

Washington State Register

FEBRUARY 15, 1995

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This issue contains documents officially
filed not later than February 1, 1995

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 (206) 753-7470 (SCAN 234-7470).

REPUBLICATION OF OFFICIAL DOCUMENTS

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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 February 1995 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.

WASHINGTON STATE REGISTER

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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.

Raymond W. Haman
Chairman, Statute Law Committee

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Subscription Clerk

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following six sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Intent that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (c) **PERMANENT**-includes the full text of permanently adopted rules.
- (d) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (e) **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.
- (f) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (g) **INDEX**-includes a combined subject matter and agency index.

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. 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].

1994 - 1995

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

<u>Issue No.</u>	<u>Closing Dates¹</u>			<u>Distribution Date</u>	<u>First Agency Hearing Date³</u>
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS ² or 10 p. max. Non-OTS		
<i>For Inclusion in--</i>	<i>File no later than--</i>			<i>Count 20 days from--</i>	<i>For hearing on or after</i>
94-16	Jul 6	Jul 20	Aug 3	Aug 17	Sep 6
94-17	Jul 27	Aug 10	Aug 24	Sep 7	Sep 27
94-18	Aug 10	Aug 24	Sep 7	Sep 21	Oct 11
94-19	Aug 24	Sep 7	Sep 21	Oct 5	Oct 25
94-20	Sep 7	Sep 21	Oct 5	Oct 19	Nov 8
94-21	Sep 21	Oct 5	Oct 19	Nov 2	Nov 22
94-22	Oct 5	Oct 19	Nov 2	Nov 16	Dec 6
94-23	Oct 26	Nov 9	Nov 23	Dec 7	Dec 27
94-24	Nov 9	Nov 23	Dec 7	Dec 21	Jan 10, 1995
95-01	Nov 23	Dec 7	Dec 21, 1994	Jan 4, 1995	Jan 24
95-02	Dec 7	Dec 21, 1994	Jan 4, 1995	Jan 18	Feb 7
95-03	Dec 21, 1994	Jan 4, 1995	Jan 18	Feb 1	Feb 21
95-04	Jan 4	Jan 18	Feb 1	Feb 15	Mar 7
95-05	Jan 18	Feb 1	Feb 15	Mar 1	Mar 21
95-06	Feb 1	Feb 15	Mar 1	Mar 15	Apr 4
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95-09	Mar 22	Apr 5	Apr 19	May 3	May 23
95-10	Apr 5	Apr 19	May 3	May 17	Jun 6
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95-22	Oct 4	Oct 18	Nov 1	Nov 15	Dec 5
95-23	Oct 25	Nov 8	Nov 22	Dec 6	Dec 26
95-24	Nov 8	Nov 22	Dec 6	Dec 20	Jan 9, 1996

¹All 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.

²A 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.

³At 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.

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;

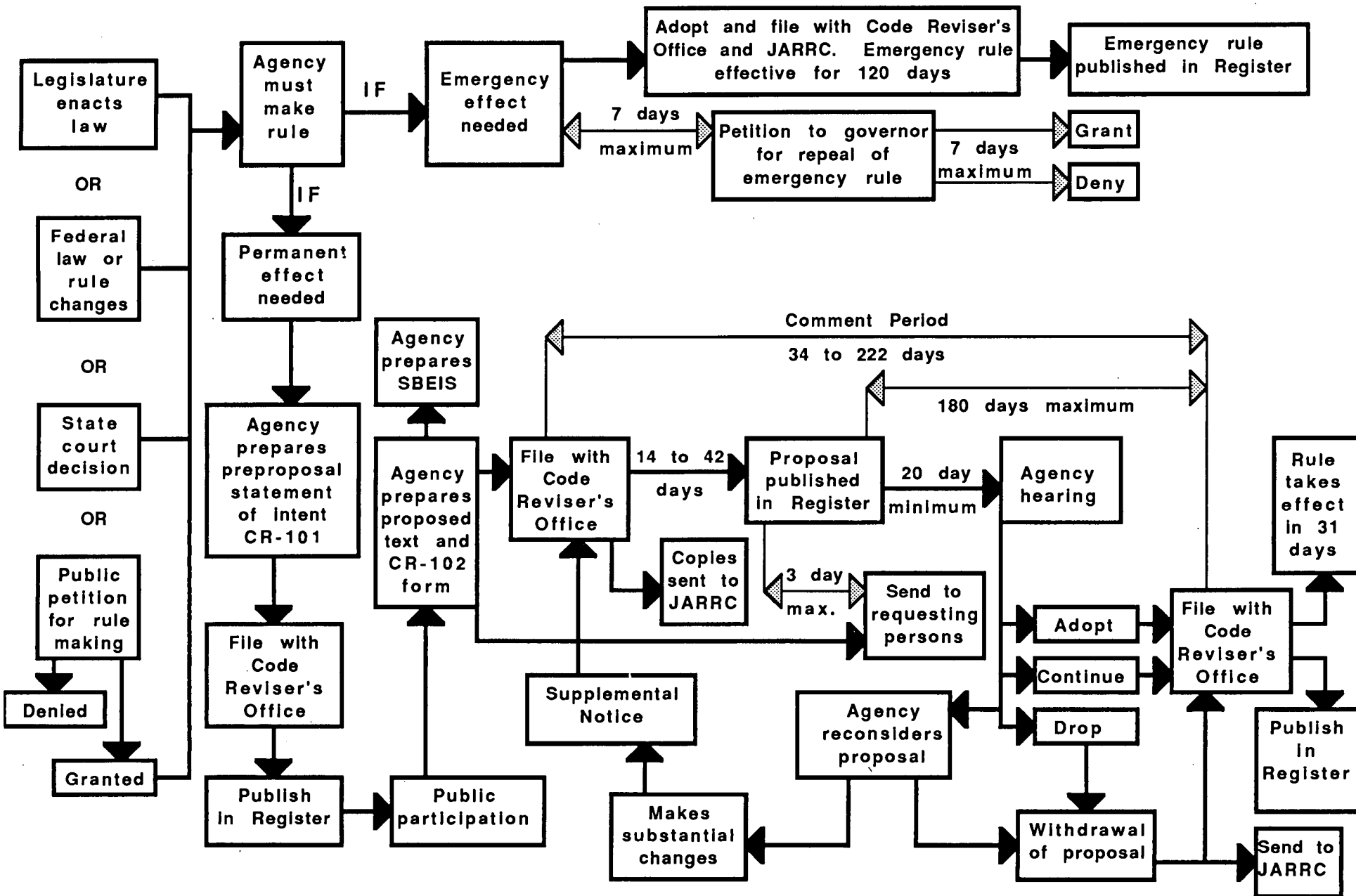
There is less than minor economic impact on business;

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



WSR 95-04-001**PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF LICENSING**

[Filed January 18, 1995, 12:25 p.m.]

Subject of Possible Rule Making: Amendment to chapters 308-88 and 308-96A WAC concerning rental car business registration and rental car registration.

Specific Statutory Authority for New Rule: RCW 46.87.023(5).

Reasons Why the New Rule is Needed: Implementation of chapter 227, Laws of 1994.

Goals of New Rule: Amend/repeal existing rules as necessary to implement new legislation.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Written and oral comments are welcome. Please contact: Business Registrations, Art Farley, LSM (Prorate), Department of Licensing, Mailstop 48083, Olympia, WA 98504, (360) 753-6993, FAX (360) 664-8468; or Vehicle Title/Registrations, Eric Anderson, LSM (Titles/Registrations), Department of Licensing, Mailstop 48030, Olympia, WA 98504, (360) 902-3811, FAX (360) 664-0339.

January 18, 1995

Nancy Kelly

Administrator

Title and Registration Services

WSR 95-04-002**PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed January 18, 1995, 1:50 p.m.]

Subject of Possible Rule Making: Expiring date of condoms.

Specific Statutory Authority for New Rule: RCW 18.64.005.

Reasons Why the New Rule is Needed: For Washington state residents to be adequately protected and to have an adequate supply of condoms to prevent disease.

Goals of New Rule: To extend the expiration date of condoms from three to five years.

Process for Developing New Rule: A memo to adopt emergency rules was submitted. An emergency rule was filed on December 7, 1994, to preserve public health and safety.

How Interested Parties can Participate in Formulation of the New Rule: Don Williams, Executive Director, (206) 753-6834, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863.

January 17, 1995

D. H. Williams

Executive Director

WSR 95-04-003**PREPROPOSAL STATEMENT OF INTENT
EXECUTIVE ETHICS BOARD**

[Filed January 18, 1995, 2:35 p.m.]

Specific Statutory Authority for New Rule: Chapter 42.52 RCW, RCW 42.52.360 (2)(b).

Reasons Why the New Rule is Needed: To implement chapter 42.52 RCW. Chapter 42.52 RCW substantially strengthens and clarifies the ethical standards that apply to state officers and state employees. The board is responsible for enforcing chapter 42.52 RCW with regard to state officers and state employees of the executive branch of state government.

Goals of New Rule: The goal is to establish procedures for the implementation of chapter 42.52 RCW as it relates to the executive branch. This includes: (1) Rules regarding the filing, processing, investigating and determining complaints and imposing sanctions pursuant to RCW 42.52.360 (2)(d), (e), (f) and (g); (2) rules for processing requests for advisory opinions pursuant to RCW 42.52.360 (2)(c); (3) rules for advising state officers or employees regarding potential conflicts in outside contracts with a state agency pursuant to RCW 42.52.120 (2)(b) and (c); (4) rules defining the term "working hours" pursuant to RCW 42.52.360 (2)(b); (5) rules regarding occasional use of state resources of de minimus cost and value pursuant to RCW 42.52.160(3); and (6) rules governing the procedure and general operation of the board.

Process for Developing New Rule: The board will request written comments from persons who may be interested in the development of the rules implementing chapter 42.52 RCW. Comments received will be considered by the board before proposed rules are published pursuant to a formal notice.

How Interested Parties can Participate in Formulation of the New Rule: Written comments must be received by February 28, 1995. These comments will be considered by the board at its March 10, 1995, meeting. Thereafter, the board will proceed with rule making. Contact Teri Metcalf, Attorney General's Office, P.O. Box 40100, Olympia, WA 98504-0100, (206) 586-3751, FAX (206) 664-0229.

January 13, 1995

Reverend Cheryl L. J. Rohret

Chair

WSR 95-04-010**PREPROPOSAL STATEMENT OF INTENT
WESTERN WASHINGTON UNIVERSITY**

[Filed January 19, 1995, 9:52 a.m.]

Specific Statutory Authority for New Rule: RCW 28B.35.120(12).

Reasons Why the New Rule is Needed: To provide an impound alternative other than towing the vehicles from campus as a consequence for violation of the university's parking regulations and failure to pay the fines.

Goals of New Rule: To provide an impound alternative other than towing vehicles as a consequence for violation of university parking regulations and failure to pay the fines.

Process for Developing New Rule: University parking advisory committee recommendation.

How Interested Parties can Participate in Formulation of the New Rule: Ann Wallace, Manager, Parking Services, Western Washington University, Bellingham, Washington 98225-9098, phone (206) 650-2945, FAX (206) 650-3412. Send written comments/questions; hearing date to be scheduled week of April 4.

January 17, 1994 [1995]
Wendy K. Bohlke
Assistant Attorney General
Senior Counsel

ments are taken into consideration before the final rule is issued.

How Interested Parties can Participate in Formulation of the New Rule: Contact Charles Henderson, Program Manager, Food Stamp Program Section, Division of Income Assistance, phone (SCAN 585) 438-8325, FAX (SCAN 585) 438-8258.

January 19, 1995
Dewey Brock, Chief
Office of Vendor Services

WSR 95-04-012
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF
SERVICES FOR THE BLIND
[Filed January 19, 1995, 10:33 a.m.]

Specific Statutory Authority for New Rule: Chapter 74.18 RCW.

Reasons Why the New Rule is Needed: WAC 67-35-030 Terms defined, to add two new definitions necessitated by change in vendor/agency relationship; WAC 67-35-210 Department responsibility, due to change in relationship as above; WAC 67-35-215 Vendor responsibility, as above; WAC 67-35-220 Department and vendor responsibility, as above, re: Initial consumable stocks and cash; WAC 67-35-230 Department and vendor responsibility, as above, re: Facility and equipment; WAC 67-35-350 Vendor responsibility, to be repealed; WAC 67-35-360 Vendor responsibility, re: Agreement, due to change in relationship, as above; and WAC 67-35-430 Reasons for suspension, as above.

Goals of New Rule: In each case, the goals are to clarify conditions under which vendors in the business enterprise program are to participate.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Contact Bonnie Jindra, Assistant Director, Department of Services for the Blind, P.O. Box 40933, Olympia, WA 98504-0933, (206) 586-1224, FAX 586-7627.

January 18, 1995
Bonnie Jindra
Assistant Director

WSR 95-04-013
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)
[Filed January 19, 1995, 2:59 p.m.]

Subject of Possible Rule Making: WAC 388-49-480.

Specific Statutory Authority for New Rule: 7 CFR 273.1 (b)(2)(i), RCW 74.04.510.

Reasons Why the New Rule is Needed: To conform WAC 388-49-480 to 7 CFR 273.1 (b)(2)(i).

Goals of New Rule: To delete ineligible students from consideration as ineligible household members.

Process for Developing New Rule: Internal (management) and external (field staff) review process whereby draft material is distributed for review and comment. All com-

WSR 95-04-016
PREPROPOSAL STATEMENT OF INTENT
ECONOMIC DEVELOPMENT
FINANCE AUTHORITY
(Community, Trade and Economic
Development, Department of)
[Filed January 19, 1995, 3:33 p.m.]

Subject of Possible Rule Making: Repealer chapter 178-01 WAC, Economic development finance authority, policies.

Specific Statutory Authority for New Rule: RCW 43.163.100(18).

Reasons Why the New Rule is Needed: To enable the authority to adopt its policies by resolution of the authority.

Goals of New Rule: To enhance the authority's flexibility in the adoption of its procedures.

Process for Developing New Rule: Negotiated rule making.

How Interested Parties can Participate in Formulation of the New Rule: Jonathan A. Hayes, Community, Trade and Economic Development, 2001 Sixth Avenue, Suite 2700, Seattle, WA 98121, phone (206) 389-2559, FAX (206) 464-5868.

January 18, 1995
Debora Brown
Special Assistant

WSR 95-04-032
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 24, 1995, 10:02 a.m.]

Specific Statutory Authority for New Rule: RCW 51.16.035 and 51.16.100.

Reasons Why the New Rule is Needed: To be responsive to changes in hazards relative to the construction industry and provide ratepayer equity to employers covered by a proposal to establish new risk classifications, and amend/repeal several existing risk classifications for the construction industry.

Goals of New Rule: To establish new risk classification definitions, and to amend/repeal several of existing risk classification definitions applicable to the construction industry.

Process for Developing New Rule: Agency is seeking input from employers to establish, amend, and/or repeal classifications for the construction industry. The CR-101

process will include eight informal hearings in March 1995, to allow industry input. The department will pursue to formalize those definitions (classifications) with industry support by way of the CR-102.

How Interested Parties can Participate in Formulation of the New Rule: Ken Woehl, Classification Development Specialist, Insurance Services Division, P.O. Box 44148, Olympia, WA 98504-4148, (206) 956-4775, FAX (206) 956-4721. Input accepted through April 28, 1995.

January 24, 1995
Mark O. Brown
Director

WSR 95-04-057
PREPROPOSAL STATEMENT OF INTENT
HEALTH CARE AUTHORITY

[Filed January 26, 1995, 1:50 p.m.]

Subject of Possible Rule Making: HCA and PEBB administrative and PEBB eligibility rules, chapters 182-04 through 182-18 WAC.

Specific Statutory Authority for New Rule: Chapter 41.05 RCW.

Reasons Why the New Rule is Needed: Current emergency rules will be amended and permanently adopted.

Goals of New Rule: Meet statutory requirements.

Process for Developing New Rule: Public hearings and stakeholder meetings.

How Interested Parties can Participate in Formulation of the New Rule: **Administrative Rules**, Elin Meyer, Rules Coordinator, P.O. Box 42705, Olympia, WA 98504-2705, phone (360) 923-2801, FAX (360) 923-2607. **Eligibility Rules**, Beth Berendt, Director, Program Development, P.O. Box 42710, Olympia, WA 98504-2710, phone (360) 923-2728, FAX (360) 923-2766.

January 25, 1995
Elin Meyer
Rules Coordinator

WSR 95-04-058
PREPROPOSAL STATEMENT OF INTENT
HEALTH CARE AUTHORITY

[Filed January 26, 1995, 1:51 p.m.]

Subject of Possible Rule Making: BHP participation and administrative rules, chapter 55-01 WAC.

Specific Statutory Authority for New Rule: Chapter 70.47 RCW.

Reasons Why the New Rule is Needed: Current emergency rule will be amended and permanently adopted.

Goals of New Rule: Reflect new legislation and agency policy.

Process for Developing New Rule: Public hearing and stakeholder meetings.

How Interested Parties can Participate in Formulation of the New Rule: Juan Alaniz, BHP Division Program Coordinator, P.O. Box 42685, Olympia, WA 98504-2685, phone (360) 923-2947, FAX (360) 923-2607.

January 25, 1995
Elin Meyer
Rules Coordinator

WSR 95-04-061
PREPROPOSAL STATEMENT OF INTENT
BOARD OF
PILOTAGE COMMISSIONERS

[Filed January 27, 1995, 11:31 a.m.]

Subject of Possible Rule Making: Establish Grays Harbor pilotage district annual tariff.

Specific Statutory Authority for New Rule: RCW 88.16.035(4).

Reasons Why the New Rule is Needed: The current tariff, WAC 296-116-185, expires on April 30, 1995.

Goals of New Rule: To establish reasonable pilotage fees which must be set annually.

Process for Developing New Rule: Negotiated rule making; and the board has begun receiving comments as to reasonable tariff levels and will continue to encourage written documentation and oral comments pursuant to formal notice requirements. Negotiations between the interested parties are ongoing and encouraged.

How Interested Parties can Participate in Formulation of the New Rule: Written comments will be received from the general public up through March 2, 1995, and oral comments will be received at the board meeting on March 9, 1995. Specific time schedules will be established for the affected pilots and ship owners/operators. Contact Peggy Larson, 801 Alaskan Way, Seattle, WA 98104-1487, phone (206) 464-7818, FAX (206) 464-6368.

January 26, 1995
Larry L. Vognild
Chair

WSR 95-04-069
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF HEALTH

[Filed January 30, 1995, 9:58 a.m.]

Subject of Possible Rule Making: WAC 246-838-990 and 246-839-990, review of current LPN fees, and combination of current RN and LPN WACs regarding fees into the new WAC chapter.

Specific Statutory Authority for New Rule: RCW 18.79.200.

Reasons Why the New Rule is Needed: License fees must be reviewed to determine whether current amounts will meet the budgetary requirements of the program. The Nursing Commission is converting all sections of chapters 246-838 and 246-839 WAC to new WAC chapter.

Goals of New Rule: To set fees that will meet the budgetary requirements of the program. This rule will combine the current separate WACs for RN and LPN fees into one section of the new WAC chapter.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Written testimony may be sent to the Washington State Nursing Care Quality Assurance Commis-

sion, ATTN: Mary Dale, Program Manager, P.O. Box 47864, Olympia, WA 98504-7864, FAX (360) 586-5935.
 January 26, 1995
 Bruce Miyahara
 Secretary

WSR 95-04-070
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF TRANSPORTATION
 [Filed January 30, 1995, 10:10 a.m.]

Specific Statutory Authority for New Rule: Chapter 47.38 RCW grants the Department of Transportation the authority to adopt rules to govern rest areas.

Reasons Why the New Rule is Needed: Presently there are no rest rules. Washington State Department of Transportation is potentially in a legally unsupported position when rest area attendants or the state patrol must prevent or stop inappropriate behavior or activities.

Goals of New Rule: To support employees and the state patrol to enforce appropriate behavior in rest areas.

Process for Developing New Rule: Agency study.

How Interested Parties can Participate in Formulation of the New Rule: Contact Larry Rus, Roadside Maintenance Program Manager, Transportation Building, P.O. Box 47358, Olympia, WA 98504-7358, phone (360) 705-7853, FAX (360) 705-6823.

January 27, 1995
 S. A. Moon
 Deputy Secretary

Chapter 468-32 WAC
SAFETY REST AREAS

NEW SECTION

WAC 468-32-010 Rest area rules. Pursuant to chapter 47.38 RCW, the purpose of these regulations is for the safety of the traveling public by governing the conduct and use of safety rest areas. The following restrictions apply to activities in safety rest areas:

- (1) Parking is only permitted in designated areas;
- (2) Litter containers are only for picnic and automobile litter;
- (3) Pets shall stay in designated areas and shall be on a leash at all times;
- (4) Open fires are prohibited;
- (5) Aggressive solicitation for money or goods with the intent to intimidate another person into giving money or goods is prohibited; and
- (6) Sanitary disposal systems are for dumping sanitary wastes only from recreational vehicles. Commercial vehicles are prohibited from using the sanitary disposal systems.

WSR 95-04-076
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF ECOLOGY
 [Order 94-48—Filed January 30, 1995, 4:34 p.m.]

Specific Statutory Authority for New Rule: Chapter 90.58 RCW, Shoreline Management Act of 1971. Rule amended: WAC 173-19-260.

Reasons Why the New Rule is Needed: Kitsap County has requested this rule amendment to amend the Kitsap County shoreline master program.

Goals of New Rule: To adopt a shoreline master program amendment for Kitsap County. This will amend WAC 173-19-260.

Process for Developing New Rule: This amendment was developed during a lengthy local amendatory process with a series of public meetings and hearings conducted by the Kitsap County Planning Commission and Board of County Commissioners.

How Interested Parties can Participate in Formulation of the New Rule: Copies of the master program are available from Alice Schisel, Department of Ecology Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, 98008-5452, (206) 649-4309, FAX (206) 649-7098.

January 26, 1995
 Linda G. Crerar
 Water and Shorelands
 Assistant Director

WSR 95-04-079
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF REVENUE
 [Filed January 31, 1995, 9:15 a.m.]

Subject of Possible Rule Making: Amending WAC 458-20-189 Sales to and by the state of Washington, counties, cities, school districts and other municipal subdivisions.

Specific Statutory Authority for New Rule: RCW 82.32.300, the rule is being amended to implement the statutory changes to RCW 82.08.0291 and 82.04.050 (3)(h).

Reasons Why the New Rule is Needed: The rule currently does not explain that physical fitness services provided by the state of Washington and municipal corporations were reclassified to retail sales. Taxpayers relying on the current version of Rule 189 would conclude that these services are subject to the service B&O tax. This rule is also being amended to clarify existing tax reporting instructions.

Goals of New Rule: To provide an explanation of how sales to and by the state of Washington and its municipal corporations are taxed. Municipal corporations are subject to B&O tax on income derived from "enterprise activities." The revised rule will clarify how municipal corporations determine whether they are engaged in "enterprise activities." The revised rule will explain the effect of statutory changes on the taxability of physical fitness activities.

Process for Developing New Rule: Department of Revenue modified negotiated rule making.

How Interested Parties can Participate in Formulation of the New Rule: Written comments should be submitted by the public meeting date to ensure full consideration, but will

be accepted until the date of adoption. Written comments on and/or requests for copies of the rule may be directed to Alan R. Lynn, Tax Policy Specialist, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-9040, FAX (360) 664-0693.

Location and Date of Public Meeting: General Administration Building, Revenue Conference Room 415, 210 11th and Columbia Street, Olympia, WA, on March 9, 1995, at 1:30 p.m.

Assistance for Person with Disabilities: Contact Gwendolyn Kopetsky by February 28, 1995, TTY 1-800-451-7985, or (360) 753-3217.

January 31, 1995
Les Jaster
Rules Coordinator

WSR 95-04-085
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF HEALTH
[Filed January 31, 1995, 1:45 p.m.]

Subject of Possible Rule Making: Delegation and supervision by registered and licensed practical nurses.

Specific Statutory Authority for New Rule: RCW 18.79.110.

Reasons Why the New Rule is Needed: To clarify the elements of delegation and supervision by registered and licensed practical nurses.

Goals of New Rule: This rule will develop delegation protocols that will facilitate and guide safe delegation of nursing tasks.

Process for Developing New Rule: A task force will be appointed by the Nursing Commission to work on WAC language.

How Interested Parties can Participate in Formulation of the New Rule: Written testimony may be sent to the Washington State Nursing Care Quality Assurance Commission, P.O. Box 47864, Olympia, WA 98504-7864, FAX (360) 586-5935.

January 30, 1995
Patricia O. Brown, RN, MSN
Executive Director

WSR 95-04-089
PREPROPOSAL STATEMENT OF INTENT
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed January 31, 1995, 3:49 p.m.]

Subject of Possible Rule Making: Special education due process hearing rules at chapter 392-171 WAC.

Specific Statutory Authority for New Rule: RCW 28A.155.090(7) and 28A.300.070.

Reasons Why the New Rule is Needed: Remedy delays in reaching decisions in special education due process hearings which are in alleged violation of the forty-five day requirement established by 34 CFR 300.512.

Goals of New Rule: Expedite the submission of requests for due process hearings to the Office of Adminis-

trative Hearings and establish requirements for compliance with 34 CFR 300.512.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

How Interested Parties can Participate in Formulation of the New Rule: Send written comments to Rules Coordinator/Legal Services, P.O. Box 47200, Olympia, WA 98504-4201, FAX (206) 753-4201, TDD (206) 664-3631.

January 30, 1995
Judith A. Billings
Superintendent of
Public Instruction

WSR 95-04-090
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF AGRICULTURE
(Beef Commission)
[Filed January 31, 1995, 3:53 p.m.]

Subject of Possible Rule Making: WAC 60-12-010(3), Washington Beef Commission Act rules, levy of assessment by brand inspectors by the state Department of Agriculture.

Specific Statutory Authority for New Rule: RCW 16.67.090(4).

Reasons Why the New Rule is Needed: To facilitate the collection of assessments by the Beef Commission when brand inspection by a state Department of Agriculture brand inspector is not required in conjunction with a change of livestock ownership.

Goals of New Rule: To provide a more efficient method of collecting Beef Commission assessments.

Process for Developing New Rule: Subject to the provisions of chapter 34.05 RCW, Administrative Procedure Act.

How Interested Parties can Participate in Formulation of the New Rule: Walter Swenson, Agricultural Programs, Administrator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (206) 902-1928, FAX (206) 902-2089. A public hearing will be set to give interested parties an opportunity to participate and comment on the proposed rule change.

January 30, 1995
John M. King
Deputy Director

WSR 95-04-094
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF REVENUE
[Filed January 31, 1995, 4:23 p.m.]

Subject of Possible Rule Making: WAC 458-40-610 Timber excise tax—Definitions, 458-40-650 Timber excise tax—Timber quality codes defined, 458-40-670 Timber excise tax—Stumpage value adjustments, and 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods.

Specific Statutory Authority for New Rule: RCW 82.32.300 and 84.33.096.

Reasons Why the New Rule is Needed: To implement the stumpage value tables contained in WAC 458-40-660, including new species classifications, new definitions, new stumpage value adjustments, and new scaling allowance. These rules were amended on an emergency basis effective January 1, 1995. The filing of this CR-101 is the first step in the adoption of these rules on a permanent basis.

Goals of New Rule: The proposed new rules will take the place of the rules adopted on an emergency basis.

Process for Developing New Rule: Department of Revenue modified negotiated rule making.

How Interested Parties can Participate in Formulation of the New Rule: Written comments should be submitted by the public meeting date to ensure full consideration, but will be accepted until the date of adoption. Written comments on and/or requests for copies of the rule may be directed to James A. Winterstein, Counsel, Legislation and Policy, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-4283, FAX (360) 664-0693.

Location and Date of Public Meeting: Revenue Conference Room, Target Place Building, 2735 Harrison Avenue N.W., Olympia, WA, on March 8, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by March 1, 1995, TTY 1-800-451-7985, or (360) 753-3217.

January 31, 1995
Russell W. Brubaker
Assistant Director

WSR 95-04-095
PREPROPOSAL STATEMENT OF INTENT
BOARD OF
PILOTAGE COMMISSIONERS
[Filed February 1, 1995, 8:50 a.m.]

Subject of Possible Rule Making: Establish Puget Sound Pilotage District annual tariff.

Specific Statutory Authority for New Rule: RCW 88.16.035.

Reasons Why the New Rule is Needed: The current tariff, WAC 296-116-300, expires on June 30, 1995.

Goals of New Rule: To establish reasonable pilotage fees which must be set annually.

Process for Developing New Rule: Negotiated rule making; and the board has begun receiving comments as to reasonable tariff levels and will continue to encourage written documentation and oral comments pursuant to formal notice requirements. Negotiations between the interested parties are ongoing and encouraged.

How Interested Parties can Participate in Formulation of the New Rule: Written comments will be received from the general public up through May 4, 1995, and oral comments will be received at the board meeting on May 11, 1995. Specific time schedules will be established for the affected pilots and ship owners/operators. Contact Peggy Larson, 801 Alaskan Way, Seattle, WA 98104-1487, phone (206) 464-7818, FAX (206) 464-6368.

January 31, 1995
Charles F. Adams
Assistant Attorney General

WSR 95-04-101
PREPROPOSAL STATEMENT OF INTENT
DEPARTMENT OF ECOLOGY
[Order 95-01—Filed February 1, 1995, 9:45 a.m.]

Specific Statutory Authority for New Rule: Chapter 90.58 RCW, Shoreline Management Act of 1971. Rule to be amended: WAC 173-19-250.

Reasons Why the New Rule is Needed: King County has requested this rule to allow amendment of the King County shoreline master program.

Goals of New Rule: An environment redesignation from conservancy to rural is proposed for a Weyerhaeuser mill property for the purpose of consistency with the property's historical use and current zoning.

Process for Developing New Rule: The rule went through interdepartmental review at the county level, and review by the King County hearing examiner on November 1, 1994. The King County Council adopted the recommendations of the hearing examiner on December 1, 1994.

How Interested Parties can Participate in Formulation of the New Rule: The next public hearing will be held in King County by ecology. Notice of ecology's hearing will be published in the state register. Contact Wayne Turnberg at (206) 649-7030, FAX (206) 649-7098, Department of Ecology, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, to be placed on the mailing list to be sent notice of the hearing.

