nelson

for Russell W. Cahill, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 95-166, filed 11/8/95, effective 12/9/95)

WAC 220-33-060 Herring and anchovies. It is unlawful to fish for herring or anchovies in the lower Columbia River for commercial purposes or to possess herring or anchovies taken from those waters for commercial purposes, except as provided in this section:

Gear

(1) Purse seine and lampara gear may be used to fish for herring or anchovies if the cork line of the gear does not exceed 1,400 feet in length and the mesh size of the gear is not less than one-half inch stretch measure.

(2) It is unlawful to fish with purse seine or lampara gear in the waters of the Columbia River if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

Licensing

(3)(a) A baitfish purse seine fishery license is a license required to operate a gear provided for in this section and allows the operator to retain anchovies.

(b) A herring purse seine fishery license is a license required to operate a gear provided for in this section and allows the operator to retain herring.

(c) A baitfish lampara fishery license is a license required to operate a gear provided for in this section and allows the operator to retain anchovies.

(d) A herring lampara fishery license is a license required to operate a gear provided for in this section and allows the operator to retain herring.

Fishing periods

(4) Purse seine and lampara gear may be used to fish for herring or anchovies in SMCRA 1A 7 days per week from January 1 through December 31 of each year.

General

(5) Species of fish other than herring or anchovies, except shad and pilchard, taken in the operation of the purse seine and lampara gear shall be returned immediately to the water. Pilchard taken incidental to the herring and anchovy fisheries provided for in this section may not exceed twenty-five percent of the weight of any landing.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

WAC 220-44-020 Coastal baitfish gear. It is unlawful to fish for or possess smelt, anchovies, candlefish, herring or pilchard taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, or 60A, except as provided for in this section.

(1)(a) It is unlawful to fish for or possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width. It is unlawful to take smelt for commercial purposes during weekly closed periods from 8:00 a.m. Friday to 8:00 a.m. Sunday.

(b) Licensing: A smelt dip bag net fishery license is the license required to operate the gear provided for in this section.

(c) Incidental catch: It is lawful to retain only anchovies and candlefish taken incidental to a lawful smelt fishery.

(2)(a) It is unlawful to fish for or possess candlefish or anchovies taken for commercial purposes with any gear except purse seine or lampara not exceeding 1,400 feet in length nor having mesh size less than 1/2 inch, or dip bag net not exceeding 72 inches maximum frame width.

(b) Licensing:

(i) A baitfish lampara fishery license is the license required to operate the lampara gear provided for in this section.

(ii) A baitfish purse seine fishery license is the license required to operate the purse seine gear provided for in this section.

(iii) A smelt dip bag net fishery license is the license required to operate the hand dip net gear provided for in this section.

(c) Incidental catch: It is lawful to retain only shad and pilchard taken incidental to a lawful anchovy or candlefish fishery. Pilchard may not exceed twenty-five percent of the weight of the landing. Any sturgeon must be released unharmed.

(3)(a) It is unlawful to fish for or possess herring or pilchard taken for commercial purposes except as authorized by permit issued by the director, except pilchard taken incidental to candlefish and anchovy.

(b) Licensing:

(i) An emerging commercial fishery license is the license for a permittee to fish for or retain pilchard.

(ii) Herring dip bag net, herring drag seine, herring gill net, herring lampara or herring purse seine are the licenses for a permittee to fish for or retain herring.

NEW SECTION

WAC 220-88C-010 Emerging commercial fishery—Coastal pilchard fishery. The purpose of this chapter is to establish the coastal pilchard fishery as an emerging commercial fishery.

NEW SECTION

WAC 220-88C-020 Designation of the coastal pilchard fishery as an emerging commercial fishery. (1) The director designates the coastal pilchard fishery as an emerging commercial fishery for which use of a vessel is required. It is unlawful for any person to fish for, possess, or deliver pilchard taken from Washington waters west of the Bonilla-Tatoosh line or from the waters of the Exclusive Economic Zone unless the fisher has a valid emerging commercial fishery license and a valid coastal pilchard trial fishery permit, or except as otherwise provided.

(2) After the effective date of this section, the following fishery licenses may not be used to take pilchard from Washington waters west of the Bonilla-Tatoosh line or from the waters of the Exclusive Economic Zone: Baitfish lampara; baitfish purse seine; Columbia River smelt; food fish trawl—non-Puget Sound; herring dip bag net; herring gill net; herring lampara; herring purse seine; smelt dip bag net; smelt gill net, except as provided for in chapter 220-44 WAC.

(3) After the effective date of this section, pilchard taken from Washington waters west of the Bonilla-Tatoosh line or from the waters of the Exclusive Economic Zone may not be delivered into a Washington port under a nonlimited entry delivery license, and may not be delivered under the licenses provided for in RCW 77.65.210.

NEW SECTION

WAC 220-88C-030 Eligibility to participate in the coastal pilchard fishery. (1) All persons who are eligible to purchase a commercial fishery license may obtain a coastal pilchard trial fishery permit and purchase an emerging commercial fishery license.

(2) Persons who violate the terms of the coastal pilchard trial fishery permit will have the permit revoked, pursuant to appeal rights under chapter 34.05 RCW, and will be ineligible to obtain a coastal pilchard trial fishery permit for the remainder of the calendar year for which the emerging commercial fishery license is valid.

NEW SECTION

WAC 220-88C-040 Coastal pilchard fishery—Seasons and lawful catch. (1) The coastal pilchard fishery season is open to purse seine fishing only May 15 through Octo-

ber 31, or until 15,000 metric tons of pilchard have been taken, whichever is earlier. Fishing under a trial commercial fishery permit for pilchard is closed within three miles of shore.

(2) It is unlawful to retain any species taken incidental to pilchard in the coastal pilchard fishery except anchovy, mackerel, and squid. Any salmon encircled in the purse seine must be released prior to completion of the set, and no salmon may be landed on the fishing vessel's deck.

(3) The transfer of catch from one vessel to another is prohibited.

(4) Legal purse seine gear must be aboard the vessel making the landing.

NEW SECTION

WAC 220-88C-050 Coastal pilchard fishery— Observer and sampler coverage, logbook requirements.

(1) As a condition of the trial commercial fishery permit, participants in the coastal pilchard fishery are required to have on-board observers for any pilchard fishing effort, and are required to have observer coverage for one-half of the vessel trips. Fishers may elect to use either department-provided observers, or NMFS-certified observers, but must notify the department of their irrevocable decision on which type of observer to use at least 48 hours before their first pilchard fishing trip of the season. NMFS-certified observers must have completed a department training session. Department-provided observer coverage will be made available to fishers who agree to reimburse the department at a rate of \$100 per landing, whether or not the vessel trip was observed. Payment for department-provided observer coverage is due by the tenth day of the following month for the previous month's landings, and failure to make timely payment will result in revocation of the trial commercial fishery permit.

(2) In order to allow sufficient time for observer coverage and sampling efforts, fishers must notify the department's marine fish division during normal business hours at least 48 hours before the first vessel trip and at least 24 hours before each subsequent trip. Fishers must provide name and contact phone number, time and location of departure, and estimated time and location of landing. Up to 500 sardine per vessel trip may be retained by WDFW samplers for biological information.

(3) All persons who obtain a trial commercial fishery permit for the coastal pilchard fishery must complete a department-issued logbook, and the logbook is required to be returned to the department by November 15th. Failure to submit the logbook will cause the person to be ineligible for a permit in the following season.

WSR 01-07-017

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 13, 2001, 3:00 p.m.]

Date of Adoption: March 13, 2001.

Purpose: RCW 82.32.080 requires that certain taxpayers remit payment of their combined excise tax return liability via "electronic funds transfer" (EFT). This rule identifies those taxpayers that are required to remit payment via EFT, and explains that other taxpayers may voluntarily elect to remit payment via EFT. It explains the coordination of the filing of tax returns with payment by EFT and the form and content of an EFT. The rule also identifies commonly accepted means of electronic funds transfer.

RCW 82.32.085 requires that the transfer be completed so that the state receives collectible funds on or before the next banking day following the tax return due date. The rule currently explains that an EFT is due on or before 3:00 p.m., Pacific time, on the banking day following the tax return due date. The department is revising Rule 22802 to change this 3:00 p.m. deadline to 5:00 p.m.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-22802 Electronic funds transfer.

Statutory Authority for Adoption: RCW 82.32.300 and 82.32.085.

Adopted under notice filed as WSR 01-03-105 on January 22, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 13, 2001

Russell W. Brubaker

Assistant Director

Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 91-24-070, filed 12/2/91, effective 1/2/92)

WAC 458-20-22802 Electronic funds transfer. (1) Introduction. (~~Chapter 69, Laws of 1990, requires~~) Certain taxpayers are required to pay the taxes reported on the combined excise tax return with an electronic funds transfer (EFT). ((This EFT requirement for taxpayers with large monthly payments begins with the monthly tax return due January 25, 1991.)) RCW 82.32.080. Taxpayers who are not required to pay by EFT may still use this method of payment if they notify the department of their desire to pay by EFT in advance of making their first EFT payment. EFT merely changes the method of payment and no other tax return procedures or requirements are changed. Taxpayers who are

either required or voluntarily choose to pay their excise tax returns by EFT must furnish the department with the necessary information, as described in subsection (9) of this rule.

(2) **Definitions.** For the purposes of this section, the following terms will apply:

(a) "~~((Electric))~~ Electronic funds transfer" or "EFT" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(b) "ACH" or "automated clearing house" means a central distribution and settlement system for the electronic clearing of debits and credits between financial institutions.

(c) "ACH debit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the department's bank to charge the taxpayer's account and deposit the funds to the department's account.

(d) "ACH credit" means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the department's account.

(e) "Department's bank" means the bank with which the department of revenue has a contract to assist in the receipt of taxes and includes any agents of the bank.

(f) "Collectible funds" actually means collected funds that have completed the electronic funds transfer process and are available for immediate use by the state.

(g) "ACH CCD + addenda" and "ACH CCD + record" mean the information in a required ACH format that needs to be transmitted to properly identify the payment.

(h) "Service access key" means a unique code that allows an ACH debit transaction to occur.

(3) Taxpayers required to pay by EFT.

~~((a)) For the calendar year 1991, taxpayers who have taxes due of \$1,800,000 or more are required to pay by EFT.~~

~~(b) For calendar years after 1991, taxpayers who have taxes due of \$240,000 or more are required to pay by EFT.~~

~~(c) In the interest of efficient tax administration, the department will notify those taxpayers required to pay by EFT at least three months prior to the start of their EFT payment requirement.~~

~~(d) The process of identifying taxpayers meeting the EFT threshold shall be based upon the taxes that were due in the last complete calendar year before the three month notification date. For example, taxpayers who will start paying by EFT in January, 1993 will be notified by the department by September 30, 1992. The base year for those taxpayers will be the calendar year 1991.~~

(e) Upon a showing by the taxpayer to the satisfaction of the department that it will not have taxes due in the payment year of more than the threshold amount, the department shall waive the requirement to pay by EFT.) Taxpayers who have taxes due of \$240,000 or more in a calendar year are required to pay by EFT. Total taxes due from the last complete calendar year will be used to determine whether a taxpayer is required to pay by EFT. When a calendar year total indicates a taxpayer is required to pay by EFT, the department will

notify that taxpayer. The notification will be made at least three months prior to the date that the first EFT payment is required.

The requirement to pay by EFT will be waived if the taxpayer reasonably shows to the department that it will not meet or exceed the EFT threshold for taxes due in the calendar year.

(4) **Taxes covered.** The taxes covered by the EFT payment are taxes reported on the combined excise tax return. The included taxes are those administered by the department under chapter 82.32 RCW except city and town taxes on financial institutions (chapter 82.14A RCW), county tax on telephone access lines (chapter 82.14B RCW), cigarette tax (chapter 82.24 RCW), enhanced food fish tax (chapter 82.27 RCW), leasehold excise tax (chapter 82.29A RCW), and forest tax (chapter 84.33 RCW).

(5) **Refunds by EFT.** Overpayments of tax will be either credited to future tax liabilities or, at the taxpayer's request, will be refunded. If the taxpayer is required to pay the taxes on the combined excise tax return by EFT, the taxpayer is entitled to a refund of those taxes by EFT. However, ~~((the taxpayer may agree in writing to waive this requirement.))~~ if the taxpayer wishes to have the refund made by EFT, the taxpayer ~~((shall))~~ must provide the department with the information necessary to make an appropriate EFT or the refund will be issued as a warrant (check).

~~((EFT shall be accomplished through the use of ACH debit or ACH credit.))~~ (6) EFT methods. Taxpayers required to pay by EFT must do so through the use of the ACH debit or ACH credit methods. All other taxpayers paying via EFT must do so through the use of ACH debit, ACH credit or other electronic payment methods approved by the department. In an emergency, the taxpayer ((shall)) should contact the department for alternative methods of payment. ((The appropriate person to contact in the department)) Contact information will be included in the notification materials sent to all EFT remitters.

(7) Due date of EFT payment.

~~((a))~~ The EFT payment is due on or before the banking day following the tax return due date. An EFT is timely when the state receives collectible U.S. funds on or before ~~((3:00))~~ 5:00 p.m., Pacific Time, ((øf)) on the EFT payment due date. The ACH system, either ACH debit or ACH credit, requires that the necessary information be in the originating bank's possession on the banking day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment.

~~((b))~~ (a) The tax return due date ~~((shall be))~~ is the next business day after the ~~((original))~~ statutory due date if the ~~((original))~~ statutory due date falls on a Saturday, Sunday, or legal holiday. Legal holidays are determined under state of Washington law and banking holidays are those recognized by the Federal Reserve System in the state of Washington.

~~((c))~~ (b) Example. The tax return due date is December 25th, a legal and banking holiday, which, for the example, falls on a Friday. The next business day ~~((would be))~~ is Monday, December 28th, and this is the new tax return due date. EFT must be completed by ~~((3:00))~~ 5:00 p.m., Pacific Time,

Tuesday, December 29th, which is the next banking day after the new due date. For an ACH debit user, the department's bank must have the appropriate information by ~~((3:00))~~ 5:00 p.m., Pacific Time, on Monday, December 28th.

(8) **Coordinating return and payment.** The filed return and the EFT payment ~~((by EFT shall))~~ will be coordinated by the department. A return ~~((shall))~~ will be considered timely filed only if it is received by the department on or before the due date ~~((, or with a postmark on or before the due date)).~~ If the return is sent by United States mail, it will be considered received on the date shown by the post office cancellation mark stamped on the envelope. RCW 82.32.080. In addition, the EFT payment ~~((by EFT))~~ must ~~((have been completed))~~ be received by the next banking day after the tax return due date. If both events occur, there is timely filing and payment and no penalties apply.

(9) **Form and contents of EFT.** The form and content of EFT will be as follows:

(a) If the taxpayer wishes to use the ACH debit system of EFT, the taxpayer will furnish the department with the information needed to complete the transaction. The department's bank will provide ~~((security codes))~~ a service access key only to the taxpayer and all transactions must be initiated by the taxpayer.

(b) If the taxpayer wishes to use the ACH credit system of the EFT, the taxpayer is responsible to see that its bank has the information necessary for timely completion. The taxpayer ~~((shall))~~ must provide the information necessary for its bank to complete the ACH CCD + addenda for transmittal to the department's bank.

(c) If the taxpayer wishes to use any other electronic payment method approved by the department, the taxpayer must provide the information necessary for the payment processing institution to timely process the payment.

~~((10))~~ (Voluntary use of EFT. The use of EFT by taxpayers other than those required by statute to use EFT shall be by the written permission of the department.

~~((11))~~ **Crediting and proof of payment.** The department will credit the taxpayer with the amount paid as of the date the payment is received by the department's bank. The proof of payment by the taxpayer ~~((shall))~~ will depend on the means of transmission.

(a) An ACH debit transaction may be proved by use of the verification number received from the department's bank that the transaction was initiated and bank statements or other evidence from the bank that the transaction was settled.

(b) An ACH credit transaction is initiated by the taxpayer ~~((and the taxpayer has responsibility for))~~ through the taxpayer's bank. The taxpayer is responsible for completion of the transaction. The taxpayer generally will be given a verification number by the taxpayer's bank. This verification number with proof of the ACH CCD + record showing the department's bank and account number, plus ~~((proof))~~ confirmation that the transaction has been settled will constitute proof of payment.

~~((12))~~ (c) Taxpayers using any other electronic payment method are responsible for completion of the transaction. Proof of payment will include transaction initiation date

and any other evidence from a financial institution that the transaction was settled.

~~((11))~~ **Correcting errors.** Errors in the EFT process will result in either an underpayment or an overpayment of the tax. In either case, the taxpayer needs to contact the department to arrange for appropriate action. Overpayments may be used as a credit or the taxpayer may apply for a refund. The department will expedite a refund where it is caused by an error in transmission. Underpayments should be corrected by the taxpayer immediately to ~~((mitigate))~~ avoid any penalties.

~~((13))~~ **Penalties.**

~~((a))~~ There are no special provisions for penalties when payment is made by EFT. The general provisions for all taxpayers apply. To avoid the imposition of penalties, it is necessary for ~~((both the filing of the tax return and))~~ the payment to be timely. ~~((Penalties may be waived only when the circumstances causing delinquency are beyond the control of the taxpayer. See:))~~ WAC 458-20-228 discusses the various penalties that may apply and the limited circumstances under which they may be waived.

~~((b))~~ (a) In an ACH debit transaction, the department's bank is the originating bank and is responsible for the accuracy of transmission. If the taxpayer has timely initiated the ACH debit, received a verification number, and shows adequate funds were available in the account, no penalties ~~((shall))~~ will apply with respect to those funds authorized.

~~((c))~~ (b) In an ACH credit transaction, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy. The taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD + record, and shown that there were sufficient funds in the account, in order to prove timely compliance. If the taxpayer can make this showing, then no penalties ~~((shall))~~ will apply as to those funds authorized if the transaction is not completed.

(c) With the use of other electronic payment methods, the taxpayer's financial institution is the originator of the payment transaction and the taxpayer is primarily responsible for the accuracy of this transaction. The taxpayer must have timely initiated the transaction and shown that there were sufficient funds in the account in order to prove timely compliance. If the taxpayer can make this showing, then no penalties will apply as to those funds authorized if the transaction is not completed.

**WSR 01-07-021
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-40—Filed March 14, 2001, 8:35 a.m.]

Date of Adoption: February 10, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-071 and 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 01-02-086 on January 3, 2001.

Changes Other than Editing from Proposed to Adopted Version: Amendment to WAC 220-69-240 filed in WSR 01-07-015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 13, 2001

Debbie Nelson

for Russell W. Cahill, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 00-07, filed 1/13/00, effective 2/13/00)

WAC 220-52-071 Sea cucumbers. It is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section.

(1) Sea cucumber districts:

(a) Sea Cucumber District 1 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, and 23B outside of the following closed areas:

(i) San Juan Channel and Upright Channel within the following lines: ~~((North of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island and))~~ South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(ii) Haro Strait north of a line projected east-west one-half mile south of Eagle Point on San Juan Island and south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island.

~~((iii) Within one-quarter mile of Green Point on Spieden Island.~~

~~(iv) Within one-quarter mile of Gull Reef, located between Spieden Island and Johns Island.)~~

(b) Sea Cucumber District 2 is defined as ~~((those))~~ the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23C, 23D, 25A, 25B, 25C, 25D, 25E, and 29 ~~((and those waters west of the Bonilla-Tatoosh Line, Pacific Ocean waters, Grays Harbor, Willapa Bay, and the~~

~~waters at the mouth of the Columbia River west of the Buoy 10 Line)).~~

(c) Sea Cucumber District 3 is defined as ~~((those))~~ the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A, 26B, and 26C ~~((and 26D)).~~

(d) Sea Cucumber District 4 is defined as ~~((those))~~ the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C ~~((, 28A, 28B, 28C, and 28D)).~~

(e) Sea Cucumber District 5 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D.

(2) Sea cucumber areas and seasons:

Sea cucumber areas and seasons will be set by emergency rule.

(3) Shellfish diver gear:

(a) Divers operating from a vessel must have a number assigned by the department placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air, and the letters must be black on white no less than eighteen inches in height and of proportional width.

(b) Only one diver from each harvesting vessel is allowed in the water at any one time during the sea cucumber harvest operation or when commercial quantities of sea cucumbers are aboard except that two divers may be in the water if the vessel has been designated on two-sea cucumber dive fishery licenses.

(c) Divers may not fish for or possess geoduck clams during commercial sea cucumber harvesting operations, or possess geoduck clams on a vessel that has sea cucumbers on board.

(d) Licensing: A sea cucumber dive fishery license is the license required to operate the gear provided for in this section.

(4) Trawl gear:

It is unlawful to fish for or possess sea cucumbers taken with trawl gear.

AMENDATORY SECTION (Amending Order 00-07, filed 1/13/00, effective 2/13/00)

WAC 220-52-073 Sea urchins. It is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section.

(1) Sea urchin districts:

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island. ~~((The following areas within Sea Urchin District 1 are closed to the harvest of sea urchins at all times:~~

~~(i) Those waters within one-quarter mile of Green Point on Spieden Island.~~

~~(ii) Those waters within one-quarter mile of Gull Reef, located between Spieden and Johns Island.)~~

(b) Sea Urchin District 2 (Southern San Juan Islands and Port Townsend) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island and Areas 21A, 21B, 22B, 23A, 23B ~~((and))~~, 25A and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times:

(i) Those waters of Haro Strait north of a line projected east-west one-half mile south of Eagle Point on San Juan Island and south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: ~~((North of a line from Cattle Point on San Juan Island to Davis Point on Lopez Island;))~~ South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(c) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point, and Area 23D.

(d) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point and those waters of Area 29 east of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock).

(e) Sea Urchin District 5 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 west of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock) and Areas 59A and 59B. Within Sea Urchin District 5, waters within one-quarter mile of Tatoosh Island are closed to the harvest of sea urchins at all times.

(2) Sea urchin seasons and sizes:

Sea urchin seasons and sizes will be set by emergency rule.

(3) Shellfish diver gear:

(a) It is unlawful to take sea urchins by any means other than shellfish diver gear.

(b) Divers may only use hand-operated equipment that does not penetrate the shell.

(c) Sea urchins may not be taken from water shallower than 10 feet below mean lower low water.

(d) Purple sea urchins may not be taken.

(e) Divers operating from a vessel must have a number assigned by the department, placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air and the number must be black on white no less than 18 inches high and of proportionate width.

(f) Divers may not take sea urchins from one-half hour after sunset to one-half hour before sunrise.

(g) No processing of sea urchins is permitted aboard the harvest vessel.

(h) Divers may not take sea urchins for use other than as human food.

(i) Only one diver from each harvesting vessel is allowed in the water at any one time during the sea urchin harvesting operation or when commercial quantities of sea urchins are aboard except that two divers may be in the water if the vessel has been designated on two sea urchin dive fishery licenses.

(j) Variance from any of the provisions of this subsection is only allowed if authorized by a permit issued by the director.

(k) Licensing: A sea urchin dive fishery license is the license required to operate the gear provided for in this section.

**WSR 01-07-024
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-39—Filed March 14, 2001, 8:38 a.m.]

Date of Adoption: February 10, 2001.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-315.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 01-02-013 on December 21, 2000.

Changes Other than Editing from Proposed to Adopted Version: Three units of gear amendment not adopted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 13, 2001

Debbie Nelson

for Russell W. Cahill, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 00-29, filed 3/29/00, effective 5/1/00)

WAC 220-56-315 Crabs, shrimp, crawfish—Unlawful acts. (1) It is unlawful to take and possess crabs, shrimp,

and crawfish taken for personal use except by hand or with hand dip nets, ring nets, shellfish pots, and any hand-operated instrument that will not penetrate the shell.

(2) It is unlawful to use more than two units of gear at any one time except:

(a) In Puget Sound waters other than Hood Canal Shrimp District ((5)) it is unlawful to use at any one time more than two units of gear for the purpose of taking crabs and two additional units of gear for the purpose of taking shrimp.

(b) In Hood Canal Shrimp District ((5-(Hood Canal))) it is unlawful to use more than one shrimp pot and a total of two star traps or ring nets during the Hood Canal shrimp season. It is unlawful for the operator of any boat from which shrimp pots are set or pulled to have on board or to fish more than four shrimp pots.

(3) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear.

(4) It is unlawful to salvage or attempt to salvage shellfish pot gear from Hood Canal that has been lost without first obtaining a permit authorizing such activity issued by the director, and it is unlawful to fail to comply with all provisions of such permit.

(5) It is unlawful to fish for or possess crab taken for personal use from the waters of Fidalgo Bay within 25 yards of the Burlington Northern Railroad trestle connecting March Point and Anacortes.

(6) It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.

(7) It is unlawful to dig for or possess ghost or mud shrimp taken for personal use by any method except hand operated suction devices or dug by hand.

(8) One unit of gear is equivalent to one ring net or one shellfish pot.

(9) Each unit of gear must be attached to its own buoy line and have a separate buoy for each unit of gear.

(10) No fisher may set or pull shellfish pots, ring nets or star traps from a vessel in all state waters from one hour after official sunset to one hour before official sunrise.

WSR 01-07-027

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 99-05—Filed March 14, 2001, 1:21 p.m.]

Date of Adoption: March 12, 2001.

Purpose: The proposed rule will establish instream flows for the Lower Skagit Mainstem and Cultus Mountain tributaries. All pending and subsequent water right applications will be conditioned as provided in the proposed rule, if applicable. The proposed rule will also establish a quantity of water that may be available for appropriation from the surface and ground waters regulated by this proposed rule.

Statutory Authority for Adoption: Chapter 90.54 RCW, Water Resources Act of 1971.

Other Authority: Chapter 90.22 RCW, Minimum water flows and levels and chapter 173-500 WAC, Water resources management program.

Adopted under notice filed as WSR 00-21-114 on October 18, 2000.

Changes Other than Editing from Proposed to Adopted Version: In WAC 173-503-040(1) the term "with telemetering" has been struck from the Control Stations for Mundt, Turner, Gilligan and Salmon creeks. Field biologists working for the Skagit PUD commented that because of the remote, mountainous terrain it was not possible to receive signals from the telemetering device. Instead, personnel will visit the sites on a daily basis and record gage readings. Additional language has been added (WAC 173-503-070(1)) to clarify that existing rights for hydroelectric and water storage projects are not affected by the rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: A benefit cost analysis must generally show that the benefits of the rule exceed the costs. The benefit/cost analysis is attached to the rule adoption package.

Effective Date of Rule: Thirty-one days after filing.

March 12, 2001

Tom Fitzsimmons

Director

Chapter 173-503 WAC

INSTREAM RESOURCES PROTECTION PROGRAM—LOWER AND UPPER SKAGIT WATER RESOURCES INVENTORY AREA (WRIA 3 AND 4)

NEW SECTION

WAC 173-503-010 General provision. These rules apply to waters within the Lower and Upper Skagit water resources inventory area (WRIA 3 and 4), as defined in WAC 173-500-040, excluding the Samish River subbasin, Fidalgo, Guemes, Cypress, Hope and Goat islands. This chapter is promulgated pursuant to chapter 90.54 (Water Resources Act of 1971), chapter 90.22 RCW (Minimum water flows and

levels), and chapter 173-500 WAC (Water resources management program).

NEW SECTION

WAC 173-503-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Lower and Upper Skagit water resources inventory area and Cultus Mt. Tributaries with instream flows and levels necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values, as well as recreation and water quality.

Chapter 90.54 RCW (Water Resources Act of 1971) requires that utilization and management of waters of the state be guided by a number of fundamentals, including:

Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial. (RCW 90.54.020(1))

The quality of the natural environment shall be protected and, where possible, enhanced, as follows:

Perennial rivers and streams of the state shall be retained with base flows necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(a))

Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(b))

In administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW.

NEW SECTION

WAC 173-503-030 Findings. Ecology finds that:

(1) The magnitude or variability of flows are important in maintaining the aquatic ecosystem that sustains both fish and other valuable resources. Criteria to limit total withdrawals of water from the Lower Skagit River were developed to protect the aquatic ecosystem in the region covered by this rule.

(2) To protect the estuary area below river mile 8.1 the duration of flow inundation of at least one foot of depth, in selected estuary habitat, can be reduced no more than ten percent from existing conditions from the date of enactment of this regulation. This criterion applies to the period of February through August to withdrawals from the Skagit River. Total withdrawals greater than eight hundred thirty-six cubic feet per second during that period will result in a greater than ten percent deviation from existing conditions and therefore would result in harm to the fisheries resources and aquatic ecosystem in the region covered by this rule.

(3) Protection of the aquatic ecosystem of the estuary in the months of September through January requires that the total withdrawals of water from the Skagit River not exceed 1/10 of the fifty percent exceedance flow for each month, based on the period of record (1/1/41 - 12/31/95) for the U.S. Geological Survey (USGS) stream gage on the Skagit River near Mt. Vernon, WA (Sta. #12-2005-00) in order to maintain channel morphology and other estuarine and riverine functions. This equates to a low point of eight hundred thirty cubic feet per second during the month of September. Total withdrawals greater than eight hundred thirty cubic feet per second during the month of September will not protect and preserve fish, wildlife and other environmental values and therefore would be harmful to fisheries resources and the aquatic ecosystem in the region covered by this rule in violation of chapter 90.54 RCW.

(4) The rules setting minimum flows in the Lower and Upper Skagit River (WRIA 3 and 4) (WAC 173-503-040) and finding certain waters available (WAC 173-503-050) are necessary to protect and preserve wildlife, fish, scenic, aesthetic and other environmental values.

NEW SECTION

WAC 173-503-040 Establishment of instream flows.

(1) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Stream Management Unit Name Control Station No.	Control Station by River Mile and Section, Township and Range; Latitude and Longitude	Stream Management Reach
Skagit Mainstem: Skagit River near Mt. Vernon, WA USGS Sta. #12-2005-00	River Mile (RM) 15.7	From mouth of Skagit River including tidal fluctuation to headwaters.*

PERMANENT

Cultus Mountain Tributaries:

Mundt Creek	Stream gage will be installed at RM 3.4 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Turner Creek	Stream gage will be installed at RM 4.2 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Gilligan Creek	Stream gage will be installed at RM 3.2 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.
Salmon Creek	Staff gage periodically recorded will be installed at RM 4.3 (Sec/Twn/Rng; Lat/Long)	From mouth to headwaters.

*Other additional control stations and instream flows may be established in WRIAs 3 & 4 to improve water management.