January 31, 1995
Linda G. Crerar
Assistant Director
Shorelands and Water
Resources Program

WSR 95-04-104
PREPROPOSAL STATEMENT OF INTENT
EMPLOYMENT SECURITY DEPARTMENT
[Filed February 1, 1995, 10:12 a.m.]

Subject of Possible Rule Making: WAC 192-12-130 and 192-12-141, relating to the procedures for filing intra- and interstate claims for unemployment compensation benefits.

Specific Statutory Authority for New Rule: RCW 50.12.010 Commissioner's duties and powers, 50.12.040 Rules and regulations, 50.20.010 Benefit eligibility conditions, and 50.20.140 Filing applications and claims.

Reasons Why the New Rule is Needed: WAC 192-12-130 and 192-12-141 require that, to be considered timely, a continued claim for benefits must be received by the department no later than the end of the week following the week(s) being claimed. This requirement means that many benefit claims are considered to be untimely, requiring staff to issue conditional payments, determine whether the claimant had good cause for filing late, write overpayments, etc. An internal agency workgroup has recommended that a continued claim for benefits be considered timely if it is received within four weeks after the end of the week(s) being claimed. These regulations also require that continued claims be filed in person or by mail. The department is developing an interactive voice response system which would allow weekly claims for benefits to be filed over the

telephone. The proposal is to amend the regulation to authorize the filing of continued claims by such means as the department considers appropriate, including telephone or electronic media (such as telefax) filings. WAC 192-12-141 also requires claimants to report the number of hours for which they received holiday and vacation pay. Current statute only requires reporting days for which such pay is received, and the amount of pay. The proposal is to eliminate the reporting of hours for holiday and vacation pay, to bring the regulation in line with current statute. WAC 192-12-130 was adopted in 1953 and has not been revised since that date. The language in subsection (7) regarding appellate procedures is outdated and does not accurately reflect the current role of the "agent state." The regulation will be updated to reflect current practices and procedures. Both regulations will be rewritten to simplify language and terminology.

Goals of New Rule: The new time limit for filing continued claims for benefits is proposed to provide for equitable treatment of claimants, reduce the number of conditional payments, redetermination, overpayments, and appeals, and streamline payment of benefits. Authorizing telephone filing of continued claims will permit the agency to implement alternative methods of filing continued UI benefit claims. Language on appellate procedures will be modified to reflect current prevailing practices. Claimants need only report days for which holiday or vacation pay is earned, and the amount; eliminating the requirement to report hours will simplify the claims process for the claimant and the agency.

Process for Developing New Rule: A workgroup comprised of agency staff (both from central office and local offices), and interested persons from the regulated community will be formed to review the proposals, make recommendations, and draft final language.

How Interested Parties can Participate in Formulation of the New Rule: Interested parties may participate on a workgroup which will review each of the proposed changes, make recommendations, and draft final regulatory language. Contact Juanita Myers, Employment Security Department, Unemployment Insurance Division, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 753-5131, FAX (360) 753-6492. Interested persons may submit written comments to John Nemes, Rules Coordinator, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046. Public rule-making hearings will be scheduled, dates and times will be announced and published, at which time interested persons may present comment.

February 1, 1995
Wendy Holden
Deputy Commissioner

WSR 95-04-105
PREPROPOSAL STATEMENT OF INTENT
BUILDING CODE COUNCIL
[Filed February 1, 1995, 10:29 a.m.]

Subject of Possible Rule Making: Establishing a methodology for the testing of factory-built fireplaces. Establishing design standards for the construction of new masonry fireplaces.

Specific Statutory Authority for New Rule: RCW 70.94.457 (b) and (c).

Reasons Why the New Rule is Needed: Required by chapter 70.94 RCW, Washington Clean Air Act, specifically RCW 70.94.457 (b) and (c).

Goals of New Rule: To establish a methodology for the testing of factory-built fireplaces that is designed to achieve a particulate air emission standard equivalent to the 1990 United States Environmental Protection Agency standard for wood stoves; and to develop design standards for the construction of new masonry fireplaces that generally achieve reductions in particulate air contaminate emissions commensurate with the reductions being achieved with factory-built fireplaces.

Process for Developing New Rule: Negotiated rule making; and Technical Advisory Group working with the State Building Code Council.

How Interested Parties can Participate in Formulation of the New Rule: As of January 1, 1997, the Washington Clean Air Act, chapter 70.94 RCW, will not allow the sale of fireplaces, except masonry fireplaces, unless such fireplaces meet the 1990 Environmental Protection Agency standards for wood stoves, or equivalent standards that may be established by the State Building Code Council (council). In developing the rules, the council will include on the Technical Advisory Group (TAG) at least one representative from the masonry fireplace builders and one representative of the factory-built fireplace manufacturer. Individuals or organizations wishing to submit nominations for membership on the TAG should submit a nomination letter, including experience and qualifications or the nominated individual, to Gene Colin, Chair, Washington State Building Code Council, P.O. Box 48300, Olympia, WA 98504-8300. Nominations should be submitted no later than February 22, 1995. Formal appointments to the TAG will be made in late February. TAG meetings are proposed to be scheduled bi-monthly from March through June. The actual schedule will be established by the TAG at their first meeting. For additional information, contact David Scott at (360) 586-3423.

January 31, 1995
Gene Colin
Chair

WSR 95-04-107
PREPROPOSAL STATEMENT OF INTENT
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 1, 1995, 10:49 a.m.]

Subject of Possible Rule Making: School district student count requirements for state basic education allocation purposes.

Specific Statutory Authority for New Rule: RCW 28A.150.290.

Reasons Why the New Rule is Needed: To correct unintended negative financial impacts upon school districts due to recent revisions in student reporting requirements.

Goals of New Rule: Allow students to be counted who participate in a school day within the first four school days of a quarter or semester.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

How Interested Parties can Participate in Formulation of the New Rule: Send written comments to Rules Coordinator/Legal Services, P.O. Box 47200, Olympia, WA 98504-4201, FAX (206) 753-4201, TDD (206) 664-3631.

January 31, 1995
Judith A. Billings
Superintendent of
Public Instruction

WSR 95-04-108

PREPROPOSAL STATEMENT OF INTENT DEPARTMENT OF REVENUE

[Filed February 1, 1995, 11:12 a.m.]

Subject of Possible Rule Making: Revision and amendment of existing rule for attorneys.

Specific Statutory Authority for New Rule: RCW 82.32.300, 34.05.410.

Reasons Why the New Rule is Needed: Amendment and revision needed to reflect statutory changes made in chapter 25, Laws of 1993 sp. sess. to RCW 82.04.055 and 82.04.290. Also revised to address legal services provided by providers in more than one tax classification.

Goals of New Rule: Goal of amendment was to update for statutory changes and provide clarity in rules application.

Process for Developing New Rule: Department of Revenue modified negotiated rule making.

How Interested Parties can Participate in Formulation of the New Rule: Written comments should be submitted by the public meeting date to ensure full consideration, but will be accepted until the date of adoption. Written comments on and/or requests for copies of the rule may be directed to Edward Ratcliffe, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-3505, FAX (306) 664-0693.

Location and Date of Public Meeting: General Administration Building, Revenue Conference Room 415, 210 11th and Columbia Street, Olympia, WA, on March 10, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by March 3, 1995, TDD 1-800-451-7985, or (360) 753-3217.

February 1, 1995
Les Jaster
Rules Coordinator

WSR 95-04-110

PREPROPOSAL STATEMENT OF INTENT UTILITIES AND TRANSPORTATION COMMISSION

[Filed February 1, 1995, 11:25 a.m.]

Subject of Possible Rule Making: Natural gas pipeline safety, bringing state rules into conformity with existing federal rules and adding the definition of master meter. Docket No. UG-950061.

Specific Statutory Authority for New Rule: RCW 80.04.130 and 80.28.210.

Reasons Why the New Rule is Needed: Washington state must track federal rules in order to retain its certification under the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101 et seq. to participate in the federal pipeline safety program. Changes in federal rules have been made since the last adoption of state rules, so the changes must be incorporated through a new rule-making procedure. Adding the definition of master meter will clarify what is and what is not a master meter.

Goals of New Rule: To make state rules consistent with federal rules and to clarify the definition of master meter.

Process for Developing New Rule: Agency study; and workshop-type meetings with regulated companies and consumer representatives in which information and views are exchanged in an effort to reach consensus.

How Interested Parties can Participate in Formulation of the New Rule: Interested parties may submit written comments to the commission, P.O. Box 47250, Olympia, WA 98504-7250. Written comments should be filed not later than the close of business February 21, 1995. Commenters are encouraged to submit specific rule language to accomplish their suggestions and to provide reasoned support for their proposals. The commission will hold a workshop on February 22, 1995, at 3:00 p.m. in Room 140, 1300 Evergreen Park Drive S.W., Olympia, WA 98504, to discuss proposals and pursue consensus regarding a proposal to be noticed for adoption. The commission will provide notice of any such meeting to all persons who submit comments and any person who asks to receive that notice.

February 1, 1995
Gloria Papiez
for Steve McLellan
Secretary

WSR 95-04-116

PREPROPOSAL STATEMENT OF INTENT DEPARTMENT OF FISH AND WILDLIFE

[Filed February 1, 1995, 11:55 a.m.]

Subject of Possible Rule Making: Amendments to coastal commercial bottom fish trawl rules.

Specific Statutory Authority for New Rule: RCW 75.08.080.

Reasons Why the New Rule is Needed: The Pacific Fisheries Management Council has set new guidelines for the 1995 trawl fishery. These are currently being implemented by emergency rule and need to be adopted on a permanent basis.

Goals of New Rule: Spread out the harvest and provide for economic stability.

Process for Developing New Rule: None. These recommendations are an annual reoccurring federal regulatory measure that is already in place for 1995.

How Interested Parties can Participate in Formulation of the New Rule: Brian Culver, Department of Fish and Wildlife, 48-B Devonshire Road, Montesano, WA 98563.

February 1, 1995
Evan Jacoby
Rules Coordinator

WSR 95-04-008

PROPOSED RULES

SHORELINE COMMUNITY COLLEGE

[Filed January 19, 1995, 9:50 a.m.]

Original Notice.

Title of Rule: Chapter 132G-126 WAC, Reduction in force and tenure code.

Purpose: Repeal an existing rule that deals with issues already covered in the faculty contract.

Statutory Authority for Adoption: RCW 34.05.320.

Statute Being Implemented: RCW 34.05.320.

Summary: Repeal chapter 132G-126 WAC, Reduction in force and tenure code.

Reasons Supporting Proposal: Shoreline Community College is bound by negotiations under the Collective Bargaining Act and thus cannot be subject to public hearing debate concerning reduction in force and tenure code.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Chuck Fields, FOSS Building, Office 2100, (206) 546-4642.

Name of Proponent: Shoreline Community College, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Repeal of chapter 132G-126 WAC, Reduction in force and tenure code, will eliminate duplication of and potential conflict with the Collective Bargaining Act under which Shoreline Community College is bound. Shoreline Community College cannot be subject to public hearing debate concerning reduction in force and tenure code because of this collective bargaining agreement.

Proposal Changes the Following Existing Rules: It repeals existing chapter 132G-126 WAC.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. There will be no economic impact in the repealing of this rule.

Hearing Location: Small Conference Room, Administration Building, Shoreline Community College, 16101 Greenwood Avenue North, Seattle, WA 98133, on March 9, 1995, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Chuck Fields by March 8, 1995, TDD (206) 546-4520, or (206) 546-4642.

Submit Written Comments to: Chuck Fields, Shoreline Community College, FAX (206) 546-5826, by March 8, 1995.

Date of Intended Adoption: March 17, 1995.
 January 18, 1995
 Charles R. Fields
 Vice-President for
 Student Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132G-126-010 Rules and regulations governing reduction in force—Objective and definition.

- WAC 132G-126-020 RIF—Procedures for determining the necessity.
- WAC 132G-126-030 RIF—Layoff units.
- WAC 132G-126-040 RIF—Seniority.
- WAC 132G-126-050 RIF—Implementation of reduction in force.
- WAC 132G-126-060 RIF—Notification, hearing and appeal.
- WAC 132G-126-070 RIF—Rights of laid off academic employees.
- WAC 132G-126-080 RIF—Special provisions.
- WAC 132G-126-200 Tenure—Purpose.
- WAC 132G-126-210 Tenure—Definitions.
- WAC 132G-126-220 Tenure—Appointment review committees—Purpose of the committees and selection of membership.
- WAC 132G-126-230 Tenure—Appointment review committees—Duties and responsibilities.
- WAC 132G-126-240 Tenure—Appointment review committees—Operating procedures.
- WAC 132G-126-250 Tenure—Authority of the board of trustees.
- WAC 132G-126-260 Tenure—Rights and reasonable expectations of the probationer.
- WAC 132G-126-270 Tenure—Dismissal of faculty members—Preamble.
- WAC 132G-126-280 Tenure—Dismissal of faculty members—Faculty categories covered.
- WAC 132G-126-290 Tenure—Dismissal of faculty members—Reasons for dismissal of a faculty member.
- WAC 132G-126-300 Tenure—Dismissal of faculty members—Composition of the dismissal review committee.
- WAC 132G-126-310 Tenure—Dismissal of faculty members—Selection of the dismissal review committee.
- WAC 132G-126-320 Tenure—Dismissal of faculty members—Preliminary procedures relating to the dismissal of a faculty member.
- WAC 132G-126-330 Tenure—Dismissal of faculty members—Initiation of formal proceedings.
- WAC 132G-126-340 Tenure—Dismissal of faculty members—Procedural rights accorded the faculty member concerned.
- WAC 132G-126-350 Tenure—Dismissal of faculty members—Responsibilities of dismissal review committee.
- WAC 132G-126-360 Tenure—Dismissal of faculty members—Duties of the hearing officer of the dismissal review committee.
- WAC 132G-126-370 Tenure—Dismissal of faculty members—Consideration by the board of trustees.

PROPOSED

- WAC 132G-126-380 Tenure—Dismissal of faculty members—Time limits.
- WAC 132G-126-390 Tenure—Dismissal of faculty members—Publicity.
- WAC 132G-126-400 Tenure—Dismissal of faculty members—Right of the faculty member to appeal the decision of the dismissal review committee and/or the board of trustees.

January 19, 1995
Debra Brown
Special Assistant

WSR 95-04-018
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed January 19, 1995, 4:31 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-104 Exemption—Volume of business.

Purpose: To help businesses understand Washington's gross receipts tax relief for small businesses.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: Title 82 RCW, particularly RCW 82.04.4451 and 82.16.040.

Summary: This rule is being revised to implement statutory changes reflected in chapter 2, Laws of 1994 sp. sess., which changed the method for computing the B&O tax exemption from a minimum tax reporting threshold to a B&O tax credit system.

Reasons Supporting Proposal: To incorporate 1994 law changes, and to clarify existing instructions about tax relief for small business.

Name of Agency Personnel Responsible for Drafting and Implementation: Les Jaster, 711 Capitol Way South, Suite 303, Olympia, (206) 586-7150; and Enforcement: Russ Brubaker, 711 Capitol Way South, Suite 303, Olympia, (206) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains Washington's gross receipts tax relief for small business. The rule explains the B&O tax credit system, and the minimum tax reporting threshold exemption for the public utility tax. The rule explains that the B&O tax credit should be computed after claiming any other B&O tax credits available under chapter 82.04 RCW, but prior to any credits provided under other chapters of Title 82 RCW. The amendments to this rule should help businesses better understand Washington's gross receipts tax relief for small business.

Proposal Changes the Following Existing Rules: This is an amendment to WAC 458-20-104. The rule has been revised to clarify Washington's small business tax relief. The 1994 legislature changed the method for computing the volume of business exemption. For B&O taxes from a minimum tax reporting threshold exemption to a B&O tax credit system. This change became effective July 1, 1994.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Legislation and Policy Division, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (206) 586-4281, or FAX (206) 664-0693.

Hearing Location: Revenue Conference Room #415, General Administration Building, 210 11th and Columbia, Olympia, WA, on March 7, 1995, at 1:30 p.m.

WSR 95-04-017

PROPOSED RULES

**ECONOMIC DEVELOPMENT
FINANCE AUTHORITY**

(Community, Trade and Economic
Development, Department of)

[Filed January 19, 1995, 3:34 p.m.]

Original Notice.

Title of Rule: Repealer chapter 178-01 WAC, Policies.

Purpose: To repeal chapter 178-01 WAC, Economic Development Finance Authority, policies (operations and procedures).

Statutory Authority for Adoption: RCW 43.163.100(18).

Summary: Repeal will permit the authority to adopt its policies and specify operations procedures by resolution of the authority.

Reasons Supporting Proposal: The current rule specifies a quorum of ten - one more than required by statute; and the current rule specifies that the state treasurer will be the secretary of the authority.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jonathan A. Hayes, Seattle, (206) 389-2559.

Name of Proponent: Economic Development Finance Authority, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This will repeal the existing policies (operations and procedures) of the authority. This will then allow the authority to adopt its policies and procedures by resolution, thereby enhancing the authority's flexibility in this area.

Proposal Changes the Following Existing Rules: Repeals chapter 178-01 WAC in its entirety.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The proposed changes would affect the authority's internal operations only; there will be no effect on any outside entity from these changes.

Hearing Location: World Trade Club, Sea-Tac International Airport, on March 7, 1995, at 9:30 a.m.

Assistance for Persons with Disabilities: Contact Jonathan A. Hayes by February 21, 1995, TDD (360) 753-2200, or (206) 389-2559.

Submit Written Comments to: FAX (206) 464-5868, by February 21, 1995.

Date of Intended Adoption: March 7, 1995.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by February 28, 1995, TDD (800) 451-7985, or (206) 753-3217.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0693, by March 7, 1995.

Date of Intended Adoption: March 15, 1995.

January 19, 1995
Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending Order ET 83-17, filed 3/15/83)

WAC 458-20-104 ((Exemptions—)) Small business tax relief based on volume of business.

((Business and Occupation Tax

~~Persons subject to the business and occupation tax are exempt from the payment of this tax for any reporting period in which the taxable amount reported under the combined total of all business and occupation tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons, according to the following schedule:~~

Monthly reporting basis	.....	\$1,000 per month
Quarterly reporting basis	.....	\$3,000 per quarter
Annual reporting basis	.....	\$12,000 per annum

~~When the taxable amount for a reporting period equals or exceeds the minimum taxable amount, tax must be paid on the full taxable amount and no deduction or offset is allowed for the amount of the minimum. The deduction for minimum taxable amounts is applicable to taxable amounts for the entire reporting period, regardless of the fact that the business may not have been operated during the entire period.~~

Retail Sales Tax

~~No exemption from tax is allowed under the retail sales tax to any person engaged in the business of making taxable retail sales by reason of the volume of such sales.~~

Public Utility Tax

~~Persons subject to the public utility tax are exempt from the payment of this tax for any reporting period in which the taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the minimum taxable amount for the reporting periods assigned to such persons, according to the following schedule.~~

Monthly reporting basis	.....	\$500 per month
Quarterly reporting basis	.....	\$1,500 per quarter
Annual reporting basis	.....	\$6,000 per annum

~~(See subhead business and occupation tax, above, for limitations which apply equally to public utility tax.)) (1)~~

Introduction. The law provides a business and occupation (B&O) tax credit for small businesses under certain conditions. Chapter 2, Laws of 1994, sp. sess., changed the method for computing the volume of business exemption for B&O taxes from a minimum tax reporting threshold exemption to a B&O tax credit system. This change became effective July 1, 1994. This section explains the tax credit

system for B&O tax, and the minimum tax reporting threshold exemption for the public utility tax. All persons required to obtain, or having obtained, a tax registration endorsement with the department of revenue must complete and file an excise tax return with the department to claim either a B&O small business tax credit, or a public utility income exemption. (See also WAC 458-20-101 on tax registration.)

(2) Business and occupation tax. Persons subject to the B&O tax may be eligible to claim a small business tax credit against the amount of B&O tax otherwise due. The B&O tax credit operates completely independent of the volume exemption which applies to the public utility tax. This tax credit should be computed after claiming any other B&O tax credits available under chapter 82.04 RCW, but prior to any credits provided under other chapters of Title 82 RCW. The maximum amount of small business tax credit available to a person is thirty-five dollars multiplied by the number of months in the reporting period assigned by the department of revenue under the provisions of RCW 82.32.045. The small business tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

If the amount of B&O tax due from all activities engaged in by the taxpayer is equal to or less than the maximum credit, a small business tax credit equal to the amount of the B&O tax liability will be allowed. If the amount of B&O tax due from all activities is greater than the maximum credit, a reduced credit may be available. This reduced credit will be equal to twice the maximum credit minus the B&O tax otherwise due. RCW 82.04.4451.

(3) Retail sales tax. Persons making retail sales must collect and remit all applicable retail sales taxes. There is no retail sales tax exemption or tax credit system based upon the volume of sales.

(4) Public utility tax. Persons subject to the public utility tax are exempt from the payment of this tax for any reporting period in which the taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the minimum tax reporting threshold for the assigned reporting period. RCW 82.16.040. The minimum tax reporting thresholds for the public utility tax are:

Monthly reporting basis	.....	\$500 per month
Quarterly reporting basis	.....	\$1,500 per quarter
Annual reporting basis	.....	\$6,000 per annum

If the taxable amount for a reporting period equals or exceeds the minimum tax reporting threshold, tax must be remitted on the full taxable amount. The public utility tax reporting thresholds apply to the entire reporting period, even though the business may not have operated during the entire period.

(5) Examples. The following examples illustrate how the small business B&O tax credit and public utility income exemption systems apply to typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(a) JD Inc. has been assigned a quarterly reporting period by the department of revenue. JD Inc.'s B&O tax liability from all business activities is ninety dollars for the

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third quarter of 1994. This B&O tax liability is less than the one hundred five-dollar maximum small business B&O tax credit available for a quarterly reporting period (three times the monthly credit amount of thirty-five dollars). JD Inc. may claim a small business B&O tax credit for the entire ninety dollar B&O tax liability.

<u>Maximum Credit available for quarterly filers (3 x \$35)</u>	
	\$105
<u>B&O Tax due</u>	\$ 90
	<hr/>
<u>Credit Available</u>	\$ 90

(b) HM Corporation has been assigned a quarterly reporting period by the department of revenue. HM's B&O tax liability from all business activities is one hundred twenty dollars for the fourth quarter of 1994. This tax liability exceeds the one hundred five-dollar maximum small business B&O tax credit available for a quarterly period (three times the monthly credit amount of thirty-five dollars). However, a reduced small business tax credit is available. This credit is computed by subtracting HM's B&O tax liability of one hundred twenty dollars from the figure of two hundred ten dollars (twice the maximum credit available for a quarterly reporting period). HM Corporation may claim a small business tax credit of ninety dollars.

<u>Twice the Maximum Credit available for quarterly filers (2 x \$105)</u>	
	\$210
<u>Less: B&O Tax due</u>	\$120
	<hr/>
<u>Credit Available</u>	\$ 90

(c) XY Inc. has been assigned a quarterly reporting period by the department of revenue. XY's B&O tax liability for the first quarter of 1995 is two hundred fifty dollars. As XY's B&O tax liability exceeds the two hundred ten-dollar figure used to determine any reduced B&O tax credit (twice the maximum credit available for a quarterly reporting period), XY Inc. is not eligible for the small business B&O tax credit.

<u>Twice the Maximum Credit available for quarterly filers (2 x \$105)</u>	
	\$210
<u>Less: B&O Tax due</u>	\$250
	<hr/>
<u>Credit Available</u>	\$ 0

(d) BG Manufacturing has been assigned a quarterly reporting period. BG has incurred a ninety dollar tax liability under the wholesaling B&O tax classification, and a seventy-dollar tax liability under the manufacturing B&O tax classification, for a total B&O tax liability of one hundred sixty dollars for the first quarter of 1995. As BG manufactures much of what it sells at wholesale, BG qualifies for an internal multiple activities tax credit (MATC) of sixty dollars. (See WAC 458-20-19301 on multiple activities tax credits.) BG Manufacturing would claim its MATC prior to computing its small business B&O tax credit. BG's B&O tax liability net of the MATC is one hundred dollars, which is less than the one hundred five-dollar maximum credit available for the reporting period. BG may claim a one hundred dollar small business B&O tax credit.

<u>Wholesaling B&O Tax due</u>	\$ 90
<u>Add: Manufacturing B&O Tax due</u>	\$ 70
	<hr/>
<u>Subtotal of B&O Tax due</u>	\$160
<u>Less: MATC</u>	\$ 60
	<hr/>
<u>Total B&O Tax Liability</u>	\$100
<hr/>	
<u>Maximum Credit available for quarterly filers (3 x \$35)</u>	
	\$105
<u>B&O Tax due</u>	\$100
	<hr/>
<u>Credit Available</u>	\$100

(e) BB Corporation has been assigned a quarterly reporting period by the department of revenue. BB's total taxable public utility income for the third quarter of 1994 is one thousand three hundred dollars. BB Corporation is exempt for the payment of public utility tax because BB's taxable public income does not exceed the one thousand five hundred dollar minimum taxable amount for this reporting period.

WSR 95-04-019
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed January 19, 1995, 4:34 p.m.]

Original Notice.
Title of Rule: Amending WAC 458-20-101 Tax registration.

Purpose: To help businesses understand the tax registration requirements for the Washington State Department of Revenue.

Statutory Authority for Adoption: RCW 82.32.300.
Statute Being Implemented: Title 82 RCW, particularly RCW 82.32.030.

Summary: This rule is being revised to implement statutory changes reflected in chapter 2, Laws of 1994 sp. sess., which changed the conditions under which a person is not required to register.

Reasons Supporting Proposal: To incorporate 1994 law changes, and to clarify existing instructions about tax registration requirements.

Name of Agency Personnel Responsible for Drafting and Implementation: Les Jaster, 711 Capitol Way South, Suite 303, Olympia, (206) 586-7150; and Enforcement: Russ Brubaker, 711 Capitol Way South, Suite 303, Olympia, (206) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains the tax registration requirements for the Washington State Department of Revenue. It explains the tax registration procedure and the unified business identifier program. The rule discusses the criteria under which a person may do business in Washington without registering with the Department of Revenue. It provides that a new tax registration endorsement is required whenever there is a change in ownership of a business and

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provides examples of when a "change in ownership" occurs. This rule will better help businesses understand their tax registration requirements.

Proposal Changes the Following Existing Rules: This is an amendment to WAC 458-20-101. The rule has been revised to clarify the tax registration requirements for the Washington State Department of Revenue. The 1994 legislature deletes the fifteen dollar registration fee previously required of persons obtaining a tax registration endorsement with the department, and changed the conditions under which a person is not required to obtain a tax registration endorsement, effective July 1, 1994.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Legislation and Policy Division, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (206) 586-4281, or FAX (206) 664-0693.

Hearing Location: Revenue Conference Room #415, General Administration Building, 210 11th and Columbia, Olympia, WA, on March 7, 1995, at 1:30 p.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by February 28, 1995, TDD (800) 451-7985, or (206) 753-3217.

Submit Written Comments to: Les Jaster, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (206) 664-0693, by March 7, 1995.

Date of Intended Adoption: March 15, 1995.

January 19, 1995
Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending WSR 93-13-126, filed 6/22/93, effective 7/23/93)

WAC 458-20-101 Tax registration. (1) Introduction. This section explains tax registration requirements for the Washington state department of revenue. It discusses who is required to be registered, changes in ownership requiring a new registration, ~~((and))~~ the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax registration.

(2) Persons required to obtain tax registration endorsements. Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if the following conditions are met:

(i) A person's value of products, gross proceeds of sales, or gross income of the business ~~((is below the tax reporting thresholds provided by RCW 82.04.300)),~~ from all business activities, is less than twelve thousand dollars per year;

(ii) The person is not required to collect or pay to the department of revenue any other tax which the department is authorized to collect; and

(iii) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) Persons subject to the public utility tax (chapter 82.16 RCW) may be required to obtain a tax registration endorsement even if their gross income from business activities is less than twelve thousand dollars per year. RCW 82.16.040 provides a minimum tax reporting threshold of six thousand dollars per year for the public utility tax. (See also WAC 458-20-104 on minimum tax reporting thresholds.) Persons receiving taxable income in excess of this minimum threshold must pay public utility tax to the department. They do not satisfy (a)(ii) of this subsection, and therefore must obtain a tax registration endorsement.

(c) The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections of chapter 458-20 WAC.

~~((e))~~ **(d) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be ~~((below the tax reporting threshold provided by RCW 82.04.300))~~ less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income which exceeds ~~((the tax reporting threshold))~~ twelve thousand dollars per year, he will be required to obtain a tax registration endorsement and remit the appropriate taxes.

(ii) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be ~~((below the tax reporting threshold provided by RCW 82.04.300))~~ less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be ~~((below the tax reporting threshold provided by RCW 82.04.300))~~ less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(iii) Jane Doe is starting a management consulting business. The gross income of the business is expected to exceed twelve thousand dollars per year. However, Jane is starting her business effective October 1, and expects to earn only ten thousand dollars prior to January 1 of the following

year. Jane is not required to pay or collect any other tax which the department is authorized to collect.

Jane Doe must apply for and obtain a tax registration endorsement with the department of revenue. Jane Doe expects to earn more than twelve thousand dollars per year. Jane may not delay obtaining a tax registration endorsement merely because she does not anticipate earning more than twelve thousand dollars for the balance (October through December) of the calendar year.

(3) **Out-of-state businesses.** Out-of-state persons not satisfying the conditions expressed in subsection (2)(a) of this section must obtain a tax registration endorsement with this department if any of the following circumstances prevail:

(a) The person maintains a place of business in this state.

(b) The person has established sufficient nexus in Washington to incur a business and occupation or retail sales tax liability in this state. (Refer to WAC 458-20-193 and 458-20-194.)

(c) The ~~((vendor))~~ seller has established sufficient nexus in Washington to be required to collect the use tax on sales made into this state. (See also WAC 458-20-193 and 458-20-221.)

(d) The out-of-state ~~((vendor))~~ seller, while not statutorily required to do so, elects to collect the use tax from its retail customers in this state.