(2) Instream flows are established for the stream management units in WAC 173-503-040(1) as follows (See Figures 1 through 3):

Sep.	1-30	7.6	4.9	39.6	4.0
Oct.	1-31	7.6	7.9	23.8	4.0
Nov.	1-30	9.4	7.9	27.7	4.0
Dec.	1-31	9.4	7.9	27.7	4.0

Instream Flows as measured at USGS Sta. #12-2005-00
(Instantaneous cubic feet per second)

PERMANENT

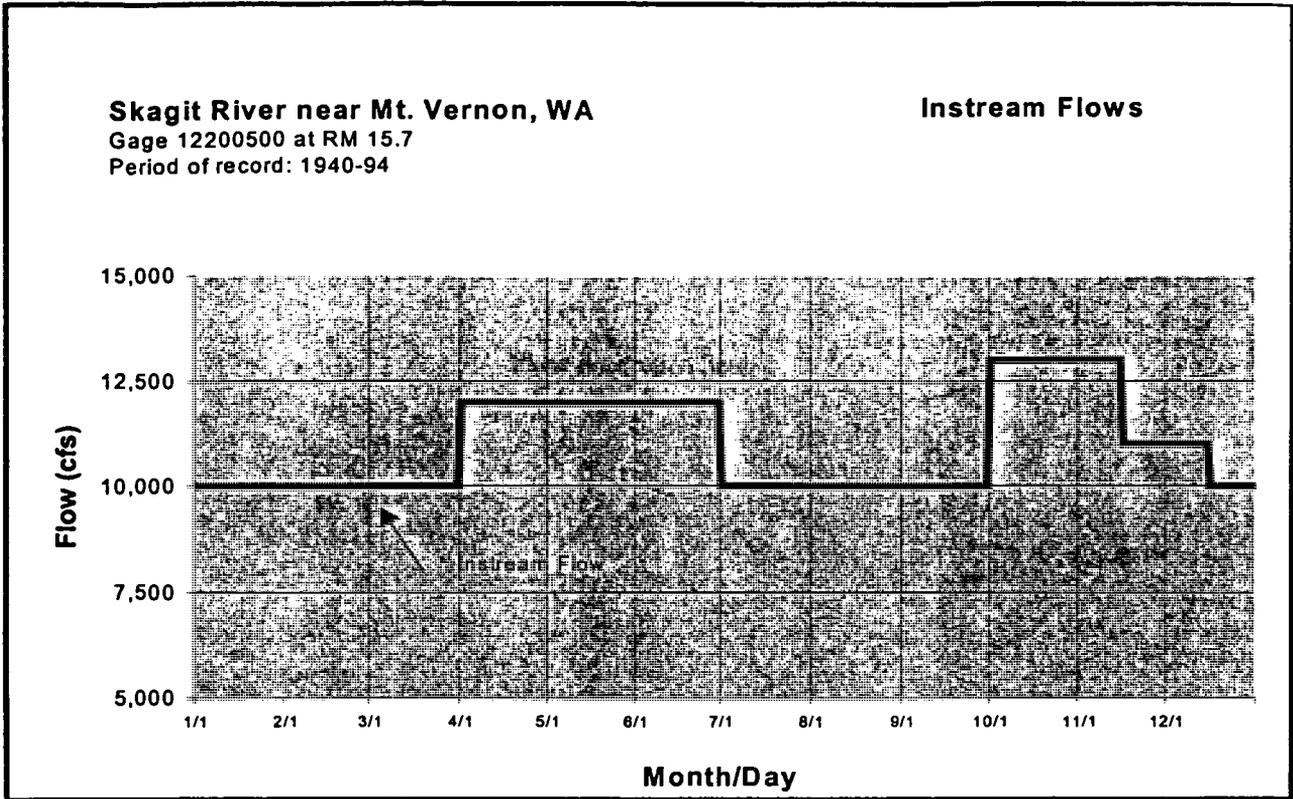
Month	Day	USGS Sta. #12-2005-00 Skagit River
Jan.	1-31	10,000
Feb.	1-29	10,000
Mar.	1-31	10,000
Apr.	1-30	12,000
May	1-31	12,000
Jun.	1-30	12,000
Jul.	1-31	10,000
Aug.	1-31	10,000
Sep.	1-30	10,000
Oct.	1-31	13,000
Nov.	1-15	13,000
	16-30	11,000
Dec.	1-15	11,000
	16-31	10,000

Instream Flows for Cultus Mountain Tributaries, WRIA 3
(Instantaneous cubic feet per second)

Month	Day	RM 3.4	RM 4.2	RM 3.2	RM 4.3
		Mundt Creek	Turner Creek	Gilligan Creek	Salmon Creek
Jan.	1-31	6.4	7.9	19.8	4.0
Feb.	1-29	6.4	5.4	19.8	4.0
Mar.	1-15	6.4	5.4	19.8	4.0
	16-31	9.4	5.4	27.7	4.0
Apr.	1-30	9.4	7.9	31.7	4.0
May	1-31	9.4	7.9	31.7	1.4
Jun.	1-30	9.4	4.9	31.7	1.4
Jul.	1-31	7.6	4.9	39.6	1.4
Aug.	1-31	7.6	4.9	39.6	1.4

(3) Instream flow hydrograph.

Figure 1



PERMANENT

Figure 2

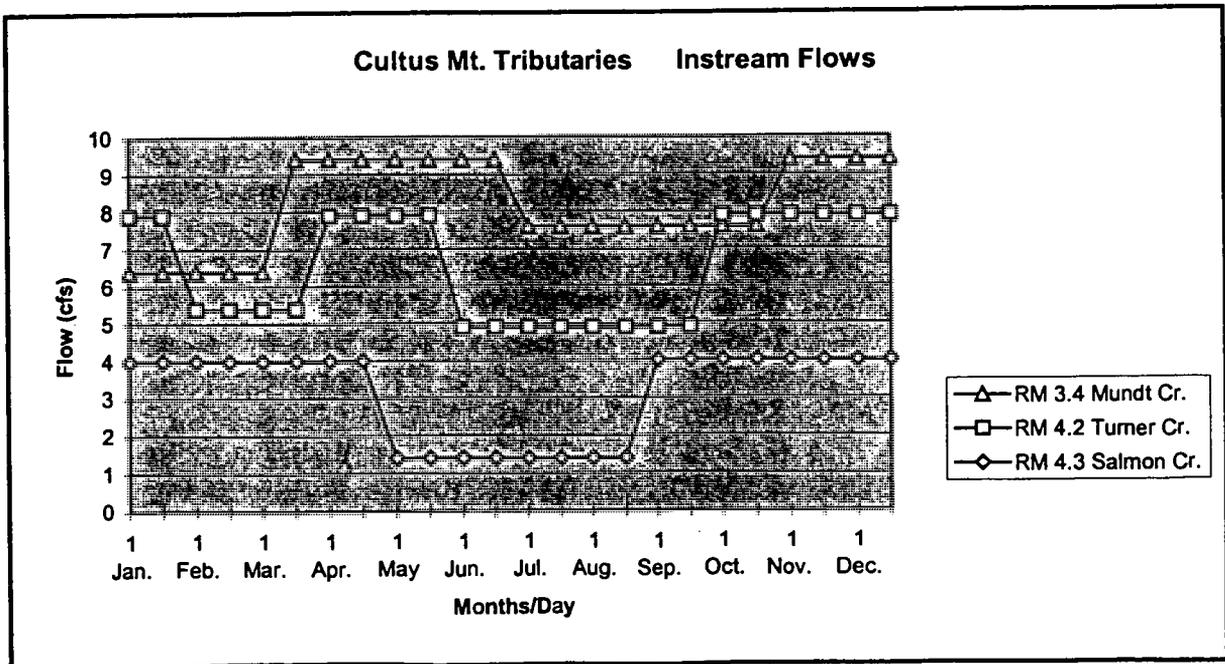
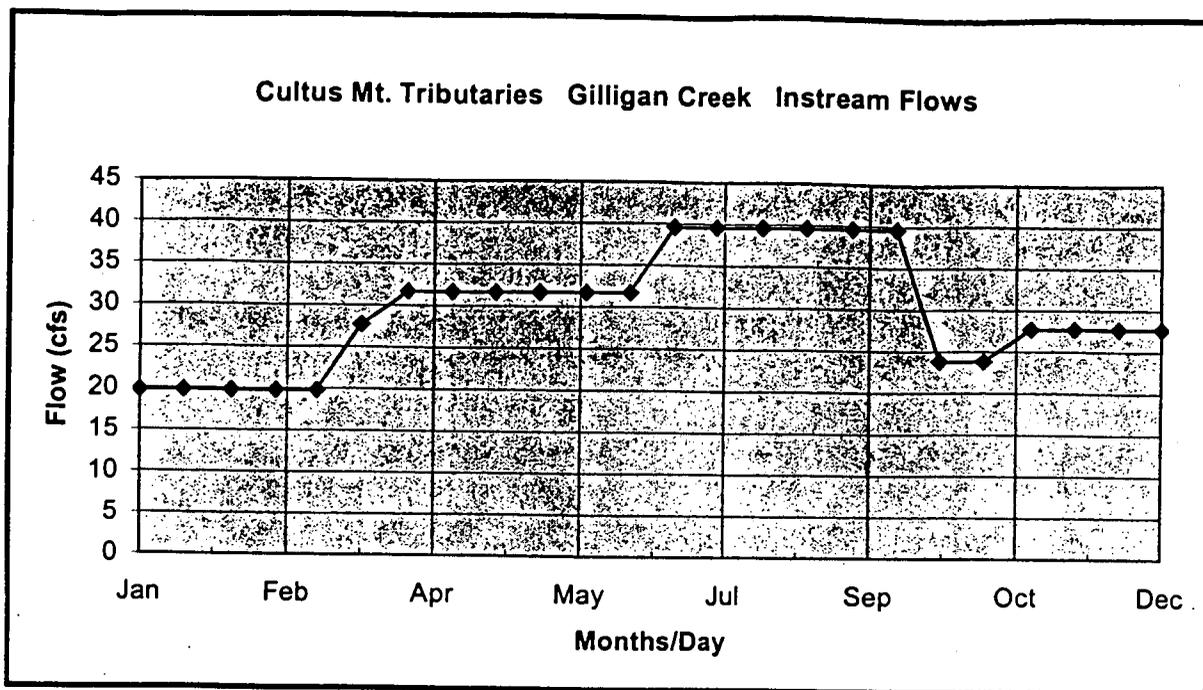


Figure 3



PERMANENT

(4) The instream flow hydrographs, as represented in Figures 1 through 3 in WAC 173-503-040(3) shall be used for identification of instream flows.

(5) Future consumptive water right permits issued hereafter for diversion of surface water in the Lower and Upper Skagit (WRIA 3 and 4) and perennial tributaries, and withdrawal of ground water in hydraulic continuity with surface water in the Skagit River and perennial tributaries, shall be expressly subject to instream flows established in WAC 173-503-040 (1) through (3) as measured at the appropriate gage, and also subject to WAC 173-503-060.

(6) Future consumptive water rights issued to applications pending at the effective date of the regulation are superior in priority date but shall be conditioned on the instream flows established in WAC 173-503-040 (1) through (3). (RCW 90.03.247)

NEW SECTION

WAC 173-503-050 Water availability determination.

(1) The department has made a determination that two hundred cubic feet per second is available to be appropriated through ground water withdrawal or surface water diversion for further instantaneous consumptive appropriation in the Lower and Upper Skagit watershed (WRIA 3 and 4). These waters are available for appropriation, subject to existing rights, exemptions in WAC 173-503-070, and instream flows in WAC 173-503-040(2). This determination was based upon review of existing water right records and existing water use, and is consistent with the findings section (WAC 173-503-030) of this regulation.

(2) The department advises that water rights issued to appropriate these waters determined to be available by this rule will be interruptible rights.

(3) After these instantaneous diversion or withdrawal of the 200 cfs quantities identified in subsection (1) of this section have been allocated by ecology, the Lower and Upper Skagit Watershed (WRIA 3 and 4) shall be withdrawn from further consumptive appropriations. This rule may be reopened to further consumptive appropriation only if further information demonstrates that such appropriations can be made consistent with the finding section (WAC 173-503-030) and the instream flow section (WAC 173-503-040). If further information demonstrates that the amount in the availability determination set forth in subsection (1) of this section should have been less than two hundred cubic feet per second, ecology will not be bound by the two hundred cubic feet per second number when processing individual water right applications.

NEW SECTION

WAC 173-503-060 Ground water. If the department determines that there is hydraulic continuity between surface water and the proposed ground water source, a water right permit or certificate shall not be issued unless the department determines that withdrawal of ground water from the source aquifer would not interfere with stream flows during the period of stream closure or with maintenance of minimum instream flows. If such findings are made, then applications to appropriate public ground waters may be approved subject to the flows established in WAC 173-503-040(2).

NEW SECTION

WAC 173-503-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, including perfected riparian rights, federal Indian and non-Indian reserved rights, or other appropriative rights existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any hydroelectric or water storage reservoir or related facilities.

(2) Nonconsumptive uses which are compatible with the intent of this chapter may be approved.

NEW SECTION

WAC 173-503-080 Policy statement for future permitting actions. (1) No rights to divert or store public surface waters of WRIA 3 and 4 which would conflict with the provisions of this chapter shall hereafter be granted, except as provided in RCW 90.54.020 (3)(a).

(2) Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate minimum instream flow in all perennial streams and rivers as well as the water levels in all lakes in the Lower and Upper Skagit watershed (WRIA 3 and 4) by encouraging the use of alternative sources of water which include:

- (a) Reuse;
- (b) Artificial recharge and recovery;
- (c) Conservation; and
- (d) Acquisition of existing water rights.

NEW SECTION

WAC 173-503-090 Enforcement. In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 43.83B.335, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

NEW SECTION

WAC 173-503-100 Regulation review. Review of the rules in this chapter may be initiated by the department of ecology whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department of ecology to require review.

**WSR 01-07-049
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Order 705—Filed March 16, 2001, 2:43 p.m.]

Date of Adoption: March 16, 2001.

Purpose: To define that "supervisor" means one or more supervisors of natural resources to reflect the current organizational structure of the Department of Natural Resources.

Citation of Existing Rules Affected by this Order: Amending WAC 332-10-020 Definition and 332-10-040 Operations and procedures of the department of natural resources.

Statutory Authority for Adoption: RCW 43.30.020, 43.30.170, 42.17.250, 34.05.220.

Adopted under notice filed as WSR 01-04-061 on February 5, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 16, 2001

Doug Sutherland

Commissioner of Public Lands

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-020 Definition. The following definitions shall apply in this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics. See RCW 42.17.020(26).

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents. See RCW 42.17.020(28).

(3) "Board" means the board of natural resources, a policy setting board whose six members serve in an ex officio capacity. The duties of the board are described in RCW 43.30.150.

(4) "Department" means the department of natural resources which is:

(a) A regulatory agency with regard to geology activities on state and privately owned land, and outdoor burning on state and privately owned forest land,

(b) A proprietary land management agency for state owned land under the jurisdiction of the department,

(c) A service and information repository agency regarding surveys and maps of the state, farm forestry advice and general geology information,

(d) An agency that administers and enforces state forest protection laws and the forest practices regulations of the forest practices board and the department of ecology on state and privately owned forest land.

(5) "Commissioner" means the commissioner of public lands who is an elected official and serves as the administrator of the department. The commissioner, in accordance with RCW 43.30.170, has delegated to the supervisor of the department the direct supervision of the department activities.

(6) "Supervisor" means one or more supervisor(s) of natural resources.

AMENDATORY SECTION (Amending WSR 91-14-014, filed 6/24/91, effective 7/25/91)

WAC 332-10-040 Operations and procedures of the department of natural resources. (1) The legal authority for the department's activities is provided principally by:

(a) The State Enabling Act, Section Nos. 10 through 19;
(b) The state Constitution, Article Nos. III, XV, XVI, XVII and Amendment No. 15;

(c) The Revised Code of Washington, Title Nos. 43, 46, 58, 70, 76, 78, 79 and 84;

(d) The Washington Administrative Code, Title Nos. 222 and 332.

(2) The commissioner and the board acting under their respective legal authorities determine policy for the department. The supervisor of the department:

(a) Provides direct supervision over the department's activities.

(b) Implements department policy through a line-functional staff comprised of (~~four deputy supervisors,~~) several divisions(;) and seven regional offices. The divisions develop operational programs and procedures within their respective specialties of resource management. These programs and procedures are carried out through the seven regional offices (~~(with the exception of the real estate and aquatic lands divisions).~~). (~~(These two divisions have a dual function in developing and carrying out their respective programs state wide.)~~)

WSR 01-07-053
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 16, 2001, 3:37 p.m.]

Date of Adoption: March 16, 2001.

Purpose: Chapter 248-554 WAC, Shelters for victims of domestic violence, is repealed and replaced by chapter 388-61A WAC, Shelters for victims of domestic violence. The rules establish minimum standards for agencies that contract with the Department of Social and Health Services (DSHS) to provide domestic violence shelter and services. The rules

have been updated and rewritten using a question and answer format in accordance with Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing WAC 248-554-001, 248-554-005, 248-554-010, 248-554-015, 248-554-018, 248-554-020, and 248-554-030.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Adopted under notice filed as WSR 00-17-160 on August 22, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 39, Amended 0, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 7.

Effective Date of Rule: Thirty-one days after filing.

March 15, 2001

Brian Lindgren

for Charles Hunter, Director
Administrative Services Division

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 01-08 issue of the Register.

WSR 01-07-054
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 16, 2001, 3:38 p.m., effective March 29, 2001]

Date of Adoption: March 16, 2001.

Purpose: WAC 388-414-0001, this food assistance eligibility rule explains categorical eligibility and describes the types of households that are categorically eligible for food assistance. It also describes the conditions in which a household cannot be categorically eligible for food assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-414-0001.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.510.

Adopted under notice filed as WSR 01-04-074 on February 6, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Failure to adopt the rule timely will cause some applicants and recipients leaving TANF to be wrongly denied or terminated from food assistance and the state will incur quality control payment errors.

Effective Date of Rule: March 29, 2001.

March 15, 2001

Charles Hunter, Director
Administrative Services Division

AMENDATORY SECTION (Amending WSR 00-11-035, filed 5/10/00, effective 8/1/00)

WAC 388-414-0001 Some food assistance (~~households~~) units do not have to meet all eligibility requirements. (1) What is "categorical eligibility" (CE)?

(a) Some food assistance (~~households~~) units do not have to meet all of the eligibility requirements for food assistance. The department calls this (~~categorical eligibility~~) CE. (~~Categorically eligible households have already met these~~) If your food assistance unit is CE, you do not have to meet the following food assistance requirements because you have met them for another program:

- ~~((a))~~ (i) Resources;
- ~~((b))~~ (ii) Gross and net income standards; ~~(and~~
- ~~(c))~~ (iii) Residency; ~~and~~
- (iv) Sponsored alien information.

(b) If you are a CE food assistance unit, you will still have your income budgeted to determine the amount of food stamps your assistance unit is eligible for.

(2) Who is (~~categorically eligible~~) CE for food assistance?

Your household is (~~categorically eligible~~) CE when:

(a) All members of your (~~household~~) food assistance unit are getting general assistance (GA) and/or Supplemental Security Income (SSI) cash benefits on their own behalf;

(b) (~~All members of your household are getting Supplemental Security Income (SSI) on their own behalf;~~

(c) All members of your household are getting either GA or SSI on their own behalf; or

~~(d) Some members))~~ A member of your (~~household are~~) food assistance unit is getting or is authorized to (~~receive~~) get payments (~~or services~~) from the following programs and you all benefit from the assistance:

- (i) Temporary assistance for needy families (TANF) cash assistance;
- (ii) State family assistance (SFA); or

(iii) Diversion cash assistance (DCA). You are CE for the month you receive (~~assistance~~) DCA and the three following months(~~or~~

~~(iv) TANF post-employment services (as defined in WAC 388-310-1800) as long as your assistance unit meets TANF resource requirements))~~ as long as you have one adult relative caretaker with a dependent child in the food assistance unit.

(c) You are receiving TANF/SFA cash assistance and no longer get assistance because your earnings are over the earned income limit in WAC 388-478-0035. You are CE for twenty-four months after your TANF/SFA cash assistance ends as long as you have one adult relative caretaker with a dependent child in the food assistance unit.

(3) Who are not considered CE even though the above criteria is met?

(a) A member of your food assistance unit is not CE who:

(i) Is not eligible because of his/her alien or student status;

(ii) Fails to follow work requirements;

(iii) Fails to provide or apply for a Social Security Number;

(iv) Is a SSI recipient in a cash-out state (state where SSI payments are increased to include the value of the food stamp allotment);

(v) Is not eligible for SSI on his/her own behalf since he/she is getting SSI as an essential person or as an ineligible spouse; or

(vi) Is living in an institution.

(b) If a person is not CE, he/she is not included as member in your CE food assistance unit.

(c) Your entire food assistance unit is not CE when your assistance unit:

(i) Is not eligible because of striker provisions;

(ii) Knowingly transferred resources for the purpose of qualifying for benefits;

(iii) Refuses to cooperate in providing information that is needed to determine your eligibility;

(iv) Has a head of the household that failed to meet work requirements; or

(v) Has a member that is not qualified because of an intentional program violation.

WSR 01-07-055

PERMANENT RULES

PERSONNEL RESOURCES BOARD

[Filed March 19, 2001, 10:22 a.m., effective May 1, 2001]

Date of Adoption: March 8, 2001.

Purpose: These modifications address when permanent Washington management service employees promote or voluntarily demote to Washington general service and fail to complete the trial service period. These modifications also address the movement and return rights of permanent Washington management service employees who accept temporary and project positions within the general service.

Citation of Existing Rules Affected by this Order: Amending WAC 356-06-045, 356-30-320, and 356-30-331.

Statutory Authority for Adoption: RCW 41.06.150.

Adopted under notice filed as WSR 01-02-088 on January 3, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Effective Date of Rule: May 1, 2001.

March 15, 2001

Doug Tanabe

Acting Secretary

AMENDATORY SECTION (Amending WSR 94-04-011, filed 1/21/94, effective 3/1/94)

WAC 356-06-045 Movement between Washington general service and Washington management service positions. (1) Employees who have attained permanent status, or who have completed six months of the review period, in the Washington management service are eligible to compete under promotional recruitments for Washington general service positions.

(2) Permanent employees may transfer from the Washington management service to Washington general service positions if their salary is within the salary range of the Washington general service position. Transfers may require the employee to meet minimum qualifications and take the appropriate examination as determined by the director of personnel or designee.

(3) Permanent employees may transfer from Washington general service to Washington management service positions if their salary is within the salary level of the Washington management service position.

(4) Permanent employees may voluntarily demote between Washington management service and Washington general service positions at a lower pay than their current permanent position. Voluntary demotion to a Washington general service classification may require the employee to meet minimum qualifications and take the appropriate examination as determined by the director of personnel or designee.

(5) Permanent WMS employees may accept temporary employment in the general service as provided in WAC 356-30-067. Upon termination of such temporary appointment, the employee shall have the right to resume the same or sim-

ilar permanent Washington management service position within their permanent agency, at their former status.

(6) Permanent WMS employees may accept project employment in the general service as provided in WAC 356-30-145. Upon reduction in force from the project, or at the request of the employee, the employee will have reduction in force rights of the permanent Washington management service position they left. Employees who entered the project through the competitive process and remain in project status for two years shall be eligible to have their names placed on the agency reduction in force register for the general service classes in which permanent project status was attained.

~~((5))~~ (7) During reduction in force, permanent Washington management service employees who also have permanent status in Washington general service will be afforded return rights as follows:

(a) Prior to considering Washington management service positions within the agency which have a lower salary, appointing authorities will consider Washington general service positions within the agency in the same occupational field with the same or similar salary for which the employee is qualified and has held permanent status.

(b) Washington management service employees who have no reduction in force options for the same or similar positions in the Washington management service will be afforded reduction in force rights to the highest Washington general service class held permanently.

AMENDATORY SECTION (Amending WSR 98-19-034, filed 9/10/98, effective 10/12/98)

WAC 356-30-320 Trial service—Reversion—Status.

(1) Employees who were appointed from a voluntary demotion register to a class not previously held or from a promotional register within the same agency and fail to satisfactorily complete the trial service period shall automatically revert to a position in the former classification.

(2) Permanent Washington management employees who were appointed from a voluntary demotion register to a class not previously held or from a promotional register within the same agency and fail to satisfactorily complete the trial service period shall automatically revert to a position in the former Washington management service band for which the employee has the required job skills, and that is at the same salary standard and/or same evaluation points.

~~((2))~~ (3) Employees who were appointed from a voluntary demotion register to a class not previously held or from a promotional register into another agency and who fail to satisfactorily complete the trial service period shall be given fifteen calendar days' written notice and placed on the dual-agency reversion register and the service-wide reversion register for their former class. If an employee waives consideration three times for a position in the class for which the register was established, the employee's name will be removed from the reversion register. The employee may then request his/her name be placed on the reemployment register.

(4) Permanent Washington management service employees who were appointed from a voluntary demotion register to a class not previously held or from of promotional register into another agency and who fail to satisfactorily

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complete the trial service period shall be given fifteen calendar days' written notice and may request placement in the reduction-in-force transition pool for positions in which they qualify.

~~((3))~~ (5) Employees who are reverted do not have the right of appeal.

~~((4))~~ (6) Former permanent employees who have promoted, demoted, or transferred to a position at a higher education institution in accordance with provisions of Title 251 WAC and fail to complete the trial service period may request their names be placed on the dual-agency reversion register and service-wide reversion register for the former class.

(7) Former permanent Washington management service employees who have moved to a classified position at a higher education institution in accordance with provisions of Title 251 WAC and fail to complete the trial service period may request their names be placed in the reduction-in-force transition pool.

~~((5))~~ (8) Employees who are reemployed from the service-wide reversion registers shall enter a trial service period. Employees reverted during this period may request their names be placed on the register from which they came.

~~((6))~~ (9) Employees who voluntarily revert to their former class may request the director of personnel to reactivate their promotional score for the class from which reverted. Employees involuntarily reverted to a former class shall have all examination grades nullified for the class from which they are reverted.

(10) Washington management service employees who promote into Washington general service then voluntarily revert from their trial service period back to a Washington management service position, or request placement in the reduction-in-force transition pool, may request the director of personnel to reactivate their promotional score for the Washington general service class from which they reverted. Employees involuntarily reverted shall have all examination grades nullified for the class from which they are reverted.

AMENDATORY SECTION (Amending WSR 00-11-122, filed 5/22/00, effective 7/1/00)

WAC 356-30-331 Reduction in force—Transition pool program. The department of personnel is responsible for administering the reduction in force transition pool program. The director shall develop and implement appropriate operating procedures to facilitate this program.

(1) To administer the program, the director or designee may waive provisions of Title 356 WAC that:

(a) Require employees seeking transfer and voluntary demotion in lieu of reduction in force to meet approved minimum qualifications;

(b) Authorize only the director to waive minimum qualifications; and

(c) Allow qualifying examinations for transfers or voluntary demotions.

(2) The program applies to:

(a) All permanent employees separated by reduction in force or notified by the agency personnel representative that they are at risk of reduction in force; and

(b) Return to work employees in those agencies that are participating in the return to work pilot program.

(c) Permanent Washington management service employees who were appointed from a voluntary demotion register to a Washington general service class not previously held or from a promotional register into another agency and who are either voluntarily or involuntarily reverted during their trial service period.

(3) Agencies, including those agencies with local list authority, shall adhere to the operating procedures established by the director.

(4) Employees participating in the reduction in force transition pool program shall have no right of appeal within this program.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 01-07-057

PERMANENT RULES

PERSONNEL RESOURCES BOARD

[Filed March 19, 2001, 10:24 a.m., effective May 1, 2001]

Date of Adoption: March 8, 2001.

Purpose: These modifications will remove requirements to adjust/recompute periodic increment dates. Once the periodic date is set, it will remain the same.

Citation of Existing Rules Affected by this Order: Amending WAC 356-10-040 Employee appointment status—Downward reallocation, 356-14-067 Salary—Classes requiring licensure as registered nurse, 356-14-075 Y-rate—Administration, 356-14-085 Salaries—Reductions in force register appointment, 356-14-110 Salary—Periodic increment dates—Original—Subsequent, 356-14-120 Periodic increment date—Promotion, 356-15-140 School year contracts for nonteaching staff, 356-18-140 Leave without pay, 356-18-220 Leave without pay—Effect on anniversary date, periodic increment date, and seniority, and 356-49-040 Inter-system movement.

Statutory Authority for Adoption: RCW 41.06.150.

Adopted under notice filed as WSR 01-02-089 on January 3, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Effective Date of Rule: May 1, 2001.

March 15, 2001

Doug Tanabe

Acting Secretary

AMENDATORY SECTION (Amending WSR 85-11-074 (Order 223), filed 5/22/85)

WAC 356-10-040 Employee appointment status—Downward reallocation. Employees in positions that are reallocated downward are affected as follows:

(1) The director of personnel shall notify the incumbent and the employing agency in writing at least thirty calendar days prior to the effective date of the reallocation. This action shall not preclude the employee from accepting a transfer or promotion to a vacant position.

(2) The employee may elect to remain in the reallocated position provided the employee meets the minimum or desirable qualifications for the new classification or acceptable qualifications as determined by the director of personnel or designee. No further qualifying examination will be required and the employee will retain existing appointment status.

(3) If the employee does not meet the qualifications for the new classification as provided in subsection (2) of this section and the employee is not transferred, promoted, demoted or otherwise retained in status within sixty days, the provisions governing reduction in force shall apply.

(4) An employee who remains in a position which is reallocated downward may have his or her name placed upon the agency reduction in force register for the classification to which the position was previously allocated.

(5) Employees who continue in positions which are reallocated downward shall be paid an amount equal to their previous salary if such amount is within the salary range for the lower class. Employees whose current salary falls between two steps or exceeds the top step of the range for the lower class shall be Y-rated.

(6) Employees shall retain their existing periodic increment date (~~provided the salary is less than the maximum of the lower range~~).

(7) Employees who retain their salary as provided in subsection (5) of this section will not be entitled to promotional salary increases if they are subsequently hired off the agency reduction in force register; however, if an employee's salary falls between the steps of the higher range, the salary will advance to the closest step for the class in the higher range upon promotion.

AMENDATORY SECTION (Amending WSR 90-23-030 (Order 361), filed 11/14/90, effective 12/15/90)

WAC 356-14-067 Salary—Classes requiring licensure as registered nurse. (1) Effective October 1, 1990 the salary of employees in classes requiring licensure as a registered nurse shall be governed by the "N" range salary schedule.

(2) An employee's total length of experience as a registered nurse (RN) and/or licensed practical nurse (LPN), calculated as follows, shall determine the placement of an employee on the proper step within an "N" range:

(a) RN experience shall be credited year for year.

(b) Up to ten years LPN experience shall be credited at the rate of two years LPN experience equals one year of RN experience, for a maximum credit of five years.

(3) For employees hired on or after October 1, 1990: Unless the prospective employing agency has authorized a higher entrance salary step, placement on the proper step within an "N" range shall be determined by the employee's total length of experience as an RN and/or LPN, calculated as shown in (2)(a) and (b) of this section.

(4) For employees hired prior to October 1, 1990:

(a) Placement on proper step:

(i) Except for employees described in (4)(a)(ii) of this section, effective October 1, 1990 employees will be placed on the proper step of the "N" range for their class based upon total length of experience as an RN and/or LPN, calculated as shown in (2)(a) and (b) of this section.

(ii) Employees who were hired above the entrance salary step and do not have the experience level now assigned that step in the new "N" range salary schedule will retain their current step in the "N" range.

(b) Treatment of periodic increment date (PID).

~~(i) (Employees who have an existing PID will retain that PID.)~~ The PID for employees placed within steps A-K shall be made in accordance with WAC 356-14-110. Advancement through these steps is made at the same intervals as through a standard range.

~~((ii) Employees who do not have a PID and upon implementation remain at step K or are placed at steps L through O will assume a new PID of October 1, 1991 except for~~

~~(iii) Employees placed at step K who will attain the necessary experience to move to step L before October 1, 1991. These employees will advance to step L on the appropriate date and assume a new PID, one year from the date of advancement to step L.)~~

(ii) Once an employee advances beyond step K, a new PID must be calculated based on the length of total experience working in a position requiring licensure as a registered nurse. For example, an employee with 11 years and 6 months of nursing experience who is currently at step P would have a PID set so advancement to step Q would occur in 6 months, whereas an employee with 10 years and 3 months of experience would have a PID set in 21 months.

AMENDATORY SECTION (Amending WSR 93-12-087 (Order 420), filed 5/28/93, effective 7/1/93)

WAC 356-14-075 Y-rate—Administration. (1) A Y-rate is a dollar amount that is treated as the basic salary for an employee.

(2) A Y-rate is set by the director of personnel or other provisions of the merit system rules at an amount other than that which would be paid if such action were not taken.

(3) A Y-rate will remain in effect until one of the following occurs:

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(a) A specific date established by the director of personnel is reached; or

(b) The employee voluntarily leaves the position occupied when the Y-rate was approved except for transfers due to reduction-in-force; or

(c) The range for the employee's present class is increased to include the Y-rate amount which formerly exceeded the top of the range. At that time, the employee's basic salary shall become the maximum step of the salary range for the class; or

(d) The range for the employee's present class is increased, but had already encompassed the employee's Y-rate, which was between normal steps. At that time, the employee's basic salary shall advance to the normal step of the range which provides the closest to, but not greater than, the increase in the range; or

(e) The employee's salary is reduced pursuant to WAC 356-34-020; or

(f) The Y-rate is subsequently modified by the director of personnel.

(4) ~~((On its effective date, a))~~ A Y-rate will not cause the employee's ~~((to lose his or her))~~ periodic increment date to change ~~((unless the salary is between steps of the range))~~.

(5) Salary increases approved by the legislature shall not move the basic salary of a Y-rated employee higher than the top step of the salary range assigned to that employee's classification, unless the salary appropriations act specifically provides for increases above the top step for Y-rated employees.

(6) The director of personnel shall keep records of all Y-rate approvals.

AMENDATORY SECTION (Amending WSR 83-06-005 (Order 180), filed 2/18/83)

WAC 356-14-085 Salaries—Reduction in force register appointment. When an eligible is appointed from a certification off of a reduction in force register, his/her salary will be set as follows:

(1) If the employee was demoted due to a reduction in force action or the reallocation of a position downward, the salary will be the basic dollar amount the employee was being paid at the time he/she left the range to which he/she is being appointed, plus, whatever the periodic increases and the salary adjustments that would have been made had the employee remained in that classification and range. If the employee was separated from state service due to a reduction in force action, the separation will not be regarded as a break in service. ~~((The time during which employees are off the payroll will not be used in computing periodic increases except for practices in effect prior to October 14, 1980, for setting periodic increment dates for employees involving recurring reduction in force.))~~ An eligible still employed by the state will not be entitled to further increases in salary based on promotion as prescribed in WAC 356-14-140.

(2) Such increases above the basic dollar amount in (1) above shall not place the employee higher than the maximum salary for the range, except general salary increase specifically granted to Y rated employees.

AMENDATORY SECTION (Amending WSR 95-19-054, filed 9/15/95, effective 10/16/95)

WAC 356-14-110 Salary—Periodic increment dates—Original—Subsequent. (1) The periodic increment date (PID) is the date on which an employee automatically advances to a higher dollar amount in the range to which the employee's position is classified; provided

(a) The employee's basic salary is not already at or above the maximum step of the assigned range, or

(b) The employee's standards of performance are such as to permit retention in a job status.

(2) The dollar amount of the increase will be two salary schedule increments; except

(a) The amount shall be one salary schedule increment ~~((if))~~ when a two-increment increase ~~((would))~~ will place the employee's basic salary above the maximum of the range of the employee's classification, or

(b) A fractional part of an increment amount shall be regarded as a full increment advance, ~~((if))~~ when the employee's basic salary ~~((was))~~ is between salary schedule steps immediately prior to the increase, or

(c) The dollar amount increase is stated otherwise in the compensation plan appendix or chapter 356-15 WAC.

(3) The ~~((original))~~ periodic increment date for an employee is ~~((:))~~

~~((a-Six))~~ six continuous months from the date the employee began work, ~~((at the first step of a salary range, or))~~ provided that:

~~((b))~~ One calendar year from the date on which the employee began work at an intervening salary step; provided that in either (a) or (b):)

~~((+))~~ (a) Any work period starting before the 16th of the month will count as a full month.

~~((+))~~ (b) Any work period starting after the 15th of the month will not be counted.

~~((iii))~~ An employee at or above the maximum step of a salary range does not have a periodic increment date.))

~~((4))~~ The periodic increment date shall be recomputed following leaves of absence without pay, in accordance with WAC 356-18-220, breaks in service due to reduction in force or reversion action. In such adjustments, calendar months of pay status already spent at a step will be credited toward the time required to advance to the next available increase in that range.))

~~((5))~~ (4) An employee's periodic increment date shall be set and remain the same ((unless subsequently changed in accordance with the provisions of the merit system rules)) for any period of continuous service, except as provided in WAC 356-14-067.

(5) Employees hired at step K prior to May 1, 2001 who did not receive a periodic increment date shall have their periodic increment date set six months from the original hire date.

AMENDATORY SECTION (Amending WSR 85-19-078 (Order 230), filed 9/18/85)

WAC 356-14-120 ((Salary—))Periodic increment date—Promotion. Employees who receive a salary increase

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through promotion shall retain their present periodic increment date (~~except~~).

~~((1) When the employee is placed at the first step, the employee either retains the same periodic increment date or assumes a new one six calendar months from the promotion, whichever date occurs first.~~

~~(2) An employee with no periodic increment date because of being promoted from a maximum step or a Y-rated amount above the maximum step of a range, will assume a new periodic increment date if the employee is moving to a minimum or intervening salary step as provided in WAC 356-14-110.)~~

AMENDATORY SECTION (Amending WSR 89-07-056 (Order 315), filed 3/15/89, effective 5/1/89)

WAC 356-15-140 School year contracts for non-teaching staff. (1) The school for the deaf and the school for the blind may contract with full-time, permanent (as opposed to temporary), noncertificated staff to retain them in pay status only during the school year, to grant them leave without pay during the student-vacation periods, and to spread the school-year base salary earnings evenly over a 12-month period. For employees who so contract, the following rules shall apply:

(a) Twelve-month, prorated pay will be calculated by the following steps:

(i) The total annual salary for scheduled work during the school year will be calculated for each employee, beginning with the first day of employment, for the new school year.

This calculation will include:

~~((a))~~ (A) Scheduled holidays which will occur between the beginning and the end of the school year.

~~((b))~~ (B) Any increment increases which will occur while the employee is in pay status.

It will not include:

~~((a))~~ (C) Sick leave or annual leave, or holidays which occur after the close of the school year.

~~((b))~~ (D) Anticipated general increases; but these will be included in a recalculation when they occur. The recalculation will affect only the remaining time in the 12-month contract.

(ii) The total annual salary will be divided by 24 to obtain 24 equal payments for a 12-month period. These equal payments are referred to hereafter as the "prorated salary."

(iii) General increases, when granted during the school year, shall be accommodated by recalculation of the prorated salary as it will be affected forward from the effective date of the increase.

(b)(i) Annual leave, compensatory time, paid holidays, and sick leave taken during scheduled days of work will be treated as hours worked.

(ii) Annual leave and paid holidays taken in lieu of leave without pay during periods of school closure, such as Christmas vacation, spring vacation, and summer months, will be paid at the full (not prorated) hourly rate.

The "full hourly rate" is determined by dividing the total annual salary by the number of contract work days in that school year, and dividing that by eight hours.

(iii) For each hour of leave-without-pay taken during a scheduled work day, an hour of pay at the full (not prorated) hourly rate will be deducted from the prorated salary for that pay period.

(c) The "regular rate" for overtime work shall be calculated in the manner described in WAC 356-05-053, except that the "basic salary" and any other components of the "regular rate" shall be the "full hourly rate" (not 12-month prorated salary). Shift premium will not be prorated.

(d) Compensatory time may be credited and utilized as described in WAC 356-14-240. If accrued compensatory time is liquidated as provided in WAC 356-14-265, the liquidation rate shall be based on the full hourly rate (not the prorated salary).

(e) Vacation leave and an employee's personal holiday which is unused at the end of the school year may be paid as extended employment beyond the contract period. Each hour of accumulated vacation thus taken will be compensated at the full hourly rate (rather than the prorated salary level) in addition to the continuing 12-month prorated salary. It will be paid at the end of the pay period in which it is taken. Hours for which vacation time is paid will be considered as hours worked for the purpose of accruing additional vacation and sick leave.

(f) Accrued sick leave may not be used between school years or during periods of leave without pay, even though accrued vacation may be being utilized during that period. Accrued sick leave which can be converted to monetary compensation as provided in WAC 356-18-050(3) shall be compensated at the employee's current actual salary rate, rather than the prorated salary rate.

(g) An employee's movement within and among the pay ranges shall be based on the actual salary (not the prorated salary).

(h) A 12-month pay agreement as described in this section may be terminated at the request of the employee only if the agency determines that a bona fide hardship is being created by its continuation, or by termination of employment. Accrued (withheld) salary, vacation, and compensatory time under the 12-month agreement is immediately payable on termination of employment.

(i) Nothing in this section shall result in an employee receiving more compensation for the same work performed than would an employee who did not have such a 12-month contract.

(2) ~~((f))~~ WAC ~~((356-15-140))~~ 356-18-220 describes the effect of leave without pay on seniority ~~((and periodic increment dates))~~ for these employees.~~((t))~~

AMENDATORY SECTION (Amending WSR 96-13-076, filed 6/18/96, effective 8/1/96)

WAC 356-18-140 Leave without pay. (1) Leave without pay may be allowed when such leave will not operate to the detriment of the state service. Leave without pay shall not affect an employee's periodic increment date.

(2) Leave without pay may be authorized for any reasons applicable to:

(a) Leave with pay.

(b) Educational leave.

(c) Military and U.S. Public Health Service and Peace Corps leave.

(d) Specific leaves granted for government service in the public interest upon specific request of an employee, concurred in by the appointing authority.

(e) Leave taken voluntarily to reduce the effect of an agency reduction in force. Such leave shall not affect an employee's seniority.

(f) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability (as defined in WAC 356-05-260).

(3) Authorized leave without pay shall be limited to not more than 12 months in any consecutive five-year period, except for:

(a) Leaves without pay for military, U.S. Public Health Service or Peace Corps;

(b) Authorized government leave not exceeding two years;

(c) Employees receiving time loss compensation;

(d) Educational leaves under provisions of WAC 356-39-120;

(e) Leave for serious health condition for an eligible employee or the employee's spouse, child or parent and newborn, adoptive or foster child care under provisions of WAC 356-18-150 and 356-18-145;

(f) Leave taken voluntarily to reduce the effect of an agency reduction in force under the provisions of WAC 356-30-335.

(g) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability (as defined in WAC 356-05-260).

(4) Leave without pay exceeding twelve months in a consecutive five-year period, not covered by the exceptions noted in subsection (3) of this section, shall be treated as unauthorized absence.

(5) Employees returning from authorized leave without pay shall be employed in the same position, or in another or similar position in the same class and in the same geographical area, provided that such return to employment is not in conflict with rules relating to reduction in force.

AMENDATORY SECTION (Amending WSR 95-19-098, filed 9/20/95, effective 11/1/95)

WAC 356-18-220 Leave without pay—Effect on anniversary date, periodic increment date, and seniority.

(1) Leave without pay of fifteen consecutive calendar days or less will not affect an employee's anniversary date (~~(or periodic increment date)~~).

(2) When an employee is on leave without pay for more than fifteen consecutive days, the employee's (~~(seniority)~~) anniversary date (~~(and periodic increment date)~~) will not be affected when the absence is due to any of the following reasons:

(a) Military or United States Public Health Service;

(b) Government service and leave to enter the Peace Corps, not to exceed two years and one month;

(c) Leave taken by employees receiving time loss compensation due to injuries sustained while performing the employee's state job;

(d) Educational leave in accordance with the provisions of WAC 356-39-120;

(e) Leave without pay taken voluntarily under the provisions of WAC 356-30-335 to reduce the effect of an agency reduction in force.

(3) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed in subsection (2) of this section, the employee's anniversary date (~~(and periodic increment date)~~) shall be moved forward in an amount equal to the duration of the leave of absence.

(4) When an employee's position is assigned to a program or facility whose primary purpose is academic and/or vocational education, and the program or facility follows the customary public school practice of less than a twelve-month school year, the employing agency may place the employee on leave without pay while the program or facility is closed for customary school vacations without adjusting the employee's anniversary (~~(and periodic increment)~~) date(s).

(5) Leave without pay taken for any of the reasons listed in subsection (2) of this section shall not affect an employee's seniority.

(6) Employees who are on leave without pay for any reason other than subsection (2) of this section, shall have their seniority date extended by the number of calendar days they are on leave without pay including any intervening nonworking days.

(7) Leave without pay shall not affect an employee's periodic increment date.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 98-19-034, filed 9/10/98, effective 10/12/98)

WAC 356-49-040 Inter-system movement. (1) Permanent classified employees of higher education institutions desiring to promote, transfer, or voluntarily demote to agency classified positions must:

(a) Submit a Washington state application for employment in accordance with a current examination announcement.

(b) Successfully complete the designated examination.

(c) Have their name placed on the appropriate register as provided in WAC 356-26-070.

(d) Be certified to vacancy(ies) as provided in WAC 356-26-070.

(e) Serve a trial service period of six months. If the trial service period is not satisfactorily completed, the employee shall be placed on the appropriate eligible list as provided by the higher education personnel rules (Title 251 WAC).

(2) Permanent classified employees desiring to promote, transfer, or voluntarily demote to agency classified positions will:

(a) Be unable to bump if laid off during such trial service period even though layoff seniority will move with employees to the new position.

(b) Bring their accumulated vacation leave, sick leave and seniority with them; however, continued accumulation will be governed by the appropriate merit system rules.

(c) Retain their former periodic increment date (~~except upon promotion as provided by WAC 356-14-120~~).

(3) Classified employees of higher education institutions who have been or are going to be separated because of reduction in force action shall be certified to any agency vacant classified positions, provided:

(a) The employees are qualified as determined by the director of personnel, or designee; and

(b) No other agency employees are eligible to be certified from the reduction in force registers, or transferred, or promoted into vacancies; and

(c) The employees have greater seniority than other such qualified employees involved in reduction in force action; and

(d) The employees are being offered the opportunity according to the department of personnel procedure established for that purpose.

WSR 01-07-059

PERMANENT RULES

WENATCHEE VALLEY COLLEGE

[Filed March 19, 2001, 1:41 p.m.]

Date of Adoption: March 14, 2001.

Purpose: Repeal of six rule chapters containing seventy-five sections that have become obsolete and require replacement or elimination.

Citation of Existing Rules Affected by this Order: Repealing chapters 132W-104, 132W-108, 132W-116, 132W-120, 132W-135, and 132W-276 WAC.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 01-04-004 on January 25, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 75.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 13, 2001

William Martin, Rules Coordinator
Dean of Administrative Services

WSR 01-07-075 PERMANENT RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed March 20, 2001, 3:58 p.m.]

Date of Adoption: March 20, 2001.

Purpose: Chapter 296-32 WAC, Safety standards for telecommunications and chapter 296-45 WAC, Safety standards for electrical workers.

Topic: State-initiated amendments are adopted to comply with the requirements of chapter 239, Laws of 2000 (ESHB 2647), which directed the department to "adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers." Because of an administrative error, amendments proposed on October 18, 2000, to WAC 296-32-240 and 296-45-52530 were not adopted on January 26, 2001, along with the department's permanent flagger amendments to WAC 296-155-305 (WSR 01-04-015). The department refiled the proposed amendments to chapter 296-32 WAC, Safety standards for telecommunications and chapter 296-45 WAC, Safety standards for electrical workers and held public hearings in Tumwater and Spokane. The department is now adopting those permanent flagger amendments to chapters 296-32 and 296-45 WAC.

Listed below are the specific amendments adopted by the department to satisfy the requirements of chapter 239, Laws of 2000. All adopted amendments have been written to comply with the clarity criteria of Executive Order 97-02.

AMENDED SECTIONS:

WAC 296-32-240 Employee protection in public work areas, state-initiated amendments are adopted to:

- Rewrite subsection (1) according to clear rule-writing principles and change "shall" to "must."
- Add requirement in subdivision (a) that traffic control signs, devices, and barriers must be positioned and used according to chapter 296-155 WAC, Part E requirements.
- Add requirement in subdivision (a) that "employers, responsible contractors and/or project owners" must comply with WAC 296-155-305 requirements when flaggers are used.
- Change, in subdivision (b), "at night" to "during hours of darkness" to be consistent with WAC 296-155-305.

WAC 296-45-52530 Employee protection in public work areas, state-initiated amendments are adopted to:

- Rewrite and reorganize the section according to clear rule-writing principles and change "shall" to "must."
- Add the requirement that "employers, responsible contractors and/or project owners" must comply with WAC 296-155-305 requirements when flaggers are used.
- Change "at night" to "during hours of darkness" to be consistent with WAC 296-155-305.

Citation of Existing Rules Affected by this Order: Amending WAC 296-32-240 Employee protection in public work areas and 296-45-52530 Employee protection in public work areas.

Statutory Authority for Adoption: RCW 49.17.010, [49.17].040, and [49.17].050, chapter 239, Laws of 2000 (ESHB 2647), and chapter 34.05 RCW.

Adopted under notice filed as WSR 01-04-091 on February 7, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 20, 2001

Gary Moore

Director

~~(2) Before work is begun in the vicinity of vehicular or pedestrian traffic that may endanger employees, warning signs or flags and other traffic control devices shall be placed in conspicuous locations to alert and channel approaching traffic.~~

~~(3) Where additional employee protection is necessary, barricades shall be used.~~

~~(4) Excavated areas shall be protected with barricades.~~

~~(5) At night, warning lights shall be prominently displayed.)~~ (a) Before work begins in the vicinity of vehicular or pedestrian traffic that may endanger employees, traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E.

(b) When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(2) During hours of darkness, warning lights must be prominently displayed.

(3) Excavated areas must be protected with barricades.

AMENDATORY SECTION (Amending Order 76-38, filed 12/30/76)

WAC 296-32-240 Employee protection in public work areas. (1)(a) Before work ~~((is begun))~~ begins in the vicinity of vehicular or pedestrian traffic ~~((which))~~ that may endanger employees, ~~((warning signs and/or flags or other traffic control devices shall be placed conspicuously to alert and channel approaching traffic. Where further protection is needed, barriers shall be utilized))~~ traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E. When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(b) ~~((At night))~~ During hours of darkness, warning lights ~~((shall))~~ must be prominently displayed~~((;))~~ and excavated areas ~~((shall))~~ must be enclosed with protective barricades.

(2) When work exposes energized or moving parts that are normally protected, danger signs shall be displayed and barricades erected to warn other personnel in the area.

(3) The employer shall insure that an employee finding any crossed or fallen wires which create or may create a hazardous situation at the work area:

(a) Remains on guard or adopts other adequate means to warn other employees of the danger, and

(b) Has the proper authority notified at the earliest practical moment.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

WAC 296-45-52530 Employee protection in public work areas. (1) ~~((Traffic control signs and traffic control devices used for the protection of employees shall meet the requirements of chapter 296-155 WAC, Part E.~~

WSR 01-07-076

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed March 20, 2001, 4:24 p.m.]

Date of Adoption: March 20, 2001.

Purpose: To correct terminology and delete unnecessary requirements in WAC 388-502-0010 Payment—Eligible providers defined and 388-502-0020 General requirements for providers.

Citation of Existing Rules Affected by this Order: Amending WAC 388-502-0010 and 388-502-0020.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, and 74.09.530.

Adopted under notice filed as WSR 00-24-078 on December 4, 2000.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 20, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 00-15-050, filed 7/17/00, effective 8/17/00)

WAC 388-502-0010 Payment—Eligible providers defined. The department reimburses enrolled providers for covered medical services, equipment and supplies they provide to eligible clients.

(1) To be eligible for enrollment, a provider must:

(a) Be licensed, certified, accredited, or registered according to Washington state laws and rules; and

(b) Meet the conditions in this chapter and chapters regulating the specific type of provider, program, and/or service.

(2) To enroll, an eligible provider must sign a core provider agreement or a contract with the department and receive a unique provider number.

(3) Eligible providers listed in this subsection may request enrollment. Out-of-state providers listed in this subsection are subject to conditions in WAC 388-502-0120.

(a) Professionals:

(i) Advanced registered nurse practitioners;

(ii) Anesthesiologists;

(iii) Audiologists;

(iv) Chiropractors;

(v) Dentists;

(vi) Dental hygienists;

(vii) Denturists;

(viii) Dietitians or nutritionists;

(xiv) Maternity case managers;

(x) Midwives;

(xi) Occupational therapists;

(xii) Ophthalmologists;

(xiii) Opticians;

(xiv) Optometrists;

(xv) Orthodontists;

(xvi) ~~((Osteopaths))~~ Osteopathic physicians;

(xvii) Podiatric physicians;

(xviii) Pharmacists

(xix) Physicians;

~~((xx))~~ (xx) Physical therapists;

~~((xxi))~~ (xxi) Psychiatrists;

~~((xxii))~~ (xxii) Psychologists;

~~((xxiii))~~ (xxiii) Registered nurse delegators;

~~((xxiv))~~ (xxiv) Registered nurse first assistants;

~~((xxv))~~ (xxv) Respiratory therapists;

~~((xxvi))~~ (xxvi) Speech/language pathologists;

~~((xxvii))~~ (xxvii) Radiologists; and

~~((xxviii))~~ (xxviii) Radiology technicians (technical only);

(b) Agencies, centers and facilities:

(i) Adult day health centers;

(ii) ~~((Ambulatory))~~ Ambulance services (ground and air);

(iii) Ambulatory surgery centers (Medicare-certified);

(iv) Birthing centers (licensed by the department of health);

(v) Blood banks;

(vi) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of alcohol and substance abuse (DASA), and contracted through either:

(A) A county under chapter 388-810 WAC; or

(B) DASA to provide chemical dependency treatment services;

(vii) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DASA);

(viii) Community AIDS services alternative agencies;

(ix) Community mental health centers;

(x) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;

(xi) Family planning clinics;

(xii) Federally qualified health care centers (designated by the Federal Health Care Financing Administration);

(xiii) Genetic counseling agencies;

(xiv) Health departments;

(xv) HIV/AIDS case management;

(xvi) Home health agencies;

(xvii) Hospice agencies;

(xviii) Hospitals;

(xix) Indian Health Service;

(xx) Tribal or urban Indian clinics;

(xxi) Inpatient psychiatric facilities;

(xxii) Intermediate care facilities for the mentally retarded (ICF-MR);

(xxiii) Kidney centers;

(xxiv) Laboratories (CLIA certified);

(xxv) Maternity support services agencies;

(xxvi) Neuromuscular and neurodevelopmental centers;

(xxvii) Nursing facilities (approved by DSHS Aging and Adult Services);

(xxviii) Pharmacies;

(xxix) Private duty nursing agencies;

(xxx) Rural health clinics (Medicare-certified);

(xxxi) Tribal mental health services (contracted through the DSHS mental health division); and

(xxxii) Washington state school districts and educational service districts.

(c) Suppliers of:

(i) Durable and nondurable medical equipment and supplies;

(ii) Infusion therapy equipment and supplies;

(iii) Prosthetics/orthotics;

(iv) Hearing aids; and

(v) Oxygen equipment and supplies;

(d) Contractors of:

(i) Transportation brokers;

(ii) Interpreter services agencies; and

(iii) Eyeglass and contact lens providers.

(4) Nothing in this chapter precludes the department from entering into other forms of written agreements to provide services to eligible clients.

(5) The department does not enroll licensed or unlicensed practitioners who are not specifically addressed in subsection (3) of this section, including, but not limited to:

(a) Acupuncturists;

(b) Counselors;

- (c) Sanipractors;
- (d) Naturopaths;
- (e) Homeopaths;
- (f) Herbalists;
- (g) Massage therapists;
- (h) Social workers; or
- (i) Christian Science practitioners or theological healers.

AMENDATORY SECTION (Amending WSR 00-15-050, filed 7/17/00, effective 8/17/00)

WAC 388-502-0020 General requirements for providers. (1) Enrolled providers must:

- (a) Keep legible, accurate, and complete charts and records to justify the services provided to each client, including, but not limited to:
 - (i) Patient's name and date of birth;
 - (ii) Dates of services;
 - (iii) Name and title of person performing the service, if other than the billing practitioner;
 - (iv) Chief complaint or reason for each visit;
 - (v) Pertinent medical history;
 - (vi) Pertinent findings on examination;
 - (vii) Medications, equipment, and/or supplies prescribed or provided;
 - (viii) Description of treatment (when applicable);
 - (ix) Recommendations for additional treatments, procedures, or consultations;
 - (x) X-rays, tests, and results;
 - (xi) Dental photographs and teeth models;
 - (xii) Plan of treatment and/or care, and outcome; and
 - (xiii) Specific claims and payments received for services.
- (b) Assure charts are authenticated by the person who gave the order, provided the care, or performed the observation, examination, assessment, treatment or other service to which the entry pertains;
- (c) Make charts and records available to DSHS, its contractors, and the US Department of Health and Human Services upon request, for six years from the date of service or longer if required specifically by federal or state law or regulation;
- (d) Bill the department according to department rules and billing instructions;
- (e) ~~((Include and sign the following statement with each bill submitted to the department for reimbursement: "I hereby certify under penalty of perjury, that the material furnished and service rendered is a correct charge against the state of Washington; the claim is just and due; that no part of the same has been paid and I am authorized to sign for the payee; and that all goods furnished and/or services rendered have been provided without discrimination on the grounds of race, creed, color, sex, religion, national origin, marital status, or the presence of any sensory, mental or physical handicap."))~~
 - (f)) Accept the payment from the department as payment in full;
 - (g)) (f) Follow the requirements in WAC 388-502-0160 and 388-538-095 about billing clients;

- ~~((h))~~ (g) Fully disclose ownership and control information requested by the department;
- ~~((i))~~ ~~Not pay a third party biller a percentage of amounts collected, or discount client accounts to a third party biller;~~
- (j)) (h) Provide all services without discriminating on the grounds of race, creed, color, age, sex, religion, national origin, marital status, or the presence of any sensory, mental or physical handicap; and
- ~~((k))~~ (i) Provide all services according to federal and state laws and rules, and billing instructions issued by the department.

(2) A provider may contact MAA with questions regarding its programs. However, MAA's response is based solely on the information provided to MAA's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the department's programs.

WSR 01-07-077
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)
 [Filed March 20, 2001, 4:27 p.m.]

Date of Adoption: March 20, 2001.

Purpose: To clarify that Medicaid does not cover laboratory-processed, or specially fitted, crowns for posterior teeth. The department also rewrote for clarity other policies regarding crowns, including coverage, prior authorization requirements, and what is included in the reimbursement for crowns.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1230 Crowns.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520.

Adopted under notice filed as WSR 01-03-154 on January 24, 2001.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

March 20, 2001

Bonita H. Jacques, Chief
Office of Legal Affairs

AMENDATORY SECTION (Amending WSR 99-07-023, filed 3/10/99, effective 4/10/99)

WAC 388-535-1230 Crowns. (1) Subject to the limitations in WAC 388-535-1100, MAA covers the following crowns ((do not need)) without prior authorization ((and are covered)):

- (a) Stainless steel, and
- (b) Nonlaboratory resin for primary anterior teeth.
- (2) MAA does not cover laboratory-processed crowns for posterior teeth.

(3) MAA requires prior authorization for the following crowns, which are limited to single restorations for permanent anterior (upper and lower) teeth((and require prior authorization by MAA)):

- (a) Porcelain fused to a **high noble metal**;
- (b) Porcelain fused to a predominately **base metal**;
- (c) Porcelain fused to a **noble metal**;
- (d) Porcelain with ceramic substrate;
- (e) Full cast **high noble metal**;
- (f) Full cast predominately **base metal**;
- (g) Full cast **noble metal**; and
- (h) Resin (laboratory).

((3)) (4) Criteria for covered crowns as described in subsections (1) and (3) of this section:

(a) Crowns may be authorized when the ((tooth meets the criteria of)) crown is dentally necessary.

(b) Coverage is based upon a supportable five year prognosis that the client will retain the tooth if the tooth is crowned. The provider must submit the following client information:

- (i) The overall condition of the mouth;
- (ii) **Oral health status**;
- (iii) Patient maintenance of good oral health status;
- (iv) **Arch integrity**; and
- (v) Prognosis of remaining teeth (that is, no more involved than periodontal case type II).

(c) **Anterior** teeth must show traumatic or pathological destruction to loss of at least one incisal angle.

((4)) (5) The laboratory processed crowns described in subsection ((2)) (3) are covered:

(a) ~~((Are covered))~~ Only when a lesser service will not suffice because of extensive coronal destruction, and treatment is beyond intracoronal restoration;

(b) Only once per permanent tooth in a five year period;
~~((b) Are covered))~~

(c) For endodontically treated anterior teeth only after satisfactory completion of the root canal therapy. Post-endodontic treatment X-rays must be submitted for prior authorization of these crowns((; and

~~(e) Including tooth and soft tissue preparation, amalgam or acrylic build-ups, temporary restoration, cement base, insulating bases, impressions, and local anesthesia; and~~

~~(d) Are covered when a lesser service will not suffice because of extensive coronal destruction, and treatment is beyond intracoronal restoration)).~~

(6) MAA reimburses only for covered crowns as described in subsections (1) and (3) of this section. The reim-

bursement is full payment; all of the following are included in the reimbursement and must not be billed separately:

- (a) Tooth and soft tissue preparation;
- (b) Amalgam or acrylic build-ups;
- (c) Temporary restoration;
- (d) Cement bases;
- (e) Insulating bases;
- (f) Impressions;
- (g) Seating; and
- (h) Local anesthesia.