(4) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master business application enables the business person to register or license with several state agencies, including the department of revenue, using a single form. The business person will be assigned one business identification number, which will be used for all state agencies participating in the UBI program.

(a) Business persons completing the master business application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master business application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master business applications are available at any participating UBI agency office. The following agencies of the state of Washington participate in the UBI program:

(i) The office of the secretary of state;

(ii) The department of licensing;

(iii) The department of employment security;

(iv) The department of labor and industries;

(v) The department of revenue.

~~(5) ((Tax registration application made in error. Persons who apply for a tax registration endorsement in error may be entitled to a return of the tax registration fee. It is the business person's responsibility to provide complete and accurate information on the master business application.~~

~~(a) The tax registration fee will be returned if, on the initial examination of the application, the information~~

~~provided by the applicant indicates that a tax registration endorsement is not needed.~~

~~(b) However, if a tax registration endorsement is issued as a result of the information available on the master business application, the tax registration fee will not be returned to the applicant.~~

~~(e) If a return of the tax registration fee is warranted, fees charged by other state agencies for the registration process may remain applicable.~~

~~(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. Each situation must be determined after a review of all of the facts and circumstances.~~

~~(i) ABC Company completes a master business application, which includes a request for a tax registration endorsement. The application is mailed to the department of licensing for processing, and payment for the tax registration fee is enclosed. The information on the application is complete and accurate.~~

~~Upon review of the application, it is determined that ABC Company is not required to be registered with the department of revenue. As this determination was based on the information provided on the master business application, ABC Company is entitled to a return of the tax registration fee.~~

~~(ii) John Smith completes a master business application, which includes a request for a tax registration endorsement. The application is mailed to the department of licensing for processing, and payment for the tax registration fee is enclosed. The information provided on the application indicates that the expected amount of income is below the tax reporting threshold provided by RCW 82.04.300. However, the description of the business activities on the application indicates that Mr. Smith will be engaging in activities which generally require retail sales tax be collected. A tax registration endorsement is issued.~~

~~At a later date, Mr. Smith determines he is not required to be registered with the department of revenue. While not indicated on the application, Mr. Smith is exclusively engaged in wholesale activities, and is not responsible for collecting retail sales tax. Mr. Smith requests the account be closed, and the tax registration fee be returned.~~

~~While the account may be closed, Mr. Smith is not entitled to a return of the tax registration fee. Based on the information provided on the master business application, the tax registration endorsement was properly issued.~~

~~(6)) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.~~

~~(a) Temporary businesses, for the purposes of registration, are those with:~~

~~(i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or~~

~~(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (6) of this section.~~

~~(b) Each temporary registration certificate is valid for a single event. ((Persons requesting a temporary registration certificate are permitted to operate two events each year.))~~

(c) Temporary revenue registration certificates (~~are issued free of charge, and~~) may be obtained by making application at any participating UBI agency office, or by completing a (~~temporary~~) seasonal registration form.

(6) Seasonal revenue registration accounts. Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a seasonal revenue registration account. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal revenue registration account include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for a seasonal revenue registration account.

(7) Display of registrations and licenses document. The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(8) Multiple locations. A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this section, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same registration number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue registration number (~~without payment of the tax registration fee~~). A registrations and licenses document will be issued for each registration number and will represent a separate account.

(d) A master business application must be completed to obtain a separate registrations and licenses document, or revenue registration number, for a new location.

(9) Change in ownership. When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the registration number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the partnership continues as a business organization and the change in the number of partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship; or

(v) Changing from a corporation to a partnership or sole proprietorship.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community, by the surviving spouse of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the partnership continues as a business organization and the change in the number of partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a master business application may be required to reflect the changes in the registered account.

(10) Change in location. Whenever the place of business is moved to a new location, the taxpayer must notify the department (~~in writing~~) of the change. A new registrations and licenses document will be issued (~~upon completion of a UBI change form, and without charge~~) to reflect the change in location.

(11) Lost registrations and licenses documents. If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued (~~free of charge~~) upon request.

(12) Administrative closure of taxpayer accounts. The department may, upon written notification to the taxpayer, close the taxpayer's account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income, and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. This request

must be in writing and state the reasons why the account should remain active. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account (~~at no charge~~). The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is (~~or will be~~) engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax which the department is authorized to collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(13) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax, may request a previously closed account be reopened. The business person must complete a new master business application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (14) of this section.

~~((a) If the account was administratively closed by this department, and the request is made within two years of the closure date, the tax registration fee will be waived. However, fees charged by other state agencies for the registration process may be applicable.~~

~~(b) Refer to subsection (14) of this section for the conditions and requirements which must be satisfied prior to the reopening of an account which had previously been closed due to a revocation action.)~~

(14) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(15) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in WAC 458-20-228 and 458-20-230.

WSR 95-04-028

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed January 23, 1995, 2:30 p.m.]

Original Notice.

Title of Rule: Library policies, rules, and regulations.

Purpose: To notify users of WSU libraries of practices and procedures used by the libraries.

Other Identifying Information: Chapter 504-40 WAC. Statutory Authority for Adoption: RCW 28B.30.095, 28B.30.125, 28B.30.150.

Summary: The proposed rules update and clarify existing rules governing WSU library procedures.

Reasons Supporting Proposal: The existing rules do not accurately convey current and new library procedures.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Baker, Holland West 221, Pullman, WA 99164-5610, (509) 335-4558.

Name of Proponent: Washington State University, public.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Washington State University recommends the adoption of the proposed rules.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules set forth the policies governing use of WSU libraries and the libraries' materials. The rules also set forth the fines charged for failure to comply with the policies. The purpose of these rules is to regulate access to materials and to preserve WSU libraries' collections. These proposed rules should have little noticeable effect other than to provide the library users with a clearer understanding of library policies and to update the method of charging fines for failure to comply with policies.

Proposal Changes the Following Existing Rules: Modify language so the WACs are easier to understand; include ban on smoking, consistent with WSU policy; update policies regarding library patron identification; and amend method used to assess and process fines.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This rule change will have no or minimal impact on small businesses.

Hearing Location: Room 219 Compton Union Building, Washington State University, Pullman, Washington, on March 8, 1995, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Marshall Mitchell by March 6, 1995, (509) 335-1726.

Submit Written Comments to: Nancy Baker, FAX (509) 335-6721, by March 6, 1995.

Date of Intended Adoption: May 12, 1995.

January 18, 1995

Lou Ann Pasquan
Rules Coordinator

AMENDATORY SECTION (Amending Order 81-2, Resolution No. 7/81-11, filed 8/7/81)

WAC 504-40-010 General policies. (1) The major functions of the Washington State University libraries (~~(major functions)~~) are to provide access to the corpus of information and documents essential to the institution's teaching, research, and service programs, especially by acquiring and preserving material; to organize these materials; to store them; to retrieve them upon demand; and to adapt and to assist in adapting them for most effective use.

The WSU libraries' collections contain this information and knowledge in its physical forms—books, journals, manuscripts, microforms, films, recordings, maps, magnetic data files, and other resources including equipment significant to the teacher, the student, and the researcher.

(2) The WSU libraries' policies (~~(rules)~~) and regulations are based on the belief that the needs of the university community as a whole take precedence over individual convenience.

(3) Upon request and suitable justification by the library user, exceptions to the regulations may be made. To insure that exceptions are made with the full knowledge of the research and instructional needs of the university community, such exceptions may be made only by an appropriate library faculty or staff member (~~(of the library faculty)~~) as designated by the director of libraries or the campus librarian at a WSU branch campus.

(4) In the WSU libraries' buildings persons are expected to maintain appropriate public behavior. No food or beverages, or use of tobacco are allowed in the reading and study areas. Smoking is not permitted in the libraries.

(5) Violators of WSU libraries' regulations may be subject to appropriate disciplinary action by the university.

(6) Unless otherwise required by law, the WSU libraries will not release the name or address of the borrower who has or had an item checked out or who has placed a hold on an item.

(7) These policies and regulations will apply equally to all libraries operated by the WSU libraries.

(8) The board of regents reserves the right to add, delete, or modify portions of these regulations (~~(rules and including the fine schedules)~~) in accordance with its regulations and applicable laws.

AMENDATORY SECTION (Amending Order 81-2, Resolution No. 7/81-11, filed 8/7/81)

WAC 504-40-020 Library patron identification. (1) Under the regulation governing the use of varying types of resources by different groups of library patrons, the WSU libraries' resources, facilities, and services are available to the Washington State University community, citizens of the state, students, faculty and staff of other academic institutions, and special borrowers not otherwise identified who have been granted permission to borrow library materials.

(2) Borrower identification cards: In order to check out library materials, each borrower must present one of the following valid authorized library borrower cards:

(a) A WSU faculty or staff card;

(b) A WSU student ID card with current validation;

(c) An off-campus borrower card with current validation; or

(d) A proxy card with current validation.

(3) Borrower identification cards are uniformly issued to all members of the university community. Verification of the status of the borrower conferred by the card is the responsibility of the issuing authority and the status cannot be altered by the WSU libraries.

(4) Upon application and with proper identification, the WSU libraries will issue authorized borrower cards to persons (high school age or older) who are not members of the university community.

(5) A borrower card is authorized for use only by the person whose name appears on the card.

(6) Cards used in an unauthorized manner or cards reported as lost or stolen may be confiscated.

(7) Each borrower is responsible for keeping the appropriate university office informed of changes of address.

AMENDATORY SECTION (Amending Order 81-2, Resolution No. 7/81-11, filed 8/7/81)

WAC 504-40-030 Internal use of library materials, facilities, and services. (1) Although the largest part of the collection is free to circulate outside the WSU libraries (~~(and most of the rest may circulate for restricted periods)~~), certain kinds of materials (~~(due to their nature)~~) are restricted to use within the WSU libraries. These may be consulted or read within the WSU libraries.

(a) Reference materials, abstracts and indexes, special reserve and noncirculating periodicals (bound and unbound) as determined by the appropriate unit of the WSU libraries. These selected reference materials, normally restricted to in-library use, may circulate in very unusual circumstances with special permission upon approval of an appropriate library faculty or staff member.

(b) Manuscripts, archives, and special collections: These rare, often irreplaceable, and sometimes unique materials may be used only within the manuscripts, archives, and special collections unit. Each user must register with the attendant, must take extreme care

in handling the materials, must keep intact their exact order and arrangement, and must make all notes in pencil, or with a typewriter, microcomputer, or similar device.

NEW SECTION

WAC 504-40-045 External use of library resources.

(1) Borrowing of library materials:

(a) Borrowers are expected to check out library material personally or by official proxy.

(b) WSU faculty may appoint not more than two proxies to borrow on their behalf, but each proxy must hold his or her own valid authorized borrower card. Information about proxy identification cards may be obtained from the circulation desk of any library.

(c) Borrowers are responsible for material checked out in their names until the material is returned. Faculty utilizing proxy borrowers assume the responsibility for all materials borrowed in their name by their proxies.

(d) WSU faculty, staff, and students stationed at locations away from the Pullman campus may borrow library materials through extended campus library services or interlibrary loans.

(2) Due dates for library materials: Material is due on the date and hour specified at the time checked out or as adjusted by recall. Material loaned on an hourly basis is due at the library unit from which it was borrowed by the date and hour specified.

(3) Return of library materials:

(a) Reserve materials, periodicals, and special loans must be returned directly to the library unit from which they were borrowed. If they are returned to another library unit, they will be considered returned at the date and time they are received at the unit from which they were borrowed.

(b) Other material is considered returned on the date it is checked in at any unit of the library system. This does not apply to departmental libraries not operated by the WSU libraries.

(c) Materials returned to "book return" receptacles during closed hours are considered to have been returned at closing time of the previous open day.

(4) Holds:

(a) All borrowers may place holds on nonreserve material which is checked out.

(b) Borrowers may not place a hold on material checked out to themselves.

(c) Library units may place holds on any nonreserve material.

(d) Material on which a hold has been placed may not be renewed.

(e) Material which has one or more holds may be checked out for a maximum of two weeks.

(f) When material on which a hold has been placed is returned, it is held and the requester is informed of its availability.

(g) The following order of priority of holds is observed:

(i) Reserve units.

(ii) Campus borrowers, in order by day of hold.

(iii) Off-campus borrowers, in order by day of hold.

(iv) Other library units.

(h) The order of priority of holds may be adjusted by the unit head or designee.

(5) Recalls and searches:

(a) Recalls:

(i) Material on which a hold has been placed will be recalled if the adjusted date due is earlier than the original date due.

(ii) For holds placed by borrowers, the adjusted date due is two weeks from the date checked out or seven days from the date of the hold, whichever is later.

(b) Searches:

(i) All borrowers and library units may place searches for material which cannot be located.

(ii) If the material on which a search has been placed is located, it is held and the requester is informed of its availability.

(6) Renewal of library material:

(a) Renewals of loaned material are permitted unless material has restricted status or has been requested by another borrower. (See also WAC 504-40-055 (2)(g).)

(b) Renewals may be requested by providing borrower identification number and material identification numbers if necessary.

(c) All material may be renewed indefinitely unless requested by means of a hold.

(d) Overdue material may be renewed subject to same conditions as similar material not overdue. Fines accrue and will be assessed for the overdue period. However, overdue material on which a replacement charge has been assessed must be brought back to the circulation desk of the library from which it was borrowed for renewal.

(7) There is no limit to the number of items which may be borrowed at one time by WSU faculty, students, and staff, except for reserve materials as outlined in WAC 504-40-055 (2)(g)(i). All other borrowers are limited to twenty-five items at one time.

(8) In accordance with general policy, and upon request and suitable justification by the library user, exceptions to these regulations may be made. To insure that exceptions are made with the full knowledge of the research and instructional needs of the university community, such exceptions may be made only by an appropriate library faculty or staff member as designated by the director of libraries or the campus librarian at a WSU branch campus.

NEW SECTION

WAC 504-40-055 Loan time periods. (1) Basis of loan time periods: The WSU libraries have established loan time periods based on anticipated demand for the various forms of material by the several classes of users.

(2) Loan time periods:

(a) Noncirculating materials may not be checked out except, in very unusual circumstances, by special permission.

(b) Circulating materials (bound and unbound) may be checked out for two hours, or one, three, seven, fourteen, or thirty days as designated.

(c) The normal loan period for all users is thirty days, subject to recall of material after fourteen days if requested by another borrower.

(d) Books borrowed for the normal loan period by Washington State University faculty and graduate students, if not recalled, may be retained without penalty to the end of

the semester. At that time the material must be returned or renewed.

(e) An item may be recalled at any time after it has been borrowed if it is needed for reserve or other restricted status.

(f) Reserve materials:

(i) Only two reserve items may be checked out by one borrower at a time.

(ii) Reserve materials may be renewed only if no one else has requested the item.

(iii) Reserve materials are not subject to recall or to holds.

(iv) Faculty members (and others) who have placed materials from their personal collections on reserve may request return of such personal possessions at any time.

(g) Special collections and categories: Certain material is maintained in special collections or has been defined as belonging to special categories. Borrowers should consult a member of the special collections staff concerning condition of use for these materials.

(h) Exceptions: Upon request and suitable justification by the borrower, exceptions to these regulations may be made. To insure that exceptions are made with the full knowledge of the research and instructional needs of the university community, such exceptions may be made only by an appropriate library faculty or staff member as designated by the director of libraries or the campus librarian at a WSU branch campus.

AMENDATORY SECTION (Amending Order 81-2, Resolution No. 7/81-11, filed 8/7/81)

WAC 504-40-060 Fines and charges. (1) System-wide applicability of fines and charges:

All borrowers are subject to a uniform system of fines and charges for late return of library materials and for replacement costs when required.

(2) Notice of due dates and overdue materials:

(a) Overdue notices are sent (~~(five days)~~) subsequent to the date due for all materials (~~(on 30 day or longer loan time periods)~~) checked out through the on-line circulation system.

(b) For two-hour, and one-, three-, and seven-day materials and special category materials, overdue notices may be phoned if possible, or borrowers may be notified by mail.

(c) Failure to receive a notice or invoice does not exempt the borrower from charges.

(d) Failure to inform the (~~(libraries)~~) university of changes of address does not exempt the borrower from charges.

(3) ((Payment of)) Fines and charges:

(a) Fines and/or replacement charges are assessed when library material is not returned by the due date specified for the material.

(b) Approved fine rates, maximum fines for specific types of materials, and basic replacement fees are available in each of the libraries.

(c) Specific fine rates and basic charges for replacement, rebinding, etc., are established for each biennium.

(d) Fine rates and charges for replacement, rebinding, etc., will be reviewed prior to the beginning of each biennium for possible adjustment by appropriate WSU libraries

personnel. Proposed adjustments to established fine rates will be submitted through the WSU faculty senate library committee to the WSU faculty senate for approval.

(e) The most recently approved fine schedule is incorporated into these rules by reference. Copies are available at all circulation desks.

(f) All fines accrue from the time material becomes overdue.

(g) Fines do not accrue when the library from which the material was borrowed is closed.

(h) If a loan period has been extended by special permission, the overdue fine is assessed according to the original loan category of the material. For materials circulated by special permission or normally categorized as noncirculating, the fine rate will be assessed on an hourly basis.

(i) The libraries have the right to reduce or forgive fines and charges for patrons with bona fide reasons for not returning materials when due.

(4) Payment of fines and charges:

~~(a) Fines and charges ((may be)) are paid ((at the Holland Library circulation desk until the charges have been referred to the controller)) through WSU accounts receivable. Payment may be made by cash, check, or money order. Departmental purchase orders or interdepartmental requisitions and invoices are not acceptable ((on the basis that)) as payment because fines may not be ((appropriately)) paid by departmental, grant, or any other funds controlled by the university.~~

(b) Failure to pay fines and charges will result in the total amount assessed being referred (~~((to the controller's office))~~) for collection. The controller may, if other collection methods fail, (~~((deduct outstanding fines from the salary warrants of employees to secure payment, or))~~) withhold outstanding fines from damage deposits or other funds held for any students. Where collection efforts are unsuccessful, the controller may notify the registrar to refrain from issuing copies of student transcripts or to withhold permission to reenroll for an ensuing term until outstanding fines are paid.

(c) Failure to pay fines and charges may also result in revocation of borrowing privileges by the director of libraries.

~~(((4) Fines and charges:~~

~~(a) For materials on 30 day or longer loan periods: The overdue fine is \$0.25 per day beginning the day the material becomes overdue.~~

~~EXCEPTION: See WAC 504 40 060 (4)(d) for fines on recalled material.~~

~~(b) For materials limited in circulation to two hours or less, including two hour reserve materials: The overdue fine is \$1.00 for the first hour or fraction thereof and \$0.25 for each succeeding hour or fraction thereof.~~

~~(c) For one-, three-, and seven-day materials: The overdue fine is \$1.00 for the first day and \$0.25 for each subsequent day, accumulating from the time the material is due.~~

~~EXCEPTION: Reserve materials of this category are fined at \$1.00 for the first day and \$0.50 for each subsequent day.~~

~~(d) For recalled material: The fine for recalled material is \$1.00 for the first day and \$0.50 per day thereafter, accumulating from the new assigned "date due" as indicated on the recall notice. The new assigned "date due" is five~~

~~days after recall is initiated but not, in the case of 30-day material, before the end of the 14-day period assured the original borrower unless material is recalled for reserve or other restricted status. (WAC 504-40-050 (2)(b)(i) as limited by WAC 504-40-050 (2)(b)(iii).)~~

~~(e) For materials circulated by special permission but normally categorized as noncirculating: If overdue, fine is \$0.25 per hour.~~

~~(f) For audio-visual equipment: The overdue fine is \$0.25 for every hour or fraction thereof.~~

~~(g) For materials from instructional media services: Late return of materials from instructional media services' collections are treated as an extended loan by the user, subject to prorated rental charges based upon the fees listed in films for teaching, the university's film catalog.~~

~~(h) Repeated late return by a single user of instructional media services' equipment or materials will be considered grounds for discontinuance of service to that user. A letter of warning will be sent to the offender before final action is taken.~~

~~(i) All fines accrue from the time material becomes overdue.~~

~~(j) Fines do not accrue when the libraries are closed.~~

~~(k) If a loan period has been extended by special permission, the overdue fine is that of the original loan category of the material.~~

~~(l) The libraries have the right to reduce or forgive fines and charges for patrons with bona fide excuses for not returning materials when due.~~

~~(m) The maximum fine for audio-visual equipment is \$15.00. The maximum fine for two-hour material is \$10.00. The maximum fine for all other library material is \$7.50.)~~

(5) Replacement charges:

(a) If library material or equipment is lost, or not returned by the time the maximum fine has accumulated, a replacement charge will be assessed.

This replacement charge includes the ~~((list price))~~ estimated replacement cost of the material plus a nonrefundable service charge ~~((of \$10.00))~~ to cover the costs of searching, correspondence, cataloguing, ~~((binding,))~~ etc. ~~((This))~~ The replacement charge ~~((is))~~ and service charge are added to the maximum fine, and the delinquent borrower is charged this total sum.

(b) If material upon which a replacement charge has been assessed is found and returned within six months of the assessment date, the ~~((purchase price))~~ replacement cost of the material will be refunded. The service charge and overdue fine are not refundable.

(c) Library patrons who mutilate library materials or return mutilated materials that have been checked out to them will be charged a library administrative fee plus replacement costs for each item involved.

(d) All library materials, regardless of fines and fees paid, remain state property.

(e) In accordance with general policy, and upon request and suitable justification by the library user, exceptions to these regulations may be made.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 504-40-040 External use of library resources.
WAC 504-40-050 Loan time periods.

WSR 95-04-034

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed January 24, 1995, 1:19 p.m.]

Original Notice.

Title of Rule: WAC 246-272-25001 Washington state on-site sewage systems waivers.

Purpose: Mitigate economic impact.

Other Identifying Information: This will cause revisions adopted through emergency rule action by the Washington State Board of Health [to] become permanent.

Statutory Authority for Adoption: RCW 43.20.050.

Summary: This revision eliminates a multiple site waiver process, and requirement for individual applications be sent to the Washington State Department of Health for concurrence. Local health officers become responsible for reviewing waivers and for reporting their decisions on a quarterly basis to the Department of Health to obtain concurrence.

Reasons Supporting Proposal: These changes mitigate economic impact to homebuilders.

Name of Agency Personnel Responsible for Drafting: Tom Long, Olympia, (360) 586-8133; Implementation: Mark Soltman, Olympia, (360) 753-3764; and Enforcement: Karen VanDusen, Olympia, (360) 586-5797.

Name of Proponent: Senator Bob Oke, 26th Legislative District; Senator Brad Owen, 35th Legislative District; and Senator Betti Sheldon, 23rd Legislative District.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The on-site sewage system regulations were adopted by the Washington State Board of Health on March 9, 1994, to become effective January 1, 1995. During a hearing held December 14, 1994, the board responded to a petition that potential economic impact resulting from the waiver process be mitigated by removing the option or multiple site waivers and for individual applications to be sent to the Washington State Department of Health for concurrence. The local health officer will be responsible for reviewing and approving waiver submissions, and reporting decisions quarterly to the Department of Health to obtain concurrence.

Proposal Changes the Following Existing Rules: All waivers must be reviewed individually by the local health officer, and all waiver decisions reported quarterly to the Department of Health.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Tom Long, Office of Community Environmental Health Programs, Washington

State Department of Health, P.O. Box 47826, Olympia, WA 98504-7826, phone (360) 586-8133, or FAX (360) 664-3071.

Hearing Location: WestCoast Sea-Tac Hotel, 18220 Pacific Highway South, Seattle, WA 98188, on March 8, 1995, at 9:20 a.m.

Assistance for Persons with disabilities: Contact Carrie McNamara, (360) 586-0399, by February 22, 1995, (206) 246-5535.

Submit Written Comments to: Ann Foster, Washington State Department of Health, P.O. Box 47890, [Olympia,] WA 98504-7890, by February 15, 1995.

Date of Intended Adoption: March 8, 1995.

January 24, 1995
Sylvia I. Beck
Executive Director

AMENDATORY SECTION (Amending WSR 94-09-025, filed 4/15/94, effective 1/1/95)

WAC 246-272-25001 Waiver of state regulations.

(1) For individual, site-by-site waiver requests, if concurrence is granted by the department, the local health officer may grant a waiver from specific requirements in this chapter for OSS under three thousand five hundred gallons per day only after the following procedure has been completed:

(a) The applicant submits a waiver application to the local health officer, including justification describing how the requested waiver is consistent with purpose and objectives to meet the public health intent of this chapter;

(b) ~~((When))~~ If the local health officer determines that the waiver is consistent with the standards in and the intent of this chapter ~~((, the applicant forwards the completed waiver form, pertinent and supportive material, with required departmental fee to the department))~~;

(c) ~~((Upon receipt of the waiver application, the department shall respond to the applicant within seven working days as to the status of departmental review. This notification is to include information regarding issues or concerns the department has identified and the expected date for completion of the review.~~

(d) ~~Upon review, the department returns the waiver application to the local health officer and a copy to the applicant, indicating that the department either concurs with the waiver as requested, or conditionally concurs with the request, or states reasons for denying the request.~~ On a quarterly basis, the local health officer will forward to the department any approved or denied waivers for their records.

(2) The department may grant a waiver from specific requirements in this chapter for a LOSS if a person submits a completed departmental waiver application and required fee to the department, including justification showing the requested waiver is consistent with the LOSS standards in this chapter, and is consistent with the purpose and objectives of this chapter to assure public health protection.

(3) If an applicant desires to modify and resubmit a previously denied waiver request, the process described above in subsection (1) of this section for OSS under three thousand five hundred gallons per day, or subsection (2) of this section for a LOSS shall be followed again.

~~((4) For general, multiple site waivers to respond to regional conditions or issues, if approval is granted by the~~

~~state board of health, the local health officer may, under the conditions and requirements of an intergovernmental agreement with the department, grant waivers from specific requirements in this chapter for OSS under three thousand five hundred gallons per day only after the following requirements have been met:~~

~~(a) The local health officer shall submit to the department for review, a proposal for an intergovernmental agreement (IGA) between the local board of health and the department that provides:~~

~~(i) Justification for the waiver request based on sound technical and scientific information and data;~~

~~(ii) Written concurrence by the department of ecology that the standards of chapter 173-201 WAC, Water quality standards for surface waters, and chapter 173-200 WAC, Water quality standards for ground water will be met;~~

~~(iii) An appropriate local public review of the proposed IGA, including opportunity for review and comment by adjacent county governments, state agencies, affected parties, and others; and~~

~~(iv) Appropriate technical, administrative, and regulatory requirements to assure public health protection, and limitations, conditions, revocation clauses, and other items as required by the department or the state board of health.~~

~~(b) The department shall, within ninety days of receipt of a completed proposal:~~

~~(i) Determine if the proposed IGA, with its supporting documentation, adequately addresses technical criteria and standards, and regulatory control to assure public health protection at least equal to that provided by this chapter; and~~

~~(ii) Submit to the state board of health a report with departmental recommendations regarding the waiver request and the proposed IGA.~~

~~(c) The department may establish fees or other mechanisms of cost recovery, to cover the costs of departmental review, development, and ongoing oversight of proposed intergovernmental agreements, and any departmental activity as provided and agreed upon in intergovernmental agreements, as described in this section.)~~

**WSR 95-04-036
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF AGRICULTURE**
[Filed January 24, 1995, 3:10 p.m.]

Effective immediately, the Department of Agriculture, Food Safety and Animal Health Division, wishes to withdraw the proposed rule change which adopts the 1993 version of the PMO.

Washington State Register number is WSR 94-22-067 filed on November 2, 1994.

John Daly
Assistant Director

PROPOSED

WSR 95-04-037
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 25, 1995, 11:28 a.m.]

Original Notice.

Title of Rule: WAC 230-02-240 Commercial gambling manager defined, 230-02-418 (~~(Bingo)~~) Charitable or nonprofit gambling manager defined, 230-04-145 Licensing of charitable or nonprofit gambling managers (~~(of bingo games)~~)—Application procedures, 230-04-147 Notification to the commission upon beginning, terminating, or changing responsibilities (~~(as bingo game)~~) of charitable or nonprofit gambling managers, 230-12-079 Duties and responsibilities of a charitable or nonprofit gambling manager, and 230-20-070 Regulation of managers, operators, and other employees—Charitable or nonprofit organizations.

Purpose: This packet of rules would require licensing charitable or nonprofit gambling managers. Amendments would also include the application requirements, procedures for licensing, and guidelines for the duties and responsibilities of a charitable or nonprofit gambling manager.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Chapter 9.46 RCW.

Summary: Defines charitable or nonprofit gambling manager, outlines application guidelines, licensing procedures and the duties and responsibilities of gambling managers.

Name of Agency Personnel Responsible for Drafting: Shanna R. Lingel, Rules Coordinator, Lacey, 438-7654, ext. 305; Implementation: Frank L. Miller, Director, Lacey, 438-7654, ext. 302; and Enforcement: Ben Bishop, Deputy Director, Lacey, 438-7654, ext. 369.

Name of Proponent: [Gambling Commission], governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Packet of rules would require charitable or nonprofit gambling managers to be licensed. Application requirements, procedures for licensing and guidelines for the duties and responsibilities of a charitable or nonprofit gambling manager are included.

Proposal Changes the following Existing Rules: Amendments define charitable or nonprofit gambling manager, outlines application guidelines, licensing procedures and duties and responsibilities of a gambling manager.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The agency has considered whether these rule changes would create an economic impact on small businesses as defined in chapter 19.85 RCW. It has determined that there are no economic impacts to small business as a result of these proposals for the following reasons: No cost or expenditure of resources; no effect on industry; and no substantive change in existing regulatory scheme.

Hearing Location: Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA 98405, on March 10, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Shanna R. Lingel by March 8, 1995, TDD (360) 438-7638, or (360) 438-7654, ext. 305.

Submit Written Comments to: Shanna R. Lingel, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, FAX (360) 438-8652, by March 8, 1995.

Date of Intended Adoption: March 10, 1995.

January 24, 1995
 Carrie L. Sutherland
 Special Assistant
 to the Director

AMENDATORY SECTION (Amending Order 221 [WSR 91-07-021], filed 3/13/91)

WAC 230-02-240 Commercial gambling manager defined. A "commercial gambling manager" is a person, whether compensated or not, who is responsible for operating and controlling authorized commercial gambling activities (~~(other than bingo games)~~) and who has the authority to make decisions regarding the operation of such gambling activities. The gambling manager supervises and directs all other persons directly or indirectly involved in the conduct of such activities. A gambling manager may be: An owner; partner; officer of a corporation; or a person designated by any of the above. A gambling manager's duties include, but are not limited to the following: Hiring, firing, and evaluating gambling personnel; supervising and controlling the conduct of gambling activities; preparing or supervising the preparation of gambling records; controlling cash generated by gambling activities and making bank deposits; and purchasing gambling supplies.

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.

AMENDATORY SECTION (Amending Order 223, filed 6/17/91)

WAC 230-02-418 (~~(Bingo)~~) Charitable or nonprofit gambling manager defined. A "~~(bingo)~~charitable or nonprofit gambling manager" is any (~~(person assigned the responsibility to conduct and/or oversee the conduct of bingo games by the governing board or elected officers of a charitable/nonprofit organization)~~) member or employee of a charitable/nonprofit organization who has the ability to, directly or indirectly, exercise a material degree of control over the operation of any gambling activity, or the disbursement of funds generated from gambling activities. This definition includes all persons (~~(directly or indirectly)~~) compensated to advise the board and/or officers regarding specific aspects of operating (~~(a bingo game)~~) any gambling activity, whether as a consultant or any other short-term contract basis: *Provided*, That charitable or nonprofit organizations currently licensed to operate (~~(bingo games)~~) gambling activities, or their members or employees, may provide nonspecific advice to any other charitable/nonprofit organization, without being deemed a (~~(bingo)~~) gambling manager for the receiving organization, if they are not directly or indirectly compensated for such advice. This

section is not intended to restrict actions regarding the operation of ~~((a bingo game))~~ any gambling activity that are initiated by the board and/or officers, if such actions are implemented through a ~~((bingo))~~ gambling manager appointed by the board and/or officers.

~~((1))~~ The duties and responsibilities of a bingo manager include but are not limited to the following:

(a) Personnel actions regarding workers in the activity including hiring, firing, training, evaluating, scheduling work periods, and/or setting salaries;

(b) Scheduling the gambling activity including determining the time and days of operation;

(c) Setting the scope of the gambling activity by determining:

(i) The number of games to be played;

(ii) The type of games to be played;

(iii) The cost for each player to participate; and

(iv) The type and amount of prizes to be awarded;

(d) Setting the scope of marketing activities related to the gambling activity by determining:

(i) Type and scope of promotional activities; and

(ii) The media, content, timing, and target market area of advertising;

(e) Supervising the operation of the bingo game including all auxiliary activities by ensuring that:

(i) The public is protected from fraud;

(ii) Persons participating in the activity are reasonably protected from physical harm and civil disorder;

(iii) All provisions of Title 230 WAC and chapter 9.46 RCW are followed;

(iv) All records are completed and correct; and

(v) All monies derived from the gambling and auxiliary activities are safeguarded until transferred to a guardian designated by the board and/or officers or directly deposited in the organization's bank account.

(2) An organization may appoint more than one person whose responsibilities include those of a bingo manager as defined above. When an organization has more than one bingo manager, the manager assigned the highest level of authority shall be designated as the "primary bingo manager" and all others as "assistant bingo managers." The primary bingo manager must be designated on the application for a bingo license.

(3) All bingo managers shall be knowledgeable of all provisions of Title 230 WAC and chapter 9.46 RCW that relate to the operation of bingo games and auxiliary activities.) For purposes of this title, the following individuals shall be deemed to be charitable or nonprofit gambling managers:

(1) Any member or employee who has the primary responsibility to supervise the operation of any gambling activity;

(2) Any employee of the organization who has been assigned the responsibility of supervising another gambling manager by the governing board or officers; or

(3) The employee who the officers or governing board of directors has delegated the highest level of authority over the day-to-day affairs of the organization and who is responsible for disbursement of funds generated from gambling activities and/or safeguarding assets purchased with funds generated from gambling activities.

AMENDATORY SECTION (Amending Order 169 [262], filed 7/14/87 [12/5/94])

WAC 230-04-145 Licensing of charitable or non-profit gambling managers ((of bingo games))

Application procedures. ((+)) Each charitable or nonprofit organization licensed to conduct gambling activities shall designate gambling managers who will be responsible to the officers or board of directors for the proper conduct of the activity and safeguarding of all funds generated by such. An individual may be designated as the gambling manager for more than a single activity if so noted on the application for each activity. No person shall perform the duties of a ((bingo game)) gambling manager ((as defined by WAC 230-02-418 for a Class D and above bingo licensee)), as set out in WAC 230-12-079, unless they have((:

(a) Received a license to do so from the commission; or

(b) Submitted)) been approved by the commission.

Applicants for a license to perform duties of a gambling manager shall comply with the following procedures:

(1) Gambling managers responsible for the following functions of a charitable or nonprofit organization shall be licensed by the commission:

(a) Primary manager of Class D and above bingo games;

(b) Primary manager of Class C and above punchboards and pull tabs;

(c) Any employee responsible for supervision of gambling managers required to be licensed by subsections (1)(a) or (b) of this section; and

(d) The employee assigned the highest level of authority by the officers or governing board of directors to manage the day-to-day affairs of the organization and who is responsible for safeguarding assets purchased with gambling funds or managing the disbursement of gambling funds when:

(i) The organization is licensed to receive more than three hundred thousand dollars in gross gambling receipts; or

(ii) The organization has an established trust and/or endowment fund and gambling receipts in excess of one hundred thousand dollars have been contributed to such funds.

(2) Prior to performing duties as a licensed gambling manager, each applicant shall:

(a) Submit a completed application to the commission on or before the first day the applicant begins working: Provided, That ((section (1)(b) above shall not apply)) an applicant shall not perform any of the duties of a gambling manager prior to issuance of a license by the commission if one or more of the following ((reasons)) conditions exist:

(i) The applicant((s present or past license)) has been previously denied((;)) a license or had a license suspended((;)) or revoked by the commission; ((or))

(ii) The applicant ((is presently involved with pending commission charges or criminal prosecution; or)) has been served administrative or criminal charges and such charges are pending at the time of the application;

(iii) The applicant has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to ((certain)) any offense((s)) set forth in RCW 9.46.158; or

(iv) The applicant has violated, failed, or refused to comply with provisions, requirements, conditions, limitations,

or duties imposed by Chapter 9.46 RCW or any rules of the commission.

~~((e) Completed)~~ (b) Complete a training course (as) provided by the commission within ~~((30))~~ thirty days after the first day worked~~((:))~~ as required by WAC 230-04-020. Individuals that have been performing duties or assigned responsibilities that require a gambling manager license under this section, for at least ninety days prior to the effective date of this section, may be exempted from such training by the director. Types of training required:

(i) Individuals applying for a license under the provisions of subsections (1)(a), (b), or (c) of this section shall attend training for each gambling activity for which they have been assigned primary or secondary oversight responsibility; and

(ii) Individuals applying for a license under the requirements of subsection (1)(d) of this section shall attend training related to safeguarding assets and proper uses of gambling funds.

~~((2))~~ (3) Each application shall be submitted as specified in WAC 230-04-020, and signed by both the applicant and the highest ranking executive officer of the ~~((employing bingo licensee. The duration of the license shall be:~~

(a) One year from the date of application, if the applicant began working the same day or prior to licensure as authorized by section (1)(b) above; or

(b)) organization;

(4) A gambling manager license shall be valid for a period not to exceed one year ~~((from))~~ beginning on the date of issuance~~((:))~~ or the date the application was submitted if the applicant ~~((waited for))~~ began working prior to licensure, as ~~((required))~~ authorized by section ~~((1)(b)(i-iv))~~ (2)(a) above~~((, or~~

(e) Upon termination of), whichever occurs first: Provided, That should a licensed gambling manager's employment with the organization listed on the license application be terminated, for any reason, the license shall ~~((expire and the licensee))~~ become immediately void. This individual must reapply for ~~((licensure-))~~ a license prior to performing gambling manager duties for any other charitable or nonprofit organization. Prior to granting a license to a previously licensed gambling manager, the commission shall conduct an investigation to determine the continued qualification of the individual. Such investigation may include inquiries to the previous employer;

~~((3))~~ (5) The fee for this license shall be as required by WAC ~~((230-04-204))~~ 230-04-204: Provided, That if an applicant is changing employment from one ~~((bingo))~~ licensee to another prior to the expiration date as specified in ~~((2)(a) and (b))~~ subsection (4) above, the fee shall be as required for license renewal~~((:));~~

(6) An organization may appoint more than one gambling manager who is responsible for supervising bingo games or punchboard and pull tab operations. The manager assigned the highest level of authority for each specific activity shall be designated on the application as the "primary gambling manager" and all others as "assistant gambling managers."

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.

AMENDATORY SECTION (Amending Order 113, filed 10/15/81)

WAC 230-04-147 Notification to the commission upon beginning, terminating, or changing responsibilities ~~((as bingo game))~~ of charitable or nonprofit gambling managers. A ~~((licensed bingo game operator))~~ charitable or nonprofit organization shall notify the commission in writing when a ~~((bingo game))~~ gambling manager has ~~((began work in the bingo game))~~ been assigned primary responsibility for the operation of any gambling activity or disbursement of funds, or has terminated employment and/or responsibilities for any reason. Individuals required to be licensed shall immediately submit an application for a license, as required by WAC 230-04-020 and WAC 230-04-145. The following procedures shall be followed for notification of changes in responsibilities of gambling managers that do not require an application:

(1) The notification shall be in writing and include:

(a) The full name~~((, sex,))~~ and ~~((birthdate))~~ date of birth of the ~~((bingo game))~~ gambling manager~~((, and among other things,))~~;

(b) The date the ~~((bingo game))~~ gambling manager ~~((began to work for the bingo game operator, with an acknowledgment that he or she has done so with the operator's knowledge and consent,))~~ was assigned new responsibilities or the date employment and/or responsibilities terminated~~((:))~~; and

(c) A full description of the change in duties and/or responsibilities.

(2) The notification shall be signed by the highest ranking elected officer or the individual assigned the responsibility of supervising the gambling manager;

(3) The ~~((report))~~ notification shall be made immediately and must reach the commission's ~~((Olympia))~~ headquarters office in Lacey not later than ~~((5))~~ five p.m. on the tenth day following the person's first day of work or last day of work, as applicable. If the tenth day falls on a Saturday, Sunday, or state holiday, it shall be due upon the next following business day.

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.

NEW SECTION

WAC 230-12-079 Duties and responsibilities of a charitable or nonprofit gambling manager. Charitable or nonprofit gambling managers shall be knowledgeable of all provisions of Title 230 WAC and Chapter 9.46 RCW that relate to the operation of gambling activities they manage and restrictions regarding the use of funds generated from gambling activities for which they have been assigned responsibility. Such managers shall be responsible for supervising the operation of the gambling activity, including all ancillary activities conducted in conjunction with gambling activities, and for safeguarding funds or other assets generated from gambling activities which are under their

control. This responsibility shall be fulfilled by ensuring that:

- (1) The public is protected from fraud;
- (2) The licensed premises is maintained in a safe condition and persons participating in the activity are reasonably protected from physical harm;
- (3) Activities are conducted in a manner that ensures fair and equal participation by players and all provisions of Title 230 WAC and Chapter 9.46 RCW are followed;
- (4) The organization is reasonably protected from illegal acts committed by players or workers;
- (5) All records are completed and correct;
- (6) All moneys derived from the gambling and ancillary activities are safeguarded until transferred to a guardian designated by the board and/or officers or directly deposited in the organization's bank account;
- (7) All assets of the organization, for which the gambling manager is responsible, are protected from misuse or theft; and
- (8) All funds generated from gambling activities, for which the gambling manager is responsible, are disbursed or invested in accordance with the directions of the officers or governing board of the organization and used solely to further the purposes of the organization.

AMENDATORY SECTION (Amending Order 243, filed 8/17/93)

WAC 230-20-070 Regulation of managers, operators, and other employees—Charitable or nonprofit organizations. Charitable or nonprofit organizations shall closely supervise all persons involved in the conduct of all gambling activities operated to ensure all rules of the commission are followed. The following restrictions apply to managers, operators, and other employees:

(1) Amusement games and raffles. No person other than a bona fide member of a qualified (~~bona fide~~) charitable or (~~qualified bona fide~~) nonprofit organization(;) shall take any part in the management or operation of, including (~~with respect to amusement games~~) the furnishing of equipment for amusement games, or work as an employee upon, amusement games or raffles conducted by that organization under a license from the commission: *Provided, (however,)* That(~~except as to persons operating without a license under RCW 9.46.0315 and 9.46.0321,~~) employees of the organization on a regular or part-time basis, employed primarily for purposes other than the conduct of such activities, shall be considered members of the organization for the purposes of (~~this subsection~~) conducting amusement games or raffles licensed by the commission.

(2) Bingo.

(a) No person other than a bona fide member or an employee of a charitable or nonprofit organization (~~licensee~~) shall take any part in the management or operation of bingo games conducted under a license issued (~~to that organization~~) by the commission, and no licensee shall allow any person not one of its members or employees to do so. No person other than a bona fide member of a charitable or nonprofit organization operating without a license under RCW 9.46.0321 shall take any part in the management or operation of bingo conducted by that organization and no

such organization shall allow any person not one of its members to do so.

(b) No person who takes any part in the management or operation of a bingo game conducted by one licensee shall take any part in the management or operation of any bingo game conducted by any other organization, or any other branch of the same organization except under the following conditions: (~~Provided, That~~)

(i) A person participating in the conduct of bingo games by one Class A, B, or C licensee may also participate in the conduct of bingo games by other Class A, B, or C licensees on a voluntary basis only when such person receives no remuneration for services to other licensees and when the requirements of subsection (3) below are satisfied; or

(ii) A person participating in the operation of bingo games conducted by one licensee under any class of license may also participate in the operation of bingo games conducted by other licensees under any class of bingo license, but only when that person has no managerial or supervisory responsibilities in connection with the operation of bingo activities by any licensee and when the requirements of subsection (~~(3)~~) (c) below are satisfied. An assistant (~~bingo game~~) gambling manager, as defined by WAC (~~(230-02-418)~~) 230-04-145(6), shall not be deemed a person having managerial or supervisory responsibilities for the purpose of this section and may participate as an hourly employee in the bingo operations of other bingo licensees.

(~~(3)~~) (c) Any licensee (~~which~~) that desires to have any person, who participates in any manner in the conduct of bingo games for another licensee, participate in the conduct of its bingo games shall notify the commission, (~~and~~) local police officials, and any other licensees for which the person works, in writing, of the following:

(i) The name and address of that person(;) and

(ii) The name and address of any licensees for (~~whom~~) which that person is working(;) and

(iii) The capacity in which that person is working for each licensee prior to the time that person participates in the conduct of the licensee's bingo games. (~~In addition, the licensee shall notify any other licensees for which the person works that the individual is now also working for it.~~)

(~~(4)~~) (d) No licensee shall allow any person to take any part in the management, supervision, or operation of a bingo game except in conformance with this rule.

(~~(5)~~) (3) Certain premises excepted. The limitations set forth above in (1) and (2) shall not apply to qualified agricultural fairs conducting amusement games or bingo.

WSR 95-04-038
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 25, 1995, 11:30 a.m.]

Original Notice.

Title of Rule: WAC 230-02-350 Commercial stimulant defined, 230-02-360 Licensed premises defined, 230-02-370 Food and/or drink business defined, 230-02-380 Established business defined, 230-04-080 Certain activities to be operated as a commercial stimulant only—Licensing of food and/or drink businesses, 230-08-130 Quarterly activity reports by operators of punchboards and pull tabs, and 230-08-160

PROPOSED

Quarterly activity reports by operators of social and public card rooms.

Purpose: Packet of rules clarify commercial stimulant in accordance with amendments to RCW 9.46.0217. Net gambling receipts are no longer required to be less than gross food and drink sales.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0217.

Statute Being Implemented: Chapter 9.46 RCW.

Summary: Amendments clarify commercial stimulant in accordance with amendments to RCW 9.46.0217.

Name of Agency Personnel Responsible for Drafting: Shanna R. Lingel, Rules Coordinator, Lacey, 438-7654, ext. 305; Implementation: Frank L. Miller, Director, Lacey, 438-7654, ext. 302; and Enforcement: Ben Bishop, Deputy Director, Lacey, 438-7654, ext. 369.

Name of Proponent: [Gambling Commission], governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Packet of amendments will clarify commercial stimulant in accordance with amendments made to RCW 9.46.0217. Net gambling receipts will no longer be required to be less than gross food and drink sales.

Proposal Changes the Following Existing Rules: Defines commercial stimulant, licensed premises, food and/or drink business, established business, adjusted net gambling receipts and commercial stimulant reporting requirements.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The agency has considered whether these rule changes would create an economic impact on small businesses as defined in chapter 19.85 RCW. It has determined that there are no economic impacts to small business as a result of these proposals for the following reasons: No cost or expenditure of resources; no affect on industry; and no substantive change in existing regulatory scheme.

Hearing Location: Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA 98405, on March 10, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Shanna Lingel by March 8, 1995, TDD (360) 438-7638, or (360) 438-7654, ext. 305.

Submit Written Comments to: Shanna R. Lingel, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, FAX (360) 438-8652, by March 8, 1995.

Date of Intended Adoption: March 10, 1995.

January 24, 1995
Carrie L. Sutherland
Special Assistant
to the Director

AMENDATORY SECTION (Amending Order 165, filed 3/16/87)

WAC 230-02-350 Commercial stimulant defined. "Commercial stimulant" means ~~((a))~~ a licensed gambling ~~((activities, when))~~ activity operated by an established food and/or drink business with the ~~((primary))~~ purpose of increasing the volume of food and/or drink sales for "on-

premises" consumption. ~~((For purposes of chapter 9.46 RCW and these rules, gambling activities shall qualify as a commercial stimulant only when the combined "adjusted net gambling receipts" from punchboards, pull tabs, and public card rooms are less than the total "gross" sales from the food and/or drink business.))~~

AMENDATORY SECTION (Amending Order 161, filed 9/15/86)

WAC 230-02-360 Licensed premises defined. "Licensed premises" means the physical building and property, upon which the licensed gambling activity occurs, as set out ~~((and approved))~~ on the license application and approved by the commission: Provided, That ~~((where))~~ when only a portion of a building is ~~((leased))~~ utilized for purposes of operating a food and/or drink business or for conducting gambling or related activities, only that portion set out in the ~~((lease document))~~ application on file with the commission, shall be considered the licensed premises ~~((: Provided further, That when owners or holders of a substantial interest, of a food and/or drink business, licensed to conduct gambling activities, also operate additional and separate businesses in the same building or on the same property, only the gross sales from the licensed food and/or drink business, as set out and approved on the license application, shall be included for commercial stimulant purposes)).~~

AMENDATORY SECTION (Amending Order 161, filed 9/15/86)

WAC 230-02-370 Food and/or drink business defined. "Food and/or drink business" means any business which is primarily engaged in the sale of food and/or drink items, to persons other than owners, employees, or substantial interest holders, for consumption on the licensed premises ~~((: Provided, That for purposes of chapter 9.46 RCW and these rules, a business is determined to be primarily a "food and/or drink business" when the total gross sales of food and/or drink, for on premises consumption, is equal to or greater than all other combined nongambling gross sales, rentals, or other income producing activities which occur on the licensed premises: Provided further, That food and drink items furnished to employees, without their actually paying for it, shall be treated as sales only if:~~

- ~~(1) Detailed records are maintained;~~
- ~~(2) The sale is recorded at estimated cost or menu price, but not more than five dollars per meal; and~~
- ~~(3) No more than one meal per employee is recorded during any four hour work shift)).~~

AMENDATORY SECTION (Amending Order 161, filed 9/15/86)

WAC 230-02-380 Established business defined. "Established business" means any business ~~((who))~~ that has applied for and received all licenses or permits required by any state or local jurisdictions and has been open to the public for a period of not less than ninety days: *Provided*, That the commission may grant "established" status to a business that:

(1) Has completed all construction and is ready to conduct business;

(2) Has obtained all required licenses and permits;

(3) Provides the commission a planned operating schedule which includes estimated gross sales(~~(+ and)~~) from each separate activity to be conducted on the proposed premises, including but not limited to the following:

(a) Food and/or drinks for on-premises consumption;

(b) Food and/or drinks "to go"; and

(c) All other business activities.

(4) Passes an inspection by the commission.

AMENDATORY SECTION (Amending Order 23, filed 9/23/74)

WAC 230-04-080 Certain activities to be operated as a commercial stimulant only—Licensing of food and/or drink businesses. The commission may issue a license to operate punchboards and pull tabs(~~(+)~~) or public card rooms(~~(- licensed for use as a commercial stimulant)~~) as commercial stimulants to any established business primarily engaged in the sale of food and/or drink items for consumption on the licensed premises. Such activities shall not be operated other than as a commercial stimulant. The following requirements apply to applicants for a license to use gambling activities to stimulate food and/or drink sales:

(1) For purposes of chapter 9.46 RCW and these rules, a business shall be presumed to be a "food and/or drink business" as defined by WAC 230-02-370 if:

(a) It is licensed by the Liquor Control Board to sell alcohol beverages at retail to the public for on-premises consumption and:

(i) It is a tavern that holds a valid class "B" liquor license; or

(ii) It is a restaurant with a cocktail lounge that holds a valid class "H" liquor license.

(b) It sells food and/or drink items at retail to the public and:

(i) All food is prepared and served for consumption on the licensed premises: *Provided*, That food may be prepared at other locations and served on the premises if the food is:

(A) Prepared by the licensed business; or

(B) Purchased from caterers by the licensed business as a wholesale transaction and resold to customers at retail.

(ii) The total gross sales of food and/or drink, for on-premises consumption, is equal to or greater than all other combined nongambling gross sales, rentals, or other income producing activities which occur on the licensed premises when measured on an annual basis. Applicants seeking qualification for a license under this subsection shall submit data necessary to evaluate compliance with these requirements as a part of their application. For purposes of determining total gross sales of food and drink for on-premises consumption, meals furnished to employees, free of charge, shall be treated as sales only if:

(A) Detailed records are maintained;

(B) The sale is recorded at estimated cost or menu price, but not more than five dollars per meal; and

(C) No more than one meal per employee is recorded during any four hour work shift.

(2) When an individual, partnership, or corporation operates two or more businesses within the same building or

building complex and such businesses meet the requirements of subsections (1)(a) or (b) above, one of the businesses may be designated as a "food and/or drink business" if all of the following conditions are met:

(a) The business being stimulated is physically isolated from all other businesses by walls and doors that clearly demonstrate the business is separate from other business being transacted at that location;

(b) All business transactions conducted by the applicant business are separated from the transactions conducted by all other businesses:

(i) Legally in the form of a separate corporation or partnership; or

(ii) By physical separation of all sales and accounting functions, and the methods of separation are approved by the commission.

(c) All gambling activities are located and occur upon the licensed premises, as defined in the license application and approved by the commission; and

(d) All gambling activities occur only when the food and/or drink business is open for customer service.

AMENDATORY SECTION (Amending Order 179 [251], filed 6/14/88 [5/17/94])

WAC 230-08-130 Quarterly activity reports by operators of punchboards and pull tabs. Each licensee for the operation of punchboards and pull tabs shall submit an activity report to the commission concerning the operation of the licensed activity and other matters set forth below:

(1) Reports shall be submitted detailing activities occurring during each of the following periods of the year:

(a) January 1st through March 31st;

(b) April 1st through June 30th;

(c) July 1st through September 30th; and

(d) October 1st through December 31st.

(2) A report shall be submitted for any period of time the activity was operated or a license was valid. If ~~((the licensee does not renew his license, then he shall file))~~ a license is not renewed, a report for the period between the previous report filed and the expiration date ~~((of his license-))~~ shall be submitted;

(3) The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than ~~((30))~~ thirty days following the end of the period for which it is made~~((-))~~;

(4) The report shall be signed by the highest ranking executive officer or ~~((his))~~ their designee. If the report is prepared by someone other than the licensee or ~~((his))~~ an employee, ~~((then))~~ the preparer shall print his/her name and phone number on the report~~((-))~~;

(5) The report shall be completed in accordance with the related instructions furnished with the report. The report shall include the following:

~~((1))~~ Gross sales, other than licensed gambling activities during the reporting period;

~~((2))~~ That portion of the gross sales that relates solely to the sale of food and drink for consumption on the premises;

~~((3))~~ The) (a) Gross gambling receipts from punchboards and ~~((the gross receipts))~~ from pull tabs;

~~((4))~~ (b) Total amount of cash prizes paid out and the cost to the licensee of all merchandise prizes paid out ~~((7))~~ for punchboards and for pull tabs;

~~((5))~~ (c) Full details of all expenses related to the purchase and operation of punchboards and pull tabs;

~~((6))~~ (d) Total net gambling income;

~~((7))~~ The number of punchboards and the number of pull tab series that were either in play and in inventory awaiting play as of the end of business on the last day of the quarter;

~~((8))~~ (e) The number of punchboards and the number of pull tab series removed from play during the period; and

~~((9))~~ (f) The number of punchboards and the number of pull tab series purchased during the period, less all un~~((-~~) played devices returned for credit during the period.

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

AMENDATORY SECTION (Amending Order 161 [251], filed 9/15/86 [5/17/94])

WAC 230-08-160 Quarterly activity reports by operators of social and public card rooms. Each licensee for the operation of social or public card rooms shall submit an activity report to the commission concerning the operation of the licensed activity and other matters set forth below: Provided, That persons licensed under class "D" - general, no fee charged, are exempt from all portions of this rule:

(1) Reports shall be submitted detailing activities occurring during each of the following periods of the year:

(a) January 1st through March 31st;

(b) April 1st through June 30th;

(c) July 1st through September 30th; and

(d) October 1st through December 31st.

(2) A report shall be submitted for any period of time the activity was operated or a license was valid. If ~~((the licensee does not renew his license, then he shall file))~~ a license is not renewed, a report for the period between the previous report filed and the expiration date ~~((of his license:))~~ shall be submitted;

(3) The report form shall be furnished by the commission and the completed report shall be received in the office of the commission or postmarked no later than ~~((30))~~ thirty days following the end of the period for which it is made~~((:))~~;

(4) The report shall be signed by the highest ranking executive officer or ~~((his))~~ their designee. If the report is prepared by someone other than the licensee or ~~((his))~~ an employee, ~~((then))~~ the preparer shall print his/her name and phone number on the report~~((:))~~;

(5) The report shall be completed in accordance with the related instructions furnished with the report. The report shall include the following:

~~((1))~~ Gross sales, other than licensed gambling activities during the report period;

~~((2))~~ That portion of the gross sales that relates solely to the sale of food and drink for consumption on the premises;

~~((3))~~ (a) Gross gambling receipts from the collection of fees charged for allowing persons to play;

~~((4))~~ (b) Full details of all compensation paid by the licensee to each person for any work connected with the

management, promotion, conduct, or operation of the card room, including:

~~((a))~~ (i) A description of the work performed by that person, including identifying each ~~(("Pan"))~~ dealer;

~~((b))~~ (ii) The hourly wage, including benefits; ~~((and))~~

~~((c))~~ (iii) The total hours worked during the period~~((:))~~; and

~~((5))~~ (iv) Full details of all other expenses related to the operation of the card room~~((:))~~;

~~((6))~~ The (c) Net gambling income or loss from the operation of the card room for the reporting period;

~~((7))~~ (d) The normal days and times of operation of the card room; and

~~((8))~~ (e) The total hours the card room was open during the period~~((:))~~;

~~((9))~~ The total hours "Pan" was played and a paid dealer was provided during the period; and

~~((10))~~ Full details of any meals furnished to employees included in (1) or (2) above as sales:

Provided, That persons licensed under Class D - general, no fee charged, are exempt from all portions of this rule).

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.

Reviser's note: The typographical errors in 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.

WSR 95-04-039
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 25, 1995, 11:31 a.m.]

Original Notice.

Title of Rule: WAC 230-02-183 Active member defined, 230-08-070 Raffle records, 230-12-040 No firearms as prizes—Exceptions, 230-20-300 Control of raffle prizes, 230-20-325 Manner of conducting a raffle, and 230-20-335 Raffles conducted among members of an organization—Procedures—Restrictions.

Purpose: Packet of rules will enhance the ability of organizations to raise funds from raffles.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Chapter 9.46 RCW.

Summary: Amendments will enhance the ability of youth and charitable/nonprofit organizations to raise funds from raffles. Restrictions and guidelines for offering and awarding raffle prizes are clarified.

Name of Agency Personnel Responsible for Drafting: Shanna R. Lingel, Rules Coordinator, Lacey, 438-7654, ext. 305; Implementation: Frank L. Miller, Director, Lacey, 438-7654, ext. 302; and Enforcement: Ben Bishop, Deputy Director, Lacey, 438-7654, ext. 369.

Name of Proponent: [Gambling Commission], governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Packet of amendments will enhance the ability of youth and charitable/nonprofit organizations to raise funds from raffles.

Proposal Changes the Following Existing Rules: Enhances the ability of organizations to raise funds from raffles. Clarifies restrictions for awarding and offering raffle prizes.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The agency has considered whether these rule changes would create an economic impact on small businesses as defined in chapter 19.85 RCW. It has determined that there are no economic impacts to small business as a result of these proposals for the following reasons: No cost or expenditure of resources; no affect on industry; and no substantive change in existing regulatory scheme.

Hearing Location: Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA 98405, on March 10, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Shanna Lingel by March 8, 1995, TDD (360) 438-7638, or (360) 438-7654, ext. 305.

Submit Written Comments to: Shanna R. Lingel, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, FAX (360) 438-8652, by March 8, 1995.

Date of Intended Adoption: March 10, 1995.