WSR 01-07-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 01-30—Filed March 8, 2001, 1:33 p.m., effective March 11, 2001, 6:00 p.m.]

Date of Adoption: March 7, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-04000K and 220-33-04000L; and amending WAC 220-33-040.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The smelt return to the Cowlitz River is better than the preseason expectations. The fishery is consistent with the draft "Washington and Oregon Eulachon

Management Plan" and is designed to limit impact on broodstock while providing some fishery benefits as well as important stock status and biological information. The other Washington tributaries will remain closed. These rules are consistent with compact action of March 6, 2001. There is insufficient time to promulgate permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 11, 2001, 6:00 p.m.

March 7, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-33-04000L Smelt—Area and seasons. Notwithstanding the provisions of WAC 220-33-040, effective March 11 through March 31, 2001, the Columbia River and Washington tributaries are closed to fishing for smelt except under the following provisions:

1) Columbia River

a) Area: SMCRA 1A, 1B, 1C, 1D, 1E.

b) Day/Time: Mondays and Wednesdays, from 3:00 a.m. to 9:00 p.m.

c) Gear: Gillnets, dipnets and trawl nets.

d) Allowable sales: Smelt.

e) Sanctuaries: Standard river mouth sanctuaries.

f) Other: Notwithstanding the provisions of WAC 220-20-010, during open salmon and/or sturgeon seasons fishers may have stored onboard their boats, while fishing, smelt gill nets; and while smelt fishing, fishers may have stored onboard their boats, gill nets of a size that meets the commercial salmon/sturgeon mesh size, weight, and length restrictions for the open salmon/sturgeon season.

2) Cowlitz River

a) Area: Cowlitz River downstream from Peterson's Eddy.

b) Day/Time: Tuesday-Wednesday and Sunday-Monday 6:00 p.m. to 6:00 a.m.

c) Gear: Dipnets.

d) Allowable sales: Smelt.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 11, 2001:

WAC 220-33-04000K Smelt—Areas and seasons.
(00-259)

The following section of the Washington Administrative Code is repealed effective March 31, 2001:

WAC 220-33-04000L Smelt—Areas and seasons.

WSR 01-07-006

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 01-35—Filed March 8, 2001, 4:41 p.m.]

Date of Adoption: March 9 [8], 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-38000Z and 220-56-38000A; and amending WAC 220-56-380.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to adjust seasons to accommodate changes in resource abundance and state/tribal allocations. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

March 9 [8], 2001

Evan Jacoby

for Jeff Koenings

Director

NEW SECTION

WAC 220-56-38000B Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to harvest or possess oysters taken for personal use from the following public tidelands except as provided below:

- (1) Dosewallips State Park - **Closed** until further notice.
- (2) Oakland Bay Recreational Tidelands (Oakland Bay North and West) - **Open** March 1 until further notice.
- (3) Potlatch East - **Closed** through March 31.
- (4) Potlatch State Park - **Closed** through March 31.
- (5) South Indian Island County Park - **Closed** until further notice.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-38000Z Oysters—Areas and seasons. (00-269)

WAC 220-56-38000A Oysters—Areas and seasons. (01-27)

WSR 01-07-007

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 01-28—Filed March 8, 2001, 4:43 p.m., effective March 12, 2001, 12:01 a.m.]

Date of Adoption: March 8, 2001.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-28500Y and 232-28-61900T; and amending WAC 220-56-285 and 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This year's upper Columbia River spring chinook return is expected to be 364,600, the largest run since records began with the construction of Bonneville Dam in 1938. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 12, 2001, 12:01 a.m.

March 8, 2001

J. P. Koenings

Director

NEW SECTION

WAC 220-56-28500Y Shad—Areas and seasons. Notwithstanding the provisions of WAC 220-56-285, effective 12:01 a.m. March 12, 2001 through April 30, 2001 it is lawful to take, fish for, or possess shad in those waters of the Columbia River from the Buoy 10 line upstream to 600 feet below the fish ladder at Bonneville Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2001:

WAC 220-56-28500Y Shad—Areas and seasons.

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. March 12, 2001 through April 30, 2001 in those waters of the Columbia River from the Buoy 10 line upstream to 600 feet below the fish ladder at Bonneville Dam, daily limit six chinook, no more than two of which may be adults, and all of which must be adipose fin clipped, minimum size is 12 inches and two hatchery steelhead, minimum size 20 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2001:

WAC 232-28-61900T Exceptions to statewide rules—Columbia River.

**WSR 01-07-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-34—Filed March 9, 2001, 12:45 p.m., effective March 16, 2001, 12:01 a.m.]

Date of Adoption: March 9, 2001.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-235 and 220-56-250.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is necessary to conform with recently enacted federal regulations for lingcod harvest. The most recent stock assessment indicates a slight increase in lingcod abundance. These regulations reflect an increased harvest opportunity for lingcod. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 16, 2001, 12:01 a.m.

March 9, 2001

J. P. Koenings

Director

NEW SECTION

WAC 220-56-23500K Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235:

(1) Effective 12:01 March 16, 2001, until further notice the daily limit for lingcod in Catch Record Areas 1 through 3 is two fish, minimum length 24 inches.

(2) Effective 12:01 a.m. April 16, 2001, until further notice the daily limit for lingcod in Catch Record Area 4 is two fish, minimum length 24 inches.

NEW SECTION

WAC 220-56-25000C Lingcod—Areas and seasons. Notwithstanding the provisions of WAC 220-56-250, effective 12:01 a.m. March 16, 2001, until further notice it is lawful to fish for or possess lingcod for personal use in Catch Record Card Areas 1 through 3.

WSR 01-07-020

**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-37—Filed March 14, 2001, 8:34 a.m.]

Date of Adoption: March 13, 2001.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-248.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Additional opportunity exists for licensed hunters to hunt wild turkey on Little Pend Oreille National Wildlife Refuge. The manager of the refuge requested that the WAC be amended to allow hunting during the upcoming spring turkey season. There is insufficient time to promulgate permanent rules. The permanent rule is proposed for amendment at the April commission hearing to allow hunting during spring turkey seasons in the future. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

EMERGENCY

Effective Date of Rule: Immediately.

March 13, 2001
J. P. Koenings
Director
by Larry Peck

Effective Date of Rule: March 15, 2001, 12:01 a.m.

March 12, 2001
J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 232-12-24800A Special closures and firearm restriction areas. Notwithstanding the provisions of WAC 232-12-248, effective immediately until further notice, Little Pend Oreille National Wildlife Refuge is open to hunting during legally established hunting seasons from April 15 through May 15, 2001.

WSR 01-07-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 01-33—Filed March 14, 2001, 8:36 a.m., effective March 15, 2001, 12:01 a.m.]

Date of Adoption: March 12, 2001.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Reduced limit on the Cowlitz River due to projected run size will not achieve hatchery escapement goal. Special daily limit due to projected run size will achieve hatchery escapement goal on the Lewis and Klickitat rivers. Clarifies river mouth boundary on the White Salmon River. Surplus hatchery spring chinook available on Wind and White Salmon rivers and Drano Lake. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Cowlitz River, Little White Salmon River (Drano Lake), Klickitat River, Lewis River, Wind River, White Salmon River. Notwithstanding the provisions of WAC 232-28-619:

(1) Cowlitz River - Effective 12:01 a.m. March 15, 2001 until further notice, those waters of the Cowlitz River mouth upstream to 400 feet or posted boundary markers below the Barrier Dam are closed for the retention of chinook salmon. South side of the river from Mill Creek upstream to the Barrier Dam closed to all fishing April 1, 2001 through June 15, 2001.

(2) Little White Salmon River (Drano Lake - Effective 12:01 a.m. March 15, 2001 through June 30, 2001 it is lawful to fish for salmonids in those waters of the Little White Salmon River (Drano Lake) from the SR 14 highway bridge at the mouth upstream to markers downstream and across from the Little White Salmon National Fish Hatchery special daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length or a combination of one such salmon and one such steelhead. Except closed on Wednesdays April 18 through May 30, 2001. Night closure and non-buoyant lure restriction in effect.

(3) Klickitat River - Effective April 2, 2001 through May 30, 2001 it is lawful to fish for salmonids in those waters of the Klickitat River from the mouth upstream to Fisher Hill Bridge Special daily limit of one chinook salmon greater than 12 inches in length or one hatchery steelhead greater than 20 inches in length. Night closure and non-buoyant lure restriction in effect.

(4) Lewis River - Effective April 1, 2001 until further notice in those waters of the Lewis River (including the North Fork) from the mouth upstream to Merwin Dam the daily limit is one chinook salmon greater than 12 inches in length. Effective May 1, 2001 until further notice in those waters between Johnson Creek and Colvin Creek bank fishing only and in those waters between Colvin Creek and Merwin Dam closed to all fishing.

(5) Wind River - Effective 12:01 a.m. March 15, 2001 through June 30, 2001 it is lawful to fish for salmonids in those waters of the Wind River from markers (buoy line) at the mouth upstream to 400 feet downstream from Shipherd Falls and effective May 1, 2001 through June 30, 2001 from 100 feet upstream from Shipherd Falls upstream to 400 feet downstream from the Coffey Dam and from 100 feet upstream from the Coffey Dam to boundary markers 800 yards downstream from the fish ladder at Carson National Fish Hatchery. Special daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length, or a combination of one such

salmon and one such steelhead. Night closure and non-buoyant lure restriction in effect.

(6) White Salmon River - Effective 12:01 a.m. April 1, 2001 through June 30, 2001, it is lawful to fish for salmonids in those waters of the White Salmon River from the mouth upstream to the powerhouse and April 1, 2001 through June 15, 2001 from the powerhouse upstream 400 feet below Northwestern Dam. Special daily limit of two chinook salmon greater than 12 inches in length or two hatchery steelhead greater than 20 inches in length, or a combination of one such salmon and one such steelhead. Fishing only from the bank from the highway 14 bridge downstream to the buoy line.

NEW SECTION

WAC 220-56-10500C River mouth definitions. Notwithstanding the provisions of WAC 220-56-105, effective 12:01 a.m. April 1, 2001 through June 30, 2001, the mouth of the White Salmon River is defined as lines due south from markers on shore (on the east and west sides of the river) to buoys off shore and then east and west between the buoys.

**WSR 01-07-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-38—Filed March 14, 2001, 8:37 a.m., effective March 14, 2001, 6:00 p.m.]

Date of Adoption: March 13, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100W.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The sturgeon allocation guideline is expected to be achieved in The Dalles Pool and the Columbia River treaty tribes requested that the Zone 6 winter commercial fishery be closed in all three pools. This regulation is consistent with compact action of March 12, 2001, and the Columbia River treaty tribes proposal.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 14, 2001, 6:00 p.m.

March 13, 2001
J. P. Koenings
Director
by Larry Peck

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 14, 2001:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (01-13)

**WSR 01-07-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-42—Filed March 16, 2001, 1:05 p.m.]

Date of Adoption: March 15, 2001.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-27000J and 220-56-27000K; and amending WAC 220-56-270.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Commercial test fishing with small mesh gillnet type gear on the lower Columbia River and tributary dipnet test fisheries indicate this year's smelt return may be one of the strongest in years. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

March 15, 2001
 Evan Jacoby
 for Jeff P. Koenings
 Director

NEW SECTION

WAC 220-56-27000K Smelt—Area and seasons. Notwithstanding the provisions of WAC 220-56-270, WAC 220-56-240 and WAC 220-56-275, effective immediately through March 31, 2001, the Washington Columbia River and tributaries are closed to fishing for smelt for personal use except under the following provisions:

(1) Columbia River - Those waters of the Columbia river from the Buoy 10 line upstream to 600 feet below the fish ladder at the new Bonneville Dam powerhouse are open seven days a week, 24 hours a day.

(2) Columbia River tributaries downstream of Bonneville Dam - Open 6:00 a.m. to 10:00 p.m. Saturdays, Sundays, Mondays and Wednesdays only.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-27000J Smelt—Areas and seasons. (01-29)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. April 1, 2001:

WAC 220-56-27000K Smelt—Areas and seasons.

**WSR 01-07-047
 EMERGENCY RULES
 DEPARTMENT OF
 FISH AND WILDLIFE**

[Order 01-41—Filed March 16, 2001, 1:05 p.m., effective March 19, 2001, 6:00 p.m.]

Date of Adoption: March 15, 2001.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-04000L and 220-33-04000M; and amending WAC 220-33-040.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The smelt return to the Cowlitz River is better than the preseason expectations and landings to date and test fishery CPUE justifies an expanded fishery. The fishery is consistent with the draft "Washington and Oregon Eulachon Management Plan" and is consistent with the large run in the Cowlitz River this year. The other Washington tributaries will remain closed. There is insufficient time to promulgate permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 19, 2001, 6:00 p.m.

March 15, 2001

Evan Jacoby
 for Jeff P. Koenings
 Director

NEW SECTION

WAC 220-33-04000M Smelt—Area and seasons. Notwithstanding the provisions of WAC 220-33-040, effective March 19 through March 31, 2001, the Columbia River and Washington tributaries are closed to fishing for smelt for commercial purposes except under the following provisions:

- 1) Columbia River
 - a) Area: SMCRA 1A, 1B, 1C, 1D, 1E.
 - b) Day/Time: Mondays and Wednesdays, from 3:00 a.m. to 9:00 p.m.
 - c) Gear: Gillnets, dipnets and trawl nets.
 - d) Allowable sales: Smelt.
 - e) Sanctuaries: Standard river mouth sanctuaries.
 - f) Other: Notwithstanding the provisions of WAC 220-20-010, during open salmon and/or sturgeon seasons fishers may have stored onboard their boats, while fishing, smelt gill nets; and while smelt fishing, fishers may have stored onboard their boats, gill nets of a size that meets the commercial salmon/sturgeon mesh size, weight, and length restrictions for the open salmon/sturgeon season.
- 2) Cowlitz River
 - a) Area: Cowlitz River downstream from Peterson's Eddy.
 - b) Day/Time: Sunday-Monday, Monday-Tuesday, and Tuesday-Wednesday 6:00 p.m. to 6:00 a.m.
 - c) Gear: Dipnets.
 - d) Allowable sales: Smelt.

EMERGENCY

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 19, 2001:

WAC 220-33-04000L Smelt—Areas and seasons. (00-30)

The following section of the Washington Administrative Code is repealed effective March 31, 2001:

WAC 220-33-04000M Smelt—Areas and seasons.

**WSR 01-07-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 01-43—Filed March 21, 2001, 9:39 a.m., effective March 22, 2001, 12:01 a.m.]

Date of Adoption: March 20, 2001.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900V; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Yakima/Klickitat Fisheries Project managers (WDFW, Yakama Nation, and Bonneville Power Administration) will use the two main gravel pit ponds at Easton to acclimate and release 250,000 marked coho smolts this spring. A recreational fishing closure is needed to prevent disruption of the acclimation process. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: March 22, 2001, 12:01 a.m.

March 20, 2001

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Easton Ponds (Kittitas Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. March 22 through June 8, 2001 it is unlawful to fish in those waters of Easton Ponds 1 and 2.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 9, 2001:

WAC 232-28-61900V Exceptions to statewide rules—Easton Ponds (Kittitas Co.)

EMERGENCY



OFFICE OF THE CODE REVISER
 Quarterly Rule-Making Report
 Covering Registers 01-01 through 01-06

Type of Activity	New	Amended	Repealed
ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION			
Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	2	0	0
ACCOUNTANCY, BOARD OF			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	2	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	2	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
AGRICULTURE, DEPARTMENT OF			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	76	22	2
Number of Rules Adopted as Emergency Rules	20	0	0
Number of Rules Proposed for Permanent Adoption	107	2	11
Number of Rules Withdrawn	2	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	7	14	11
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	8	22	2
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	7	13	10
Number of Sections Adopted using Pilot Rule Making	0	0	0
BUILDING CODE COUNCIL			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	143	81	12
Number of Rules Withdrawn	169	9	88
Number of Sections Adopted at Request of a Nongovernmental Entity	21	88	13
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	2	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	21	89	13
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISC.

Type of Activity	New	Amended	Repealed
COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT, DEPARTMENT OF			
Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	17	1	0
CORRECTIONS, DEPARTMENT OF			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	19	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	2	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
COUNTY ROAD ADMINISTRATION BOARD			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	14	14	0
Number of Rules Proposed for Permanent Adoption	2	2	0
Number of Rules Withdrawn	2	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
ECOLOGY, DEPARTMENT OF			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	170	89	35
Number of Rules Proposed for Permanent Adoption	28	22	0
Number of Sections Adopted at Request of a Nongovernmental Entity	15	31	31
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	22	88	4
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	31
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	4
Number of Sections Adopted on the Agency's own Initiative	9	57	4
Number of Sections Adopted using Negotiated Rule Making	15	61	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	6	0	0
EDUCATION, STATE BOARD OF			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	14	6	6
Number of Rules Proposed for Permanent Adoption	13	10	3

MISC.

Type of Activity	New	Amended	Repealed
Number of Rules Withdrawn	9	5	4
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	4	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	1	2	1
Number of Sections Adopted using Negotiated Rule Making	1	0	1
Number of Sections Adopted using Other Alternative Rule Making	0	6	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

EMPLOYMENT SECURITY DEPARTMENT

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	0	1
Number of Rules Adopted as Emergency Rules	36	0	2
Number of Rules Proposed for Permanent Adoption	48	0	4
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	1
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	17	0	2
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

EVERETT COMMUNITY COLLEGE

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	9	9	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	9	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	9	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

FINANCIAL INSTITUTIONS, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	36	34	0
Number of Rules Proposed for Permanent Adoption	51	17	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	3	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	17	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	1
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	22	1

MISC.

Type of Activity	New	Amended	Repealed
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	4	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

FISH AND WILDLIFE, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	36	33	3
Number of Rules Adopted as Emergency Rules	147	0	45
Number of Rules Proposed for Permanent Adoption	64	40	6
Number of Rules Withdrawn	2	1	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	1	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	60	33	48
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

GAMBLING COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	38	25	9
Number of Rules Proposed for Permanent Adoption	2	1	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	23	9
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	2	25	9
Number of Sections Adopted using Negotiated Rule Making	2	9	9
Number of Sections Adopted using Other Alternative Rule Making	0	16	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

HEALTH CARE AUTHORITY

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	10	10	0
Number of Rules Adopted as Emergency Rules	1	1	0
Number of Rules Proposed for Permanent Adoption	1	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	8	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	11	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	2	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISC.

Type of Activity	New	Amended	Repealed
HEALTH, DEPARTMENT OF			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	137	60	13
Number of Rules Proposed for Permanent Adoption	21	15	0
Number of Sections Adopted at Request of a Nongovernmental Entity	4	2	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	17	35	13
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	9	32	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	16	15	6
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	31	53	13
Number of Sections Adopted using Pilot Rule Making	0	0	0

HIGHER EDUCATION COORDINATING BOARD

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	14	13	1
Number of Rules Proposed for Permanent Adoption	3	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	13	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	13	1
Number of Sections Adopted using Negotiated Rule Making	0	13	1
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

HORSE RACING COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

INDUSTRIAL INSURANCE APPEALS, BOARD OF

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	3	1	0

INSURANCE COMMISSIONER, OFFICE OF THE

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	75	4	1
Number of Rules Adopted as Emergency Rules	1	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0

MISC.

Type of Activity	New	Amended	Repealed
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	24	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	15	4	1
Number of Sections Adopted on the Agency's own Initiative	3	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

INTERAGENCY COMMITTEE, OFFICE OF THE

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	44	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	22	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	22	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	22	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

LABOR AND INDUSTRIES, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1252	3	395
Number of Rules Adopted as Emergency Rules	2	2	0
Number of Rules Proposed for Permanent Adoption	5	5	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	429	0	407
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	17	7	0
Number of Sections Adopted on the Agency's own Initiative	429	0	407
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	429	7	407
Number of Sections Adopted using Pilot Rule Making	0	0	0

LICENSING, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	27	15	12
Number of Rules Proposed for Permanent Adoption	107	62	11
Number of Sections Adopted at Request of a Nongovernmental Entity	0	5	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	10	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	13	1

MISC.

Type of Activity	New	Amended	Repealed
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

LIQUOR CONTROL BOARD

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	159	5	42
Number of Sections Adopted at Request of a Nongovernmental Entity	9	1	1
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	37	2	22
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	30	1	21
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	37	2	22
Number of Sections Adopted using Pilot Rule Making	0	0	0

MARINE EMPLOYEES' COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	5	5	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	5	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	5	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MILITARY DEPARTMENT

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	16	16	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	16	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	16	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	16	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

NATURAL RESOURCES, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	2	2	0

PARKS AND RECREATION COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	9	7	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	6	0

Type of Activity	New	Amended	Repealed
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	1	6	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	1	6	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

PENINSULA COLLEGE

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	2	2	0

PERSONNEL, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	2	0
Number of Rules Adopted as Emergency Rules	1	1	0
Number of Rules Proposed for Permanent Adoption	1	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	1	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	1	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

PUBLIC INSTRUCTION, SUPERINTENDENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	9	9	0
Number of Rules Adopted as Emergency Rules	1	1	0
Number of Rules Proposed for Permanent Adoption	16	16	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	7	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	2	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	9	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

PUBLIC WORKS BOARD

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	5	5	0

REDISTRICTING COMMISSION

Type of Activity	New	Amended	Repealed
Number of Rules Adopted as Emergency Rules	5	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0

MISC.

Type of Activity	New	Amended	Repealed
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	1	3	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

RETIREMENT SYSTEMS, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	161	21	2
Number of Rules Adopted as Emergency Rules	1	1	0
Number of Rules Proposed for Permanent Adoption	3	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	5	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	69	20	2
Number of Sections Adopted on the Agency's own Initiative	69	20	2
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

REVENUE, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	4	4	0
Number of Rules Proposed for Permanent Adoption	3	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	0	0
Number of Sections Adopted on the Agency's own Initiative	1	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	1	3	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**SALARIES FOR ELECTED OFFICIALS, WASHINGTON CITIZENS COMMISSION
ON**

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	28	0	0

SECRETARY OF STATE

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	8	4	0

SOCIAL AND HEALTH SERVICES, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	786	125	147
Number of Rules Adopted as Emergency Rules	14	10	0
Number of Rules Proposed for Permanent Adoption	55	27	10

MISC.

Type of Activity	New	Amended	Repealed
Number of Rules Withdrawn	20	2	8
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	256	96	146
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	1	10	0
Number of Sections Adopted in Order to Comply with Federal Statute	1	1	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	2	13	1
Number of Sections Adopted on the Agency's own Initiative	116	114	44
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	256	131	146
Number of Sections Adopted using Pilot Rule Making	0	0	0

TRANSPORTATION, DEPARTMENT OF

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	7	5	0
Number of Rules Proposed for Permanent Adoption	4	4	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	6	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	6	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	6	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

TREASURER, OFFICE OF THE STATE

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	16	0	0

UNIVERSITY OF WASHINGTON

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	4	4	0

UTILITIES AND TRANSPORTATION COMMISSION

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	68	0	12
Number of Rules Proposed for Permanent Adoption	336	8	98
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	6	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	0	1
Number of Sections Adopted on the Agency's own Initiative	27	0	12
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

WASHINGTON STATE PATROL

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	1	0
Number of Rules Adopted as Emergency Rules	1	1	0

MISC.

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	3	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	2	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	2	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

WENATCHEE VALLEY COLLEGE

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	75	0	75

WESTERN WASHINGTON UNIVERSITY

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	19	7	10
Number of Rules Proposed for Permanent Adoption	8	3	3
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	2	0
Number of Sections Adopted using Negotiated Rule Making	0	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	1	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

TOTALS FOR THE QUARTER:

Number of Permanent Rules Adopted	3365	632	703
Number of Rules Adopted as Emergency Rules	230	21	47
Number of Rules Proposed for Permanent Adoption	1043	267	222
Number of Rules Withdrawn	204	19	101
Number of Sections Adopted at Request of a Nongovernmental Entity	49	131	45
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	799	372	615

MISC.

Type of Activity	New	Amended	Repealed
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	10	49	33
Number of Sections Adopted in Order to Comply with Federal Statute	25	1	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	144	46	11
Number of Sections Adopted on the Agency's own Initiative	774	386	558
Number of Sections Adopted using Negotiated Rule Making	18	98	12
Number of Sections Adopted using Other Alternative Rule Making	806	368	611
Number of Sections Adopted using Pilot Rule Making	6	0	0

WSR 01-07-002

**NOTICE OF PUBLIC MEETINGS
SHORELINE COMMUNITY COLLEGE**
[Memorandum—March 5, 2001]

Special Meetings of the Board of Trustees

In accordance with provisions of the Open Public Meetings Act, RCW 42.30.080 Special meetings, the Shoreline Community College board of trustees will hold two special meetings as follows:

Special meeting on Monday, beginning at 3:00 p.m. to 5:30 p.m.

Special meeting on Tuesday, beginning at 3:00 p.m. to 5:30 p.m.

Both meetings will include an executive session for the purpose of evaluating the performance of a public employee and will be held in the Building 1000 Board Room. All members of the governing body and eight local newspapers of general circulation have been notified, including the written agenda for the special meeting.

Please contact (206) 546-4552 if you require further information.

DATE: July 12, 2001
TIME: 9:30 a.m. - 3:30 p.m.
LOCATION: Curtis Senior High School Library
8425 40th Street West
Tacoma, WA 98466-2041

DATE: September 6, 2001
TIME: 9:30 a.m. - 3:30 p.m.
LOCATION: Tacoma Community College
6501 South 19th Street
Tacoma, WA 98466-6100

DATE: November 1, 2001
TIME: 9:30 a.m. - 3:30 p.m.
LOCATION: John A. Cherberg Building
Rooms B and C
304 15th Avenue S.W.
Olympia, WA 98504

**WSR 01-07-010
RULES OF COURT
STATE SUPREME COURT**
[March 8, 2001]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENTS TO CrR 3.2A,) NO. 25700-A-701
CrR 3.2B, CrR 3.2(a), NEW CrR 3.2.1, CrR)
3.4 (d)(1) AND CrR 4.3A)

The Superior Court Judges' Association having recommended the adoption of the proposed amendments to CrR 3.2A, CrR 3.2B, CrR 3.2(a), New CrR 3.2.1, CrR 3.4 (d)(1) and CrR 4.3A, and the Court having determined that the proposed amendments and new rule will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments and new rule as attached hereto are adopted.

(b) That pursuant to the emergency provisions of GR 9(i), the amendments and new rule will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 8th day of March 2001.

WSR 01-07-003

**NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE LIBRARY**
(Library Council of Washington)
[Memorandum—March 7, 2001]

LIBRARY COUNCIL OF WASHINGTON 2001 MEETING DATES

This is to inform you of the Library Council of Washington 2001 meeting dates and locations. If you have any questions, please call 704-5246.

DATE: May 3, 2001
TIME: 9:30 a.m. - 3:30 p.m.
LOCATION: Lynnwood Public Library
19200 44th Avenue West
Lynnwood, WA 98036

	<u>Alexander, C. J.</u>
<u>Smith, J.</u>	<u>Sanders, J.</u>
<u>Johnson, J.</u>	<u>Bridge, J.</u>
<u>Madsen, J.</u>	<u>Chambers, J.</u>
<u>Ireland, J.</u>	<u>Owens, J.</u>

Superior Court Criminal Rules (CrR)

~~RULE 3.2A~~

~~PROCEDURE FOLLOWING ARREST WITHOUT WARRANT~~

~~(a) Probable Cause Determination. A person arrested without a warrant shall have a judicial determination of probable cause no later than 48 hours following the person's arrest.~~

~~(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or a prosecuting attorney in the same manner as provided for a warrant of arrest in rule 2.2. The evidence shall be preserved.~~

Superior Court Criminal Rules (CrR)

~~RULE 3.2B~~

~~PRELIMINARY APPEARANCE~~

~~(a) Preliminary Appearance.~~

~~(1) Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court authorized conditions of release, and any person in whose case the juvenile court has entered a written order declining jurisdiction, must be taken or required to appear before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next judicial day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.~~

~~(2) If a defendant is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.~~

~~(b) Procedure at Preliminary Appearance. At the preliminary appearance the court shall orally inform the defendant:~~

~~(1) Of the nature of the charge against the defendant, and;~~

~~(2) Of the right to be assisted by a lawyer at every stage of the proceedings. The court shall provide for counsel pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2.~~

~~(c) Time Limits.~~

~~(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open~~

~~court, a defendant shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever occurs first. Computation of the 72-hour period shall not include any part of Saturdays, Sundays, or holidays.~~

~~(2) If no complaint, information or indictment has been filed at the time of the preliminary appearance, and the defendant has not otherwise consented, the court at a time certain which is within the period described in subsection (c)(1), shall either (i) require that the defendant be released from jail or exonerated from the conditions of release, or (ii) set a time at which the defendant shall reappear before the court. The time for reappearance must also be within the period described in subsection (c)(1). If no complaint, information or indictment has been filed by the time set for release or reappearance, the defendant shall be immediately released from jail or deemed exonerated from all conditions of release.~~

Superior Court Criminal Rules (CrR)

~~RULE 3.2 RELEASE OF ACCUSED~~

~~(a) Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2A.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or if there is shown a likely danger that the accused will commit a violent crime, or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice. For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030. If the court finds that release without bail should be denied or that conditions should attach to the release on personal recognizance, other than the promise to appear for trial, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony, and further may examine under oath the affiant and any witnesses the affiant may produce. Sworn testimony shall be electronically or stenographically recorded. The evidence shall be preserved and shall be subject to constitutional limitations for probable cause determinations, and may be hearsay in whole or in part. The court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, will not significantly interfere with the administration of justice and not pose a substantial danger to others or the community or, if no single condition gives that assurance, any combination of the following conditions:~~

~~(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;~~

~~(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;~~

MISC.

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release;

(5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required, assure noninterference with the trial and reduce danger to others or the community.

(b) **Relevant Factors.** In determining which conditions of release will reasonably assure the accused's appearance and noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to: the length and character of the accused's residence in the community; the accused's employment status and history and financial condition; the accused's family ties and relationships; the accused's reputation, character and mental condition; the accused's history of response to legal process; the accused's criminal record; the willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release; the nature of the charge; any other factors indicating the accused's ties to the community; the accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice; whether or not there is evidence of present threats or intimidation directed to witnesses; the accused's past record of committing offenses while on pretrial release, probation or parole; and the accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.

(c) **Conditions of Release.** Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community or the appearance of the defendant.

(d) **Delay of Release.** The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person's mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(e) **Release in Capital Cases.** Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(f) **Release After Finding or Plea of Guilty.** After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(g) **Order for Release.** A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(h) **Review of Conditions.**

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (g). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(i) **Amendment or Revocation of Order.**

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (h). Release may be revoked only if the violation is proved by clear and convincing evidence.