January 24, 1995
Carrie L. Sutherland
Special Assistant
to the Director

AMENDATORY SECTION (Amending Order 249 [WSR 94-01-035], filed 12/6/93)

WAC 230-02-183 Active member defined. For purposes of this title, "active member" means an individual who is a "bona fide member," as defined by RCW 9.46.0261, and meets all of the requirements set out below:

(1) Did not join the organization specifically to participate in, or be an operator or manager of, gambling activities;

(2) Is authorized to vote in the election of officers or board members who determine the policies of the organization;

(3) Has been a member for at least twelve months preceding an application for a gambling license, or has been accepted as a member according to guidelines set out in the organization's bylaws and such acceptance recorded in the official minutes of a regular membership meeting: *Provided*, That the minimum time provision does not apply to board members or directors if the organization's membership consists entirely of board members or directors elected or appointed for a limited term;

(4) Complies with ~~((the organization's))~~ membership criteria, as set out in ~~((its))~~ the organization's bylaws;

(5) Lives within the boundaries of Washington State or, if outside the state boundaries, lives within one hundred miles of the main administrative offices of the organization which is located within Washington State: *Provided*, That

the director may waive the requirements of this subsection for organizations applying for a license to conduct raffles only;

(6) Is at least eighteen years old: *Provided*, That the director may waive this provision when:

(a) The organization's primary purpose is the development of youth;

(b) The organization is applying for a license to conduct only raffles or amusement games;

(c) The organization has at least three members or advisors that are at least eighteen years of age who supervise the operation of the activity; and

(d) One of the adult members or advisors shall be designated as the manager of the activity. This member shall be responsible for ensuring that all activities are operated in accordance with all requirements of the commission and shall attend training required by WAC 230-04-020;

(7) ~~Has ((, over the last twelve months,))~~ participated directly in the activities conducted by the organization over the past twelve months. For purposes of this section, participation by a member in any of the following activities during the twelve month period immediately preceding an application for certification shall be prima facie evidence of direct participation:

(a) Attended at least one regular membership meeting ~~((within the previous twelve months));~~ or

(b) Voted in person or, if authorized by the organization's bylaws, by proxy at a meeting at which officers and/or board members were elected ~~((within the previous twelve months));~~ or

(c) Has been actively involved in policy setting for the organization by serving as a member of the board of directors or a similar policy setting position; or

(d) Has paid dues imposed by the organization ~~((during the last twelve months; or~~

(e) Has served as a volunteer providing services or raising funds from nongambling sources ~~((during the last twelve months));~~ or

(f) Has maintained a level of communications with the organization that would allow them to demonstrate in-depth knowledge regarding the activities of the organization ~~((during the previous twelve months)).~~ In-depth knowledge would include:

(i) The types of program services provided;

(ii) The scope of program services provided;

(iii) Sources and levels of funding available to the organization; and

(iv) Key plans, including major programs and capital projects.

(8) Incorporated towns or cities applying for a license to conduct gambling activities are exempted from all requirements of this section. The citizens of an incorporated town or city, who are registered to vote in the election for the mayor or governing body of such town or city, ~~((shall be))~~ are deemed to be "active members" ~~((for purposes of this title and are exempted from all other requirements of this section))~~ of such towns and cities.

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

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 Order 188, filed 3/14/89)

WAC 230-08-070 Raffle records. (~~L~~icensees for the operation of raffles shall be required to prepare a detailed record covering each individual raffle. This detailed record shall be recorded in a standard format prescribed by the commission. Each detailed raffle record shall be supported by a validated bank deposit receipt(s) and winning tickets.

Operators of Class A and B raffles shall be exempt from this rule, but will be required to keep all operator records in order to properly report all information as required by WAC 230-08-015.) A detailed record shall be prepared for each raffle conducted. Unless otherwise noted in this section, organizations licensed to conduct raffles at class "D" or below and organizations conducting unlicensed raffles under the authority of RCW 9.46.0315 or 9.46.0321 are authorized to use reduced record keeping requirements as set out in WAC 230-08-015. Organizations licensed to conduct raffles at or above class "E" or conducting raffles under any class of license by utilizing alternative drawing formats, as authorized by WAC 230-20-325, shall comply with the following record keeping procedures:

(1) All data required shall be recorded in a standard format prescribed by the commission;

(2) At least the following data shall be recorded:

(a) Beginning and ending ticket numbers;

(b) Total gross gambling receipts;

(c) A description of each prize including the cost, or if contributed to the organization, the fair market value;

(d) The name, address, and telephone number of each winner of a prize with a fair market value in excess of twenty dollars;

(e) Details of disbursement to and return of tickets from sellers that include the name of the person receiving the tickets, the number of tickets disbursed, number of tickets returned, and all funds returned: *Provided*, That this record shall not be required for members-only raffles conducted using procedures set forth in WAC 230-20-335.

(3) In addition to the prescribed format, the following records shall be maintained:

(a) Validated deposit receipts for each deposit of raffle proceeds;

(b) All winning tickets;

(c) All ticket stubs for raffles that participants are not required to be present at the drawing;

(d) All unsold tickets for individual raffles for which gross gambling receipts exceed five thousand dollars;

(e) Invoices and other documentation recording the purchase or receipt of prizes; and

(f) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle.

(4) These records shall be maintained for a period of not less than three years from the end of the licensee's fiscal year in which the raffle was completed: *Provided*, That records for members-only raffles conducted by utilizing procedures set forth in WAC 230-20-335 shall be required to be retained for a period of not less than one year following the date of each individual raffle drawing;

(5) Records for each individual raffle shall be completed and available for review by commission staff and local law enforcement or taxing authorities no later than thirty days following the drawing: *Provided*, That this subsection shall not restrict commission staff or local law enforcement authorities from review of any required records prior to the allowed completion date; and

(6) Records shall be maintained at the main administrative or business office of the organization that is located within Washington State. If the organization does not have an administrative or business office located within Washington State or if the organization is structured to include more than one chapter or subunit that conducts raffles, they shall designate a records custodian that resides in Washington State who shall be responsible for retaining all original records. Such organizations shall inform the commission on its application of the custodian's name, phone number, and the location of the records. Such organizations shall provide all records within seven days of a request at any reasonable location designated by any representative of the commission or local law enforcement.

AMENDATORY SECTION (Amending Order 253, filed 6/15/94)

WAC 230-12-040 No firearms as prizes—Exceptions. No firearms, air guns, or other mechanical devices which are capable of discharging dangerous projectiles, including but not limited to, BB(~~(s)~~) or CO₂ guns, (~~(including but not limited to,)~~) rifles, shotguns, pistols(~~(s)~~) or revolvers(~~(s)~~), or crossbows, shall be offered or awarded as a prize (~~(or in lieu of a prize)~~) for (~~(winning at)~~) any of the activities authorized by Chapter 9.46 RCW: *Provided*, That bona fide charitable or nonprofit organizations licensed to conduct a raffle, may award any legal (~~(shotguns or hunting rifles)~~) firearm or air gun as (~~(merchandise)~~) a prize(~~(s not deemed unlawful as defined by WAC 232-12-047: Provided further, That the organization shall not award the actual prize but will provide)~~) for such raffles. Any firearm for which the transfer is restricted by state or federal law shall be awarded by providing the winner a certificate for (~~(the)~~) such prize which is redeemable (~~(at)~~) by a licensed firearms dealer.

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 Order 5, filed 12/19/73)

WAC 230-20-300 Control of raffle prizes. Any person or organization conducting (~~(a raffle in which)~~) raffles shall ensure that all prizes offered are available at the time and place of the drawing. Prizes shall be controlled as follows:

(1) Merchandise prizes (~~(are to be awarded)~~) shall (~~(have)~~) be owned by the licensee and paid for in full (~~(or otherwise become the owner)~~), without lien or interest of others, (~~(of all such merchandise)~~) prior to the drawing at which the winners of such prizes are to be determined(~~(—If each prize totaling fifty dollars or more are to be awarded in any one raffle, the total amount of money to be awarded~~

shall be placed in a trust account for the benefit of the winners of the raffle in a bank or savings and loan association doing business in the state of Washington prior to the drawing at which the winners of such prizes are to be determined.)) *Provided*, That when the winner has an option to receive a cash prize in lieu of such merchandise, a licensee may enter into a contract to immediately purchase a merchandise prize after the winner makes their option;

(2) All cash prizes shall be available at the time of the drawing in the form of United States currency or an equivalent amount of negotiable instruments; and

(3) At the time and date of any raffle drawing, the licensee shall have on deposit an unencumbered amount of money that is equal to or greater than:

(a) All cash prizes currently being offered; or

(b) The total cost to purchase merchandise prizes for which the winner has an option.

(4) Any funds required by subsection (3) of this section shall be on deposit in the gambling receipts account, if required by WAC 230-12-020, or otherwise in a recognized Washington State depository authorized to receive funds. The balance of funds available from this account shall not be reduced below the required amount prior to awarding the prize.

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 Order 205, filed 2/14/90)

WAC 230-20-325 Manner of conducting a raffle.

All raffles shall be conducted by selling individual ~~((prenumbered tickets))~~ chances for not more than five dollars and awarding prizes by selecting winners by a random drawing from among all ~~((tickets))~~ chances sold. The following operating procedures apply:

(1) All ~~((tickets for use in any))~~ raffle chances shall be consecutively numbered ~~((and each ticket shall be accounted for separately in accordance with WAC 230-08-070.))~~ tickets or other objects imprinted with letters or symbols that are not repeated within the population of all chances sold for a specific raffle.

(2) Raffle ~~((tickets))~~ chances sold to the general public or for raffles that do not require the winner to be present at the drawing shall ~~((have))~~ consist of a ticket that includes a stub or other detachable section bearing a duplicate number, letter, or symbol corresponding to the number, letter, or symbol on the ticket ~~((Provided, That with prior written director approval, tickets may include any consecutively numbered or lettered object if a stub imprinted with an identical number or letter and all other information required by WAC 230-20-325, is provided to each entrant at the time of purchase.))~~ or object representing the player's chance. The portion retained by the seller shall include the participant's name, complete address, telephone number, and/or other information necessary to notify the winner;

~~((2))~~ (3) All ~~((prizes available, whether cash or merchandise, and))~~ participants in a raffle must be informed of all rules by which such prizes may be won ~~((including all costs to a participant, shall be disclosed to each participant.~~

This information shall be printed upon each ticket sold, or shall be otherwise provided in writing to each purchaser)) at the time of sale ~~((and shall also include, but not be limited to,))~~ of a chance. This information shall be provided by either imprinting such on the participant's portion of the ticket or otherwise providing such to each participant in writing. The following information shall be provided to each participant:

(a) The cost of each chance;

(b) All prizes available, whether cash or merchandise;

(c) Date and time of drawing~~((;))~~;

(d) Location of drawing~~((;))~~;

(e) Whether an entrant is required to be present at a raffle drawing in order to be eligible to win a prize; and

(f) Name of organization conducting raffle.

~~((3))~~ (4) No person shall be required to pay, directly or indirectly, more than ~~(((\$5.00))~~ five dollars in order to enter any raffle ~~((After April 15, 1990,))~~;

(5) Each raffle ticket must be sold for the same price as every other raffle ticket being used for that particular raffle~~((;))~~;

(6) No free tickets, or any opportunity to participate in the drawing of any raffle, shall be awarded or given to a person as a prize ~~((or))~~, reward for selling raffle tickets, or for purchasing a certain number of raffle tickets~~((;))~~: *Provided*, That noncash incentive awards may be provided to members selling tickets if:

(a) Individual awards do not exceed a fair market value of ten dollars;

(b) The awards are based on the number of chances sold; and

(c) The fair market value of the total amount awarded for an individual raffle does not exceed two percent of the gross gambling receipts of the raffle.

(7) No person shall be required to obtain more than one ~~((ticket or to pay for anything other than the ticket, in order))~~ chance to enter ~~((the))~~ a raffle ~~((Provided, That licensed raffles conducted among members of the organization only, may be conducted using alternative sales methods, if specifically authorized by the commission. This authority will be issued on an individual basis and will require a detailed written request.~~

~~((4))~~ From October 15, 1988, through April 15, 1990, each raffle ticket must be sold for the same price as every other raffle ticket being used for that particular raffle. However, the sponsor may provide to a purchaser of a raffle ticket an opportunity to obtain by random method a discount on such a ticket, including the opportunity to obtain that ticket free, but only if the sponsor maintains records for each book of raffle tickets so that income from the sale of tickets in each book can be audited.

(5) If an entrant is required to be present at a raffle drawing in order to be eligible for the prize drawing, then a statement setting forth this condition shall be set forth conspicuously on each raffle ticket and on all promotional material concerning the raffle. When the participant is not required to be present at the drawing the ticket stub or other detachable section ~~((s))~~ of the ticket shall contain the purchaser's name, complete address, and telephone number, and shall be maintained for a period of not less than three years from the end of the fiscal year in which the raffle was completed.

~~(6) In conducting a drawing in connection with any raffle;~~

(8) Each ticket seller shall return to the licensee the stubs or other detachable section of all tickets sold. The licensee shall then place each stub or other detachable section of each ticket sold into a receptacle out of which the winning tickets are to be drawn(~~(--Such)~~);

(9) The ticket collection receptacle shall be designed so that each ticket placed therein has an equal opportunity with every other ticket to be the one withdrawn(~~(-)~~): *Provided*, That an alternative drawing format to determine the (~~winning ticket~~) winner may be utilized if such format is approved by the director (~~in writing prior to the sale of any ticket. The following requirements must be met prior to utilizing any such alternative drawing format~~) and the following requirements are complied with:

(a) The organization must have a current raffle(~~(s)~~) license;

(b) The alternate format must meet the definition of a drawing as defined by WAC 230-02-500;

(c) The random selection process used in the alternative format shall be fully disclosed to each player prior to selling a ticket;

(d) Any alternate format utilized to determine the winners must be closely controlled by the licensee; and

~~((d))~~ (e) Each separate alternative format scheme shall be approved by the director in writing prior to a ticket being sold to participate in a raffle using such a scheme to determine winners. The request to utilize an alternative drawing format shall contain, at a minimum, the following information:

(i) The time, date, and location of the drawing;

(ii) The type of random selection process to be used and complete details of its operation;

(iii) The name and telephone number of the raffles manager; and

(iv) The signature of the organization's chief executive officer.

~~((7))~~ (10) The raffle license issued by the commission or a photostatic copy of the license shall be conspicuously posted and displayed at the location at all times during the occasion when a drawing is being conducted.

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.

NEW SECTION

WAC 230-20-335 Raffles conducted among members of an organization—Procedures—Restrictions. Organizations may conduct members-only raffles utilizing simplified procedures. For purposes of this section, "members-only raffle" means a raffle conducted by selling chances only to members of the organization and a limited number of guests, and determining the winners from among those members and guests that have purchased chances. The following procedures and restrictions supplement or modify WAC 230-08-070 and 230-20-325 and apply only to members-only raffles:

(1) In order to conduct raffles utilizing these simplified procedures, all phases of the raffle must be completed during a meeting of the members, and the meeting must be com-

pleted on the same day and at the same location without interruption;

(2) If guests are allowed to participate, the total number of guests, as a percentage of the total attendance of the meeting, shall not exceed twenty-five percent. Records shall be maintained that will allow commission staff to determine compliance with this requirement;

(3) All disclosures required to be imprinted on a raffle ticket or chance may be provided to participants by posting a sign at each ticket sales point;

(4) Chances to enter a raffle may be included as a part of a package that includes dues, entertainment, or other fund raising activities if the value of each component of the package is disclosed to the purchaser and the value of each individual raffle chance does not exceed five dollars: *Provided*, That initial applications for membership and any fees paid for such shall not include chances to enter raffles or to participate in any gambling activities;

(5) The director may authorize an organization to deviate from the "same price" requirements of WAC 230-20-325(5). Chances to enter a raffle may be sold for different values, ranging from one cent to a maximum of five dollars, if the following conditions are met:

(a) The scheme for assigning the cost of the ticket must be disclosed to the player prior to selling them a chance to participate;

(b) The scheme provides an adequate audit trail that will allow commission staff and taxing authorities to determine gross gambling receipts;

(c) The total gross gambling receipts available from raffles utilizing such schemes are limited to thirteen hundred dollars each drawing;

(d) No more than two such drawings are conducted by any chapter or subunit during a calendar month; and

(e) Approval must be obtained in writing from the director. Such approval shall be valid until revoked by commission staff.

(6) The following sales schemes may be used for members-only raffles:

(a) Multiple tickets to enter one or more drawings may be sold as a package as long as the total price of the package does not exceed five dollars; and

(b) Alternative sales methods, may be used if specifically authorized by the commission. This authority will be issued on an individual basis and will require a detailed written request.

(7) Alternative drawing formats approved for members-only raffles shall be valid until revoked by the commission staff, if all the information required by this subsection is reported to the commission at least ten days prior to any drawing using such schemes. Notification for members-only raffles may be signed by the designated raffle manager;

(8) Raffle records, as required by WAC 230-08-070, are modified as follows:

(a) Ticket disbursement records set forth in WAC 230-08-070 (2)(e) are not required; and

(b) Minimum record retention period set forth in WAC 230-08-070(6) is reduced to a period that is not less than one year following the date of each individual raffle drawing.

PROPOSED

WSR 95-04-040
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 25, 1995, 11:34 a.m.]

Continuance of WSR 94-24-053.

Title of Rule: WAC 230-04-280 (~~Notification to law enforcement.~~) Licensees must notify law enforcement and local taxing authorities; 230-04-400 Denial, suspension or revocation of licenses; and 230-50-010 Adjudicated proceedings—Hearings.

Purpose: WAC 230-04-280, sets out the guidelines for notification to law enforcement and local taxing authorities; WAC 230-04-400, to include failure to make required gambling tax payments to local taxing authorities; and WAC 230-50-010, to include hearings held due to failure to pay required gambling taxes.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Chapter 9.46 RCW.

Summary: WAC 230-04-280, amendment sets out the guidelines for notification to law enforcement and local taxing authorities; WAC 230-04-400, amendment includes failure to make required gambling tax payments to local taxing authorities; and WAC 230-50-010, amendment includes hearings held due to failure to pay required gambling taxes.

Name of Agency Personnel Responsible for Drafting: Shanna Lingel, Rules Coordinator, Lacey, 438-7654, ext. 305; Implementation: Frank L. Miller, Director, Lacey, 438-7654, ext. 301; and Enforcement: Ben Bishop, Deputy Director, Lacey, 438-7654, ext. 369.

Name of Proponent: Washington State Association of County Treasurers, Mary Dodge, President, Douglas County Treasurer, P.O. Box 609, Waterville, WA 98858, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 230-04-280, sets out guidelines for notification to local law enforcement and local taxing authorities; WAC 230-04-400, amendment will include failure to make required gambling tax payments to local taxing authorities; and WAC 230-50-010, amendment includes hearings held for failure to pay required gambling taxes.

Proposal Changes the Following Existing Rules: WAC 230-04-280, amendment sets out guidelines to notify local law enforcement and local taxing authorities; WAC 230-04-400, amendment includes failure to make required gambling tax payments to local taxing authorities; and WAC 230-50-010, amendment includes hearings held for failure to pay required gambling taxes.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The agency has considered whether these rule changes would create an economic impact on small businesses as defined in chapter 19.85 RCW. It has determined that there are no economic impacts to small business as a result of these proposals for the following reasons: No cost or expenditure of resources; no affect on industry; and no substantive change in existing regulatory scheme.

Hearing Location: Ramada Governor House, 621 Capitol Way South, Olympia, WA 98501, on February 10, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Carrie Sutherland by February 8, 1995, TDD (360) 438-7638, or (360) 438-7654, ext. 373.

Submit Written Comments to: Carrie Sutherland, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, FAX (360) 438-8652, by February 8, 1995.

Date of Intended Adoption: February 10, 1995.

January 20, 1995

Shanna R. Lingel

Rules Coordinator

AMENDATORY SECTION (Amending Order 5, filed 12/19/73)

WAC 230-04-280 (~~Notification to~~) Licensees must notify law enforcement and local taxing authorities. (~~Each licensee for the operation of an authorized gambling activity, within ten days after issuance of the license and before initially conducting any activity under the license, shall notify, in writing, the law enforcement agencies set forth below of the name and address of the licensee, the address where the activity will be conducted, the type of activity licensed, the date the activity shall first be conducted, and if the activity is planned to be conducted on a regular basis, the proposed schedule for the operation of the activity.~~)

~~When the activity is to be conducted within a city or town, the local police agency shall be notified, and when the activity is to be conducted within a county, then the sheriff's office shall be notified.~~

~~No activity shall be initially conducted until such notification has been made.)~~ In accordance with RCW 9.46.070, the commission will continue to cooperate, and share information, with other governmental agencies, including local law enforcement and local taxing authorities.

(1) Before a licensee may operate an authorized gambling activity, it must notify law enforcement and the local taxing authority, in writing, of the following:

(a) Its name and address;

(b) The type of gambling activity it will conduct;

(c) The address where the gambling activity will be conducted;

(d) The date the gambling activity will begin; and

(e) If the gambling activity will be conducted on a regular basis, the proposed schedule for the operation of the gambling activity.

(2) The licensee must provide this information to law enforcement and to the taxing authority within ten days after the commission issues the initial license and before the licensee can conduct the gambling activity. If the licensee is renewing its license for a particular gambling activity and if this information has not changed, it need not provide law enforcement and the taxing authority this information.

(3) If the activity is to be conducted within a city or town, the licensee must notify the local police agency and the local city or town treasurer or the agency responsible for collecting local gambling taxes. If the activity is to be conducted within the county, the licensee must notify the sheriff's office and the county treasurer, finance division, or the agency responsible for collecting local gambling taxes.

(4) The licensee may not conduct a gambling activity until it has notified law enforcement and the local gambling tax authority.

AMENDATORY SECTION (Amending WSR 93-12-082, filed 5/28/93, effective 7/1/93)

WAC 230-04-400 Denial, suspension or revocation of licenses. The commission may deny a license or permit to any applicant, or may suspend or revoke any and all licenses or permits of any holder, when the applicant or holder, or any other person with any interest in the applicant or holder:

(1) Commits any act that constitutes grounds under RCW 9.46.075 for denying, suspending, or revoking licenses or permits;

(2) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person, whether any of these crimes is a misdemeanor or felony;

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level. This includes, but is not limited to, failure to make required gambling tax payments to local taxing authorities, as supported by a petition submitted by the local taxing authority;

(4) Is serving a period of probation or community supervision imposed as a sentence for any criminal offense, whether juvenile, misdemeanor, or felony, and whether or not the offense is covered under RCW 9.46.075(4): *Provided*, That each case will be individually analyzed to determine the extent to which the probationary or supervisory status affects the person's qualifications to hold a license or permit;

(5) Is the subject of an outstanding gross misdemeanor or felony arrest warrant;

(6) Poses a threat to the effective regulation of gaming or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gaming activities, as demonstrated through the person's prior activities, criminal record, reputation, habits, or associations;

(7) When other than a charitable or nonprofit organization operates punchboards or pull tabs, or operates or allows card games at any time other than as a commercial stimulant;

(8) Fails to provide at the office of the commission any information required under the commission's rules within the time required therefor by applicable rule, or if no maximum time has been established respecting the particular kind of information by other rule then within thirty days after receiving a written request therefor from the commission or its staff;

(9) Allows any person to participate in the management or operation of any activity regulated by the commission without prior written approval of the commission or its director when that person:

(a) Has been convicted of, pleaded guilty to, or forfeited bond upon any of the offenses set out in RCW 9.46.075(4);

(b) Has violated any other provisions of chapter 9.46 RCW or Title 230 WAC; or

(c) Would otherwise be subject to denial or revocation under the provisions of this section.

(10) Commits any other act that the commission determines constitutes a sufficient reason in the public interest for denying, suspending, or revoking licenses or permits;

(11) Has failed to make required gambling tax payments to local taxing authorities as defined by chapter 9.46 RCW and adopted local ordinances.

AMENDATORY SECTION (Amending Order 231, filed 9/18/92, effective 10/19/92)

WAC 230-50-010 Adjudicated proceedings—Hearings. (1) Adjudicated proceedings shall be commenced for any and all matters wherein the commission is causing administrative charges to be brought against any applicant, licensee or permittee within the limitations to chapter 34.05 RCW as applicable.

(2) The commission shall afford an applicant for a license an opportunity for an adjudicated proceeding prior to denying such application, and shall afford a licensee the opportunity for an adjudicated proceeding prior to suspending or revoking a license.

(3) The commission will afford a person applying to the commission for approval of a pull tab dispensing device under WAC 230-30-095 an opportunity for an adjudicated proceeding prior to denying approval of such device.

(4) No hearing will be conducted with respect to any adjudicated proceeding unless an application for an adjudicated proceeding and request for hearing is timely filed by the applicant or licensee with the commission in compliance with WAC 230-50-210. The application must be made upon a form to be obtained from the commission, or facsimile thereof, and must be received within 20 days following service upon the party affected by the commission or the director of a notice of administrative charges and opportunity for an adjudicated proceeding. Said document shall contain the maximum penalty that may be assessed should an application not be filed by the party affected. An application for an adjudicated proceeding and request for hearing shall accompany all notices of administrative charges.

(5) If an application for an adjudicated proceeding is not timely filed, then the party affected shall have waived the right to a hearing on the allegations set forth in the notice of administrative charges. The party shall be deemed to be in default pursuant to RCW 34.05.440 and the commission and director may take action against the party not to exceed the maximum penalty as stated in the notice of administrative charges and opportunity for an adjudicated proceeding, which action shall be final.

(6) The procedures of RCW 34.05.485, brief adjudicative proceedings, shall be used for the following purposes:

(a) All hearings in which the penalty sought by the commission is for a suspension of seven days or less;

(b) Hearings held pursuant to WAC 230-50-015 (stay of summary suspension);

(c) Hearings held pursuant to WAC 230-04-400(3) (failure to pay required gambling taxes);

(d) Hearings in which the parties have stipulated to facts or the parties have stipulated to charges, and the hearing is limited to a determination of whether facts constitute

violations as charged and/or determination of appropriate penalty to be imposed; or

((~~d~~)) (e) Where the parties have stipulated to the use of brief adjudicative proceedings.

WSR 95-04-043
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 25, 1995, 11:38 a.m.]

Original Notice.

Title of Rule: WAC 230-02-010 Washington State Gambling Commission—Purpose and organization.

Purpose: Housekeeping change to reflect current number of assistant directors on staff.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Chapter 9.46 RCW.

Summary: Amends rule to reflect three assistant directors currently on staff.

Name of Agency Personnel Responsible for Drafting: Shanna R. Lingel, Rules Coordinator, Lacey, 438-7654, ext. 305; Implementation: Frank L. Miller, Director, Lacey, 438-7654, ext. 302; and Enforcement: Ben Bishop, Deputy Director, Lacey, 438-7654, ext. 369.

Name of Proponent: [Gambling Commission], governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amendment reflects current number of assistant directors currently on staff.

Proposal Changes the Following Existing Rules: Amendment reflects three assistant directors currently on staff.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The agency has considered whether these rule changes would create an economic impact on small businesses as defined in chapter 19.85 RCW. It has determined that there are no economic impacts to small business as a result of these proposals for the following reasons: No cost or expenditure of resources; no affect on industry; and no substantive change in existing regulatory scheme.

Hearing Location: Sheraton Hotel, 1320 Broadway Plaza, Tacoma, WA 98405, on March 10, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Shanna Lingel by March 8, 1995, TDD (360) 438-7638, or (360) 438-7654, ext. 305.

Submit Written Comments to: Shanna Lingel, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504-2400, FAX (360) 438-8652, by March 8, 1995.

Date of Intended Adoption: March 10, 1995.

January 24, 1995
 Carrie L. Sutherland
 Special Assistant
 to the Director

AMENDATORY SECTION (Amending Order 203, filed 1/18/90, effective 2/18/90)

WAC 230-02-010 Washington state gambling commission—Purpose and organization. (1) Purpose - The Washington state gambling commission, hereinafter called "the commission," is created pursuant to RCW 9.46.040 as the licensing and regulatory agency charged with the authority and duty to control statutorily authorized nonprofessional gambling. Where appropriate, the term "commission" also refers to the staff and employees of the commission. In order to carry out the assigned duties and responsibilities, the legislature designated the commission as a law enforcement agency with the powers to investigate all gambling and associated activities and enforce the provisions of chapter 9.46 RCW.

(2) Organization - The commission is comprised of five part-time members, four ex officio members, and a full time staff.

(a) Commission members - Five citizens, all appointed by the governor with the consent of the stat senate for six-year staggered terms. One members is annually elected as chairperson. Commissioners serve part-time as necessary and otherwise as directed by the chairperson.

(b) Ex officio members - Two members each from the senate and the house of representatives, one each from the majority and minority political parties. Members are appointed for two year terms by the president of the senate and speaker of the house of representatives, respectively. Ex officio members do not vote on matters before the commission for review.

(c) Staff - The commission staff is organized under a director, a deputy director, and ((two)) three assistant directors pursuant to RCW 9.46.080. The director, the deputy director, ((both)) the assistant directors, and all staff required to perform undercover duties are exempt from the provisions of chapter 41.06 RCW. Staff duties and responsibilities are as follows:

(i) Director - The director is appointed by the commission as its administrator for carrying out its powers and duties. The director ensures that staff and other resources are available to carry out the purposes and provisions of chapter 9.46 RCW. The director is directly responsible for matters pertaining to public relations, research, contracts, agreements, and legal problems.

(ii) Deputy Director - The deputy director is appointed by the director with responsibilities of making decisions and carrying out duties delegated by the director: *Provided*, That those duties specifically enumerated in WAC 230-12-900 may not be delegated to the deputy director.

(iii) Assistant Directors - Assistant directors are appointed by the director with the responsibilities for the day-to-day management of the various operational sections of the commission and advising the director regarding matters necessary to carry out the provisions of chapter 9.46 RCW.

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 95-04-051
PROPOSED RULES
DEPARTMENT OF REVENUE
 [Filed January 25, 1995, 4:09 p.m.]

Original Notice.

Title of Rule: Repealing chapter 458-08 WAC, Uniform procedural rules for the conduct of contested cases.

Purpose: This rule making repeals chapter 458-08 WAC, Uniform procedural rules for the conduct of contested cases, which is obsolete and replaced by proposed WAC 458-20-10001 and 458-20-10002.

Statutory Authority for Adoption: RCW 82.32.300.

Summary: This rule making repeals chapter 458-08 WAC which is obsolete and is replaced by proposed WAC 458-20-10001 and 458-20-10002.