(j) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (i).

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (i).

(k) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(l) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(m) Accused Released on Recognizance or Bail—Absence—Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Comment

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

Superior Court Criminal Rules (CrR)

{NEW} RULE CrR 3.2.1

PROCEDURE FOLLOWING WARRANTLESS ARREST - PRELIMINARY APPEARANCE

(a) Probable Cause Determination. A person who is arrested shall have a judicial determination of probable cause no later than 48 hours following the person's arrest, unless probable cause has been determined prior to such arrest.

(b) How Determined. The court shall determine probable cause on evidence presented by a peace officer or prosecuting authority in the same manner as provided for a warrant of arrest in rule 2.2(a). The evidence shall be preserved and may consist of an electronically recorded telephonic statement.

(c) Court Days. For the purpose of section (a) Saturday, Sunday and holidays may be considered judicial days.

(d) Preliminary Appearance.

(1) Adult. Unless a defendant has appeared or will appear before a court of limited jurisdiction for a preliminary appearance pursuant to CrRLJ 3.2.1(a), any defendant whether detained in jail or subjected to court-authorized conditions of release shall be brought before the superior court as soon as practicable after the detention is commenced, the conditions of release are imposed or the order is entered, but in any event before the close of business on the next court day. A person is not subject to conditions of release if the person has been served with a summons and the only obligation is to appear in court on a future date.

(2) Juveniles. Any person in whose case the juvenile court has entered a written order declining jurisdiction, and who is detained in custody must be taken to appear before the superior court as soon as practicable after the juvenile court order is entered, but in any event before the close of business on the next court day.

(3) Unavailability. If an accused is unavailable for preliminary appearance because of physical or mental disability, the court may, for good cause shown and recited in a written order, enlarge the time prior to preliminary appearance.

(e) Procedure at Preliminary Appearance.

(1) At the preliminary appearance, the court shall provide for a lawyer pursuant to rule 3.1 and for pretrial release pursuant to rule 3.2., and the court shall orally inform the accused:

- (i) of the nature of the charge against the accused;
- (ii) of the right to be assisted by a lawyer at every stage of the proceedings; and
- (iii) of the right to remain silent, and that anything the accused says may be used against him or her.

(2) If the court finds that release should be denied or that conditions should attach to release on personal recognizance, other than the promise to appear at subsequent hearings, the court shall proceed to determine whether probable cause exists to believe that the accused committed the offense charged, unless this determination has previously been made by a court. Before making the determination, the court may consider affidavits filed or sworn testimony and further may examine under oath the affiant and any witnesses he or she may produce. Subject to constitutional limitations, the findings of probable cause may be based on evidence which is hearsay in whole or in part.

(f) Time Limits.

(1) Unless an information or indictment is filed or the affected person consents in writing or on the record in open court, an accused, shall not be detained in jail or subjected to conditions of release for more than 72 hours after the defendant's detention in jail or release on conditions, whichever

occurs first. Computation of the 72 hour period shall not include any part of Saturdays, Sundays or holidays.

(1) If no information or indictment has been filed at the time of the preliminary appearance, and the accused has not otherwise consented, the court shall either:

(i) order in writing that the accused be released from jail or exonerated from the conditions of release at a time certain which is within the period described in subsection (f)(1); or

(ii) set a time at which the accused shall reappear before the court. The time set for reappearance must also be within the period described in subsection (f)(1). If no information or indictment has been filed by the time set for release or reappearance, the accused shall be immediately released from jail or deemed exonerated from all conditions of release.

Superior Court Criminal Rules (CrR)

RULE 3.4 PRESENCE OF THE DEFENDANT

(a) When Necessary. The defendant shall be present at the arraignment, at every stage of the trial including the empanelling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.

(b) Effect of Voluntary Absence. The defendant's voluntary absence after the trial has commenced in his or her presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by its lawyer for all purposes. In prosecutions for offenses punishable by fine only, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(c) Defendant Not Present. If in any case the defendant is not present when his or her personal attendance is necessary, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.

(d) Video Conference Proceedings.

(1) Authorization. Preliminary appearances held pursuant to CrR 3.2B.1, arraignments held pursuant to this rule and CrR 4.1, bail hearings held pursuant to CrR 3.2, and trial settings held pursuant to CrR 3.3, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an inperson hearing, which may in the trial court judge's discretion be granted.

(2) Agreement. Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrR 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.

(3) Standards for Video Conference Proceedings. The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.

Superior Court Criminal Rules (CrR)

RULE 4.3A.1 CONSOLIDATION FOR TRIAL

(a) Consolidation Generally. Offenses or defendants properly joined under rule 4.3 shall be consolidated for trial unless the court orders severance pursuant to rule 4.4.

(b) Failure to Join Related Offenses.

(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.

(2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged.

(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for consolidation of these offenses was previously denied or the right of consolidation was waived as provided in this rule. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

(4) Entry of a plea of guilty to one offense does not bar the subsequent prosecution of a related offense unless the plea of guilty was entered on the basis of a plea agreement in which the prosecuting attorney agreed to seek or not to oppose dismissal of other related charges or not to prosecute other potential related charges.

(c) Authority of Court To Act on Own Motion. The court may order consolidation for trial of two or more indictments or informations if the offenses or defendants could have been joined in a single charging document under rule 4.3.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 01-07-011**INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed March 12, 2001, 3:37 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: WAC Implementation Guide.

Subject: Chapter 388-805 WAC, Certification requirements for chemical dependency service providers.

Effective Date: March 15, 2001.

Document Description: The WAC Implementation Guide (WIG), Department of Social and Health Services, Division of Alcohol and Substance Abuse (DASA) is a resource manual about chapter 388-805 WAC for use by chemical dependency services providers. The WIG provides interpretive guidelines, background information, general expectations about chapter 388-805 WAC, additional resources, and describes survey procedures generally used by certification specialists of the Department of Social and Health Services, DASA.

To receive a copy of the interpretive or policy statement, contact Washington State Alcohol/Drug Clearinghouse, 3700 Rainier Avenue South, Suite A, Seattle, WA 98144, phone 1-800-662-9111 (from within Washington state) or (206) 725-9696 (from Seattle or outside of Washington), fax (206) 722-1032, e-mail clearinghouse@adhl.org or website <http://www.adhl.org/clearinghouse>.

March 9, 2001

Dennis W. Malmer

WSR 01-07-026**NOTICE OF PUBLIC MEETINGS
SKAGIT VALLEY COLLEGE**

[Memorandum—March 14, 2001]

NOTICE OF SPECIAL MEETING**BOARD OF TRUSTEES
COMMUNITY COLLEGE DISTRICT NO. 4
SKAGIT VALLEY COLLEGE**

2405 East College Way
Mount Vernon, WA 98273
Thursday, March 15, 2001
4:30 p.m.

Mount Vernon Campus Board Room

Chairperson, Dr. Barbara Andersen, has called a special meeting of the board of trustees for Thursday, March 15, 2001, 4:30 p.m. This meeting is being held to discuss full-time faculty salary options. Action items, if any, made necessary by the foregoing discussion.

WSR 01-07-031**PROCLAMATION
OFFICE OF THE GOVERNOR
[February 28, 2001]**

WHEREAS, an Earthquake occurred February 28, 2001 threatening citizens and property of Washington State;

WHEREAS, a 7.0 Richter scale Earthquake occurred 10.9 miles northeast of Olympia in Puget Sound, causing extensive damage to homes, businesses, public utilities, public facilities, and infrastructure in King, Thurston, Pierce, Kitsap, and possibly other counties.

WHEREAS, the Washington State Military Department has activated the state Emergency Operations Center, implemented response procedures, and is coordinating resources to support local officials in alleviating the immediate social and economic impacts to people, property, and infrastructure, and is assessing the magnitude of the event;

NOW, THEREFORE, I, Gary Locke, Governor of the state of Washington, as a result of the aforementioned situation and under RCW 38.08, 38.52, and 43.06, do hereby proclaim that a State of Emergency exists in Western Washington and direct the supporting plans and procedures to the *Washington State Comprehensive Emergency Management Plan* be implemented. State agencies and departments are directed to utilize state resources and to do everything possible to assist affected political subdivisions in an effort to respond to and recover from the event. I also hereby order into active state service the Washington National Guard, or such part thereof as may be necessary in the opinion of the Adjutant General, to perform such duties as directed by competent authority. Additionally, the Washington State Military Department, Emergency Management Division is instructed to coordinate all event-related assistance to the affected areas.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the state of Washington to be affixed at Olympia, this 28 of February, A.D., Two Thousand and one.

Gary Locke

Governor of Washington

BY THE GOVERNOR:Sam Reed

Secretary of State

WSR 01-07-032**OFFICE OF THE GOVERNOR
[Filed March 15, 2001, 10:05 a.m.]****NOTICE OF APPEAL
(RCW 34.05.330(3))**

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

MISC.

On March 9, 2001 the Governor received an appeal to the denial by the Public Disclosure Commission of a request to repeal WAC 390-16-311, relating to automatically affiliated entities maintaining separate contribution limits, dated March 8, 2001, filed by Robert M. Edelman.

DATED: March 14, 2001

Everett H. Billingslea
General Counsel to the Governor

WSR 01-07-048
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
GENERAL ADMINISTRATION
(State Capitol Committee)
[Memorandum—March 15, 2001]

STATE CAPITOL COMMITTEE MEETING

This is to inform you that the State Capitol Committee meeting schedule for **Thursday, March 20, 2001**, has been cancelled, as there are no action items for the committee members to review.

If you have any questions, please call (360) 902-0970.

WSR 01-07-060
NOTICE OF PUBLIC MEETINGS
COMMITTEE ON ADVANCED
COLLEGE TUITION PAYMENT
[Memorandum—March 13, 2001]

In accordance with RCW 28B.95.020 and WAC 14-276-030, the Advanced College Tuition Program, also known as the Guaranteed Education Tuition Program will be holding a special meeting on Wednesday, April 4, 2001, at 919 Lakemeadow Way S.W., Olympia, between the hours 1:30 and 3:30 p.m. An approved schedule for the remainder of the year had previously been forwarded to you.

If anyone wishes to request disability accommodations, notice should be given to the Guaranteed Education Tuition Program at least ten days in advance of the meeting in question. Notice may be given by any of the following methods: Phone (360) 586-2770, TDD (360) 753-7809, or fax (360) 586-2858.

WSR 01-07-063
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—March 15, 2001]

Following are six regular spring meeting notices for the University of Washington. Please note the College of Education's notice dates to January, but called special meetings for the first two dates, as this notice was delinquent.

ASUW Finance and Budget Committee
Tuesdays, 3:30 (Room 204M-BOD Meeting Room)
Chair: Jorge Roberts

- 3/27/01
- 4/3/01
- 4/10/01
- 4/17/01
- 4/24/01
- 5/1/01
- 5/8/01
- 5/15/01
- 5/22/01
- 5/29/01
- 6/5/01

ASUW Personnel
Chair: Stephan Hamberg
Mondays, 3:00 p.m. in HUB 204N

- 3/26/01
- 4/2/01
- 4/9/01
- 4/16/01
- 4/23/01
- 4/30/01
- 5/7/01
- 5/14/01
- 5/21/01
- 6/4/01

COLLEGE OF EDUCATION FACULTY MEETINGS
Chair: Dr. Walter Parker

Date	Location	Time
January 19, 2001	Miller 104	1:30 p.m.
February 16, 2001	Miller 104	1:30 p.m.
April 27, 2001	Miller 104	1:30 p.m.
May 25, 2001	Miller 104	1:30 p.m.
October 26, 2001	Miller 104	1:30 p.m.
November 30, 2001	Miller 104	1:30 p.m.

GPSS Executive Committee
Chair: Gorkem Kuterdem
Tuesdays, 1-3 p.m. 304F

- 4/3/01
- 4/10/01
- 4/17/01
- 5/1/01
- 5/15/01
- 5/29/01

MISC.

GPSS Finance and Budget

Committee chair: Amy Skei
Fridays 9:30 - 10:30 a.m. HUB 300

- 3/30/01
- 4/6/01
- 4/13/01
- 4/20/01
- 4/27/01
- 5/4/01
- 5/11/01
- 5/18/01
- 5/25/01

Department of Zoology
Regular Faculty Meetings
Spring Quarter 2001

Mondays, 4:00 p.m. Room A023D, Kincaid Annex

- 1st March 26
- 2nd April 9
- 3rd April 23
- 4th May 7
- 5th May 21
- 6th June 4

WSR 01-07-065

**NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE
CENTER**

[Memorandum—March 15, 2001]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on Wednesday, March 21, 2001, at 1:30 p.m. in Room 307 of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

WSR 01-07-066

**NOTICE OF PUBLIC MEETINGS
CASCADIA COMMUNITY COLLEGE**

[Memorandum—March 19, 2001]

Associated Students of Cascadia Community College
Cascadia Student Government

These dates will be valid until the end of May 2001. We will be sure to inform you of any changes made to the schedule.

Cascadia Student Government (CSG) Meetings: Every other Tuesday (even), 3:30 p.m. in the Board Room, Main Cascadia Community College Building.

Student Response Team (SRT) Meetings: Every other Tuesday (odd), 3:30 p.m. in the Board Room, Main Cascadia Community College Building.

Budget Committee Meetings: Every other Tuesday (odd), 3:30 p.m. in the CSG Office, Library Annex Building, 204E.

CSG Executive Board Meetings: Every Thursday, 3:30 p.m. in the CSG Office, Library Annex Building, 204E.

WSR 01-07-074

**NOTICE OF PUBLIC MEETINGS
SOUTH PUGET SOUND
COMMUNITY COLLEGE**

[Memorandum—March 16, 2001]

At their March 8, 2001, regular meeting the South Puget Sound Community College board of trustees changed their regular May 10, 2001, meeting to Thursday, May 3, 2001.

If you have any questions, please contact 754-7711 ext. 5202.

WSR 01-07-090

DEPARTMENT OF ECOLOGY

[Filed March 21, 2001, 10:28 a.m.]

**NOTICE TO ALL WASTEWATER/STORMWATER PERMIT
HOLDERS**

The Department of Ecology amended chapter 173-224 WAC, Wastewater discharge permit fees on June 9, 2000. At that time, it was estimated the fee increase for State Fiscal Year 2002 would total 2.66%, the fiscal growth factor amount estimate projected by the Governor's Office of Financial Management (OFM).

Ecology calculated the fee schedule at the 2.66% projected rate, but also included language that stated fees will be increased for Fiscal Year 2002 to match the final fiscal growth factor determination. Ecology has been informed by OFM that the actual fiscal growth factor for FY 2002 is 2.79% and fees for all permit holders will be increased by that amount.

Please call Bev Poston at (360) 407-6425 or e-mail her at bpos461@ecy.wa.gov if you have any questions regarding this fee increase or would like to receive a copy of the new rate schedule.

MISC.

WSR 01-07-103
AGENDA
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed March 21, 2001, 11:32 a.m.]

The Department of Labor and Industries
Rule Making Agenda for January 2001 to July 2001

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
DIVISION: Washington Industrial Safety & Health (WISHA)						
Chapter 296-24 WAC, General safety and health standards. Chapter 296-62 WAC, General occupational health standards.	Diptanks	Cindy Ireland (360) 902-5522 Sally Elliott (360) 902-5484	4/26/00	7/18/01	TBD	To adopt new federal OSHA (Occupational Safety and Health Administration) requirements relating to diptanks and rewrite the standard in the new innovation format.
Chapter 296-24 WAC, General safety and health standards.	Machine guarding	Ken Lewis (360) 902-4568 Sally Elliott (360) 902-5484	2/21/01	11/6/01	4/02	To revise and adopt requirements relating to machine guarding, while rewriting the standard in the new innovation format.
Chapter 296-28 WAC, Clearance rules—Rail- roads in private yards and plants.	Railroads	George Huffman (360) 902-5008 Sally Elliott (360) 902-5484	8/30/00	7/18/01	9/01	To review requirements for possi- ble amendments and rewrite the standard in the new innovation format.
Chapter 296-32 WAC, Safety standards for tele- communications. Chapter 296-45 WAC, Safety standards for elec- trical workers.	Flaggers	George Huffman (360) 902-5008 Sally Elliott (360) 902-5484	7/5/00	2/7/01	3/21/01	To revise and adopt rules relating to flagger safety requirements in accordance with chapter 239, Laws of 2000 (ESHB 2647).
Chapter 296-52 WAC, Safety standards for the possession and handling of explosives.	Explosives	Linda Dausener (360) 902-5516 Sally Elliott (360) 902-5484	10/19/99	5/22/01	8/01	To review for possible updates to the blasting requirements with the assistance of an advisory commit- tee.
Chapter 296-62 WAC, General occupational health standards.	Bloodborne patho- gens	Jennie Hays (360) 902-5516 Sally Elliott (360) 902-5484	2/7/01	4/17/01	6/19/01	To adopt new federal OSHA (Occupational Safety and Health Administration) requirements relating to bloodborne pathogens.
Chapter 296-62 WAC, General occupational health standards.	Hazardous waste	George Huffman (360) 902-5008 Sally Elliott (360) 902-5484	4/26/00	7/18/01	11/7/01	To review for possible updates to Part P for requirements relating to Hazardous Waste Operations and Environmental Controls, while rewriting the standard in the new innovation format.
Chapter 296-62 WAC, General occupational health standards.	Emergency response	George Huffman (360) 902-5008 Sally Elliott (360) 902-5484	4/26/00	7/18/01	11/7/01	To review for possible updates to Part R for requirements relating to Emergency Response, while rewriting the standard in the new innovation format.
Chapter 296-155 WAC, Safety standards for con- struction work.	Ground personnel	George Huffman (360) 902-5008 Sally Elliott (360) 902-5484	1/17/00	8/22/01	11/7/01	To review for possible updates to Part C for requirements relating to ground personnel exposed to motor vehicles on construction sites.
Chapter 296-800 WAC, Safety and health core rules.	Core rules	Cindy Ireland (360) 902-5522 Sally Elliott (360) 902-5484	11/30/99	11/21/00	5/9/01	To adopt a user-friendly book of core requirements in accordance with chapter 360, Laws of 1999 (ESHB [ESSB] 5180).

MISC.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
Chapter 296-24 WAC, General safety and health standards. Chapter 296-32 WAC, Safety standards for telecommunications. Chapter 296-36 WAC, Safety standards—Compressed air work. Chapter 296-37 WAC, Safety standards for commercial diving operations.	Miscellaneous changes cont.	Linda Dausener (360) 902-5516 Sally Elliott (360) 902-5484	9/20/00	7/18/01	9/01	To adopt federal miscellaneous OSHA (Occupational Safety and Health Administration) requirements to be as effective as the federal final rules.
Chapter 296-45 WAC, Safety standards for electrical workers. Chapter 296-54 WAC, Safety standards—Logging operations. Chapter 296-56 WAC, Safety standards for longshore, stevedore and related waterfront operations. Chapter 296-62 WAC, General occupational health standards. Chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals. Chapter 296-78 WAC, Safety standards for sawmills and woodworking operations.	Miscellaneous changes cont.	Linda Dausener (360) 902-5516 Sally Elliott (360) 902-5484	9/20/00	7/18/01	9/01	To adopt federal miscellaneous OSHA (Occupational Safety and Health Administration) requirements to be as effective as the federal final rules.
Chapter 296-79 WAC, Safety standards for pulp, paper, and paperboard mills and converters. Chapter 296-99 WAC, Safety standards for grain handling facilities. Chapter 296-155 WAC, Safety standards for construction work. Chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking. Chapter 296-307 WAC, Safety standards for agriculture.	Miscellaneous changes cont.	Linda Dausener (360) 902-5516 Sally Elliott (360) 902-5484	9/20/00	7/18/01	9/01	To adopt federal miscellaneous OSHA (Occupational Safety and Health Administration) requirements to be as effective as the federal final rules.

MISC.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
DIVISION: SPECIALITY COMPLIANCE SERVICES						
296-96	Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances.	Rich Atkinson (360) 902-6128 Josh Swanson (360) 902-6411	TBD	TBD	TBD	The purpose of this rule making is to make substantive changes to the elevator rules that were adopted on December 22, 2000, with the assistance of an advisory committee.
296-04	Internal rules, state apprenticeship and training council.	Nancy Mason (360) 902-5321 Josh Swanson (360) 902-6411	4/17/98	5/2/01	6/20/01	To repeal and adopt rules relating to apprenticeship in a more clear and usable format with the assistance of an advisory committee and at the request of the Washington State Apprenticeship and Training Council. These changes will also address necessary changes identified by the United States Department of Labor.
296-403	Amusement rides or structures.	Ron Fuller (360) 902-5249 Josh Swanson (360) 902-6411	TBD	TBD	TBD	The purpose of this rule making is to make substantive changes to the carnival rules with the assistance of an advisory committee.
296-127-013	Scope of work descriptions for prevailing wage.	Rich Ervin (360) 902-5530 Josh Swanson (360) 902-6411	7/19/00	TBD	TBD	The purpose of this rule making is to make substantive changes to the scope of work description rules that were adopted July 19, 2000, with the assistance of an advisory committee. Also, clear rule writing principles will be applied to these rules.
296-150C, 296-150F, 296-150M, 296-150P, 296-150R, 296-150T, 296-150V	Factory assembled structures.	Dan Wolfenbarger (360) 902-5225 Josh Swanson (360) 902-6411	1/15/01	3/21/01	5/29/01	The purpose of this rule making is to adopt the most recent State Building Codes and other nationally recognized codes and standards; make clarifying and house-keeping changes; and incorporate necessary policy into rule as directed by the Executive Order 97-02 on Regulatory Improvement.
296-127-018	Prevailing wage coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.	Rich Ervin (360) 902-5530 Josh Swanson (360) 902-6411	7/19/00	TBD	TBD	The purpose of this rule making is to make substantive changes to WAC 296-127-018 in order to eliminate the confusion associated with this rule and the department's authority to administer and enforce the application of prevailing wages for all work where a public expense is incurred.
296-402A	Electrical evaluation/certification laboratory accreditation.	Ron Fuller (360) 902-5249 Josh Swanson (360) 902-6411	TBD	TBD	6/20/01	To review the rule in order to ensure laboratory compliance with law and industry standards.

MISC.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
296-150C, 296-150F, 296-150M, 296-150P, 296-150R, 296-150T, and 296-150V, 296-96C, 296-200A, 296-46A, 296-401B, 296-104; and 296-400A	Factory assembled structures; Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances; Contractor certificate of registration renewals—Security—Insurance; Safety standards—Installing electric wires and equipment—Administrative rules; Journeyman electricians—Certification of competency; Board of boiler rules—Substantive; and Certification of competency for journeyman plumbers.	Josh Swanson (360) 902-6411	TBD	TBD	TBD	These rules may be reviewed for possible fee adjustments.
296-125 and 296-131	Subminimum wages for minors in agriculture.	Rich Ervin (360) 902-5310 Josh Swanson 902-6411				To adopt a subminimum wage provision for minors employed in agriculture.
DIVISION: INDUSTRIAL INSURANCE (Workers' Compensation)						
296-23-220	Physical therapy rules.	Tom Davis 902-6687	12/20/00	2/21/01	4/24/01	Medical aid rules updates regarding rate setting for most professional health care services for injured workers. These updates may also impact rates for health care services provided to crime victims.
296-23-230	Occupational therapy rules.	Tom Davis 902-6687	12/20/00	2/21/01	4/24/01	Medical aid rules updates regarding rate setting for most professional health care services for injured workers. These updates may also impact rates for health care services provided to crime victims.
296-20-135	Conversion factors.	Tom Davis 902-6687	12/20/00	2/21/01	4/24/01	Medical aid rules updates regarding rate setting for most professional health care services for injured workers. These updates may also impact rates for health care services provided to crime victims.
296-20 (possibly 296-23 also)	Revise/draft rule(s) regarding attendant care services.	Jim Dick 902-5131	1/3/01	2/21/01	5/1/01	Develop regulations regarding eligibility requirements for providers of attendant care services.
296-20, 296-23, 296-23A	Revise/draft rules regarding outpatient hospital services.	Jim Dick 902-5131	1/3/01	2/21/01	5/1/01	Develop rules to allow reimbursement of selected outpatient services and supplies through a prospective payment system.

MISC.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
296-20	Medical aid rules.	Jami Lifka 902-4941	3/1/01	TBD	TBD	The department may update sections of this chapter to be consistent with current standards of care and department practices. This might include: Updating sections that clarify which services are covered and which services require prior authorization; and/or adding a section describing categories of permanent impairment for tinnitus. These changes may impact injured workers and crime victims.
	Policy review	Jami Lifka (360) 902-4941			Review completed by 6/30/01	In accordance with Executive Order 97-02, medical coverage policies will be reviewed to see if by law they should be in rule.
296-23-225 296-23-235	Specialty providers—Work hardening.	Jami Lifka (360) 902-4941	CR-101XR		3/15/01	These sections pertain to work hard hardening services purchased by insurance services. These sections are essentially duplicates of each other. For that reason, the department may repeal one of these sections to get rid of the duplication. There should be no impact on the purchasing of these services.
296-20-01002	Medical aid rules—Definitions.	Jami Lifka (360) 902-4941	TBD	TBD	TBD	In compliance with Executive Order 97-02, the department may review and rewrite, as necessary, the definitions in the medical aid rules. These changes may impact injured workers and crime victims.
296-17-31001 through 296-17-930	General reporting rules, classifications and rating system.	Ken Woehl 902-4775 Karen Chamberlain 902-4772	2/7/01	3/21/01	5/23/01	Amend general reporting rules and risk classification definitions as necessary.
296-17-850 through 296-17-930	General reporting rules, classifications and rating system.	Ken Woehl 902-4775 Karen Chamberlain 902-4772	5/23/01	9/19/01	11/20/01	Amend rules and rating tables to adjust industrial insurance rates for each risk classification based on current loss data for each classification.
296-15	Workers' compensation self insurance rules and regulations.	Barb Butler (360) 902-6906	10/10/01	TBD	TBD	The department may update sections of this chapter. This might include changes in vocational reporting requirements.
296-30-130	How are death benefits paid to a survivor(s) receiving public or private death benefits?	Valerie Estes 902-5369	CR-101XR TBD	TBD	TBD	Due to a recent supreme court decision (Sebastian) we will need to make a change in this rule to comply with the court decision on how death benefits accumulate towards the cap when other insurance is also being received.
296-14	Pension tables—Workers' compensation.	Valerie Grimm (360) 902-5005	2/20/01	3/22/01	6/1/01	The changes would potentially include two areas: Updates to mortality assumptions used to determine pension reserves and actuarial benefits reduction, and the discount factor which reflects anticipated investment earnings of the pension reserves.

MISC.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE			DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
296-14	Wage at the time of injury.	Valerie Grimm (360) 902-5005	TBD	TBD	6/20/01	Methods and factors included in the calculation of the worker's wages at the time of injury.
296-14	Workers' compensation insurance.	Valerie Grimm (360) 902-5005	TBD	TBD	6/20/01	Continued rewrite of existing WACs to comply with regulatory reform.

Selwyn S. C. Walters
Rules Coordinator

MISC.