Name of Agency Personnel Responsible for Drafting: Stephen Zagelow, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; **Implementation:** Les Jaster, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; and **Enforcement:** Russ Brubaker, 711 Capitol Way South, Suite 303, Olympia, (360) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule making repeals chapter 458-08 WAC which is obsolete by the 1989 amendments to the Administrative Procedure Act and is replaced by proposed WAC 458-20-10001 and proposed WAC 458-20-10002. The twenty-seven rules of this chapter are replaced by the two new proposed rules.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Legislation and Policy Division, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-4281, or FAX (360) 664-0693.

Hearing Location: Revenue Conference Room #415, General Administration Building, 210 11th and Columbia, Olympia, WA, on March 7, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by February 22, 1995, TDD (800) 451-7985, or (360) 753-3217.

Submit Written Comments to: Steve Zagelow, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by March 7, 1995.

Date of Intended Adoption: March 14, 1995.

January 25, 1995
 Russell W. Brubaker
 Assistant Director

REPEALER

Chapter 458-08 WAC, Uniform procedural rules for the conduct of contested cases, is repealed.

WSR 95-04-052
PROPOSED RULES
DEPARTMENT OF REVENUE
 [Filed January 25, 1995, 4:12 p.m.]

Original Notice.

Title of Rule: New section WAC 458-20-10002 Adjudicative proceedings—Formal adjudicative proceedings—Log export enforcement actions pursuant to chapter 240-15 WAC—Orders to county officials issued to pursuant to RCW 84.08.120 and 84.41.120—Converted brief adjudicative proceedings.

Purpose: This rule adopts and explains the adjudicative process and procedure for formal adjudications conducted by the Department of Revenue under the Administrative Procedure Act.

Statutory Authority for Adoption: RCW 82.32.300, 34.05.410.

Statute Being Implemented: RCW 82.32.215.

Summary: This rule explains the adjudicative process and procedure for formal adjudications conducted by the Department of Revenue under the Administrative Procedure Act. This rule adopts the process and procedures of chapter 10-08 WAC for the conducting of the formal adjudications.

Reasons Supporting Proposal: This rule is a companion to proposed WAC 458-20-10001 which adopts the brief adjudicative provisions of the APA for certain Department of Revenue adjudications. These rules replace chapter 458-08 WAC which is being repealed.

Name of Agency Personnel Responsible for Drafting: Stephen Zagelow, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; **Implementation:** Les Jaster, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; and **Enforcement:** Russ Brubaker, 711 Capitol Way South, Suite 303, Olympia, (360) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule explains the process and procedure for formal adjudications conducted by the Department of Revenue under the Administrative Procedure Act. This rule adopts chapter 10-08 WAC as the process and procedure for the conducting of the formal adjudications. This rule is a companion to proposed WAC 458-20-10001 which adopts the APA brief adjudicative process and procedure for wholesale and retail cigarette license revocation or suspension and certificate of registration (tax registration endorsement) revocations conducted under the APA.

Proposal Changes the Following Existing Rules: Chapter 458-08 WAC, Uniform procedural rules for the conduct of contested cases, is being repealed simultaneously with the adoption of this rule. These rules were made obsolete by the 1989 amendments to the APA and chapter 82.32A RCW, Taxpayer rights and responsibilities, and are being replaced by this rule and proposed WAC 458-20-10001. Also being amended simultaneously with the adoption of this rule is WAC 458-20-18601 Wholesale and retail cigarette vendor licenses, to adopt the provisions of this rule for the applicable license suspension/revocation.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the

statement may be obtained by writing to: Legislation and Policy Division, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-4281, or FAX (360) 664-0693.

Hearing Location: Revenue Conference Room #415, General Administration Building, 210 11th and Columbia, Olympia, WA, on March 7, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by February 22, 1995, TDD (800) 451-7985, or (360) 753-3217.

Submit Written Comments to: Steve Zagelow, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 663-0693, by March 7, 1995.

Date of Intended Adoption: March 14, 1995.

January 25, 1995
Russell W. Brubaker
Assistant Director

NEW SECTION

WAC 458-20-10002 Adjudicative proceedings - Formal adjudicative proceedings - Log export enforcement actions pursuant to chapter 240-15 WAC - Orders to county officials issued pursuant to RCW 84.08.120 and RCW 84.41.120 - Converted brief adjudicative proceedings. (1) **Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedures Act (APA). This section explains the procedure and process for formal adjudicative proceedings conducted by the department. These formal proceedings include, but are not limited to log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and RCW 84.41.120, and converted brief adjudicative proceedings. This section does not apply to wholesale and retail cigarette license revocation/suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215, or other proceedings which are brief adjudicative proceedings and are explained in WAC 458-20-10001. This section also does not apply to the non-adjudicative proceedings as provided in RCW 82.32.160, 170 and WAC 458-20-100.

(2) **Formal Adjudicative Proceedings - Procedure and process.** RCW 34.05.413 through 479 and chapter 10-08 WAC shall apply to formal adjudicative proceedings conducted by the Department of Revenue.

(a) **Presiding Officer - Final Order - Review.** The presiding officer of a formal adjudicative proceeding shall be the Director, Department of Revenue, or such person as the Director shall designate. The presiding officer, whether the Director of the Department of Revenue, or such person as the Director shall have designated, shall make the final decision and shall enter a final order as provided in RCW 34.05.461 (1)(b). No further administrative review is available from a decision of the presiding officer.

(b) **Petitions for Reconsideration.** RCW 34.05.470 provides that petitions for reconsideration shall be filed within ten days of the final order. A petition for reconsideration shall be filed with the presiding officer at the address of the presiding officer provided in the notice of the proceedings, or at such other address as may be provided in the final order, and shall be in the form of other pleadings in the

matter. As with all other pleadings, a copy of the petition shall be served upon all other parties to the proceeding.

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 95-04-053
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed January 25, 1995, 4:14 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-20-18601 Wholesale and retail cigarette vendor licenses.

Purpose: This rule adopts the adjudicative process and procedure of proposed WAC 458-20-10001 for wholesale and retail cigarette vendor license suspensions or revocations under the Administrative Procedure Act.

Statutory Authority for Adoption: RCW 82.32.300.

Statute Being Implemented: RCW 82.24.550.

Summary: This rule adopts the adjudicative process and procedure of proposed WAC 458-20-18601 for wholesale and retail vendor license suspensions and revocations.

Reasons Supporting Proposal: This rule is a companion to proposed WAC 458-20-10001 which adopts the brief adjudicative provisions of the APA for the Department of Revenue adjudication of wholesale and retail vendor license suspensions or revocations.

Name of Agency Personnel Responsible for Drafting: Stephen Zagelow, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; Implementation: Les Jaster, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; and Enforcement: Russ Brubaker, 711 Capitol Way South, Suite 303, Olympia, (360) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule adopts and is a companion to proposed WAC 458-20-10001 which adopts the APA brief adjudicative process and procedure for wholesale and retail cigarette license revocation or suspension and certificate of registration (tax registration endorsement) revocations conducted under the APA.

Proposal Changes the Following Existing Rules: Chapter 458-08 WAC, Uniform procedural rules for the conduct of contested cases, is being repealed simultaneously with the adoption of this rule. These rules were made obsolete by the 1989 amendments to the APA and chapter 82.32A RCW, Taxpayer rights and responsibilities, and are being replaced by proposed WAC 458-20-10001 and proposed WAC 458-20-10002.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Legislation and Policy Division, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-4281, or FAX (360) 664-0693.

PROPOSED

Hearing Location: Revenue Conference Room #415, General Administration Building, 210 11th and Columbia, Olympia, WA, on March 7, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by February 22, 1995, TDD (800) 451-7985, or (360) 753-3217.

Submit Written Comments to: Steve Zagelow, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by March 7, 1995.

Date of Intended Adoption: March 14, 1995.

January 25, 1995
Russell W. Brubaker
Assistant Director

AMENDATORY SECTION (Amending WSR 92-06-081, filed 3/4/92)

WAC 458-20-18601 Wholesale and retail cigarette vendor licenses. (1) Definitions. For purposes of this section, the following terms mean:

(a) "Wholesaler" is any person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(b) "Retailer" is any person, other than a wholesaler, who purchases, sells, offers for sale or distributes cigarettes at retail and all persons operating under a retailer's registration certificate.

(c) "Place of business" is any location where business is transacted with, or sales are made to, customers. The term also includes any vehicle, truck, vessel, or the like at which sales are made.

(d) "Department" is the department of revenue.

(2) Wholesale license. Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first be issued a wholesale cigarette license from the department of licensing.

(a) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of \$650. A wholesale cigarette license shall be valid for one year from the date of issuance.

(b) If the wholesaler sells, or intends to sell, cigarettes at more than one place of business, whether temporary or established, a separate license with a license fee of \$115 shall be required for each additional place of business. Each license shall be exhibited in the place of business for which it is issued.

(c) Each licensed wholesaler shall file a bond with the department in an amount determined by the department, which amount shall not be less than \$5,000. The bond shall be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license.

(3) Retail license. Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing.

(a) Applications for license or renewal of license shall be made on forms supplied by the department of licensing and shall be accompanied by the annual license fee of \$10.

A retail cigarette license shall be valid for one year from the date of issuance.

(b) Retailers operating cigarette vending machines are required to pay an additional fee of \$1 for each such vending machine.

(4) Persons acting as wholesalers and retailers. Persons may sell cigarettes both as retailers and wholesalers only if appropriate licenses are first secured for sales in both capacities. The sale of cigarettes by any person who does not possess a valid license authorizing such sale shall be considered a violation of this section.

(5) Revocation or suspension of license. The department shall revoke or suspend the license of any wholesale or retail cigarette dealer found to have violated the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section. Upon a finding by the department of a failure to comply with the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section, it shall:

(a) For the first offense, suspend the license or licenses of the offender for a period of not less than thirty consecutive business days;

(b) In the case of a second or multiple offense, suspend the license or licenses of the offender for not less than ninety consecutive business days nor more than twelve months;

(c) In the case of a finding that the offender is guilty of wilful and persistent violations, revoke the offender's license or licenses.

(6) Revocation or suspension hearing.

(a) If the department determines that a license holder has violated the provisions of chapter 82.24 RCW, WAC 458-20-186, or this section, a hearing will be scheduled to consider the license revocation or suspension of such license holder. ~~((In the event of such a determination, the department shall so notify the license holder in writing of its intent to revoke or suspend the license. Such notice shall inform the license holder of the date scheduled for hearing and shall also contain the information specified in RCW 34.05.434.))~~

~~(b) The provisions of WAC 458-20-10001, Adjudicative proceedings - Brief Adjudicative proceeding - Wholesale and retail cigarette license revocation or suspension - Certificate of registration (tax registration endorsement) revocation, applies to a revocation or suspension hearing. ~~((Revocation or suspension hearings shall be held before the assistant director of the miscellaneous tax division or his or her designee in the department's offices in Olympia unless a different location is specified in the notice of hearing. The department shall schedule the hearing no earlier than twenty days from the date of mailing of notice of the hearing.~~~~

~~(c) The hearing will be conducted in accordance with the provisions of chapter 34.05 RCW (Administrative Procedure Act). Following the hearing the department shall issue a written order revoking or suspending the license or finding in favor of the license holder. The order of the department shall represent the final decision of the department and shall be binding unless the license holder files a timely petition for review with the department's interpretation and appeal division. (See WAC 458-20-100 for appeal procedures.)~~

~~(d) The license holder may seek review of any order revoking or suspending a license by filing a petition for review with the department's interpretation and appeals division within thirty days from the date of the order of~~

~~revocation or suspension. The decision of the interpretation and appeals division shall represent the final position of the department and shall be binding unless timely appealed.~~

~~(c) Appeals from orders of the department revoking or suspending a license may be appealed to the superior court of Thurston County.)~~

(7) Reinstatement of license.

(a) Any person whose license or licenses have been revoked may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the license holder will comply with the provisions of chapter 82.24 RCW, WAC 458-20-186, and this section.

(b) Application for reinstatement is to be made to the ~~((miscellaneous tax))~~ special programs division of the department. Upon receipt of an application for reinstatement of license, the department shall schedule a hearing for consideration of the application. Such hearing shall be held pursuant to WAC 458-20-10001. ~~((and shall notify the applicant of the date and time of the hearing. Such notice shall be sent at least twenty days prior to the date set for the hearing.~~

~~(c) Hearings for consideration of reinstatement of a license shall be conducted as provided in subsection (6) of this section. Any applicant whose petition for reinstatement is denied may file a petition for review as provided in subsection (6)(d) of this section or appeal the denial to the superior court of Thurston County.)~~

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 95-04-054

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed January 25, 1995, 4:17 p.m.]

Original Notice.

Title of Rule: New section WAC 458-20-10001
Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation or suspension—Certificate of registration (tax registration endorsement) revocation.

Purpose: This rule adopts and explains the brief adjudicative process and procedure for wholesale and retail cigarette license revocation or suspension and certificate of registration (tax registration endorsement) revocations under the Administrative Procedure Act.

Statutory Authority for Adoption: RCW 82.32.300, 34.05.410.

Statute Being Implemented: RCW 82.32.215.

Summary: This rule adopts and explains the brief adjudicative process and procedure for wholesale and retail cigarette license revocation or suspension and certificate of registration (tax registration endorsement) revocations under the Administrative Procedure Act.

Reasons Supporting Proposal: This rule coordinates the taxpayer rights and responsibilities under RCW 82.32A.020

(6) with the adjudicative provisions of the Administrative Procedure Act of chapter 34.05 RCW.

Name of Agency Personnel Responsible for Drafting: Stephen Zagelow, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; Implementation: Les Jaster, 711 Capitol Way South, Suite 303, Olympia, (360) 586-7150; and Enforcement: Russ Brubaker, 711 Capitol Way South, Suite 303, Olympia, (360) 586-0257.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule adopts and explains the brief adjudicative process and procedure for wholesale and retail cigarette license revocation or suspension and certificate of registration (tax registration endorsement) revocations under the Administrative Procedure Act. This rule coordinates the taxpayer rights and responsibilities under RCW 82.32A.020 (6) with the adjudicative provisions of the Administrative Procedure Act of chapter 34.05 RCW.

Proposal Changes the Following Existing Rules: Chapter 458-08 WAC, Uniform procedural rules for the conduct of contested cases, is being repealed simultaneously with the adoption of this rule. These rules were made obsolete by the 1989 amendments to the Administrative Procedure Act and chapter 82.32A RCW, Taxpayer rights and responsibilities. Also being amended simultaneously with the adoption of this rule is WAC 458-20-18601 Wholesale and retail cigarette vendor licenses, to adopt the provisions of this rule for the applicable license suspension/revocation.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Legislation and Policy Division, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 586-4281, or FAX (360) 664-0693.

Hearing Location: Revenue Conference Room #415, General Administration Building, 210 11th and Columbia, Olympia, WA, on March 7, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Gwendolyn Kopetsky by February 22, 1995, TDD (800) 451-7985, or (360) 753-3217.

Submit Written Comments to: Steve Zagelow, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, FAX (360) 664-0693, by March 7, 1995.

Date of Intended Adoption: March 14, 1995.

January 25, 1995
Russell W. Brubaker
Assistant Director

NEW SECTION

WAC 458-20-10001 Adjudicative proceedings - Brief adjudicative proceedings - Wholesale and retail cigarette license revocation or suspension - Certificate of registration (tax registration endorsement) revocation. (1) Introduction. The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedures Act (APA). These adjudicative proceedings include, but are not limited to, wholesale and retail

cigarette license revocation or suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. The department adopts in this section the brief adjudicative procedures as provided in the APA for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings. This section does not apply to log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and RCW 84.41.120, brief adjudicative proceedings converted to formal adjudicative proceeding under subsection (5) below, and other formal adjudicative proceedings which are explained in WAC 458-20-10002. This section also does not apply to the non-adjudicative proceedings as provided in RCW 82.32.160, 170 and WAC 458-20-100.

(2) **Adoption of brief adjudicative proceedings.** As provided in RCW 34.05.482(c), this section adopts RCW 34.05.482 through RCW 34.05.494 and the brief adjudicative procedure for APA adjudicative proceedings which the Department of Revenue conducts for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215.

(3) **Brief Adjudicative proceedings - Procedure.** The following procedure shall apply to the department's brief adjudicative proceeding.

(a) **Notice of Hearing.** The department shall set the time and place of the hearing. The date of the hearing may not be not less than seven days after written notice is served upon the person(s) to whom the proceedings apply. With the concurrence of the presiding officer and all persons involved in the proceedings, the hearing may be conducted by telephone and the recorded conversation shall be made a part of the record of the hearing. The notice shall include:

(i) The names and addresses of each person to whom the proceedings apply and, if known, the names and addresses of their representative(s);

(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;

(iii) The official file or other reference number and the name of the proceeding;

(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;

(v) A statement of the time, place and nature of the proceeding;

(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(vii) A reference to the particular sections of the statutes and/or rules involved;

(viii) A short and plain statement of the matters asserted by the department; and

(ix) A statement that if a person to whom the proceedings apply fails to attend or participate in a hearing, the hearing may/will proceed and that adverse action may be taken against such person.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice

of hearing, continuance and dismissal, shall either be in the primary language of such person or shall include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice shall state that if a limited English speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the person to whom the proceedings apply or witness. The notice shall include a form to be returned to the department for a person to whom the proceedings apply to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) **Presiding officer.**

(i) When the proceeding is a certificate of registration (tax registration endorsement) revocation pursuant to RCW 82.32.215, the presiding officer shall be the Assistant Director of the Department's Compliance Division or designee, or such other person as the Director of the Department of Revenue may designate.

(ii) When the proceeding is a wholesale and retail cigarette license revocation or suspension pursuant to RCW 82.24.550, the presiding officer shall be the Assistant Director of the Department's Special Program's Division or designee, or such other person as the Director of the Department of Revenue may designate.

(iii) The presiding officer conducts the hearing and before taking action, the presiding officer shall give each person to whom the proceedings apply an opportunity to be informed of the department's view of the matter, and to explain the person's view of the matter.

(iv) The presiding officer shall have the authority granted by chapter 34.05 RCW including but not limited to:

(A) Determine the order of the hearing including the presentation of evidence; administer oaths and affirmations; issue subpoenas;

(B) Rule on procedural matters, objections and motions; rule on offers of proof and receive relevant evidence;

(C) Ask questions of the person to whom the proceedings apply or the person representing the department, or the of witnesses called by either, in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(D) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by both the person to whom the proceedings apply and the department;

(E) Take any appropriate action to maintain order during the hearing; permit or require oral argument, briefs, or discovery and determine the time limits for their submission;

(F) Take any other action necessary and authorized by applicable statute or rule;

(G) Waive any requirement of this section not specifically required by law unless either the person to whom the proceedings apply or the department shows that it would be prejudiced by such a waiver;

(H) Convert the proceedings, at any time in the proceeding, from a brief adjudicative proceeding to a formal proceeding pursuant to RCW 34.05.413 through RCW 34.05.479 and WAC 458-20-10002.

(c) Appearance and practice at a brief adjudicative proceeding.

(i) The right to practice before the department in a brief adjudicative proceeding is limited to:

(A) Persons who are natural persons representing themselves;

(B) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(C) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(D) Public officials in their official capacity;

(E) Certified public accountants entitled to practice in the state of Washington;

(F) A duly authorized director, officer, or full time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership or corporation;

(G) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(H) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

(ii) In the event a proceedings is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(d) Rules of evidence - discovery - record of the proceeding - filing and service of papers.

(i) All testimony of a person to whom the proceedings apply, the department and witnesses shall be made under oath or affirmation. Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer in the English language, to the best of the interpreter's skill and judgment.

(ii) Evidence, including hearsay, is admissible if in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious and shall be guided in evidentiary rulings, where not inconsistent with this section, by RCW 34.05.452, WAC 10-08-140, and by the Washington Rules of Evidence.

(iii) Discovery (depositions, interrogatories, etc.) may be conducted only by order of the presiding officer and if ordered, RCW 34.05.446 applies to the proceeding.

(iv) All hearings shall be recorded by manual, electronic, or other type of recording device. The agency record shall consist of the documents regarding the matter that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records shall be maintained by the department as its official record.

(v) All notices and other pleadings or papers filed with the presiding officer or reviewing officer shall be served on each person to whom the proceeding apply, the department or their representatives/agents of record. Service shall be made personally; by first-class, registered or certified mail; by telegraph; or electronic telefacsimile (FAX) and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by telegraph shall be regarded as completed when deposited with a telegraph company with the charges prepaid. Service by electronic telefacsimile (FAX) shall be regarded as completed upon the production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as being completed upon delivery to the parcel delivery company charges prepaid. Service to a person to whom the proceedings apply and/or representative/agent, and, the department and/or presiding officer shall be to the address shown on the notice of subsection (2)(a) above. Service to the reviewing officer shall be to Interpretation and Appeals Division at the address shown in subsection (4) of this section. Where proof of service is required, the proofs of service include:

(A) An acknowledgment of service;

(B) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names).

(C) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of parties of record by a method of service as provided in this subsection (v).

(d) Impaired persons - Interpreters. When an impaired person is a person to whom the proceedings apply, or a witness, the presiding officer shall, in absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceeding.

(i) An "impaired person" is any person involved in an adjudicative proceeding who is a hearing impaired person or a limited-English-speaking person.

(ii) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(iii) A "limited-English-speaking person" is a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(iv) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and for impaired persons into spoken English and who meets the requirements of subsection (ix) below: Provided, That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate, or comprehensive skills certificate.

(v) An "intermediary interpreter" is one who is readily able to interpret spoken and translate written English and who meets the requirements of subsection (ix) below, and who is able to assist in providing an accurate interpretation

between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.

(vi) When an impaired person is a person to whom the proceedings apply, or a witness in such adjudicative proceeding, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(A) The impaired person requests a waiver through the use of a qualified interpreter.

(B) The representative, if any, of the impaired person consents; and

(C) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(vii) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.

(viii) Relatives of any participant in a proceeding and employees of the department shall not be appointed as interpreters in the proceeding without the consent of the presiding officer and the person(s) to whom the proceedings apply, in the case of an employee of the department, or the department in the case of a relative of the person(s) to whom the proceedings apply or of a witness for such person(s).

(ix) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. A person to whom the proceedings apply or their representative(s), or the department may question the interpreter as to his or her qualifications or impartiality.

(x) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.

(xi) If the communication mode or language or a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

(xii) Mode of interpretation.

(A) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(B) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(C) When an impaired person is the person to whom the proceedings apply, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the person to whom the proceedings apply to the extent that the person has the same opportunity to understand all statements made during the proceedings as a nonimpaired party listening to uninterpreted statements would have.

(xiii) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(xiv) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. The presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(xv) At the hearing, the interpreter for a limited English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(xvi) In any proceeding involving a hearing impaired person, the presiding officer may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(xvii) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The department shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

(xviii) This subparagraph (d) shall apply to a review of the decision under subparagraph (4) of this section.

(e) Informal Settlements.

(i) The department encourages informal settlement of issues which have resulted in a proceeding being commenced. At any time in the proceeding the person(s) to whom the proceeding applies and the department are encouraged to reach agreement. Settlement of a proceeding shall be concluded by:

(A) Stipulation of the person(s) to whom the proceedings apply and the department signed by each or their representative(s), and/or recited into the record of the proceedings. In the event the stipulation provides for a payment agreement, the order of the presiding officer may

be a continuance of these proceedings and dismissal when all payments have been made, but in no case, may the order provide for the re-convening of the proceedings if the payment agreement is breached unless seven days notice of the re-convening is provided. Except as provided in this section, the presiding officer shall enter an order in conformity with the terms of the stipulation; or

(B) Withdrawal by the department in which case the presiding officer shall enter an order dismissing the proceedings.

(ii) In the case of revocation of certificate of registration (tax registration endorsement) under RCW 82.32.215, the presiding officer, or the reviewing officer, shall not hear or rule upon (other than the entry of an as provided in (A) and (B) above) arguments, or motions, etc., for the settlement of the matter. Settlement of the controversy is totally between the person(s) to whom the proceedings apply and the department through its representative at the proceeding. Nothing in this section shall prevent a presiding officer or a reviewing officer from granting a continuance of a hearing, or such other motion as the presiding officer or reviewing officer deems appropriate for the purpose of settlement of the matter between the parties.

(f) Entry of orders.

(i) At the time any unfavorable action is taken, the presiding officer shall serve upon each person to whom the proceeding apply and the department a brief statement of the reasons for the decision. Within ten days of a decision, the presiding officer shall serve upon each person to whom the proceedings apply and the department a brief written statement of the reasons for the decision and the availability of the departmental review procedure as provided in this section.

(ii) The brief written statement provided the parties, which may include an order where a person to whom the proceedings apply fails to attend or participate in the hearing or other stage of the proceeding, is an initial order and if no review is requested as provided in subsection (4) this section, the initial order shall become a final order.

(4) Review of initial orders from brief adjudicative proceeding. If a person to whom the proceedings apply wishes a review of the initial order, the brief written statement of the decision as provided in subsection (3)(f)(i) above, the person may request a review by the department by the filing of a petition for review, or the making of an oral request for review, with the Department's Interpretation and Appeals Division, within twenty-one days after the service of the initial order on the person to whom the proceedings apply. A request for review should state the reasons the review is sought. The address and telephone number of the Interpretation and Appeals Division is:

Interpretation and Appeals Division
Department of Revenue
P.O. Box 47460
Olympia, Washington 98404
Telephone Number - (360) 753-2310
FAX - (360) 664-2729

(a) The Interpretation and Appeals Division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall give each person to whom the proceedings

apply and the department an opportunity to explain each's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the Interpretation and Appeals Division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or subsection (5) of this section in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) The order of the reviewing officer shall be in writing and shall include a brief statement of the reasons for the decision and must be entered within twenty days of the initial order or the petition for review, whichever is later. The order shall include a description of any further administrative review available, or if none, a notice that judicial review may be available.

(d) Unless otherwise provided in the order of the reviewing officer, the order of the reviewing officer represents the final position of the department. A reconsideration of the order of a reviewing officer may be sought only if the right to a reconsideration is contained in the final order.

(5) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer, or reviewing officer, may at any time, on motion of a person to whom the proceedings apply, or the department, or his/her own motion, convert the brief adjudicative proceeding to a formal proceeding.

(a) The presiding/reviewing officer shall convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through RCW 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the Director of the Department of Revenue, upon notice to the person(s) to whom the proceedings apply and the department, may become the presiding officer, or may designate a replacement presiding officer to conduct the formal proceedings.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 shall apply to the proceedings. The converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

(6) Court appeal. Court appeal from the final order of the department is available under part V chapter 34.05. RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) above and all other administrative remedies have been exhausted. See: RCW 34.05.534.

(7) Posting of a final order of revoking a certificate of registration (tax registration endorsement) - Revocation not a substitute for other collection methods or processes available to the department. When an order revoking a certificate of registration (tax registration endorse-

ment) is a final order of the department, the department shall post a copy of the order in a conspicuous place at the main entrance to the taxpayer's place of business and it shall remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a certificate of registration (tax registration endorsement). A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration (tax registration endorsement) revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and,

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer.

(c) The revocation of a certificate of registration (tax registration endorsement), including any time during the revocation process, shall not be a substitute for, or in any way curtail, other collection methods or processes available to the department.

(8) **Computation of Time.** In computing any period of time prescribed by this regulation or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

Reviser's note: The typographical errors in 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.

WSR 95-04-064
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed January 30, 1995, 9:22 a.m.]

Continuance of WSR 94-23-149.

Title of Rule: Personal use rules.

Purpose: Continue part of WSR 94-23-149 for later adoption.

Statutory Authority for Adoption: RCW 75.08.080.

Statute Being Implemented: RCW 75.08.080.

Summary: See WSR 94-23-149. The following rules are being continued for adoption on April 28, 1995, in order for beach assessments to be completed prior to setting clam

and oyster seasons for 1995-1996: WAC 220-56-350 and 220-56-380.

The following rules are being continued for adoption on April 28, 1995, in order to coordinate sturgeon harvest with Oregon: WAC 220-56-285 and 220-56-305.

The following rules are being continued for adoption on April 28, 1995, in order to accommodate recommendations from the International Pacific Halibut Commission and the Secretary of Commerce: WAC 220-56-245 and 220-56-255.

The following rules are being continued for adoption on April 28, 1995, in order to accommodate federal recommendations from the Pacific Fisheries Management Council and the state accommodations for inland saltwaters and freshwaters that will result from those recommendations: WAC 220-56-124, 220-56-126, 220-56-128, 220-56-134, 220-56-190, 220-56-191, 220-56-195, 220-56-196, 220-56-199, 220-57-001, 220-57-120, 220-57-130, 220-57-135, 220-57-137, 220-57-138, 220-57-140, 220-57-155, 220-57-160, 220-57-165, 220-57-170, 220-57-175, 220-57-181, 220-57-190, 220-57-200, 220-57-205, 220-57-210, 220-57-215, 220-57-220, 220-57-230, 220-57-235, 220-57-240, 220-57-250, 220-57-255, 220-57-260, 220-57-265, 220-57-270, 220-57-280, 220-57-285, 220-57-290, 220-57-295, 220-57-300, 220-57-305, 220-57-310, 220-57-313, 220-57-315, 220-57-319, 220-57-321, 220-57-326, 220-57-327, 220-57-335, 220-57-340, 220-57-342, 220-57-345, 220-57-350, 220-57-355, 220-57-365, 220-57-370, 220-57-380, 220-57-385, 220-57-390, 220-57-395, 220-57-400, 220-57-405, 220-57-410, 220-57-415, 220-57-425, 220-57-427, 220-57-430, 220-57-435, 220-57-440, 220-57-450, 220-57-455, 220-57-460, 220-57-465, 220-57-470, 220-57-473, 220-57-480, 220-57-495, 220-57-497, 220-57-502, 220-57-505, 220-57-510, 220-57-515, 220-57-520, 220-57-525, 220-57A-001, 220-57A-015, 220-57A-017, 220-57A-030, 220-57A-035, 220-57A-037, 220-57A-040, 220-57A-045, 220-57A-110, 220-57A-112, 220-57A-120, 220-57A-125, 220-57A-140, 220-57A-145, 220-57A-175, 220-57A-180, 220-57A-183, 220-57A-185, and 220-57A-190.

Reasons Supporting Proposal: See WSR 94-23-149.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, 902-2930; Implementation: Bruce Crawford, 1111 Washington Street, Olympia, 902-2325; and Enforcement: Dayna Matthews, 1111 Washington Street, Olympia, 902-2927.

Name of Proponent: Washington Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See WSR 94-23-149.

Proposal Changes the Following Existing Rules: See WSR 94-23-149.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. See WSR 94-23-149.

Date of Intended Adoption: April 28, 1995.

January 28, 1995

Robert Turner

Director

WSR 95-04-068
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
 [Filed January 30, 1995, 9:35 a.m.]

Original Notice.

Title of Rule: Authorizing correctional agencies to waive required basic academy training for middle management and executive positions.

Purpose: To allow correctional agencies employing or promoting employees to a middle management or executive position to waive or forgo basic academy training for such employees.

Statutory Authority for Adoption: RCW 43.101.220.

Statute Being Implemented: RCW 43.101.220.

Summary: The proposed rule will provide correctional administrators the authority to determine the necessary and appropriate training for newly employed or promoted middle managers and executives rather than being required to send such employees to the commission's basic corrections academy.

Name of Agency Personnel Responsible for Drafting: James C. Scott, Lacey, (360) 459-6342; Implementation and Enforcement: Garry Wegner, Seattle, (206) 439-3740.

Name of Proponent: Criminal Justice Training Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Agency proposed rule amendment.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 139-10-210 requires all newly employed or promoted correctional employees, including middle management and executives, to attend an entry-level basic academy training program. The amendment will allow state, county, and municipal correctional agencies to forgo the basic entry-level academy training for middle management and executive positions.

Proposal Changes the Following Existing Rules: Allows correctional agencies to waive or forgo basic academy training for newly employed or promoted middle management and executive positions.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. Has no impact or relationship to any business.

Hearing Location: Criminal Justice Training Center, 19010 1st Avenue South, Seattle, WA 98148, on March 16, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Ron Stanley by March 15, 1995, (206) 439-3740.

Submit Written Comments to: James C. Scott, Executive Director, P.O. Box 40905, Olympia, WA 98504-0905, FAX (360) 459-6347, by March 9, 1995.

Date of Intended Adoption: March 16, 1995.

January 27, 1995
 James C. Scott
 Executive Director

AMENDATORY SECTION (Amending Order 15-D, filed 9/18/87)

WAC 139-10-210 Requirement of basic corrections training. As provided in RCW 43.101.220, all full-time corrections employees of the state of Washington or of any city, county, or political subdivision of the state of Washington, initially hired on or after January 1, 1982, shall, as a condition of continued employment, successfully complete a basic corrections academy as prescribed, sponsored((++)) or conducted by the Washington state criminal justice training commission for their class. This requirement to complete basic training shall be fulfilled within the initial six months of corrections employment unless otherwise extended or waived by the commission. Requests for extension or waiver of the basic training requirement shall be submitted to the commission in writing as designated by its policies.

(1) Corrections personnel shall attend basic academy training according to job function as described below:

(a) Corrections officers academy. All employees whose primary job function is to provide for the custody, safety and security of adult prisoners in jails, penal institutions and work release facilities. Representative job classifications include, but are not limited to, jailers and correctional officers.

(b) Adult services academy. All employees whose primary job function is the case management of offenders, to include assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to, community corrections officers, probation counselors, institution counselors, and psychiatric social workers.

(c) Juvenile services academy. All employees working with juveniles whose primary job function is the case management of offenders, to include assessment, case planning, counseling, supervision, and monitoring. Representative job classes include, but are not limited to, juvenile probation and parole counselors and juvenile rehabilitation counselors.

(d) Juvenile security workers academy. All employees responsible for the care, custody, and safety of youth in county juvenile court detention centers. Representative job class includes, but is not limited to, juvenile detention workers.

(2) It shall be the responsibility of the employing agency to determine the most appropriate basic academy for an employee to attend within the guidelines set by the commission.

An agency may elect to forgo completely any basic academy training if such employee occupies a middle management or an executive position, as defined in WAC 139-10-410 or 139-10-510.

(3) Failure to comply with the above requirements shall result in a notification of noncompliance from the commission directed to the individual employee, and, as appropriate, the employing agency director, chief or sheriff, the civil service commission, and/or the state auditor's office, and the chief executive of the local unit of government.

(4) Each agency employing personnel covered by RCW 43.101.220 shall be responsible for full and complete compliance with the above training requirements. Additionally, each such agency shall provide the commission with

employment information necessary for the establishment and maintenance of complete and accurate training records on all affected employees.

**WSR 95-04-071
PROPOSED RULES**

DEPARTMENT OF TRANSPORTATION

[Filed January 30, 1995, 10:12 a.m.]

Original Notice.

Title of Rule: Rest area rules, WAC 468-32-010.

Purpose: For the safety of the traveling public by governing the conduct and use of safety rest areas.

Statutory Authority for Adoption: Chapter 47.38 RCW.

Summary: Presently there are no rules. Washington State Department of Transportation is potentially in a legally unsupported position when rest area attendants and the state patrol must prevent or stop inappropriate behavior or activities.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Rus, Olympia, (360) 705-7853.

Name of Proponent: Larry Rus, Washington State Department of Transportation, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Some inappropriate behavior is already prohibited in state statutes, such as speeding, consumption of alcoholic beverages, and over night camping. Many other activities that have always been considered inappropriate within rest areas are not prohibited by either statute either in RCW or WAC. Depositing litter other than automobile or picnic litter has always been discouraged. Many people will drop off household garbage or construction scraps at the rest areas. Commercial cleaning services have been caught dumping at the RV dump station. This is unacceptable because the RV dump stations were not designed or intended for this purpose and use by other than recreational vehicles could jeopardize some of the on-site treatment systems. Other activities that are now presently prohibited by statute include limiting parking to designated areas, keeping pets in the pet area, prohibition of open fires, and aggressive solicitation for money.

Proposal does not change existing rules.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. This rule has no impact on small businesses.

Hearing Location: Department of Transportation, Transportation Building, Room 1D2, Olympia, Washington 98504, on March 20, 1995, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Tammy Osborne by March 17, 1995, TDD (360) 705-6980.

Submit Written Comments to: FAX (360) 705-6823, by March 17, 1995.

Date of Intended Adoption: March 20, 1995.

January 27, 1995

S. A. Moon

Deputy Secretary

**Chapter 468-32 WAC
SAFETY REST AREAS**

NEW SECTION

WAC 468-32-010 Rest area rules. Pursuant to chapter 47.38 RCW, the purpose of these regulations is for the safety of the traveling public by governing the conduct and use of safety rest areas. The following restrictions apply to activities in safety rest areas:

- (1) Parking is only permitted in designated areas;
- (2) Litter containers are only for picnic and automobile litter;
- (3) Pets shall stay in designated areas and shall be on a leash at all times;
- (4) Open fires are prohibited;
- (5) Aggressive solicitation for money or goods with the intent to intimidate another person into giving money or goods is prohibited; and
- (6) Sanitary disposal systems are for dumping sanitary wastes only from recreational vehicles. Commercial vehicles are prohibited from using the sanitary disposal systems.

WSR 95-04-073

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed January 30, 1995, 12:57 p.m.]

Continuance of WSR 94-17-156.

Title of Rule: Amendment to forest practices rules, Title 222 WAC.

Purpose: The purpose of this proposed rule is to identify critical wildlife habitat (state) for the northern spotted owl and the marbled murrelet.

Statutory Authority for Adoption: Chapter 34.05 RCW. Statute Being Implemented: Chapter 76.06 RCW.

Summary: Northern Spotted Owl Proposed Rules: Washington Forest Protection Association Proposal, WAC 222-16-010, 222-16-075 new section, and 222-16-080; Washington Forest Practices Board Wildlife Committee Proposal, WAC 222-10-040 new section, 222-16-010 and 222-16-080; new chapter 222-21 WAC, WAC 222-21-010, 222-21-020, 222-21-030, 222-21-040, 222-24-030, 222-30-050, 222-30-060, 222-30-065 new section, 222-30-070, 222-30-075 new section, 222-30-100, 222-38-020 and 222-38-030; Yakama Indian Nation-Washington Environmental Council Proposal, WAC 222-10-030 new section, 222-10-040 new section, 222-16-010, 222-16-080, 222-24-030, 222-30-050, 222-30-060, 222-30-065 new section, 222-30-070, 222-30-075 new section, 222-30-100, 222-38-020, and 222-38-030.

Marbled Murrelet Proposed Rules: Occupied Stand Approach, WAC 222-16-010 and 222-16-080; and Marbled Murrelet-Watershed Administrative Unit Approach, WAC 222-16-010 and 222-16-080.

Reasons Supporting Proposal: Both of these species are listed as threatened by the United States Fish and Wildlife Service and by the state Fish and Wildlife Commission. The Forest Practices Board is required to identify forest practices which have the potential for a substantial impact on the environment.

PROPOSED

Name of Agency Personnel Responsible for Drafting: Judith Holter, 1111 Washington Street S.E., Olympia, WA 98504-7012, (206) 902-1412; Implementation and Enforcement: John Edwards, 1111 Washington Street S.E., Olympia, WA 98504-7012, (206) 902-1730.

Name of Proponent: Forest Practices Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These rules identify critical wildlife habitat (state) for two threatened species: The northern spotted owl and the marbled murrelet. Any applications for forest practices within such habitat are classed as Class IV-Special and require additional environmental review in order to identify the potential for substantial material damage to public resources. Three alternatives are proposed for the northern spotted owl: The Washington Forest Protection Association proposal; the Forest Practices Board Wildlife Committee's proposal; and the Yakama Indian Nation-Washington Environmental Council proposal. The rule also places restrictions on certain forest practices to minimize disturbance impacts on the northern spotted owl. Two alternatives are proposed for the marbled murrelet: The occupied stand approach; and the marbled murrelet watershed administrative unit approach. The Forest Practices Board is soliciting public comments on all of these alternatives. The board's responsible official for SEPA has directed the Department of Natural Resources to prepare an environmental impact statement on the alternatives for the proposed rules. The purpose of the proposed rule is to capture all forest practices that have the potential for a substantial adverse impact on the environment.

Proposal Changes the Following Existing Rules: Changes to existing rules include: For the northern spotted owl, each alternative: Designates a differing number of "spotted owl special emphasis areas" (SOSEAs); identifies the function(s) for each SOSEA as dispersal habitat and/or demographic support; an optional planning provision that provides landowners with more flexibility that might be available under SEPA; lists varying amounts of suitable habitat; and identifies disturbance factors. For the marbled murrelet, each alternative: Includes several new definitions; and identifies critical wildlife habitat (state).

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Forest Practices Board Recording Secretary, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (206) 902-1413, or FAX (206) 902-1784.

Hearing Location: Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on March 8, 1995, at 2 p.m.; on March 9, 1995, at Nordic Inn Convention Center, Scandia Room, 1700 South Boone Street, Aberdeen; on March 14, 1995, at the Leopold Banquet Center, 1224 Cornwall Avenue, Bellingham; and on March 15, 1995, at Central Washington University, SUB Theater, Ellensburg. Hearing notices will also be mailed to all parties who have requested such notifications. For more information, please contact Forest Practices Board Recording Secretary, Department of Natural Resources, Forest Practices

Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (206) 902-1413, FAX (206) 902-1784.

Assistance for Persons with Disabilities: Contact Forest Practices Board Recording Secretary by February 24, 1995, TDD (206) 902-1431, or (206) 902-1413.

Submit Written Comments to: Judith Holter, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, FAX (206) 902-1784, by March 17, 1995.

Date of Intended Adoption: June 14, 1995.

January 25, 1995

Jennifer M. Belcher

Commissioner of Public Lands

WASHINGTON FOREST PROTECTION
ASSOCIATION
PROPOSED RULES FOR
THE NORTHERN SPOTTED OWL
AUGUST 4, 1994

AMENDATORY SECTION (Amending WSR 94-17-033, filed 8/10/94, effective 8/13/94)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"**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.

"**Appeals board**" means the forest practices appeals board established in the act.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"**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.

"**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.

"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.

"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.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"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.

"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.

"Department" means the department of natural resources.

"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 state line.

"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.

"Erodible soils" means those soils 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) 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.

"**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.

"**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 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.

"**Green recruitment trees**" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"**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.

"**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.

"**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.

"**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.

"**Northern spotted owl site center**" means a point location indicating the center of northern spotted owl activities as determined by the department under the protocols set forth in the forest practices board manual, using the department's own data as well as information provided by the department of fish and wildlife, forest landowners, and the U.S. Fish & Wildlife Service, for Status 1, 2 or 3 northern spotted owls using the following criteria:

Status 1 Reproductive pair - the presence or response of two birds of the opposite sex where past or current reproductive activities has been documented.

Status 2 Two birds, status unknown - the presence or response of two birds of the opposite sex where pair status cannot be determined and where at least one of the birds meets the requirements of a resident territorial single.

Status 3 Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within one or two breeding seasons where there is no response by an owl of the opposite sex after a complete survey has been completed.

The department shall review the status and location of northern spotted owl site centers annually upon the request of an affected landowner. After up to three consecutive years of surveys conducted pursuant to protocols set forth in

the forest practices board manual which reveal no Status 1, 2, or 3 owls at the site center (as defined in the protocol), or if actual evidence demonstrates at any time that a site is no longer occupied, the location shall no longer be classified as a northern spotted owl site center. Territorial areas occupied by northern spotted owls after the approval of local option plans under WAC 222-16-075 will not become northern spotted owl site centers under these regulations.

"**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.

"**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.

"**Public resources**" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"**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 management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"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.

"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 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.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl special emphasis area" means a geographic area identified in WAC 222-16-075(2) and described in WAC 222-16-075(6).

"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.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of

wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"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 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: Irrigation 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.

NEW SECTION

WAC 222-16-075 Northern spotted owl protection—Special emphasis areas, dispersal habitat and site center management plans. (1) **Policy and findings.** The board finds that as a matter of policy the principal responsibility for the conservation of the northern spotted owl as a species must and will fall on public lands, and that the board and the department should look first to those lands to provide for the conservation of the species. A contribution to the protection of the species, beyond maintaining seventy acres of suitable habitat around a northern spotted owl site center, is appropriate only in spotted owl special emphasis areas ("SOSEA's") defined below. Within those SOSEA's, development of local option plans is preferred. Those plans should be developed and approved in as simple and expeditious a manner as possible. It is important to avoid conflicting regulations between state and federal governments. Therefore, federally approved habitat conservation plans, habitat management plans accompanied by a "no-take" letter, practices covered by an incidental take statement or practices consistent with a rule adopted pursuant to 16 U.S.C. §1533(d) ("federally approved plans") will be exempt from this section.

In light of the actions which are being taken on public land to conserve the owl, the board finds that there is a potential for substantial impact on the northern spotted owl as a species in only the following circumstances:

(a) Outside of the SOSEA's described below, only where harvesting, road construction or concentrated helicopter use will occur within seventy acres of most suitable habitat surrounding a northern spotted owl site center. Such forest practices are prohibited unless permitted under a federally approved plan.

(b) Inside of the SOSEA's described below, where harvesting or road construction occurs in suitable habitat within 1.8 miles of a northern spotted owl site center, or where the practice calls for concentrated helicopter use during the period from March 1 to July 31 within seventy acres of suitable habitat around the northern spotted owl site center, except those practices which:

(i) Are covered by and consistent with a previously approved local option plan under subsection (4) of this section which has not been amended by a subsequent local

option plan, or a federally approved plan under subsection (5) of this section;

(ii) Are in habitat determined to be excess under subsection (6) of this section;

(iii) Will not degrade habitat below the limits specified in subsection (6) of this section; or

(iv) Constitute small harvests specified in subsection (7) of this section: *Provided*, That in all cases unless permitted by a federally approved plan, harvesting, road construction and concentrated use of helicopters within seventy acres of suitable habitat surrounding a northern spotted owl site center are prohibited.

(c) Inside of the SOSEA's described below, where harvesting or road construction occurs outside 1.8 miles of a northern spotted owl site center which conflicts with a local option plan which has been approved under subsection (4) of this section and not amended by a new approved plan, or a federal plan under subsection (5) of this section.

(2) **Prohibited acts.** Both within and without SOSEA's, no harvesting, road construction, or concentrated helicopter use inside seventy acres of suitable habitat surrounding a northern spotted owl site center will be permitted unless permitted by a federally approved plan.

(3) **Spotted owl special emphasis areas.** The board finds that the following geographic areas should receive special attention to prevent a potential for substantial impact on the environment due to impacts on the northern spotted owl population in Washington, and hereby designates them as SOSEA's. For each area so identified, the board has separately considered the nature of the contribution needed from lands within its jurisdiction and has determined that plans which meet the criteria set forth in subsection (4) (b), (c), and (d) of this section will preclude the potential for a substantial impact on the environment. The following table identifies these geographic areas and specifies the type of contribution called for.

Spotted Owl Special Emphasis Areas	Type of Protection
Columbia Gorge	dispersal
Finney Block	dispersal
Mineral Block	pair maintenance
Mineral Link	dispersal
I-90 West	pair maintenance
I-90 East	pair maintenance

The boundary description for each SOSEA is as follows:

COLUMBIA GORGE: This area is generally described as the two contiguous blocks (185,325 acres combined) of nonfederal lands in southern Skamania County (as far north as Township 5 N) between the Gifford Pinchot National Forest (NF) and the Columbia River.

FINNEY BLOCK: This area is generally described as the contiguous block (231,593 acres) of nonfederal lands north of the disjunct portion of Mt. Baker-Snoqualmie (MBS) NF east of Range 6 E in Skagit County, and east of Range 7 E on the south side of this MBS NF block in northern Snohomish County. The area extends to the northeast along Highway 20 only as far as the southwest 1/4 of Township 36 N, Range 11 E.

MINERAL BLOCK: This area is generally described as lands in eastern Lewis County north of Highway 508,

PROPOSED

west of Highway 7, east of Township 2 E, and bounded on the north by the county line.

MINERAL LINK: This area is generally described as the contiguous block (190,203 acres) of nonfederal lands between the Mineral Block and the main body of the Gifford Pinchot National Forest, west of Range 7 E, south of the Nisqually River, north of Riffe Lake and east of that portion of Goat Creek north of the Gifford Pinchot NF in Lewis County.

I-90 WEST: This area is generally described as the eastern portion of King County west of the Cascade Mountain crest, south of Highway I-90 to the Pierce County line, and east of Range 8 E.

I-90 EAST: Starting at the northeast corner of Township 23 North, Range 14 East, WM; running west along the north line of that township to the northwest corner of Section 3, T23N, R14E; then south following section lines to the north line of Township 22 North, Range 14 East; then west to the northwest corner of Section 4, Township 22 North, Range 13 East; then south to the intersection with the east shore of Lake Kachess; following the east shore of Lake Kachess south to the intersection with the west line of Section 35, Township 21 North, Range 13 East; then south along this section line to the intersection with the north line of Township 20 North, Range 13 East; then west along the north line of Township 20 North, Range 13 East and Township 20 North, Range 12 East to the intersection with the Kittitas-King County line; then southerly following the county line to the intersection, in Section 35, Township 19 North, Range 11 East, with the Yakima-Kittitas County line; then generally to the southeast along the Kittitas-Yakima County line to the intersection with the north line of Township 18 North, Range 11 East; then east along the township line to the northeast corner of Township 18 North, Range 14 East; then south to the southeast corner of Township 18 North, Range 14 East; then east to the southeast corner of Township 18 North, Range 15 East; then north along the township line to the northeast corner of Section 13, Township 19 North, Range 15 East; then west following section lines to the west township line of T19N, R15E; then north to the northeast corner of Section 12, Township 19 North, Range 14 East; then west following section lines to the southwest corner of Section 3, T19N, R14E; then north along the west line of Section 3 to the north line of Township 19 North, Range 14 East; continuing north along section lines to the intersection with the south line of Township 21 North, Range 14 East; then east along this township line to the southeast corner of T21N, R14E; then north along the east township line of T21N, R14E, Township 22 North, Range 14 East and Township 23 North, Range 14 East to the beginning point at the northeast corner of Township 23 North, Range 14 East.

The department or a landowner within a SOSEA may petition the board to remove the SOSEA from the list, change the type of protection called for in the SOSEA, or revise the SOSEA boundaries, upon a showing that a contribution to the conservation of the owl as a species in Washington is no longer needed from lands subject to the board's jurisdiction within all or a part of that SOSEA.

(4) Local option plans for lands within SOSEA's.

(a) Overview. As a part of an application for harvesting or road construction within 1.8 miles of a northern spotted

owl site center inside a SOSEA, a landowner may submit a local option plan or incorporate by reference a previously approved local option plan concerning the management of owl habitat. Such application shall be reviewed by the department and approved as a Class III forest practice application if the local option plan meets the criteria set forth in (b), (c) and (d) of this subsection, unless the application of which the local option plan is a part would be a Class IV application irrespective of the northern spotted owl. Local option plans are plans designed to avoid the potential for substantial impact on the environment due to impacts on the northern spotted owl as a species by applying known biological information to a site center or centers, or other area, as specified below. These plans are the most effective and efficient way to achieve an appropriate contribution from private land to the protection of the owl, and are preferred. They are intended to be plans which can be developed quickly and with reasonable certainty. A plan cannot be required to include more than one ownership. Local option plans shall not restrict a landowner's right to respond to a catastrophic event such as a fire, disease outbreak, or wind damage. Once approved, subsequent forest practice applications which are within the area covered by a plan may incorporate the plan by reference and be approved as a Class III practice without a new approval of the plan unless the practice would be a Class IV practice irrespective of the owl. Once approved, a plan can be amended by submitting a new local option plan as part of a forest practice application within the area covered by the original plan.

In those SOSEA's for which dispersal habitat is identified in subsection (2) of this section as the goal, the landowner may either submit a dispersal habitat plan which meets the dispersal habitat criteria set forth in (b) of this subsection, or submit a site management plan under (c) of this subsection covering that portion of its property in that SOSEA which lie within 1.8 miles of a northern spotted owl site center. In SOSEA's for which maintenance of owl pairs is the goal identified in subsection (2) of this section, landowners may submit site center management plans pursuant to (c) of this subsection. Local option plans meeting the criteria set forth in (b) and (c) of this subsection shall be approved by the department as a Class III forest practice. In (d) of this subsection it permits a landowner to submit either a dispersal plan or a site center management plan which does not meet the criteria of (b) or (c) of this subsection, but which is tailored to the landowner's property and meets the objectives of dispersal or pair maintenance.

(b) Dispersal habitat plans. Dispersal habitat is intended to facilitate the movement of juvenile, subadult and adult owls among populations or subpopulations. Dispersal plans shall include all of the landowners' forest land within the WAU in which a northern spotted owl site center is located, provided that a dispersal plan need not include area outside of the SOSEA. The department shall approve a plan which demonstrates that the lands included in the plan will be managed to develop dispersal habitat over time. Specifically, the plan must show that the landowner is managing the size and spacing of harvest units such that, as rapidly as is feasible for the landowner, the resulting forest stands will meet the following criteria:

(i) Amount and spacing.

(A) In Western Washington, the average distance between dispersal stands shall not exceed one-half mile, excluding openings caused by nonforest land;

(B) In Eastern Washington, a minimum of twenty-five percent of the landowners forest land with a site index eighty or greater (base age fifty) shall be in stands of dispersal habitat; and

(C) A stand of dispersal habitat in both Eastern and Western Washington shall be a minimum of five acres, and the average size of all stands of dispersal habitat within the plan area shall be forty acres or greater.

(ii) Definition.

(A) Dispersal habitat in Western Washington shall be stands with seventy square feet of basal area or greater per acre of trees at least ten inches dbh or greater, at least seventy percent of which are conifers, with the average height of dominant and codominant trees being eighty feet or greater.

(B) Dispersal habitat in Eastern Washington shall be stands composed of at least seventy percent conifer tree species having between fifty and two hundred trees per acre with an average size of six inches dbh or greater. These criteria shall apply to dominant and codominant trees in even-aged stands, or to trees four inches dbh or larger in uneven-aged stands.

Recognizing that it will take time to achieve those conditions, plans will provide for harvesting to continue prior to and after achieving the goal set forth above. The conditions described above are recognized to be average conditions, and reasonable deviations reflecting topography and site-specific conditions shall be approved. In addition, the plan shall provide for protection during the breeding season (March 1 to July 31) of seventy acres of suitable habitat on the landowner's property around other territorial areas of northern spotted owl use that are found to be established after approval of the plan by the department.

(c) Site center management plans. Site center management plans are designed to give a reasonable degree of protection to owls occupying northern spotted owl site centers. Plans may, at the landowner's option, cover one or more northern spotted owl site centers. While the board directs the department to approve any plan which is demonstrated to provide reasonable protection on the landowner's property, the board has reviewed the plan criteria set forth below and finds that adherence to them will prevent a potential for substantial impact on the northern spotted owl as a species, and accordingly plans which meet these criteria shall be approved by the department.

(i) A plan which protects the suitable roosting and foraging habitat, as defined in the board manual, owned by the landowner within 0.7 mile of and including the northern spotted owl site center and which provides foraging habitat in amounts and as defined below. Within 0.7 mile of the northern spotted owl site center, the landowner shall not be required to maintain more than fifty percent of the area as suitable roosting and foraging habitat, including all suitable habitat on both public land and the landowner's property. Once that standard is met, and so long as it is maintained, the landowner can substitute new habitat which becomes suitable roosting and foraging habitat, for previously existing habitat, which can be harvested. Outside of 0.7 mile, the plan shall provide for additional foraging habitat, so that the

total of foraging habitat and suitable roosting and foraging habitat shall equal forty percent (in Western Washington) or thirty percent (in Eastern Washington) of the area within the 1.8 mile circle. Suitable roosting and foraging habitat and foraging habitat on public land shall be counted first, to reduce the obligation on private land. In circles with multiple private owners, any individual owner may submit a plan which provides for maintaining a proportionate amount of the required habitat on the landowner's property. No net increase in roosting and foraging habitat or foraging habitat created after the date of a local option plan can be counted by any other landowner, for purposes of an excess habitat determination under subsection (6) of this section. Foraging habitat is all forest stands which meet the following criteria:

Western Washington. Foraging habitat in Western Washington shall be stands with seventy square feet of basal area or greater per acre of trees at least ten inches dbh or greater, at least seventy percent of which are conifers, with the average height of dominant and codominant trees being eighty feet or greater, and which contain an average of three Type 1 wildlife reserve trees per acre.

Eastern Washington. Foraging habitat in Eastern Washington shall be stands composed of at least seventy percent conifer tree species having between fifty and two hundred trees per acre with an average size of six inches dbh or greater and which contain an average of three Type 1 wildlife trees per acre. These criteria shall apply to dominant and codominant trees in even-aged stands, or to trees four inches dbh or larger in uneven-aged stands.

Such plans may provide for the harvest of foraging habitat as other stands reach a condition which meet the foraging habitat condition, so that the minimum amount of foraging habitat is maintained over time. In addition, the plan shall provide for protection during the breeding season (March 1 to July 31) of seventy acres of suitable habitat on the landowner's property subject to the plan around other northern spotted activity areas that are found to have been established after approval of the plan, less the amount of suitable habitat on federal land around those owl activity areas.

(ii) In the case of a resident single owl which has less than one thousand five hundred acres of suitable habitat within 1.8 miles of its activity center, and for which following three years of annual surveying according to U.S. Fish & Wildlife survey protocols there is no evidence that it has mated, a plan may call for protection of only seventy acres of suitable habitat surrounding the site center.

(d) Site specific owl management plans. In those SOSEA's identified as requiring dispersal habitat only, a plan for providing dispersal habitat which is tailored to the specific circumstances of a landowner's property and the dispersal habitat being provided under other federal or state protection plans shall be approved by the department. In all SOSEA's, a plan tailored to the specific circumstances of the particular owl site center or centers, which identifies the contribution from private land needed to support the owl or owls in question and demonstrates that contribution will continue to be made, shall be approved by the department. In cases where there are multiple private landowners within 1.8 miles of a northern spotted owl site center, any landowner may submit a plan for that landowner's property. At the landowner's sole option, such plans may include ele-

ments of operational research and adaptive management opportunities.

(e) **Plan contents.** Plans shall include maps at a reasonable scale, and a narrative or graphic proposal, including the time frame for the plan. The specific requirements for documentary support for plans are set forth in the *Forest Practices Board Manual*. Plans that provide for long-term management are preferred.

(f) **Plan evaluation process.** A forest practice application which includes a local option plan shall be approved unless the department finds that the plan fails to meet the criteria set forth in (b), (c), or (d) of this subsection, as appropriate. In evaluating plans, the department shall follow the procedures established in the forest practices board manual.

(5) **Federally approved plans.** The board finds that forest practices conducted pursuant to and consistent with a federally approved plan will suffice to eliminate the potential for substantial impact on the environment due to impacts on the northern spotted owl in Washington as a species. Practices pursuant to a federally approved plan shall be exempt from the provisions of this section.

(6) **Determination of whether there is excess habitat and whether habitat will be degraded.** An application covering forest practices which will require the harvest of suitable habitat to be conducted within 1.8 miles of a northern spotted owl site center in a SOSEA identified in subsection (3) of this section may be made without submitting a local option plan. In such case, the department shall first evaluate whether sufficient habitat exists on public land within 1.8 miles of the northern spotted owl site center. Habitat will be determined using the criteria set forth in the forest practices board manual, looking first to suitable habitat on public land. Counting suitable habitat on public land first, to the extent that suitable habitat equal to forty percent in Western Washington (thirty percent in Eastern Washington) of the forested area within a 1.8 mile radius of the site center exists (without counting the area covered by the application, the area covered by previously approved forest practice applications or any net increase in suitable habitat created under a local option plan submitted by another landowner within 1.8 miles of the site center), the department will determine that habitat included within the area covered by the application is excess. In instances where the area within 1.8 miles of two or more site centers overlaps, suitable habitat which is not within 0.7 mile of any site center can be counted when making the excess habitat determination for each site center for which it is within 1.8 miles. Suitable habitat within 0.7 mile of a site center can be counted for only one site center. Forest practices conducted in excess habitat will not be classified as Class IV forest practices on account of potential impacts on the northern spotted owl.

Where the practices are proposed for lands within 1.8 miles of a site center for which no local option plan or federally approved plan has been approved and which are proposed in stands of suitable habitat determined not to be excess habitat, the department shall then determine whether the proposed practices will reduce the habitat to conditions below foraging habitat as defined in subsection (4)(c) of this section. If not, the practices are not Class IV-special because of the northern spotted owl.