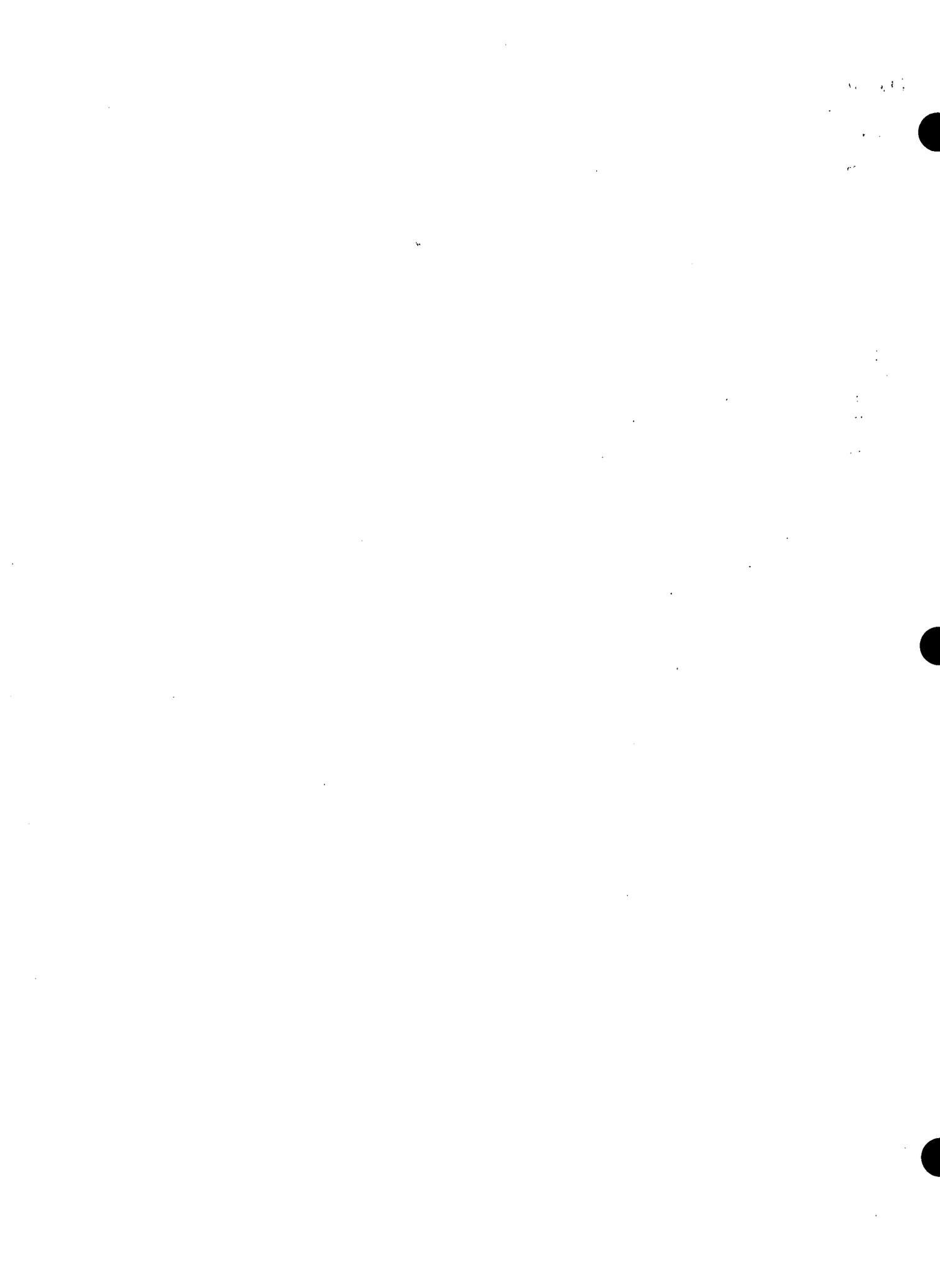


Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

Suffixes:

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- XA = Expedited adoption
- XR = Expedited repeal
- No suffix means permanent action

WAC # Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

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16-202-1019	NEW-P	01-06-052	16-238-082	NEW-E	01-05-003	51- 11-0503	AMD	01-03-010
16-202-1020	NEW-P	01-06-052	16-238-090	NEW-E	01-05-003	51- 11-0504	AMD	01-03-010
16-202-1021	NEW-P	01-06-052	16-238-100	NEW-E	01-05-003	51- 11-0505	AMD	01-03-010
16-202-1022	NEW-P	01-06-052	16-238-110	NEW-E	01-05-003	51- 11-0530	AMD	01-03-010

Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
51- 11-0601	AMD	01-03-010	51- 13-301	AMD	01-02-099	51- 44-2500	AMD	01-02-096
51- 11-0602	AMD-W	01-07-073	51- 13-302	AMD	01-02-099	51- 44-5200	AMD	01-02-096
51- 11-0604	AMD	01-03-010	51- 13-303	AMD	01-02-099	51- 44-6100	AMD-W	01-05-031
51- 11-0605	AMD	01-03-010	51- 13-304	AMD	01-02-099	51- 44-6300	AMD-W	01-05-031
51- 11-0625	AMD	01-03-010	51- 13-503	AMD	01-02-099	51- 44-7900	AMD	01-02-096
51- 11-0626	AMD	01-03-010	51- 40-0200	AMD	01-02-095	51- 44-8000	AMD-W	01-05-031
51- 11-0627	AMD	01-03-010	51- 40-0310	AMD	01-02-095	51- 44-8102	NEW-S	01-05-031
51- 11-0628	AMD	01-03-010	51- 40-0313	AMD	01-02-095	51- 45-10100	NEW-W	01-05-031
51- 11-0630	AMD	01-03-010	51- 40-0403	AMD-W	01-05-028	51- 46-001	REP-W	01-05-029
51- 11-0701	AMD	01-03-010	51- 40-0804	AMD-W	01-05-028	51- 46-002	REP-W	01-05-029
51- 11-1001	AMD	01-03-010	51- 40-0902	AMD	01-02-095	51- 46-003	REP-W	01-05-029
51- 11-1002	AMD	01-03-010	51- 40-1003	AMD	01-02-095	51- 46-007	REP-W	01-05-029
51- 11-1003	AMD	01-03-010	51- 40-1004	AMD	01-02-095	51- 46-008	REP-W	01-05-029
51- 11-1004	AMD	01-03-010	51- 40-1103	AMD-W	01-05-028	51- 46-0100	REP-W	01-05-029
51- 11-1005	AMD	01-03-010	51- 40-1104	AMD	01-02-095	51- 46-0101	REP-W	01-05-029
51- 11-1006	AMD	01-03-010	51- 40-1105	AMD	01-02-095	51- 46-0102	REP-W	01-05-029
51- 11-1007	AMD	01-03-010	51- 40-1106	AMD	01-02-095	51- 46-0103	REP-W	01-05-029
51- 11-1008	AMD	01-03-010	51- 40-1202	NEW	01-02-095	51- 46-0200	AMD	01-02-097
51- 11-1009	AMD	01-03-010	51- 40-1203	AMD	01-02-095	51- 46-0205	REP-W	01-05-029
51- 11-1132	AMD	01-03-010	51- 40-1505	NEW-W	01-05-028	51- 46-0215	REP-W	01-05-029
51- 11-1201	REP	01-03-010	51- 40-1600	NEW-W	01-05-028	51- 46-0218	REP-W	01-05-029
51- 11-1210	REP	01-03-010	51- 40-1616	AMD-W	01-05-028	51- 46-0300	REP-W	01-05-029
51- 11-1312	AMD	01-03-010	51- 40-1700	NEW-W	01-05-028	51- 46-0301	REP-W	01-05-029
51- 11-1313	AMD	01-03-010	51- 40-1800	NEW-W	01-05-028	51- 46-0310	REP-W	01-05-029
51- 11-1322	AMD	01-03-010	51- 40-1900	NEW-W	01-05-028	51- 46-0311	REP-W	01-05-029
51- 11-1323	AMD	01-03-010	51- 40-2000	NEW-W	01-05-028	51- 46-0313	REP-W	01-05-029
51- 11-1331	AMD	01-03-010	51- 40-2100	NEW-W	01-05-028	51- 46-0314	REP-W	01-05-029
51- 11-1334	AMD	01-03-010	51- 40-2106	NEW-W	01-05-028	51- 46-0316	REP-W	01-05-029
51- 11-1401	AMD-W	01-07-073	51- 40-2200	NEW-W	01-05-028	51- 46-0392	REP-W	01-05-029
51- 11-1410	AMD	01-03-010	51- 40-2300	NEW-W	01-05-028	51- 46-0400	REP-W	01-05-029
51- 11-1411	AMD	01-03-010	51- 40-2900	AMD	01-02-095	51- 46-0402	REP-W	01-05-029
51- 11-1412	AMD	01-03-010	51- 40-2929	AMD-W	01-05-028	51- 46-0412	REP-W	01-05-029
51- 11-1414	AMD	01-03-010	51- 40-3102	AMD	01-02-095	51- 46-0413	REP-W	01-05-029
51- 11-1415	AMD	01-03-010	51- 40-31200	AMD	01-02-095	51- 46-0500	REP-W	01-05-029
51- 11-1416	NEW	01-03-010	51- 42-0405	NEW	01-02-098	51- 46-0501	REP-W	01-05-029
51- 11-1423	AMD	01-03-010	51- 42-1101	AMD-W	01-05-030	51- 46-0502	REP-W	01-05-029
51- 11-1433	AMD	01-03-010	51- 42-1103	AMD	01-02-098	51- 46-0505	REP-W	01-05-029
51- 11-1435	AMD	01-03-010	51- 42-1105	AMD	01-02-098	51- 46-0507	REP-W	01-05-029
51- 11-1438	AMD	01-03-010	51- 42-1109	NEW	01-02-098	51- 46-0509	REP-W	01-05-029
51- 11-1439	NEW	01-03-010	51- 42-1110	NEW	01-02-098	51- 46-0512	REP-W	01-05-029
51- 11-1443	NEW	01-03-010	51- 42-1111	NEW	01-02-098	51- 46-0513	REP-W	01-05-029
51- 11-1454	AMD	01-03-010	51- 42-1112	NEW	01-02-098	51- 46-0514	REP-W	01-05-029
51- 11-1512	AMD	01-03-010	51- 42-1113	NEW	01-02-098	51- 46-0515	REP-W	01-05-029
51- 11-1513	AMD	01-03-010	51- 42-1114	NEW	01-02-098	51- 46-0516	REP-W	01-05-029
51- 11-1521	AMD	01-03-010	51- 42-1115	NEW	01-02-098	51- 46-0517	REP-W	01-05-029
51- 11-1530	AMD	01-03-010	51- 42-1116	NEW	01-02-098	51- 46-0518	REP-W	01-05-029
51- 11-1531	AMD	01-03-010	51- 42-1117	NEW	01-02-098	51- 46-0519	REP-W	01-05-029
51- 11-1532	AMD	01-03-010	51- 42-1118	NEW	01-02-098	51- 46-0520	REP-W	01-05-029
51- 11-1701	REP	01-03-010	51- 42-1119	NEW	01-02-098	51- 46-0521	REP-W	01-05-029
51- 11-2000	REP	01-03-010	51- 42-1120	NEW	01-02-098	51- 46-0522	REP-W	01-05-029
51- 11-2001	REP	01-03-010	51- 42-1121	NEW	01-02-098	51- 46-0523	REP-W	01-05-029
51- 11-2002	REP	01-03-010	51- 42-1122	NEW	01-02-098	51- 46-0524	REP-W	01-05-029
51- 11-2003	REP	01-03-010	51- 42-1123	NEW	01-02-098	51- 46-0525	REP-W	01-05-029
51- 11-2004	REP	01-03-010	51- 42-1124	NEW	01-02-098	51- 46-0600	REP-W	01-05-029
51- 11-2005	REP	01-03-010	51- 42-1126	NEW	01-02-098	51- 46-0603	AMD	01-02-097
51- 11-2007	REP	01-03-010	51- 42-1301	NEW	01-02-098	51- 46-0604	REP-W	01-05-029
51- 11-2008	REP	01-03-010	51- 44-0103	AMD	01-02-096	51- 46-0608	REP-W	01-05-029
51- 11-2009	REP	01-03-010	51- 44-0105	NEW	01-02-096	51- 46-0609	REP-W	01-05-029
51- 11-99902	AMD	01-03-010	51- 44-0200	AMD	01-02-096	51- 46-0610	REP-W	01-05-029
51- 11-99903	AMD	01-03-010	51- 44-1007	AMD	01-02-096	51- 46-0700	REP-W	01-05-029
51- 11-99904	AMD	01-03-010	51- 44-1102	NEW	01-02-096	51- 46-0701	REP-W	01-05-029
51- 13-101	AMD	01-02-099	51- 44-1109	AMD	01-02-096	51- 46-0704	REP-W	01-05-029

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
51-46-0710	REP-W	01-05-029	132A-120-021	AMD-P	01-03-116	132W-108-140	REP	01-07-059
51-46-0713	REP-W	01-05-029	132K-122-020	PREP	01-03-125	132W-108-230	REP-P	01-04-004
51-46-0793	REP-W	01-05-029	132K-122-020	AMD-P	01-07-062	132W-108-230	REP	01-07-059
51-46-0800	REP-W	01-05-029	132K-122-100	PREP	01-03-126	132W-108-240	REP-P	01-04-004
51-46-0810	REP-W	01-05-029	132K-122-100	AMD-P	01-07-061	132W-108-240	REP	01-07-059
51-46-0814	REP-W	01-05-029	132W-104	PREP	01-03-103	132W-108-250	REP-P	01-04-004
51-46-0815	REP-W	01-05-029	132W-104-010	REP-P	01-04-004	132W-108-250	REP	01-07-059
51-46-0900	REP-W	01-05-029	132W-104-010	REP	01-07-059	132W-108-260	REP-P	01-04-004
51-46-0903	REP-W	01-05-029	132W-104-020	REP-P	01-04-004	132W-108-260	REP	01-07-059
51-46-1000	REP-W	01-05-029	132W-104-020	REP	01-07-059	132W-108-270	REP-P	01-04-004
51-46-1003	REP-W	01-05-029	132W-104-030	REP-P	01-04-004	132W-108-270	REP	01-07-059
51-46-1012	REP-W	01-05-029	132W-104-030	REP	01-07-059	132W-108-280	REP-P	01-04-004
51-46-1300	REP-W	01-05-029	132W-104-040	REP-P	01-04-004	132W-108-280	REP	01-07-059
51-46-1301	REP-W	01-05-029	132W-104-040	REP	01-07-059	132W-108-290	REP-P	01-04-004
51-46-1302	REP-W	01-05-029	132W-104-050	REP-P	01-04-004	132W-108-290	REP	01-07-059
51-46-1303	REP-W	01-05-029	132W-104-050	REP	01-07-059	132W-108-300	REP-P	01-04-004
51-46-1304	REP-W	01-05-029	132W-104-060	REP-P	01-04-004	132W-108-300	REP	01-07-059
51-46-1305	REP-W	01-05-029	132W-104-060	REP	01-07-059	132W-108-310	REP-P	01-04-004
51-46-1400	REP-W	01-05-029	132W-104-070	REP-P	01-04-004	132W-108-310	REP	01-07-059
51-46-1401	REP-W	01-05-029	132W-104-070	REP	01-07-059	132W-108-320	REP-P	01-04-004
51-46-1491	REP-W	01-05-029	132W-104-080	REP-P	01-04-004	132W-108-320	REP	01-07-059
51-46-97120	REP-W	01-05-029	132W-104-080	REP	01-07-059	132W-108-330	REP-P	01-04-004
51-46-97121	REP-W	01-05-029	132W-104-090	REP-P	01-04-004	132W-108-330	REP	01-07-059
51-46-97122	REP-W	01-05-029	132W-104-090	REP	01-07-059	132W-108-340	REP-P	01-04-004
51-46-97123	REP-W	01-05-029	132W-104-100	REP-P	01-04-004	132W-108-340	REP	01-07-059
51-46-97124	REP-W	01-05-029	132W-104-100	REP	01-07-059	132W-108-350	REP-P	01-04-004
51-46-97125	REP-W	01-05-029	132W-104-110	REP-P	01-04-004	132W-108-350	REP	01-07-059
51-46-97126	REP-W	01-05-029	132W-104-110	REP	01-07-059	132W-108-360	REP-P	01-04-004
51-46-97127	REP-W	01-05-029	132W-104-111	REP-P	01-04-004	132W-108-360	REP	01-07-059
51-46-97128	REP-W	01-05-029	132W-104-111	REP	01-07-059	132W-108-400	REP-P	01-04-004
51-46-97129	REP-W	01-05-029	132W-104-120	REP-P	01-04-004	132W-108-400	REP	01-07-059
51-47-001	REP-W	01-05-029	132W-104-120	REP	01-07-059	132W-108-410	REP-P	01-04-004
51-47-002	REP-W	01-05-029	132W-104-130	REP-P	01-04-004	132W-108-410	REP	01-07-059
51-47-003	REP-W	01-05-029	132W-104-130	REP	01-07-059	132W-108-420	REP-P	01-04-004
51-47-007	REP-W	01-05-029	132W-105-010	NEW-P	01-07-058	132W-108-420	REP	01-07-059
51-47-008	REP-W	01-05-029	132W-105-020	NEW-P	01-07-058	132W-108-430	REP-P	01-04-004
51-56-001	NEW-W	01-05-029	132W-105-030	NEW-P	01-07-058	132W-108-430	REP	01-07-059
51-56-002	NEW-W	01-05-029	132W-105-040	NEW-P	01-07-058	132W-108-440	REP-P	01-04-004
51-56-003	NEW-W	01-05-029	132W-105-050	NEW-P	01-07-058	132W-108-440	REP	01-07-059
51-56-007	NEW-W	01-05-029	132W-105-060	NEW-P	01-07-058	132W-108-450	REP-P	01-04-004
51-56-008	NEW-W	01-05-029	132W-105-070	NEW-P	01-07-058	132W-108-450	REP	01-07-059
51-56-0100	NEW-W	01-05-029	132W-105-080	NEW-P	01-07-058	132W-108-460	REP-P	01-04-004
51-56-0200	NEW-W	01-05-029	132W-108	PREP	01-03-103	132W-108-460	REP	01-07-059
51-56-0300	NEW-W	01-05-029	132W-108-001	REP-P	01-04-004	132W-108-470	REP-P	01-04-004
51-56-0400	NEW-W	01-05-029	132W-108-001	REP	01-07-059	132W-108-470	REP	01-07-059
51-56-0500	NEW-W	01-05-029	132W-108-005	REP-P	01-04-004	132W-108-480	REP-P	01-04-004
51-56-0600	NEW-W	01-05-029	132W-108-005	REP	01-07-059	132W-108-480	REP	01-07-059
51-56-0700	NEW-W	01-05-029	132W-108-010	REP-P	01-04-004	132W-109-010	NEW-P	01-07-058
51-56-0800	NEW-W	01-05-029	132W-108-010	REP	01-07-059	132W-109-020	NEW-P	01-07-058
51-56-0900	NEW-W	01-05-029	132W-108-080	REP-P	01-04-004	132W-109-030	NEW-P	01-07-058
51-56-1300	NEW-W	01-05-029	132W-108-080	REP	01-07-059	132W-109-040	NEW-P	01-07-058
51-56-1400	NEW-W	01-05-029	132W-108-090	REP-P	01-04-004	132W-109-050	NEW-P	01-07-058
51-56-1500	NEW-W	01-05-029	132W-108-090	REP	01-07-059	132W-109-060	NEW-P	01-07-058
51-56-201300	NEW-W	01-05-029	132W-108-100	REP-P	01-04-004	132W-109-070	NEW-P	01-07-058
51-57-001	NEW-W	01-05-029	132W-108-100	REP	01-07-059	132W-109-085	NEW-P	01-07-058
51-57-002	NEW-W	01-05-029	132W-108-110	REP-P	01-04-004	132W-112	PREP	01-03-103
51-57-003	NEW-W	01-05-029	132W-108-110	REP	01-07-059	132W-112-001	NEW-P	01-07-058
51-57-007	NEW-W	01-05-029	132W-108-120	REP-P	01-04-004	132W-112-010	NEW-P	01-07-058
51-57-008	NEW-W	01-05-029	132W-108-120	REP	01-07-059	132W-112-020	NEW-P	01-07-058
51-57-790000	NEW-W	01-05-029	132W-108-130	REP-P	01-04-004	132W-112-030	NEW-P	01-07-058
51-57-895000	NEW-W	01-05-029	132W-108-130	REP	01-07-059	132W-112-040	NEW-P	01-07-058
132A-120-011	AMD-P	01-03-116	132W-108-140	REP-P	01-04-004	132W-112-050	NEW-P	01-07-058

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
132W-112-060	NEW-P	01-07-058	132W-117-200	NEW-P	01-07-058	132W-276-090	REP	01-07-059
132W-112-070	NEW-P	01-07-058	132W-117-210	NEW-P	01-07-058	132W-276-100	REP-P	01-04-004
132W-112-080	NEW-P	01-07-058	132W-117-220	NEW-P	01-07-058	132W-276-100	REP	01-07-059
132W-112-090	NEW-P	01-07-058	132W-117-230	NEW-P	01-07-058	132W-276-110	REP-P	01-04-004
132W-112-100	NEW-P	01-07-058	132W-117-240	NEW-P	01-07-058	132W-276-110	REP	01-07-059
132W-112-110	NEW-P	01-07-058	132W-117-250	NEW-P	01-07-058	132W-277-010	NEW-P	01-07-058
132W-112-120	NEW-P	01-07-058	132W-117-260	NEW-P	01-07-058	132W-277-020	NEW-P	01-07-058
132W-112-130	NEW-P	01-07-058	132W-117-270	NEW-P	01-07-058	132W-277-030	NEW-P	01-07-058
132W-112-140	NEW-P	01-07-058	132W-117-280	NEW-P	01-07-058	132W-277-040	NEW-P	01-07-058
132W-115	PREP	01-03-103	132W-120-010	REP-P	01-04-004	132W-277-050	NEW-P	01-07-058
132W-115-010	NEW-P	01-07-058	132W-120-010	REP	01-07-059	132W-277-060	NEW-P	01-07-058
132W-115-020	NEW-P	01-07-058	132W-120-030	REP-P	01-04-004	132W-277-070	NEW-P	01-07-058
132W-115-030	NEW-P	01-07-058	132W-120-030	REP	01-07-059	132W-277-080	NEW-P	01-07-058
132W-115-040	NEW-P	01-07-058	132W-120-040	REP-P	01-04-004	132W-277-090	NEW-P	01-07-058
132W-115-050	NEW-P	01-07-058	132W-120-040	REP	01-07-059	132W-277-100	NEW-P	01-07-058
132W-115-060	NEW-P	01-07-058	132W-120-050	REP-P	01-04-004	132W-277-110	NEW-P	01-07-058
132W-115-070	NEW-P	01-07-058	132W-120-050	REP	01-07-059	132W-277-120	NEW-P	01-07-058
132W-115-080	NEW-P	01-07-058	132W-120-060	REP-P	01-04-004	132W-277-130	NEW-P	01-07-058
132W-115-090	NEW-P	01-07-058	132W-120-060	REP	01-07-059	132W-277-140	NEW-P	01-07-058
132W-115-100	NEW-P	01-07-058	132W-120-070	REP-P	01-04-004	132W-300	PREP	01-06-056
132W-115-110	NEW-P	01-07-058	132W-120-070	REP	01-07-059	132W-325	PREP	01-03-103
132W-115-120	NEW-P	01-07-058	132W-120-100	REP-P	01-04-004	132W-325-010	NEW-P	01-07-058
132W-115-130	NEW-P	01-07-058	132W-120-100	REP	01-07-059	136-130-030	AMD	01-05-009
132W-115-140	NEW-P	01-07-058	132W-120-100	REP	01-07-059	136-130-040	AMD-P	01-06-017
132W-115-150	NEW-P	01-07-058	132W-120-130	REP-P	01-04-004	136-130-050	AMD	01-05-009
132W-115-160	NEW-P	01-07-058	132W-120-130	REP	01-07-059	136-130-060	AMD	01-05-009
132W-115-170	NEW-P	01-07-058	132W-120-300	REP-P	01-04-004	136-130-070	AMD	01-05-009
132W-115-180	NEW-P	01-07-058	132W-120-300	REP	01-07-059	136-161-020	AMD	01-05-009
132W-115-190	NEW-P	01-07-058	132W-120-310	REP-P	01-04-004	136-161-030	AMD	01-05-009
132W-115-200	NEW-P	01-07-058	132W-120-310	REP	01-07-059	136-161-040	AMD	01-05-009
132W-115-210	NEW-P	01-07-058	132W-120-320	REP-P	01-04-004	136-161-050	AMD	01-05-009
132W-115-210	NEW-P	01-07-058	132W-120-320	REP	01-07-059	136-161-070	AMD	01-05-009
132W-115-220	NEW-P	01-07-058	132W-120-330	REP-P	01-04-004	136-163-050	AMD	01-05-009
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132W-116-010	REP-P	01-04-004	132W-120-400	REP-P	01-04-004	136-170-030	AMD	01-05-008
132W-116-010	REP	01-07-059	132W-120-400	REP	01-07-059	136-210-030	AMD	01-05-009
132W-116-020	REP-P	01-04-004	132W-125-010	NEW-P	01-07-058	136-210-040	AMD	01-05-009
132W-116-020	REP	01-07-059	132W-125-020	NEW-P	01-07-058	136-210-050	AMD	01-05-009
132W-116-040	REP-P	01-04-004	132W-125-030	NEW-P	01-07-058	137- 04-010	AMD	01-03-079
132W-116-040	REP	01-07-059	132W-129	PREP	01-06-011	137- 04-020	AMD	01-03-079
132W-116-050	REP-P	01-04-004	132W-130	PREP	01-06-010	137- 52-010	AMD	01-04-001
132W-116-050	REP	01-07-059	132W-134	PREP	01-06-010	137-104-010	NEW	01-04-044
132W-116-065	REP-P	01-04-004	132W-135-010	REP-P	01-04-004	137-104-020	NEW	01-04-044
132W-116-065	REP	01-07-059	132W-135-010	REP	01-07-059	137-104-030	NEW	01-04-044
132W-117-010	NEW-P	01-07-058	132W-140	PREP	01-06-010	137-104-040	NEW	01-04-044
132W-117-020	NEW-P	01-07-058	132W-140	PREP	01-06-011	137-104-050	NEW	01-04-044
132W-117-030	NEW-P	01-07-058	132W-149	PREP	01-06-011	137-104-060	NEW	01-04-044
132W-117-040	NEW-P	01-07-058	132W-164	PREP	01-06-011	137-104-070	NEW	01-04-044
132W-117-050	NEW-P	01-07-058	132W-168	PREP	01-06-010	137-104-080	NEW	01-04-044
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132W-117-070	NEW-P	01-07-058	132W-276-001	REP-P	01-04-004	173- 09-020	REP	01-05-035
132W-117-080	NEW-P	01-07-058	132W-276-001	REP	01-07-059	173- 09-030	REP	01-05-035
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132W-117-130	NEW-P	01-07-058	132W-276-060	REP-P	01-04-004	173-321-050	AMD	01-05-024
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132W-117-150	NEW-P	01-07-058	132W-276-070	REP-P	01-04-004	173-321-070	AMD	01-05-024
132W-117-160	NEW-P	01-07-058	132W-276-070	REP	01-07-059	173-321-080	AMD	01-05-024
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173-322-050	AMD	01-05-024	173-340-820	AMD	01-05-024	180- 78A-545	REP	01-04-021
173-322-060	AMD	01-05-024	173-340-830	AMD	01-05-024	180- 78A-550	REP	01-04-021
173-322-070	AMD	01-05-024	173-340-840	AMD	01-05-024	180- 78A-555	REP	01-04-021
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173-340-120	AMD	01-05-024	173-400-050	AMD-P	01-04-072	180- 79A-130	AMD-P	01-05-093
173-340-130	AMD	01-05-024	173-400-060	AMD-P	01-04-072	180- 79A-145	AMD-P	01-04-019
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173-340-320	AMD	01-05-024	173-400-110	AMD-P	01-04-072	180- 79A-265	PREP	01-05-147
173-340-330	AMD	01-05-024	173-400-112	AMD-P	01-04-072	180- 82-130	AMD-P	01-05-091
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173-340-355	NEW	01-05-024	173-400-115	AMD-P	01-04-072	180- 82-204	PREP	01-05-128
173-340-357	NEW	01-05-024	173-400-116	AMD-P	01-04-072	180- 82-210	PREP	01-05-129
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173-340-390	NEW	01-05-024	173-400-136	AMD-P	01-04-072	182- 20-100	AMD	01-04-080
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173-340-450	AMD	01-05-024	173-503-010	NEW	01-07-027	183- 04-020	NEW-P	01-04-033
173-340-510	AMD	01-05-024	173-503-020	NEW	01-07-027	183- 04-030	NEW-P	01-04-033
173-340-515	NEW	01-05-024	173-503-030	NEW	01-07-027	183- 04-040	NEW-P	01-04-033
173-340-520	AMD	01-05-024	173-503-040	NEW	01-07-027	183- 04-050	NEW-P	01-04-033
173-340-530	AMD	01-05-024	173-503-050	NEW	01-07-027	183- 04-060	NEW-P	01-04-033
173-340-545	NEW	01-05-024	173-503-060	NEW	01-07-027	183- 04-070	NEW-P	01-04-033
173-340-550	AMD	01-05-024	173-503-070	NEW	01-07-027	183- 04-080	NEW-P	01-04-033
173-340-600	AMD	01-05-024	173-503-080	NEW	01-07-027	183- 04-090	NEW-P	01-04-033
173-340-610	AMD	01-05-024	173-503-090	NEW	01-07-027	183- 04-100	NEW-P	01-04-033
173-340-700	AMD	01-05-024	173-503-100	NEW	01-07-027	183- 04-110	NEW-P	01-04-033
173-340-702	AMD	01-05-024	180- 27-070	AMD-P	01-05-089	183- 06-010	NEW-P	01-04-033
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173-340-704	AMD	01-05-024	180- 33-042	PREP	01-05-130	183- 06-030	NEW-P	01-04-033
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173-340-706	AMD	01-05-024	180- 51-061	PREP	01-05-125	192- 16-011	REP-P	01-05-118
173-340-708	AMD	01-05-024	180- 51-063	PREP	01-05-092	192- 16-017	REP-E	01-05-071
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173-340-740	AMD	01-05-024	180- 57-010	REP-W	01-04-024	192-150-050	NEW-E	01-05-071
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173-340-747	NEW	01-05-024	180- 57-030	REP-W	01-04-024	192-150-060	NEW-P	01-05-117
173-340-7490	NEW	01-05-024	180- 57-040	REP-W	01-04-024	192-150-065	NEW-E	01-05-071
173-340-7491	NEW	01-05-024	180- 57-050	AMD-W	01-04-024	192-150-065	NEW-P	01-05-118
173-340-7492	NEW	01-05-024	180- 57-055	AMD-W	01-04-024	192-150-085	NEW-E	01-05-071
173-340-7493	NEW	01-05-024	180- 57-070	AMD-P	01-05-090	192-150-085	NEW-P	01-05-118
173-340-7494	NEW	01-05-024	180- 57-080	REP-W	01-04-024	192-150-100	NEW-P	01-04-082
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192-270-010	NEW-E	01-05-071	208-460-150	NEW-P	01-05-072	210-03-030	NEW-P	01-06-060
192-270-010	NEW-P	01-05-118	208-460-160	NEW-P	01-05-072	210-03-040	NEW-P	01-06-060
192-270-015	NEW-E	01-05-071	208-460-170	NEW-P	01-05-072	210-03-050	NEW-P	01-06-060
192-270-015	NEW-P	01-05-118	208-512	PREP-W	01-03-106	210-03-060	NEW-P	01-06-060
192-270-020	NEW-E	01-05-071	208-512-045	AMD-P	01-03-107	210-03-070	NEW-P	01-06-060
192-270-020	NEW-P	01-05-118	208-512-045	AMD	01-06-024	210-03-080	NEW-P	01-06-060
192-270-025	NEW-E	01-05-071	208-512-110	AMD-P	01-03-107	220-16-260	AMD	01-03-016
192-270-025	NEW-P	01-05-118	208-512-110	AMD	01-06-024	220-16-270	AMD	01-03-016
192-270-030	NEW-E	01-05-071	208-512-115	AMD-P	01-03-107	220-20-016	AMD-P	01-02-085
192-270-030	NEW-P	01-05-118	208-512-115	AMD	01-06-024	220-20-016	AMD	01-07-015
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192-270-035	NEW-P	01-05-118	208-512-116	AMD	01-06-024	220-32-05100	REP-E	01-04-042
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192-270-040	NEW-P	01-05-118	208-512-117	AMD	01-06-024	220-33-01000Q	NEW-E	01-05-069
192-270-045	NEW-E	01-05-071	208-512-240	AMD-P	01-03-107	220-33-01000Q	REP-E	01-05-069
192-270-045	NEW-P	01-05-118	208-512-240	AMD	01-06-024	220-33-01000R	REP-E	01-06-004
192-270-050	NEW-E	01-05-071	208-512-280	AMD-P	01-03-107	220-33-01000R	NEW-E	01-06-004
192-270-050	NEW-P	01-05-118	208-512-280	AMD	01-06-024	220-33-040	AMD-W	01-03-015
192-270-055	NEW-E	01-05-071	208-512-300	AMD-P	01-03-107	220-33-04000K	REP-E	01-07-005
192-270-055	NEW-P	01-05-118	208-512-300	AMD	01-06-024	220-33-04000L	NEW-E	01-07-005
192-270-060	NEW-E	01-05-071	208-514-140	AMD-P	01-03-107	220-33-04000L	REP-E	01-07-005
192-270-060	NEW-P	01-05-118	208-514-140	AMD	01-06-024	220-33-04000L	REP-E	01-07-047
192-270-065	NEW-E	01-05-071	208-528-040	AMD-P	01-03-107	220-33-04000	NEW-E	01-07-047
192-270-065	NEW-P	01-05-118	208-528-040	AMD	01-06-024	220-33-04000	REP-E	01-07-047
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192-270-070	NEW-P	01-05-118	208-532-050	AMD	01-06-024	220-33-060	AMD	01-07-016
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196-23-070	NEW-P	01-04-050	208-544-037	AMD	01-06-024	220-47-301	AMD-P	01-02-085
196-33-100	NEW-P	01-05-033	208-544-037	REP-P	01-07-081	220-47-301	AMD	01-07-015
196-33-200	NEW-P	01-05-033	208-544-039	AMD-P	01-03-107	220-48-015	AMD-P	01-05-070
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196-33-400	NEW-P	01-05-033	208-544-039	AMD-P	01-07-081	220-52-04000	NEW-E	01-04-030
196-33-500	NEW-P	01-05-033	208-544-050	REP-P	01-07-081	220-52-04000	REP-E	01-04-030
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204-38-050	AMD-P	01-05-097	208-556-080	AMD	01-06-024	220-52-04000X	REP-E	01-05-044
204-96-010	AMD-E	01-03-078	208-586-135	AMD-P	01-03-107	220-52-04000Y	NEW-E	01-05-044
204-96-010	AMD	01-05-098	208-586-135	AMD	01-06-024	220-52-04000Y	REP-E	01-05-044
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208-460-020	NEW-P	01-05-072	208-630-022	AMD-P	01-07-083	220-52-073	AMD-P	01-02-086
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208-460-040	NEW-P	01-05-072	208-630-02303	NEW-P	01-07-083	220-52-07300B	REP-E	01-03-014
208-460-050	NEW-P	01-05-072	208-630-02305	NEW-P	01-07-083	220-52-07300C	NEW-E	01-03-014
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208-460-090	NEW-P	01-05-072	208-660-062	NEW-P	01-07-083	220-52-07300E	NEW-E	01-03-062
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208-460-110	NEW-P	01-05-072	208-680B-081	NEW-P	01-07-083	220-52-07300F	NEW-E	01-03-093
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220- 52-07300H	NEW-E	01-04-049	220- 95-018	AMD-P	01-05-120	222- 22-075	NEW-C	01-07-117
220- 52-07300H	REP-E	01-05-011	220- 95-022	AMD-P	01-05-120	222- 22-076	NEW-C	01-07-117
220- 52-07300I	NEW-E	01-05-011	220- 95-027	AMD-P	01-05-120	222- 22-080	AMD-C	01-07-117
220- 55-115	AMD-P	01-05-112	220- 95-032	AMD-P	01-05-120	222- 22-090	AMD-C	01-07-117
220- 56-10500C	NEW-E	01-07-022	220- 95-034	NEW-P	01-05-120	222- 22-100	AMD-C	01-07-117
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284- 04-600	NEW	01-03-034	296-150P	PREP	01-03-070	308- 57-005	AMD-P	01-05-106
284- 04-605	NEW	01-03-034	296-150P	PREP	01-05-116	308- 57-005	AMD-W	01-07-029
284- 04-610	NEW	01-03-034	296-150R	PREP	01-03-070	308- 57-010	AMD-P	01-05-106
284- 04-615	NEW	01-03-034	296-150R	PREP	01-05-116	308- 57-010	AMD-W	01-07-029
284- 04-620	NEW	01-03-034	296-150T	PREP	01-03-070	308- 57-020	AMD-P	01-05-106
284- 04-900	NEW	01-03-034	296-150V	PREP	01-03-070	308- 57-020	AMD-W	01-07-029
284- 43-130	AMD	01-03-032	296-150V	PREP	01-05-116	308- 57-030	AMD-P	01-05-106
284- 43-130	AMD	01-03-033	296-155	PREP	01-07-102	308- 57-030	AMD-W	01-07-029
284- 43-200	AMD	01-03-033	296-155-200	PREP	01-05-115	308- 57-110	AMD-P	01-05-106
284- 43-251	NEW	01-03-033	296-155-205	AMD	01-04-015	308- 57-110	AMD-W	01-07-029
284- 43-410	NEW	01-03-033	296-155-305	AMD	01-04-015	308- 57-120	REP-P	01-05-106
284- 43-610	REP	01-03-033	296-155-605	PREP	01-05-115	308- 57-120	REP-W	01-07-029

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
308- 57-130	REP-P	01-05-106	308- 96A-072	AMD-P	01-04-017	308-390-501	NEW-P	01-07-084
308- 57-130	REP-W	01-07-029	308- 96A-073	AMD-P	01-04-017	308-390-502	NEW-P	01-07-084
308- 57-135	REP-P	01-05-106	308- 96A-074	AMD-P	01-04-017	308-390-503	NEW-P	01-07-084
308- 57-135	REP-W	01-07-029	308- 96A-099	AMD-P	01-05-106	308-390-504	NEW-P	01-07-084
308- 57-140	AMD-P	01-05-106	308- 96A-099	AMD-W	01-07-029	308-390-505	NEW-P	01-07-084
308- 57-140	AMD-W	01-07-029	308- 96A-135	REP-P	01-05-106	308-390-600	NEW-P	01-07-084
308- 57-210	A/R-P	01-05-106	308- 96A-135	REP-W	01-07-029	308-390-601	NEW-P	01-07-084
308- 57-210	AMD-W	01-07-029	308- 96A-145	AMD-P	01-05-106	308-390-602	NEW-P	01-07-084
308- 57-230	AMD-P	01-05-106	308- 96A-145	AMD-W	01-07-029	308-390-603	NEW-P	01-07-084
308- 57-230	AMD-W	01-07-029	308- 96A-175	AMD-P	01-04-017	308-400	REP-P	01-07-084
308- 57-240	AMD-P	01-05-106	308- 96A-176	AMD-P	01-04-017	308-400-010	REP-P	01-07-084
308- 57-240	AMD-W	01-07-029	308- 96A-177	NEW-P	01-04-017	308-400-020	REP-P	01-07-084
308- 57-500	REP-P	01-05-106	308- 96A-202	AMD-P	01-05-106	308-400-025	REP-P	01-07-084
308- 57-500	REP-W	01-07-029	308- 96A-202	AMD-W	01-07-029	308-400-030	REP-P	01-07-084
308- 63-010	AMD	01-03-141	308- 96A-203	AMD-P	01-05-106	308-400-053	REP-P	01-07-084
308- 63-040	AMD	01-03-141	308- 96A-203	AMD-W	01-07-029	308-400-056	REP-P	01-07-084
308- 63-070	AMD	01-03-141	308- 96A-295	AMD-P	01-04-062	308-400-058	REP-P	01-07-084
308- 63-100	AMD	01-03-141	308- 96A-400	AMD-P	01-05-106	308-400-059	REP-P	01-07-084
308- 78-010	AMD-P	01-03-083	308- 96A-400	AMD-W	01-07-029	308-400-060	REP-P	01-07-084
308- 78-020	AMD-P	01-03-083	308- 96A-410	REP-P	01-05-106	308-400-062	REP-P	01-07-084
308- 78-030	AMD-P	01-03-083	308- 96A-410	REP-W	01-07-029	308-400-080	REP-P	01-07-084
308- 78-035	NEW-P	01-03-083	308- 96A-550	AMD-P	01-04-017	308-400-092	REP-P	01-07-084
308- 78-040	AMD-P	01-03-083	308- 96A-560	AMD-P	01-04-017	308-400-095	REP-P	01-07-084
308- 78-045	AMD-P	01-03-083	308- 97-230	AMD-P	01-05-106	308-400-100	REP-P	01-07-084
308- 78-046	NEW-P	01-03-083	308- 97-230	AMD-W	01-07-029	308-400-110	REP-P	01-07-084
308- 78-060	REP-P	01-03-083	308-100-140	AMD-P	01-04-075	308-400-120	REP-P	01-07-084
308- 78-070	AMD-P	01-03-083	308-390-100	NEW-P	01-07-084	308-410	REP-P	01-07-084
308- 78-075	NEW-P	01-03-083	308-390-101	NEW-P	01-07-084	308-410-010	REP-P	01-07-084
308- 78-080	AMD-P	01-03-083	308-390-102	NEW-P	01-07-084	308-410-020	REP-P	01-07-084
308- 78-090	AMD-P	01-03-083	308-390-103	NEW-P	01-07-084	308-410-030	REP-P	01-07-084
308- 93	PREP	01-05-076	308-390-104	NEW-P	01-07-084	308-410-040	REP-P	01-07-084
308- 93-010	AMD	01-03-128	308-390-105	NEW-P	01-07-084	308-410-060	REP-P	01-07-084
308- 93-030	AMD	01-03-128	308-390-106	NEW-P	01-07-084	308-410-070	REP-P	01-07-084
308- 93-050	AMD	01-03-128	308-390-107	NEW-P	01-07-084	314- 01-005	NEW	01-06-016
308- 93-055	AMD	01-03-128	308-390-108	NEW-P	01-07-084	314- 04-005	REP	01-03-086
308- 93-056	AMD	01-03-128	308-390-109	NEW-P	01-07-084	314- 04-006	REP	01-03-086
308- 93-060	AMD-P	01-03-017	308-390-200	NEW-P	01-07-084	314- 04-007	REP	01-03-086
308- 93-069	AMD-P	01-03-017	308-390-201	NEW-P	01-07-084	314- 08-001	REP-S	01-06-062
308- 93-070	AMD-P	01-03-017	308-390-202	NEW-P	01-07-084	314- 08-010	REP-S	01-06-062
308- 93-071	AMD-P	01-03-017	308-390-203	NEW-P	01-07-084	314- 08-020	REP-S	01-06-062
308- 93-073	REP-P	01-03-017	308-390-204	NEW-P	01-07-084	314- 08-030	REP-S	01-06-062
308- 93-078	AMD-P	01-03-017	308-390-300	NEW-P	01-07-084	314- 08-040	REP-S	01-06-062
308- 93-079	AMD	01-03-128	308-390-301	NEW-P	01-07-084	314- 08-050	REP-S	01-06-062
308- 93-090	AMD	01-03-128	308-390-302	NEW-P	01-07-084	314- 08-070	REP-S	01-06-062
308- 93-145	PREP	01-05-076	308-390-303	NEW-P	01-07-084	314- 08-080	REP-S	01-06-062
308- 93-160	AMD	01-03-128	308-390-304	NEW-P	01-07-084	314- 08-090	REP-S	01-06-062
308- 93-285	AMD-P	01-03-017	308-390-305	NEW-P	01-07-084	314- 08-100	REP-S	01-06-062
308- 93-350	AMD-P	01-03-017	308-390-306	NEW-P	01-07-084	314- 08-110	REP-S	01-06-062
308- 93-360	AMD-P	01-03-017	308-390-307	NEW-P	01-07-084	314- 08-120	REP-S	01-06-062
308- 93-390	AMD-P	01-03-072	308-390-308	NEW-P	01-07-084	314- 08-130	REP-S	01-06-062
308- 93-640	AMD-P	01-03-017	308-390-309	NEW-P	01-07-084	314- 08-140	REP-S	01-06-062
308- 94-030	AMD-P	01-06-049	308-390-310	NEW-P	01-07-084	314- 08-150	REP-S	01-06-062
308- 94-050	AMD-P	01-06-049	308-390-311	NEW-P	01-07-084	314- 08-160	REP-S	01-06-062
308- 94-080	AMD-P	01-06-049	308-390-312	NEW-P	01-07-084	314- 08-170	REP-S	01-06-062
308- 94-100	AMD-P	01-06-049	308-390-313	NEW-P	01-07-084	314- 08-180	REP-S	01-06-062
308- 94-105	NEW-P	01-06-049	308-390-314	NEW-P	01-07-084	314- 08-190	REP-S	01-06-062
308- 96A-065	AMD-P	01-04-017	308-390-315	NEW-P	01-07-084	314- 08-200	REP-S	01-06-062
308- 96A-066	REP-P	01-04-017	308-390-400	NEW-P	01-07-084	314- 08-210	REP-S	01-06-062
308- 96A-067	REP-P	01-04-017	308-390-401	NEW-P	01-07-084	314- 08-220	REP-S	01-06-062
308- 96A-068	REP-P	01-04-017	308-390-402	NEW-P	01-07-084	314- 08-230	REP-S	01-06-062
308- 96A-070	AMD-P	01-04-017	308-390-403	NEW-P	01-07-084	314- 08-240	REP-S	01-06-062
308- 96A-071	AMD-P	01-04-017	308-390-500	NEW-P	01-07-084	314- 08-250	REP-S	01-06-062

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
314- 08-260	REP-S	01-06-062	314- 12-125	REP	01-06-014	314- 17-100	NEW	01-03-085
314- 08-270	REP-S	01-06-062	314- 12-130	REP	01-06-014	314- 17-105	NEW	01-03-085
314- 08-280	REP-S	01-06-062	314- 12-140	AMD	01-06-015	314- 17-110	NEW	01-03-085
314- 08-290	REP-S	01-06-062	314- 12-195	REP	01-06-014	314- 17-115	NEW	01-03-085
314- 08-300	REP-S	01-06-062	314- 13-005	NEW	01-06-015	314- 24-170	REP	01-06-015
314- 08-310	REP-S	01-06-062	314- 13-010	NEW	01-06-015	314- 29-005	NEW	01-03-086
314- 08-320	REP-S	01-06-062	314- 13-015	NEW	01-06-015	314- 29-010	NEW	01-03-086
314- 08-330	REP-S	01-06-062	314- 13-020	NEW	01-06-015	314- 42-010	PREP	01-06-061
314- 08-340	REP-S	01-06-062	314- 13-025	NEW	01-06-015	314- 42-020	NEW-S	01-06-062
314- 08-350	REP-S	01-06-062	314- 13-030	NEW	01-06-015	314- 42-025	NEW-S	01-06-062
314- 08-360	REP-S	01-06-062	314- 13-040	NEW	01-06-015	314- 42-030	NEW-S	01-06-062
314- 08-370	REP-S	01-06-062	314- 14-010	REP	01-03-085	314- 42-040	NEW-S	01-06-062
314- 08-380	REP-S	01-06-062	314- 14-020	REP	01-03-085	314- 42-045	NEW-S	01-06-062
314- 08-390	REP-S	01-06-062	314- 14-030	REP	01-03-085	314- 42-050	NEW-S	01-06-062
314- 08-400	REP-S	01-06-062	314- 14-040	REP	01-03-085	314- 42-060	NEW-S	01-06-062
314- 08-410	REP-S	01-06-062	314- 14-050	REP	01-03-085	314- 42-065	NEW-S	01-06-062
314- 08-415	REP-S	01-06-062	314- 14-060	REP	01-03-085	314- 42-070	NEW-S	01-06-062
314- 08-420	REP-S	01-06-062	314- 14-070	REP	01-03-085	314- 42-075	NEW-S	01-06-062
314- 08-430	REP-S	01-06-062	314- 14-080	REP	01-03-085	314- 42-080	NEW-S	01-06-062
314- 08-440	REP-S	01-06-062	314- 14-090	REP	01-03-085	314- 42-085	NEW-S	01-06-062
314- 08-450	REP-S	01-06-062	314- 14-100	REP	01-03-085	314- 42-090	NEW-S	01-06-062
314- 08-460	REP-S	01-06-062	314- 14-110	REP	01-03-085	314- 42-100	NEW-S	01-06-062
314- 08-470	REP-S	01-06-062	314- 14-120	REP	01-03-085	314- 42-105	NEW-S	01-06-062
314- 08-480	REP-S	01-06-062	314- 14-130	REP	01-03-085	314- 70-020	REP	01-06-014
314- 08-490	REP-S	01-06-062	314- 14-140	REP	01-03-085	314- 70-040	REP	01-06-014
314- 08-500	REP-S	01-06-062	314- 14-150	REP	01-03-085	314- 70-050	REP	01-06-014
314- 08-510	REP-S	01-06-062	314- 14-160	REP	01-03-085	315- 06-040	PREP	01-04-040
314- 08-520	REP-S	01-06-062	314- 14-165	REP	01-03-085	315- 34	PREP	01-07-013
314- 08-530	REP-S	01-06-062	314- 14-170	REP	01-03-085	315- 36	PREP	01-07-004
314- 08-540	REP-S	01-06-062	314- 16-020	AMD	01-06-014	317- 21-010	REP	01-05-036
314- 08-550	REP-S	01-06-062	314- 16-025	REP	01-06-014	317- 21-020	REP	01-05-036
314- 08-560	REP-S	01-06-062	314- 16-030	REP	01-06-014	317- 21-030	REP	01-05-036
314- 08-570	REP-S	01-06-062	314- 16-030	REP	01-06-014	317- 21-030	REP	01-05-036
314- 08-570	REP-S	01-06-062	314- 16-040	AMD	01-06-014	317- 21-040	REP	01-05-036
314- 08-580	REP-S	01-06-062	314- 16-050	REP	01-06-014	317- 21-050	REP	01-05-036
314- 08-590	REP-S	01-06-062	314- 16-060	REP	01-06-014	317- 21-060	REP	01-05-036
314- 09-005	NEW	01-03-087	314- 16-070	REP	01-06-014	317- 21-070	REP	01-05-036
314- 09-010	NEW	01-03-087	314- 16-075	REP	01-06-014	317- 21-100	REP	01-05-036
314- 09-015	NEW	01-03-087	314- 16-090	REP	01-06-014	317- 21-110	REP	01-05-036
314- 10-020	REP	01-06-014	314- 16-120	REP	01-06-014	317- 21-120	REP	01-05-036
314- 11-005	NEW	01-06-014	314- 16-122	REP	01-06-014	317- 21-140	REP	01-05-036
314- 11-015	NEW	01-06-014	314- 16-125	REP	01-06-014	317- 21-300	REP	01-05-036
314- 11-020	NEW	01-06-014	314- 16-145	REP	01-06-014	317- 21-305	REP	01-05-036
314- 11-025	NEW	01-06-014	314- 16-160	AMD	01-06-014	317- 21-310	REP	01-05-036
314- 11-030	NEW	01-06-014	314- 17-005	NEW	01-03-085	317- 21-315	REP	01-05-036
314- 11-035	NEW	01-06-014	314- 17-010	NEW	01-03-085	317- 21-320	REP	01-05-036
314- 11-040	NEW	01-06-014	314- 17-015	NEW	01-03-085	317- 21-325	REP	01-05-036
314- 11-045	NEW	01-06-014	314- 17-020	NEW	01-03-085	317- 21-330	REP	01-05-036
314- 11-050	NEW	01-06-014	314- 17-025	NEW	01-03-085	317- 21-335	REP	01-05-036
314- 11-055	NEW	01-06-014	314- 17-030	NEW	01-03-085	317- 21-340	REP	01-05-036
314- 11-060	NEW	01-06-014	314- 17-035	NEW	01-03-085	317- 21-345	REP	01-05-036
314- 11-065	NEW	01-06-014	314- 17-040	NEW	01-03-085	317- 21-400	REP	01-05-036
314- 11-070	NEW	01-06-014	314- 17-045	NEW	01-03-085	317- 21-410	REP	01-05-036
314- 11-080	NEW	01-06-014	314- 17-050	NEW	01-03-085	317- 21-500	REP	01-05-036
314- 11-085	NEW	01-06-014	314- 17-055	NEW	01-03-085	317- 21-510	REP	01-05-036
314- 11-090	NEW	01-06-014	314- 17-060	NEW	01-03-085	317- 21-520	REP	01-05-036
314- 11-095	NEW	01-06-014	314- 17-065	NEW	01-03-085	317- 21-530	REP	01-05-036
314- 11-100	NEW	01-06-014	314- 17-070	NEW	01-03-085	317- 21-550	REP	01-05-036
314- 11-105	NEW	01-06-014	314- 17-075	NEW	01-03-085	317- 21-560	REP	01-05-036
314- 11-110	NEW	01-06-014	314- 17-080	NEW	01-03-085	317- 21-900	REP	01-05-036
314- 12-020	AMD	01-03-087	314- 17-085	NEW	01-03-085	317- 21-910	REP	01-05-036
314- 12-115	REP	01-06-014	314- 17-090	NEW	01-03-085	332- 10-020	AMD-P	01-04-061
314- 12-120	REP	01-06-014	314- 17-095	NEW	01-03-085	332- 10-020	AMD	01-07-049

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
332- 10-040	AMD-P	01-04-061	388- 11-280	REP	01-03-089	388- 14-423	REP	01-03-089
332- 10-040	AMD	01-07-049	388- 11-300	REP	01-03-089	388- 14-424	REP	01-03-089
356- 06-045	AMD-C	01-02-088	388- 11-305	REP	01-03-089	388- 14-427	REP	01-03-089
356- 06-045	AMD	01-07-055	388- 11-310	REP	01-03-089	388- 14-435	REP	01-03-089
356- 10-040	AMD-C	01-02-089	388- 11-320	REP	01-03-089	388- 14-440	REP	01-03-089
356- 10-040	AMD	01-07-057	388- 11-325	REP	01-03-089	388- 14-450	REP	01-03-089
356- 14-067	AMD-C	01-02-089	388- 11-330	REP	01-03-089	388- 14-460	REP	01-03-089
356- 14-067	AMD	01-07-057	388- 11-335	REP	01-03-089	388- 14-480	REP	01-03-089
356- 14-075	AMD-C	01-02-089	388- 11-340	REP	01-03-089	388- 14-490	REP	01-03-089
356- 14-075	AMD	01-07-057	388- 13-010	REP	01-03-089	388- 14-495	REP	01-03-089
356- 14-085	AMD-C	01-02-089	388- 13-020	REP	01-03-089	388- 14-496	REP	01-03-089
356- 14-085	AMD	01-07-057	388- 13-030	REP	01-03-089	388- 14-500	REP	01-03-089
356- 14-110	AMD-C	01-02-089	388- 13-040	REP	01-03-089	388- 14-510	REP	01-03-089
356- 14-110	AMD	01-07-057	388- 13-050	REP	01-03-089	388- 14-520	REP	01-03-089
356- 14-120	AMD-C	01-02-089	388- 13-060	REP	01-03-089	388- 14-530	REP	01-03-089
356- 14-120	AMD	01-07-057	388- 13-070	REP	01-03-089	388- 14-540	REP	01-03-089
356- 15-125	AMD-E	01-04-051	388- 13-085	REP	01-03-089	388- 14-550	REP	01-03-089
356- 15-125	AMD-P	01-04-079	388- 13-090	REP	01-03-089	388- 14-560	REP	01-03-089
356- 15-140	AMD-C	01-02-089	388- 13-100	REP	01-03-089	388- 14-570	REP	01-03-089
356- 15-140	AMD	01-07-057	388- 13-110	REP	01-03-089	388- 14A-1000	NEW	01-03-089
356- 18-140	AMD-C	01-02-089	388- 13-120	REP	01-03-089	388- 14A-1005	NEW	01-03-089
356- 18-140	AMD	01-07-057	388- 14-010	REP	01-03-089	388- 14A-1010	NEW	01-03-089
356- 18-220	AMD-C	01-02-089	388- 14-020	REP	01-03-089	388- 14A-1015	NEW	01-03-089
356- 18-220	AMD	01-07-057	388- 14-030	REP	01-03-089	388- 14A-1020	NEW	01-03-089
356- 22-220	AMD-W	01-07-056	388- 14-035	REP	01-03-089	388- 14A-1025	NEW	01-03-089
356- 30-320	AMD-C	01-02-088	388- 14-040	REP	01-03-089	388- 14A-1030	NEW	01-03-089
356- 30-320	AMD	01-07-055	388- 14-045	REP	01-03-089	388- 14A-1035	NEW	01-03-089
356- 30-331	AMD-C	01-02-088	388- 14-050	REP	01-03-089	388- 14A-1036	NEW	01-03-089
356- 30-331	AMD	01-07-055	388- 14-100	REP	01-03-089	388- 14A-1040	NEW	01-03-089
356- 49-040	AMD-C	01-02-089	388- 14-200	REP	01-03-089	388- 14A-1045	NEW	01-03-089
356- 49-040	AMD	01-07-057	388- 14-201	REP	01-03-089	388- 14A-1050	NEW	01-03-089
356- 56-210	AMD	01-03-003	388- 14-202	REP	01-03-089	388- 14A-1055	NEW	01-03-089
356- 56-220	AMD	01-03-003	388- 14-203	REP	01-03-089	388- 14A-1060	NEW	01-03-089
365-195-900	AMD-P	01-03-166	388- 14-205	REP	01-03-089	388- 14A-2000	NEW	01-03-089
365-197-010	NEW-P	01-03-165	388- 14-210	REP	01-03-089	388- 14A-2005	NEW	01-03-089
365-197-020	NEW-P	01-03-165	388- 14-220	REP	01-03-089	388- 14A-2010	NEW	01-03-089
365-197-030	NEW-P	01-03-165	388- 14-250	REP	01-03-089	388- 14A-2015	NEW	01-03-089
365-197-040	NEW-P	01-03-165	388- 14-260	REP	01-03-089	388- 14A-2020	NEW	01-03-089
365-197-050	NEW-P	01-03-165	388- 14-270	REP	01-03-089	388- 14A-2025	NEW	01-03-089
365-197-060	NEW-P	01-03-165	388- 14-271	REP	01-03-089	388- 14A-2030	NEW	01-03-089
365-197-070	NEW-P	01-03-165	388- 14-272	REP	01-03-089	388- 14A-2035	NEW	01-03-089
365-197-080	NEW-P	01-03-165	388- 14-273	REP	01-03-089	388- 14A-2036	NEW	01-03-089
388- 11-011	REP	01-03-089	388- 14-274	REP	01-03-089	388- 14A-2037	NEW	01-03-089
388- 11-015	REP	01-03-089	388- 14-276	REP	01-03-089	388- 14A-2038	NEW	01-03-089
388- 11-045	REP	01-03-089	388- 14-300	REP	01-03-089	388- 14A-2040	NEW	01-03-089
388- 11-048	REP	01-03-089	388- 14-310	REP	01-03-089	388- 14A-2041	NEW	01-03-089
388- 11-065	REP	01-03-089	388- 14-350	REP	01-03-089	388- 14A-2045	NEW	01-03-089
388- 11-067	REP	01-03-089	388- 14-360	REP	01-03-089	388- 14A-2050	NEW	01-03-089
388- 11-100	REP	01-03-089	388- 14-365	REP	01-03-089	388- 14A-2060	NEW	01-03-089
388- 11-120	REP	01-03-089	388- 14-370	REP	01-03-089	388- 14A-2065	NEW	01-03-089
388- 11-135	REP	01-03-089	388- 14-376	REP	01-03-089	388- 14A-2070	NEW	01-03-089
388- 11-140	REP	01-03-089	388- 14-385	REP	01-03-089	388- 14A-2075	NEW	01-03-089
388- 11-143	REP	01-03-089	388- 14-386	REP	01-03-089	388- 14A-2080	NEW	01-03-089
388- 11-145	REP	01-03-089	388- 14-387	REP	01-03-089	388- 14A-2085	NEW	01-03-089
388- 11-150	REP	01-03-089	388- 14-388	REP	01-03-089	388- 14A-2090	NEW	01-03-089
388- 11-155	REP	01-03-089	388- 14-390	REP	01-03-089	388- 14A-2095	NEW	01-03-089
388- 11-170	REP	01-03-089	388- 14-395	REP	01-03-089	388- 14A-2097	NEW	01-03-089
388- 11-180	REP	01-03-089	388- 14-410	REP	01-03-089	388- 14A-2099	NEW	01-03-089
388- 11-205	REP	01-03-089	388- 14-415	REP	01-03-089	388- 14A-2105	NEW	01-03-089
388- 11-210	REP	01-03-089	388- 14-420	REP	01-03-089	388- 14A-2110	NEW	01-03-089
388- 11-215	REP	01-03-089	388- 14-421	REP	01-03-089	388- 14A-2115	NEW	01-03-089
388- 11-220	REP	01-03-089	388- 14-422	REP	01-03-089	388- 14A-2120	NEW	01-03-089

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-61A-0155	NEW	01-07-053	388-96-732	NEW-P	01-06-057	388-160-0045	NEW-W	01-07-070
388-61A-0160	NEW	01-07-053	388-96-740	AMD-P	01-06-057	388-160-0055	NEW-W	01-07-070
388-61A-0165	NEW	01-07-053	388-96-776	AMD-P	01-06-057	388-160-0065	NEW-W	01-07-070
388-61A-0170	NEW	01-07-053	388-96-777	AMD-P	01-06-057	388-160-0075	NEW-W	01-07-070
388-61A-0175	NEW	01-07-053	388-96-780	AMD-P	01-06-057	388-160-0085	NEW-W	01-07-070
388-61A-0180	NEW	01-07-053	388-96-802	NEW-P	01-06-057	388-160-0095	NEW-W	01-07-070
388-61A-0185	NEW	01-07-053	388-96-803	NEW-P	01-06-057	388-160-010	REP-W	01-07-070
388-61A-0190	NEW	01-07-053	388-96-901	AMD-P	01-06-057	388-160-0105	NEW-W	01-07-070
388-61A-0195	NEW	01-07-053	388-146-0010	NEW-W	01-07-071	388-160-0115	NEW-W	01-07-070
388-71-0500	AMD-P	01-07-045	388-146-0020	NEW-W	01-07-071	388-160-0125	NEW-W	01-07-070
388-71-0505	AMD-P	01-07-045	388-146-0030	NEW-W	01-07-071	388-160-0135	NEW-W	01-07-070
388-71-0510	AMD-P	01-07-045	388-146-0040	NEW-W	01-07-071	388-160-0145	NEW-W	01-07-070
388-71-0513	NEW-P	01-07-045	388-146-0045	NEW-W	01-07-071	388-160-0155	NEW-W	01-07-070
388-71-0515	AMD-P	01-07-045	388-146-0050	NEW-W	01-07-071	388-160-0165	NEW-W	01-07-070
388-71-0540	AMD-P	01-07-045	388-146-0060	NEW-W	01-07-071	388-160-0175	NEW-W	01-07-070
388-71-0545	REP-P	01-07-045	388-146-0070	NEW-W	01-07-071	388-160-0185	NEW-W	01-07-070
388-71-0546	NEW-P	01-07-045	388-146-0080	NEW-W	01-07-071	388-160-0195	NEW-W	01-07-070
388-71-0550	REP-P	01-07-045	388-146-0090	NEW-W	01-07-071	388-160-020	REP-W	01-07-070
388-71-0551	NEW-P	01-07-045	388-146-0100	NEW-W	01-07-071	388-160-0205	NEW-W	01-07-070
388-71-0555	REP-P	01-07-045	388-146-0110	NEW-W	01-07-071	388-160-0215	NEW-W	01-07-070
388-71-0556	NEW-P	01-07-045	388-146-0120	NEW-W	01-07-071	388-160-0225	NEW-W	01-07-070
388-71-0560	AMD-P	01-07-045	388-146-0130	NEW-W	01-07-071	388-160-0235	NEW-W	01-07-070
388-71-0580	AMD-P	01-07-045	388-146-0140	NEW-W	01-07-071	388-160-0245	NEW-W	01-07-070
388-71-0605	AMD-P	01-03-155	388-146-0150	NEW-W	01-07-071	388-160-0255	NEW-W	01-07-070
388-71-0613	NEW-P	01-03-155	388-146-0160	NEW-W	01-07-071	388-160-0265	NEW-W	01-07-070
388-71-0900	NEW-P	01-07-044	388-146-0170	NEW-W	01-07-071	388-160-0275	NEW-W	01-07-070
388-71-0905	NEW-P	01-07-044	388-146-0180	NEW-W	01-07-071	388-160-0285	NEW-W	01-07-070
388-71-0910	NEW-P	01-07-044	388-146-0190	NEW-W	01-07-071	388-160-0295	NEW-W	01-07-070
388-71-0915	NEW-P	01-07-044	388-146-0200	NEW-W	01-07-071	388-160-030	REP-W	01-07-070
388-71-0920	NEW-P	01-07-044	388-146-0210	NEW-W	01-07-071	388-160-0305	NEW-W	01-07-070
388-71-0925	NEW-P	01-07-044	388-146-0220	NEW-W	01-07-071	388-160-0315	NEW-W	01-07-070
388-71-0930	NEW-P	01-07-044	388-155-040	AMD-P	01-07-052	388-160-0325	NEW-W	01-07-070
388-71-0935	NEW-P	01-07-044	388-155-050	AMD-P	01-07-052	388-160-0335	NEW-W	01-07-070
388-71-0940	NEW-P	01-07-044	388-155-060	AMD-P	01-07-052	388-160-0345	NEW-W	01-07-070
388-71-0945	NEW-P	01-07-044	388-155-080	AMD-P	01-07-052	388-160-0355	NEW-W	01-07-070
388-71-0950	NEW-P	01-07-044	388-155-085	AMD-P	01-07-052	388-160-0365	NEW-W	01-07-070
388-71-0955	NEW-P	01-07-044	388-155-090	AMD-P	01-07-052	388-160-0375	NEW-W	01-07-070
388-71-0960	NEW-P	01-07-044	388-155-092	AMD-P	01-07-052	388-160-0385	NEW-W	01-07-070
388-71-0965	NEW-P	01-07-044	388-155-093	AMD-P	01-07-052	388-160-0395	NEW-W	01-07-070
388-74-010	REP	01-06-041	388-155-094	AMD-P	01-07-052	388-160-040	REP-W	01-07-070
388-74-030	REP	01-06-041	388-155-095	AMD-P	01-07-052	388-160-0405	NEW-W	01-07-070
388-86-071	REP	01-05-040	388-155-160	AMD-P	01-07-052	388-160-0415	NEW-W	01-07-070
388-86-085	REP	01-06-029	388-155-190	AMD-P	01-07-052	388-160-0425	NEW-W	01-07-070
388-86-086	REP	01-03-084	388-155-270	AMD-P	01-07-052	388-160-0435	NEW-W	01-07-070
388-86-100	REP-W	01-03-001	388-155-330	AMD-P	01-07-052	388-160-0445	NEW-W	01-07-070
388-86-100	REP	01-06-028	388-155-370	AMD-P	01-07-052	388-160-0455	NEW-W	01-07-070
388-87-027	REP	01-06-032	388-155-380	AMD-P	01-07-052	388-160-0465	NEW-W	01-07-070
388-87-035	REP	01-06-029	388-155-420	AMD-P	01-07-052	388-160-0475	NEW-W	01-07-070
388-87-036	REP	01-03-084	388-155-480	AMD-P	01-07-052	388-160-0485	NEW-W	01-07-070
388-87-060	REP	01-06-033	388-155-605	AMD-P	01-07-052	388-160-0495	NEW-W	01-07-070
388-96-010	AMD-P	01-06-057	388-155-610	AMD-P	01-07-052	388-160-050	REP-W	01-07-070
388-96-218	AMD-P	01-06-057	388-155-620	AMD-P	01-07-052	388-160-0505	NEW-W	01-07-070
388-96-310	AMD-P	01-06-057	388-155-630	AMD-P	01-07-052	388-160-0515	NEW-W	01-07-070
388-96-369	AMD-P	01-06-057	388-155-640	AMD-P	01-07-052	388-160-0525	NEW-W	01-07-070
388-96-384	AMD-P	01-06-057	388-155-650	AMD-P	01-07-052	388-160-0535	NEW-W	01-07-070
388-96-559	AMD-P	01-06-057	388-155-660	AMD-P	01-07-052	388-160-0545	NEW-W	01-07-070
388-96-708	AMD-P	01-06-057	388-155-670	AMD-P	01-07-052	388-160-0555	NEW-W	01-07-070
388-96-709	AMD-P	01-06-057	388-155-680	AMD-P	01-07-052	388-160-0565	NEW-W	01-07-070
388-96-710	AMD-P	01-06-057	388-160-0005	NEW-W	01-07-070	388-160-0575	NEW-W	01-07-070
388-96-713	AMD-P	01-06-057	388-160-0015	NEW-W	01-07-070	388-160-0585	NEW-W	01-07-070
388-96-714	AMD-P	01-06-057	388-160-0025	NEW-W	01-07-070	388-160-0595	NEW-W	01-07-070
388-96-723	AMD-P	01-06-057	388-160-0035	NEW-W	01-07-070	388-160-060	REP-W	01-07-070

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-160-0605	NEW-W	01-07-070	388-273-0030	NEW-P	01-04-070	388-484-0005	AMD	01-04-016
388-160-0615	NEW-W	01-07-070	388-273-0035	NEW-P	01-04-070	388-484-0010	NEW	01-04-016
388-160-0625	NEW-W	01-07-070	388-310-0900	AMD-P	01-03-060	388-488	PREP	01-03-024
388-160-0635	NEW-W	01-07-070	388-310-0900	AMD-E	01-03-132	388-490	PREP	01-06-027
388-160-0645	NEW-W	01-07-070	388-310-1000	AMD-P	01-03-060	388-502-0010	AMD	01-07-076
388-160-070	REP-W	01-07-070	388-310-1000	AMD-E	01-03-132	388-502-0010	AMD	01-08-004
388-160-080	REP-W	01-07-070	388-310-1050	AMD-P	01-03-060	388-502-0020	AMD	01-07-076
388-160-090	REP-W	01-07-070	388-310-1050	AMD-E	01-03-132	388-502-0020	AMD	01-08-004
388-160-100	REP-W	01-07-070	388-310-1300	AMD-E	01-05-007	388-502-0160	AMD	01-05-100
388-160-110	REP-W	01-07-070	388-310-2000	NEW	01-03-042	388-505-0210	AMD-P	01-07-012
388-160-120	REP-W	01-07-070	388-330-010	REP-W	01-07-071	388-505-0220	AMD-P	01-07-012
388-160-130	REP-W	01-07-070	388-330-020	REP-W	01-07-071	388-505-0595	REP	01-06-043
388-160-140	REP-W	01-07-070	388-330-030	REP-W	01-07-071	388-512-1210	REP-W	01-06-046
388-160-150	REP-W	01-07-070	388-330-035	REP-W	01-07-071	388-512-1215	REP	01-06-042
388-160-160	REP-W	01-07-070	388-330-040	REP-W	01-07-071	388-512-1220	REP	01-06-042
388-160-170	REP-W	01-07-070	388-330-050	REP-W	01-07-071	388-512-1225	REP	01-06-042
388-160-180	REP-W	01-07-070	388-330-060	REP-W	01-07-071	388-512-1230	REP	01-06-042
388-160-190	REP-W	01-07-070	388-400-0005	AMD	01-03-121	388-512-1235	REP	01-06-042
388-160-200	REP-W	01-07-070	388-400-0015	REP	01-03-121	388-512-1240	REP	01-06-042
388-160-210	REP-W	01-07-070	388-400-0020	REP-P	01-03-120	388-512-1245	REP	01-06-042
388-160-220	REP-W	01-07-070	388-400-0020	REP	01-07-001	388-512-1250	REP	01-06-042
388-160-230	REP-W	01-07-070	388-400-0030	AMD-P	01-03-040	388-512-1255	REP	01-06-042
388-160-240	REP-W	01-07-070	388-400-0030	AMD-E	01-03-041	388-512-1260	REP	01-06-042
388-160-250	REP-W	01-07-070	388-400-0030	AMD	01-06-031	388-512-1265	REP	01-06-042
388-160-260	REP-W	01-07-070	388-404-0005	AMD	01-03-121	388-512-1275	REP	01-06-042
388-160-270	REP-W	01-07-070	388-406	PREP	01-06-027	388-517-0400	NEW	01-06-033
388-160-280	REP-W	01-07-070	388-408-0005	AMD	01-03-121	388-535	PREP	01-07-018
388-160-290	REP-W	01-07-070	388-408-0010	AMD	01-03-121	388-535-1230	AMD-P	01-03-154
388-160-300	REP-W	01-07-070	388-408-0015	AMD	01-03-121	388-535-1230	AMD	01-07-077
388-160-310	REP-W	01-07-070	388-408-0020	AMD	01-03-121	388-538	PREP	01-07-008
388-160-320	REP-W	01-07-070	388-408-0025	AMD	01-03-121	388-543-1150	PREP	01-05-027
388-160-340	REP-W	01-07-070	388-408-0030	AMD	01-03-121	388-543-2800	PREP	01-05-027
388-160-350	REP-W	01-07-070	388-414	PREP	01-06-027	388-544	PREP	01-07-018
388-160-360	REP-W	01-07-070	388-414-0001	AMD-P	01-04-074	388-546-0001	NEW	01-03-084
388-160-370	REP-W	01-07-070	388-414-0001	AMD	01-07-054	388-546-0100	NEW	01-03-084
388-160-380	REP-W	01-07-070	388-416	PREP	01-06-027	388-546-0150	NEW	01-03-084
388-160-390	REP-W	01-07-070	388-418	PREP	01-06-027	388-546-0200	NEW	01-03-084
388-160-400	REP-W	01-07-070	388-432-0005	NEW	01-03-066	388-546-0250	NEW	01-03-084
388-160-410	REP-W	01-07-070	388-434	PREP	01-06-027	388-546-0300	NEW	01-03-084
388-160-420	REP-W	01-07-070	388-438	PREP	01-07-018	388-546-0400	NEW	01-03-084
388-160-430	REP-W	01-07-070	388-438-0110	AMD	01-05-041	388-546-0450	NEW	01-03-084
388-160-440	REP-W	01-07-070	388-444-0075	AMD	01-05-006	388-546-0500	NEW	01-03-084
388-160-460	REP-W	01-07-070	388-448	PREP	01-04-069	388-546-0600	NEW	01-03-084
388-160-470	REP-W	01-07-070	388-450	PREP	01-06-027	388-546-0700	NEW	01-03-084
388-160-480	REP-W	01-07-070	388-450-0190	AMD-P	01-03-038	388-546-0800	NEW	01-03-084
388-160-490	REP-W	01-07-070	388-450-0190	AMD-E	01-03-039	388-546-1000	NEW	01-03-084
388-160-500	REP-W	01-07-070	388-450-0190	AMD	01-06-030	388-546-5000	NEW	01-06-029
388-160-510	REP-W	01-07-070	388-452	PREP	01-06-027	388-546-5100	NEW	01-06-029
388-160-520	REP-W	01-07-070	388-454-0005	AMD	01-03-121	388-546-5200	NEW	01-06-029
388-160-530	REP-W	01-07-070	388-454-0006	NEW-E	01-06-025	388-546-5300	NEW	01-06-029
388-160-540	REP-W	01-07-070	388-454-0010	AMD	01-03-121	388-546-5400	NEW	01-06-029
388-160-550	REP-W	01-07-070	388-470	PREP	01-06-027	388-546-5500	NEW	01-06-029
388-160-560	REP-W	01-07-070	388-472-0005	PREP	01-03-119	388-551	PREP	01-03-095
388-200-1050	REP-P	01-07-051	388-472-0005	AMD-P	01-07-051	388-551	PREP	01-03-096
388-200-1300	REP-P	01-07-051	388-472-0010	NEW-P	01-07-051	388-551-3000	NEW	01-05-040
388-200-1350	REP-P	01-07-051	388-472-0020	NEW-P	01-07-051	388-561-0001	NEW	01-06-043
388-222-001	REP	01-03-066	388-472-0030	NEW-P	01-07-051	388-561-0100	NEW	01-06-043
388-222-010	REP	01-03-066	388-472-0040	NEW-P	01-07-051	388-561-0200	NEW	01-06-043
388-222-020	REP	01-03-066	388-472-0050	NEW-P	01-07-051	388-561-0300	NEW	01-06-043
388-273-0010	NEW-P	01-04-070	388-474-0001	AMD	01-06-042	388-815-005	REP-XR	01-07-019
388-273-0020	NEW-P	01-04-070	388-478-0055	AMD-P	01-04-068	388-815-010	REP-XR	01-07-019
388-273-0025	NEW-P	01-04-070	388-478-0056	REP-P	01-04-068	388-815-020	REP-XR	01-07-019

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-865-0363	NEW-P	01-07-116	390- 16-111	AMD-P	01-07-107	417- 01-105	PREP	01-05-102
388-865-0365	NEW-P	01-07-116	390- 16-115	PREP	01-07-113	417- 01-110	PREP	01-05-102
388-865-0400	NEW-P	01-07-116	390- 16-120	PREP	01-07-104	417- 01-115	PREP	01-05-102
388-865-0405	NEW-P	01-07-116	390- 16-125	PREP	01-07-114	417- 01-125	AMD-E	01-05-101
388-865-0410	NEW-P	01-07-116	390- 16-150	PREP	01-03-162	417- 01-125	PREP	01-05-102
388-865-0415	NEW-P	01-07-116	390- 16-150	REP-P	01-07-108	417- 01-127	NEW-E	01-05-101
388-865-0420	NEW-P	01-07-116	390- 16-155	PREP	01-07-112	417- 01-130	PREP	01-05-102
388-865-0425	NEW-P	01-07-116	390- 16-190	PREP	01-07-115	417- 01-135	PREP	01-05-102
388-865-0430	NEW-P	01-07-116	390- 16-309	PREP	01-03-081	417- 01-150	AMD-E	01-05-101
388-865-0435	NEW-P	01-07-116	390- 16-311	PREP	01-03-082	417- 01-150	PREP	01-05-102
388-865-0436	NEW-P	01-07-116	390- 24-200	PREP	01-03-160	417- 01-155	PREP	01-05-102
388-865-0440	NEW-P	01-07-116	390- 24-200	AMD-P	01-07-109	417- 06	PREP	01-05-102
388-865-0445	NEW-P	01-07-116	391- 25	PREP	01-04-073	420- 04-010	NEW	01-04-052
388-865-0450	NEW-P	01-07-116	391- 35	PREP	01-04-073	420- 04-015	NEW	01-04-052
388-865-0452	NEW-P	01-07-116	392-122-322	PREP	01-03-099	420- 04-020	NEW	01-04-052
388-865-0454	NEW-P	01-07-116	392-122-900	PREP	01-03-099	420- 04-030	NEW	01-04-052
388-865-0456	NEW-P	01-07-116	392-125-080	AMD-E	01-03-098	420- 04-040	NEW	01-04-052
388-865-0458	NEW-P	01-07-116	392-125-080	AMD-P	01-06-063	420- 04-050	NEW	01-04-052
388-865-0460	NEW-P	01-07-116	392-136-020	AMD-P	01-06-064	420- 04-060	NEW	01-04-052
388-865-0462	NEW-P	01-07-116	392-140-600	AMD	01-04-023	420- 04-070	NEW	01-04-052
388-865-0464	NEW-P	01-07-116	392-140-605	AMD	01-04-023	420- 04-080	NEW	01-04-052
388-865-0466	NEW-P	01-07-116	392-140-609	AMD	01-04-023	420- 04-085	NEW	01-04-052
388-865-0468	NEW-P	01-07-116	392-140-613	AMD	01-04-023	420- 04-100	NEW	01-04-052
388-865-0470	NEW-P	01-07-116	392-140-616	AMD	01-04-023	420- 12-010	NEW	01-04-052
388-865-0472	NEW-P	01-07-116	392-140-625	AMD	01-04-023	420- 12-020	NEW	01-04-052
388-865-0474	NEW-P	01-07-116	392-140-626	AMD	01-04-023	420- 12-030	NEW	01-04-052
388-865-0476	NEW-P	01-07-116	392-140-660	AMD	01-04-023	420- 12-040	NEW	01-04-052
388-865-0478	NEW-P	01-07-116	392-140-675	AMD	01-04-023	420- 12-050	NEW	01-04-052
388-865-0480	NEW-P	01-07-116	392-141-200	PREP	01-03-099	420- 12-060	NEW	01-04-052
388-865-0482	NEW-P	01-07-116	392-151-090	AMD-P	01-03-097	420- 12-070	NEW	01-04-052
388-865-0484	NEW-P	01-07-116	392-151-095	AMD-P	01-03-097	420- 12-075	NEW	01-04-052
388-865-0500	NEW-P	01-07-116	399- 10-010	AMD-P	01-03-143	420- 12-080	NEW	01-04-052
388-865-0501	NEW-P	01-07-116	399- 30-030	AMD-P	01-03-143	420- 12-085	NEW	01-04-052
388-865-0502	NEW-P	01-07-116	399- 30-040	AMD-P	01-03-143	420- 12-090	NEW	01-04-052
388-865-0504	NEW-E	01-06-040	399- 30-042	AMD-P	01-03-143	434-260-220	AMD-P	01-06-023
388-865-0505	NEW-P	01-07-116	399- 50-040	AMD-P	01-03-143	434-260-225	AMD-P	01-06-023
388-865-0510	NEW-P	01-07-116	415- 02-030	PREP	01-05-074	434-260-300	AMD-P	01-06-023
388-865-0515	NEW-P	01-07-116	415- 02-060	AMD-P	01-05-096	434-260-305	AMD-P	01-06-023
388-865-0525	NEW-P	01-07-116	415-100-055	PREP	01-05-094	434-260-307	NEW-P	01-06-023
388-865-0530	NEW-P	01-07-116	415-103	PREP	01-06-048	434-260-309	NEW-P	01-06-023
388-865-0535	NEW-P	01-07-116	415-104-215	AMD-P	01-07-079	458- 12-015	REP-XR	01-07-094
388-865-0540	NEW-P	01-07-116	415-108-326	AMD-P	01-07-079	458- 12-020	REP-XR	01-07-094
388-865-0545	NEW-P	01-07-116	415-108-467	AMD-P	01-05-077	458- 12-085	REP-XR	01-07-094
388-865-0546	NEW-P	01-07-116	415-110-326	AMD-P	01-07-079	458- 20-169	AMD-P	01-03-091
388-865-0550	NEW-P	01-07-116	415-110-467	AMD-P	01-05-077	458- 20-178	PREP	01-07-093
388-865-0555	NEW-P	01-07-116	415-111-220	PREP	01-07-078	458- 20-17801	PREP	01-07-093
388-865-0557	NEW-P	01-07-116	415-112	PREP	01-05-075	458- 20-228	AMD	01-05-022
388-865-0560	NEW-P	01-07-116	415-112-727	AMD-P	01-07-079	458- 20-22802	AMD-P	01-03-105
388-865-0565	NEW-P	01-07-116	415-210	PREP	01-05-075	458- 20-22802	AMD	01-07-017
388-865-0600	NEW-P	01-07-116	415-610	PREP	01-04-028	458- 20-247	AMD-P	01-04-048
388-865-0610	NEW-P	01-07-116	415-620	PREP	01-04-028	458- 40-660	PREP	01-06-034
388-865-0620	NEW-P	01-07-116	415-630	PREP	01-04-028	468-300-010	AMD-P	01-04-078
388-865-0630	NEW-P	01-07-116	415-630-030	PREP	01-04-028	468-300-020	AMD-P	01-04-078
388-865-0640	NEW-P	01-07-116	415-630-030	AMD-E	01-04-029	468-300-040	AMD-P	01-04-078
390- 16-011	PREP	01-03-164	415-640	PREP	01-04-028	468-300-220	AMD-P	01-04-078
390- 16-011	AMD-P	01-07-105	415-650	PREP	01-04-028	478-136-030	AMD-P	01-06-009
390- 16-012	PREP	01-03-163	415-660	PREP	01-04-028	478-156-014	REP-XR	01-07-064
390- 16-012	AMD-P	01-07-110	415-670	PREP	01-04-028	478-250-050	AMD-P	01-07-014
390- 16-041	PREP	01-07-111	415-680	PREP	01-04-028	478-250-070	AMD-P	01-07-014
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478-276-100	AMD-P	01-07-014	480-90-021	REP-P	01-02-084	480-90-218	NEW-P	01-02-084
478-276-120	AMD-P	01-07-014	480-90-023	NEW-P	01-02-084	480-90-223	NEW-P	01-02-084
478-276-140	AMD-P	01-07-014	480-90-026	REP-P	01-02-084	480-90-228	NEW-P	01-02-084
478-355-010	AMD-P	01-03-122	480-90-028	NEW-P	01-02-084	480-90-233	NEW-P	01-02-084
478-355-030	AMD-P	01-03-122	480-90-031	REP-P	01-02-084	480-90-238	NEW-P	01-02-084
478-355-040	AMD-P	01-03-122	480-90-032	REP-P	01-02-084	480-90-303	NEW-P	01-02-084
480-62-010	REP	01-04-026	480-90-033	NEW-P	01-02-084	480-90-308	NEW-P	01-02-084
480-62-020	REP	01-04-026	480-90-036	REP-P	01-02-084	480-90-313	NEW-P	01-02-084
480-62-030	REP	01-04-026	480-90-041	REP-P	01-02-084	480-90-323	NEW-P	01-02-084
480-62-040	REP	01-04-026	480-90-043	REP-P	01-02-084	480-90-328	NEW-P	01-02-084
480-62-050	REP	01-04-026	480-90-046	REP-P	01-02-084	480-90-333	NEW-P	01-02-084
480-62-060	REP	01-04-026	480-90-051	REP-P	01-02-084	480-90-338	NEW-P	01-02-084
480-62-070	REP	01-04-026	480-90-056	REP-P	01-02-084	480-90-343	NEW-P	01-02-084
480-62-080	REP	01-04-026	480-90-061	REP-P	01-02-102	480-90-348	NEW-P	01-02-084
480-62-085	REP	01-04-026	480-90-066	REP-P	01-02-084	480-90-353	NEW-P	01-02-084
480-62-090	REP	01-04-026	480-90-071	REP-P	01-02-084	480-90-999	NEW-P	01-02-084
480-62-100	REP	01-04-026	480-90-072	REP-P	01-02-084	480-100-001	NEW-P	01-02-083
480-62-120	REP	01-04-026	480-90-076	REP-P	01-02-084	480-100-003	NEW-P	01-02-083
480-62-125	NEW	01-04-026	480-90-081	REP-P	01-02-084	480-100-008	NEW-P	01-02-083
480-62-130	NEW	01-04-026	480-90-086	REP-P	01-02-084	480-100-011	REP-P	01-02-083
480-62-135	NEW	01-04-026	480-90-091	REP-P	01-02-084	480-100-013	NEW-P	01-02-083
480-62-140	NEW	01-04-026	480-90-096	REP-P	01-02-084	480-100-016	REP-P	01-02-083
480-62-145	NEW	01-04-026	480-90-101	REP-P	01-02-084	480-100-018	NEW-P	01-02-083
480-62-150	NEW	01-04-026	480-90-103	NEW-P	01-02-084	480-100-021	REP-P	01-02-083
480-62-155	NEW	01-04-026	480-90-106	REP-P	01-02-084	480-100-023	NEW-P	01-02-083
480-62-160	NEW	01-04-026	480-90-108	NEW-P	01-02-084	480-100-026	REP-P	01-02-083
480-62-165	NEW	01-04-026	480-90-113	NEW-P	01-02-084	480-100-028	NEW-P	01-02-083
480-62-170	NEW	01-04-026	480-90-116	REP-P	01-02-084	480-100-031	REP-P	01-02-083
480-62-200	NEW	01-04-026	480-90-118	NEW-P	01-02-084	480-100-032	REP-P	01-02-083
480-62-205	NEW	01-04-026	480-90-121	REP-P	01-02-084	480-100-033	NEW-P	01-02-083
480-62-210	NEW	01-04-026	480-90-123	NEW-P	01-02-084	480-100-036	REP-P	01-02-083
480-62-215	NEW	01-04-026	480-90-126	REP-P	01-02-084	480-100-041	REP-P	01-02-083
480-62-220	NEW	01-04-026	480-90-128	NEW-P	01-02-084	480-100-043	REP-P	01-02-083
480-62-225	NEW	01-04-026	480-90-131	REP-P	01-02-084	480-100-046	REP-P	01-02-083
480-62-230	NEW	01-04-026	480-90-133	NEW-P	01-02-084	480-100-051	REP-P	01-02-083
480-62-235	NEW	01-04-026	480-90-136	REP-P	01-02-084	480-100-056	REP-P	01-02-083
480-62-240	NEW	01-04-026	480-90-138	NEW-P	01-02-084	480-100-061	REP-P	01-02-102
480-62-245	NEW	01-04-026	480-90-141	REP-P	01-02-084	480-100-066	REP-P	01-02-083
480-62-250	NEW	01-04-026	480-90-143	NEW-P	01-02-084	480-100-071	REP-P	01-02-083
480-62-300	NEW	01-04-026	480-90-146	REP-P	01-02-084	480-100-072	REP-P	01-02-083
480-62-305	NEW	01-04-026	480-90-148	NEW-P	01-02-084	480-100-076	REP-P	01-02-083
480-62-310	NEW	01-04-026	480-90-151	REP-P	01-02-084	480-100-081	REP-P	01-02-083
480-62-315	NEW	01-04-026	480-90-153	NEW-P	01-02-084	480-100-086	REP-P	01-02-083
480-62-320	NEW	01-04-026	480-90-156	REP-P	01-02-084	480-100-091	REP-P	01-02-083
480-62-325	NEW	01-04-026	480-90-158	NEW-P	01-02-084	480-100-096	REP-P	01-02-083
480-62-999	NEW	01-04-026	480-90-161	REP-P	01-02-084	480-100-101	REP-P	01-02-083
480-80-010	AMD-P	01-02-102	480-90-163	NEW-P	01-02-084	480-100-103	NEW-P	01-02-083
480-80-035	NEW-P	01-02-102	480-90-166	REP-P	01-02-084	480-100-108	NEW-P	01-02-083
480-80-047	REP-P	01-02-102	480-90-168	NEW-P	01-02-084	480-100-111	REP-P	01-02-083
480-80-048	REP-P	01-02-102	480-90-171	REP-P	01-02-084	480-100-113	NEW-P	01-02-083
480-80-049	REP-P	01-02-102	480-90-173	NEW-P	01-02-084	480-100-116	REP-P	01-02-083
480-80-120	REP-P	01-02-102	480-90-176	REP-P	01-02-084	480-100-118	NEW-P	01-02-083
480-80-325	NEW-P	01-02-102	480-90-178	NEW-P	01-02-084	480-100-121	REP-P	01-02-083
480-80-326	NEW-P	01-02-102	480-90-181	REP-P	01-02-084	480-100-123	NEW-P	01-02-083
480-80-390	REP-P	01-02-102	480-90-183	NEW-P	01-02-084	480-100-126	REP-P	01-02-083
480-90-001	NEW-P	01-02-084	480-90-188	NEW-P	01-02-084	480-100-128	NEW-P	01-02-083
480-90-003	NEW-P	01-02-084	480-90-191	REP-P	01-02-084	480-100-131	REP-P	01-02-083
480-90-008	NEW-P	01-02-084	480-90-193	NEW-P	01-02-102	480-100-133	NEW-P	01-02-083
480-90-011	REP-P	01-02-084	480-90-203	NEW-P	01-02-084	480-100-136	REP-P	01-02-083
480-90-013	NEW-P	01-02-084	480-90-208	NEW-P	01-02-084	480-100-138	NEW-P	01-02-083
480-90-016	REP-P	01-02-084	480-90-211	REP-P	01-02-084	480-100-141	REP-P	01-02-083

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480-100-146	REP-P	01-02-083	480-120-036	REP-P	01-03-100			
480-100-148	NEW-P	01-02-083	480-120-043	NEW-P	01-02-102			
480-100-151	REP-P	01-02-083	480-120-049	NEW-P	01-03-100			
480-100-153	NEW-P	01-02-083	480-120-066	REP-P	01-02-102			
480-100-156	REP-P	01-02-083	480-120-076	REP-P	01-03-100			
480-100-161	REP-P	01-02-083	480-120-091	REP-P	01-03-100			
480-100-163	NEW-P	01-02-083	480-120-096	REP-P	01-03-100			
480-100-166	REP-P	01-02-083	480-120-136	AMD-P	01-03-100			
480-100-168	NEW-P	01-02-083	480-120-530	AMD-P	01-03-100			
480-100-171	REP-P	01-02-083	480-120-531	NEW-P	01-03-100			
480-100-173	NEW-P	01-02-083	480-120-541	NEW-P	01-02-102			
480-100-176	REP-P	01-02-083	480-120-542	NEW-P	01-02-102			
480-100-178	NEW-P	01-02-083	480-120-543	NEW-P	01-02-102			
480-100-181	REP-P	01-02-083	480-120-544	NEW-P	01-02-102			
480-100-183	NEW-P	01-02-083	480-120-545	NEW-P	01-03-100			
480-100-186	REP-P	01-02-083	480-121-061	NEW-P	01-02-102			
480-100-188	NEW-P	01-02-083	480-121-062	NEW-P	01-02-102			
480-100-191	REP-P	01-02-083	480-121-063	NEW-P	01-02-102			
480-100-193	NEW-P	01-02-102	480-121-064	NEW-P	01-02-102			
480-100-201	REP-P	01-02-083	516- 24-001	AMD-P	01-05-086			
480-100-203	NEW-P	01-02-083	516- 24-050	REP-P	01-05-086			
480-100-206	REP-P	01-02-083	516- 24-060	REP-P	01-05-086			
480-100-208	NEW-P	01-02-083	516- 24-110	AMD-P	01-05-086			
480-100-211	REP-P	01-02-083	516- 24-115	REP-P	01-05-086			
480-100-213	NEW-P	01-02-083	516- 24-130	AMD-P	01-05-086			
480-100-218	NEW-P	01-02-083	516- 25-001	NEW-P	01-05-086			
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480-100-228	NEW-P	01-02-083						
480-100-233	NEW-P	01-02-083						
480-100-251	REP-P	01-02-083						
480-100-308	NEW-P	01-02-083						
480-100-311	REP-P	01-02-083						
480-100-313	NEW-P	01-02-083						
480-100-318	NEW-P	01-02-083						
480-100-328	NEW-P	01-02-083						
480-100-333	NEW-P	01-02-083						
480-100-338	NEW-P	01-02-083						
480-100-343	NEW-P	01-02-083						
480-100-353	NEW-P	01-02-083						
480-100-358	NEW-P	01-02-083						
480-100-363	NEW-P	01-02-083						
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480-100-373	NEW-P	01-02-083						
480-100-378	NEW-P	01-02-083						
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	PREP	01-06-010			
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	PROP	01-07-058			
	PERM	01-07-059			
WESTERN WASHINGTON UNIVERSITY					
Admission and registration procedures	PERM	01-01-137			
General conduct	PROP	01-05-086			