The foregoing determinations will be made within thirty days of the receipt of the application by the department.

(7) **Small harvest exception.** Without regard to any other provision of this rule, landowners may harvest by clearcut up to ten acres of suitable habitat not found to be excess habitat under subsection (6) of this section in each calendar year that lie beyond 0.7 mile but within 1.8 miles of the site center which is not excess habitat. Beginning with the adoption of this rule, up to four years of this acreage may be accumulated over time and included in a single harvest.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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 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 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 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 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 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 wildlife.

(h) Northern spotted owl - ~~((harvesting, road construction, or aerial application of pesticides on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.~~

~~This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.~~

~~The department shall rely upon the department of wildlife for the determination of status based on the following definitions:~~

~~Status 1 Pair or reproductive — the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.~~

~~Status 2 Two birds, pair status unknown — the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.~~

~~Status 3 Resident territorial single — the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area:))~~

(i) Inside of the SOSEA's described in WAC 222-16-075(3), where harvesting or road construction occurs in suitable habitat within 1.8 miles of a northern spotted owl site center, or where the practice calls for concentrated helicopter use during the period from March 1 to July 31 within the seventy acres of suitable habitat around the northern spotted owl site center, except those practices which:

(A) Are covered by and consistent with a previously approved local option plan under WAC 222-16-075(4) which has not been amended by a subsequent local option plan, or a federally approved plan or under WAC 222-16-075(5);

(B) Are in habitat determined to be excess under WAC 222-16-075(6);

(C) Will not degrade habitat below the limits specified in WAC 222-16-075(6); or

(D) Constitute small harvests specified in WAC 222-16-075(7): *Provided*, That in all cases, harvesting, road construction and concentrated use of helicopters within the seventy acres of suitable habitat surrounding a northern spotted owl site center are prohibited.

(ii) Inside of the SOSEA's described in WAC 222-16-075(3), where harvesting or road construction occurs outside 1.8 miles of a northern spotted owl site center which conflicts with a local option plan approved under WAC 222-16-075(4) which has not been amended by a subsequent local option plan, or a federal plan under WAC 222-16-075(5).

(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.

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC

232-12-292, developed by the landowner shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) 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 wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of 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 15 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)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) 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 wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 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 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.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service, as applicable, pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by an agreement in the nature of a "prelisting agreement" or a habitat management plan accompanied by a "no-take" letter issued by the U.S. Fish & Wildlife Service or National Marine Fisheries Service, as applicable, consistent with that agreement or letter; or

(c) Forest practices covered by a rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d).

FOREST PRACTICES BOARD
WILDLIFE COMMITTEE
PROPOSED RULES FOR
THE NORTHERN SPOTTED OWL

AUGUST 4, 1994

NEW SECTION

WAC 222-10-040 Class IV—Environmental impact evaluation. The department shall consider the following species-specific policies when evaluating environmental impacts, developing mitigation measures and conditioning or denying permits.

Northern spotted owls.

(1) The forest practices board intends to:

(a) Contribute to maintaining the long-term viability of owl populations in Washington state;

(b) Complement the federal conservation strategy for owl populations in Washington state;

(c) Promote flexibility by maximizing the use of landowner planning;

(d) Minimize the economic impacts on landowners; and

(e) Minimize conflicts between federal and state standards.

(2) In SOSEAs, suitable northern spotted owl habitat for the nesting, roosting and foraging requirements of a particular owl site shall be selected to provide the highest probability of maintaining site viability. Selection of suitable habitat shall be as follows:

(a) Within 2.0 miles of known site centers three thousand two hundred acres in Western Washington and two thousand four hundred acres in Eastern Washington must be retained as nesting, roosting, and foraging habitat.

(b) The seventy acres of nesting, roosting and foraging habitat surrounding the known site center must be maintained.

(c) Habitat nearest to the site center is preferred when determining the required acreage.

(d) Within 0.7 mile of known site centers five hundred acres of habitat suitable for nesting, roosting and foraging must be maintained, including the seventy acres immediately surrounding the site center. If less than five hundred acres is available within 0.7 mile, then the balance can be added outside of 0.7 mile and within the 2.0 mile circle.

(e) Within 0.7 mile of a known site center, the first priority for habitat selection is old-forest habitat, followed by submature habitat, followed by young forest marginal habitat.

(f) All suitable habitat within 0.7 mile of a known site center that is retained for one site center shall not be utilized for meeting suitable habitat needs of any other site center.

(g) Beyond 0.7 mile of known site centers and within the 2.0 mile circle, up to forty percent of the area (or two thousand seven hundred acres) must be maintained as foraging habitat in Western Washington and up to thirty percent of this area (or one thousand nine hundred acres) in Eastern Washington. Younger forests that meet the definition of foraging habitat may be substituted for older forests.

(3) Outside SOSEAs, suitable northern spotted owl habitat for the nesting, roosting and foraging requirements of a particular owl site shall be selected to provide the highest probability of maintaining site viability. Selection of suitable habitat shall be as follows:

(a) The seventy acres of nesting, roosting and foraging habitat surrounding the known site center must be maintained.

(b) The first priority for habitat selection is old-forest habitat, followed by submature habitat, followed by young forest marginal habitat.

(c) The seventy acres retained for one site center shall not be utilized for meeting suitable habitat needs of any other site center.

AMENDATORY SECTION (Amending WSR 94-17-033, filed 8/10/94, effective 8/13/94)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations: "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.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"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.

"**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.

"**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.

"**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.

"**Critical habitat (federal)**" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

"**Critical wildlife habitat (state)**" means those habitats designated by the board in accordance with WAC 222-16-080.

"**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.

"**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.

"**Demographic support**" means maintaining the viability of spotted owl sites (status 1, 2 or 3) within the identified SOSEAs by providing for the maintenance of habitat essential for nesting, roosting and foraging for each of the known spotted owl sites.

"**Department**" means the department of natural resources.

"**Dispersal habitat**" means habitat that may be developed over time which allows the movement of juvenile, subadult and adult owls among populations or subpopulations and can be described as either old-forest, submature, or young forest marginal habitat, or stands having the following characteristics:

Western Washington:

• Stands of at least five acres (average size of all stands of dispersal habitat within a planning area shall be at least forty acres AND the average distance between dispersal stands shall not exceed one-half mile excluding openings caused by nonforest land) with at least seventy square feet of basal area per acre of trees at least 10" dbh;

• At least a seventy percent conifer component; and an average height of dominant and co-dominant trees of at least eighty feet;

• At least seventy percent crown closure;

• Three wildlife reserve trees per acre;

• Two green recruitment trees that were dominant or co-dominant; and

• Two down logs twenty feet or more in length with a small end diameter of twelve inches or more per acre.

Eastern Washington:

• Stands of at least five acres (average size of all stands of dispersal habitat within a planning area shall be at least forty acres and a minimum of twenty-five percent of the forest land with a site index of at least eighty (base age fifty) shall be in stands of dispersal habitat with at least a fifty percent conifer component;

• At least fifty percent crown closure and average height of the dominates and co-dominates of at least sixty-five feet in height;

• Two green recruitment trees that were dominant or co-dominant;

• Two wildlife reserve trees ten or more feet in height and ten or more inches in dbh per acre;

• Two down logs twenty feet or more in length with a small end diameter twelve inches or more per acre;

• Between fifty and two hundred trees/acre with an average size of at least 6" dbh (at least 4" dbh in uneven-aged stands); and

• Douglas fir trees with a moderate to heavy mistletoe index rating may be substituted for residual snags.

"**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 state line.

"**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.

"**Erodible soils**" means those soils 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) 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.

"**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.

"Foraging habitat" means old-forest, submature or young forest marginal habitat.

"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 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.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"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.

"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.

"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.

"Landowner option plans (LOP)" means landowner generated plans approved by the department which are designed to avoid the potential for adverse impacts to the northern spotted owl.

"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.

"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.

"Natural disasters" means those catastrophic events that occur such as flood, fire, wind or insect infestation which rapidly results in a loss of timber value. These normally occur over a large area.

"Northern spotted owl site center" means the location documented by the department of fish and wildlife for status 1, 2 or 3 northern spotted owls. The department shall consult with the department of fish and wildlife for the determination of status based on the following definitions:

Status 1 **Pair or reproductive** - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.

Status 2 Two birds, pair status unknown - the presence or response of two birds of the opposite sex where pair status cannot be determined and where at least one member must meet 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 multiple responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

"**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.

"**Old-forest habitat**" means habitat that provides for all the characteristics needed by northern spotted owls for nesting, roosting, foraging and dispersal. Such habitats can be characterized by greater abundance of prey, trees with broken tops and large cavities while exhibiting greater horizontal and vertical diversity. These stands can be described as follows:

- Forests with moderate to high canopy closure (sixty to eighty percent);
- A multilayered, multispecies canopy dominated by large (>30" dbh) overstory trees;
- A high incidence of large trees with various deformities (i.e., large cavities, broken tops, dwarf mistletoe infections, and other indications of decadence);
- Numerous large snags;
- Large accumulations of fallen trees and other woody debris on the ground; and
- Considerable open space through which owls can fly within and beneath the canopy (definition from Thomas et.al. 1990).

"**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.

"**Public resources**" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"**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 management zone**" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"**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.

"**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 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.

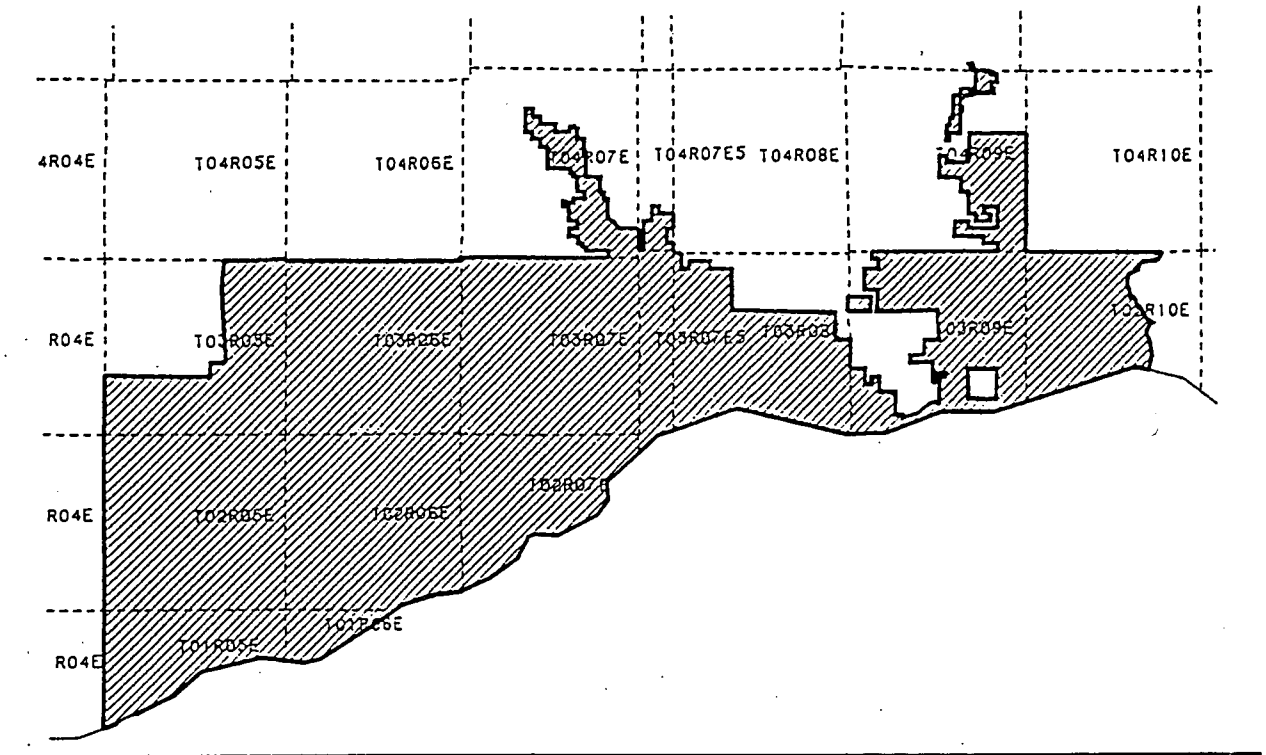
"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

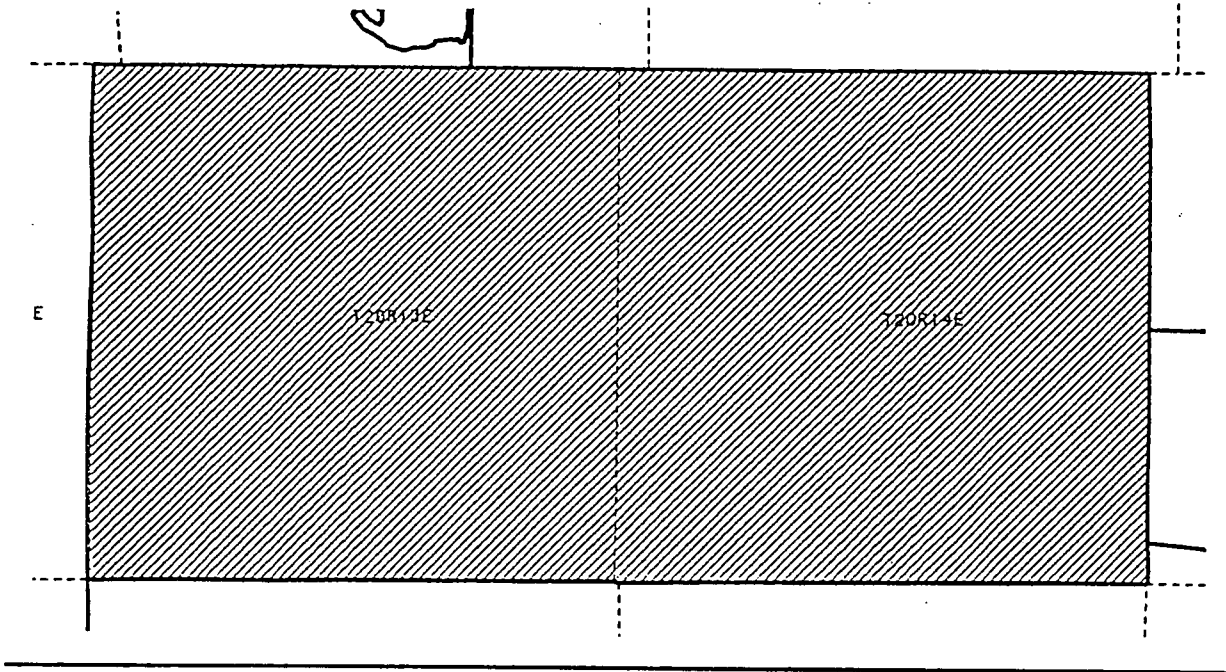
"Spotted owl special emphasis areas (SOSEA)" means the following geographic areas and their associated conservation functions:

PROPOSED

Columbia Gorge - dispersal

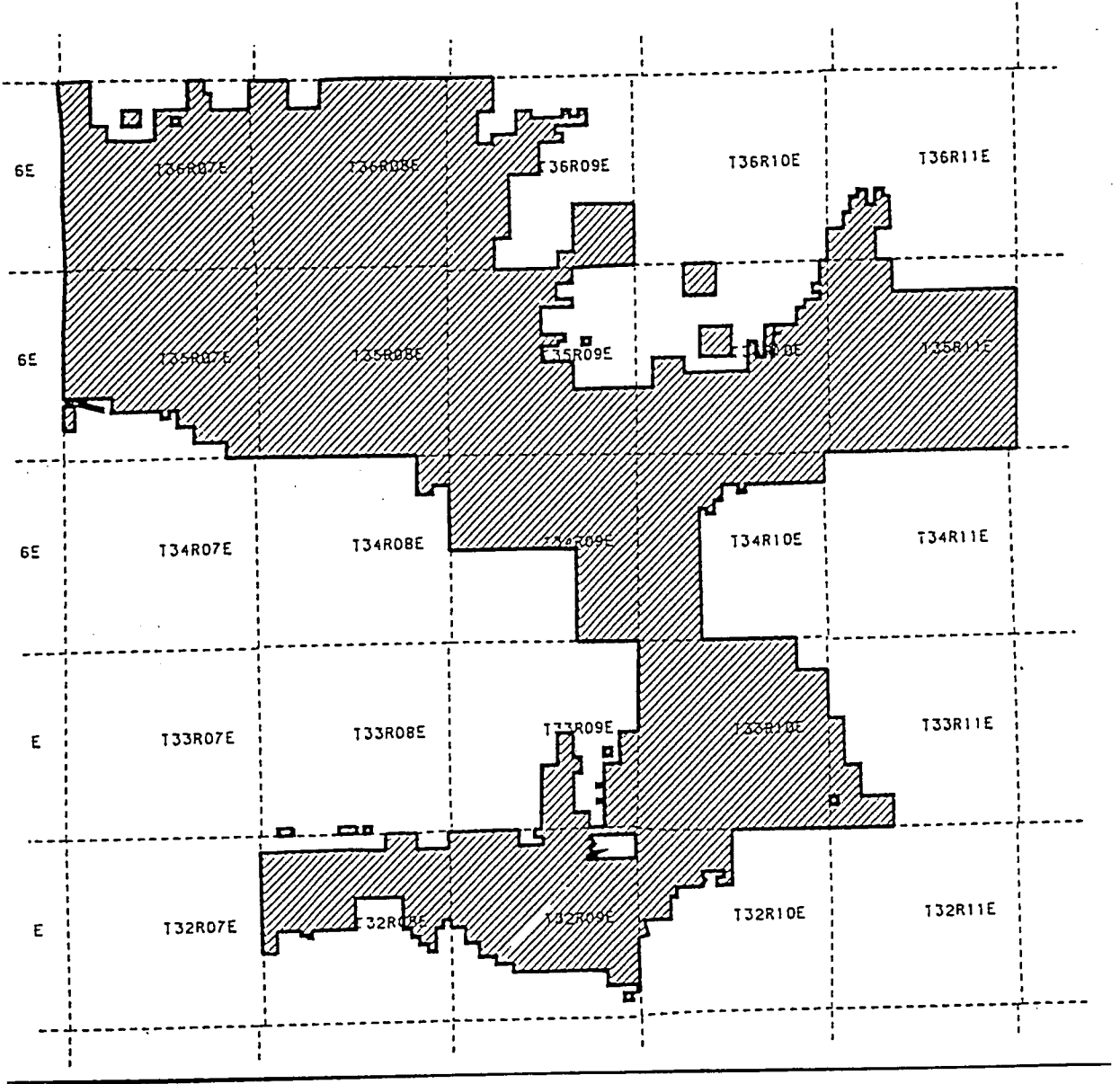


Easton - dispersal



PROPOSED

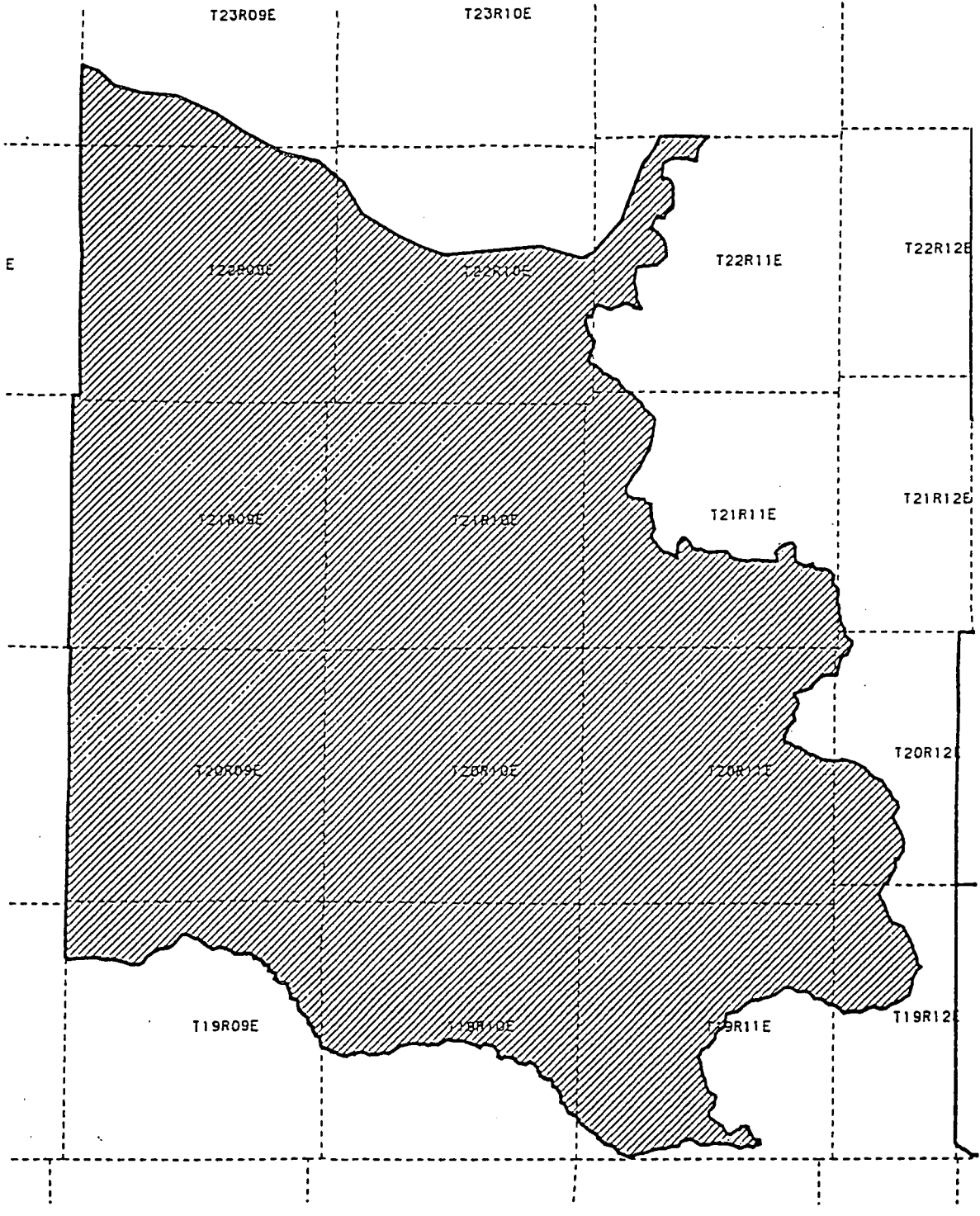
Finney Block - dispersal



PROPOSED

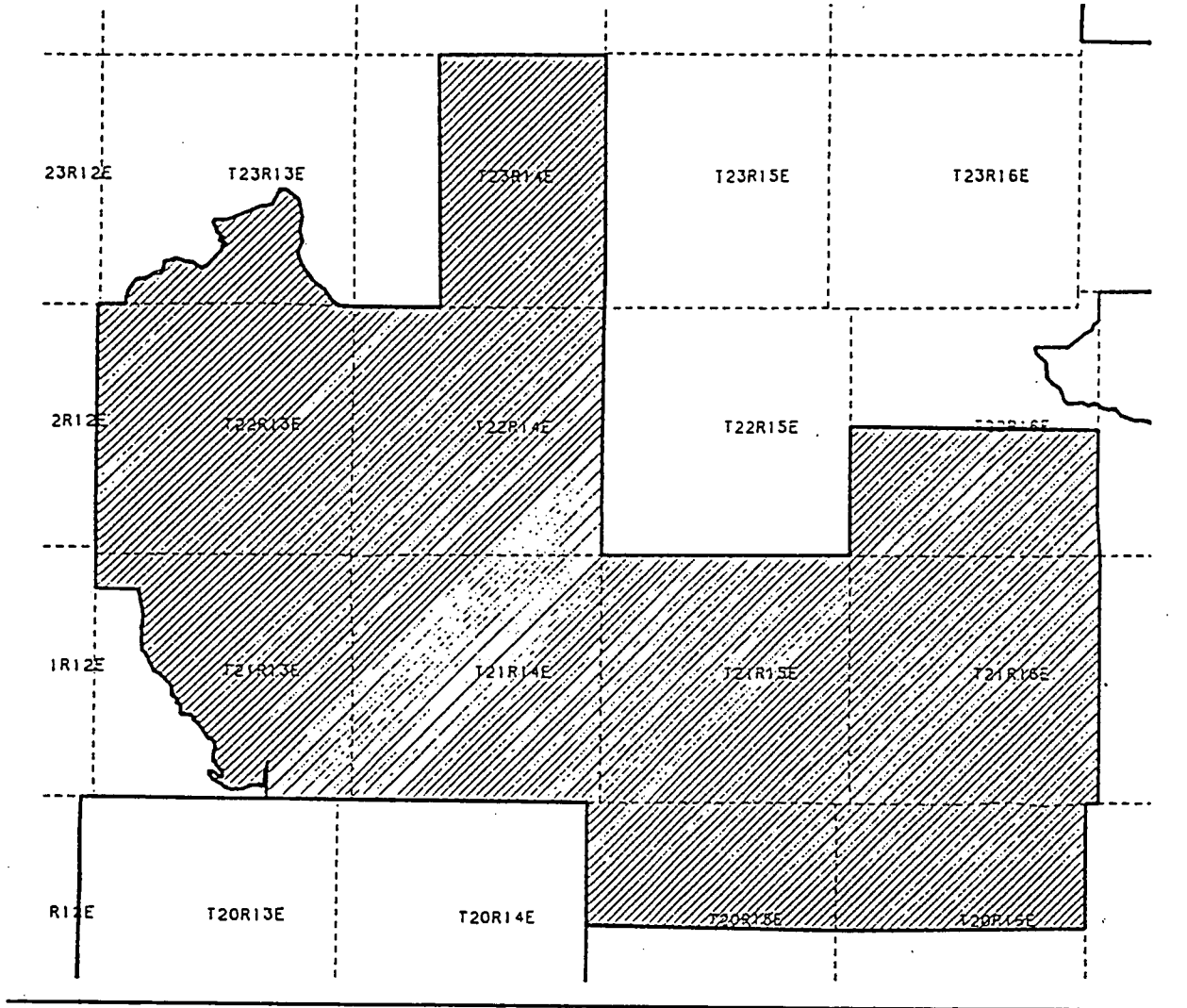
I-90 West - demographic support

PROPOSED

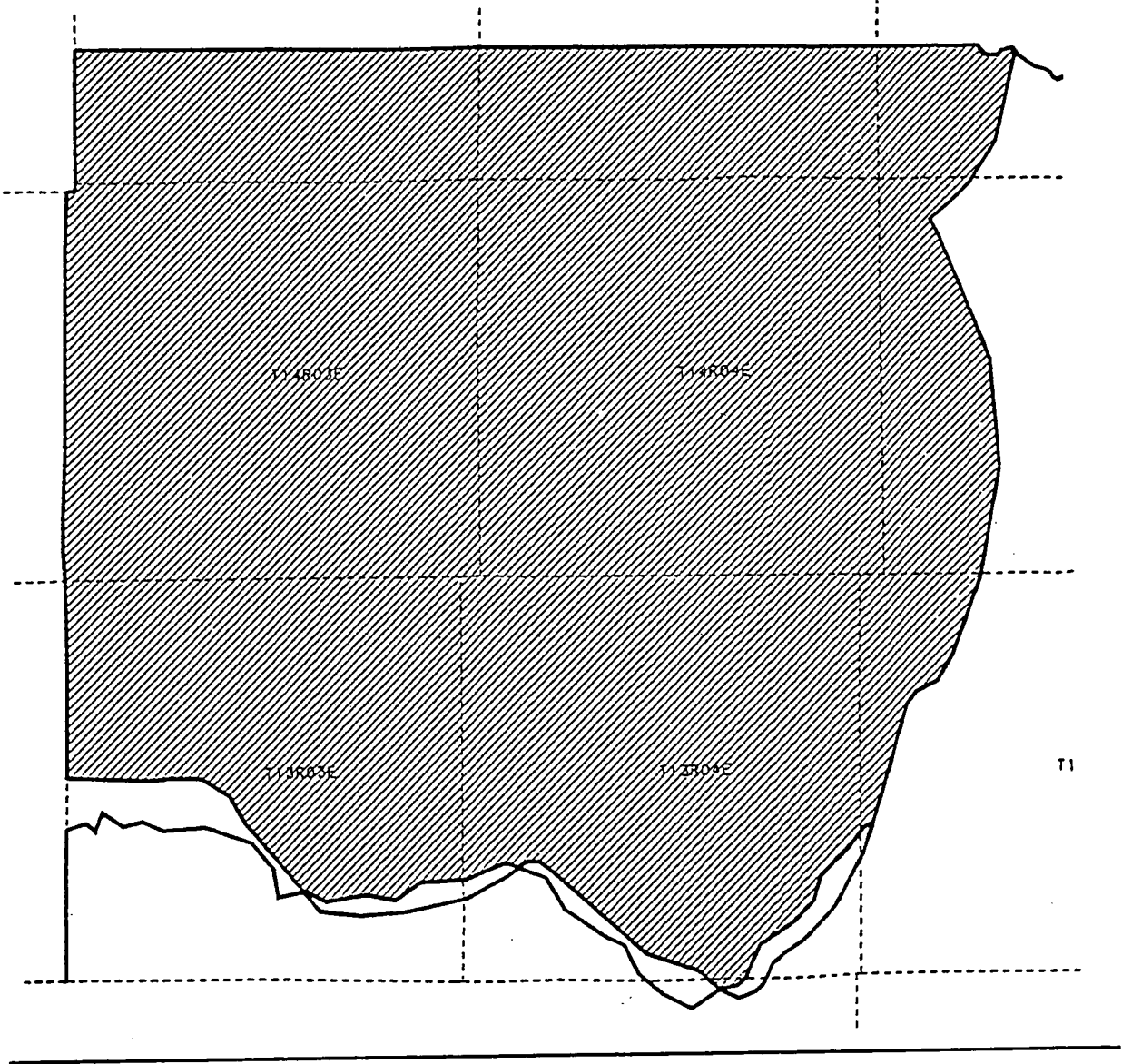


I-90 East/Teanaway - demographic support

PROPOSED



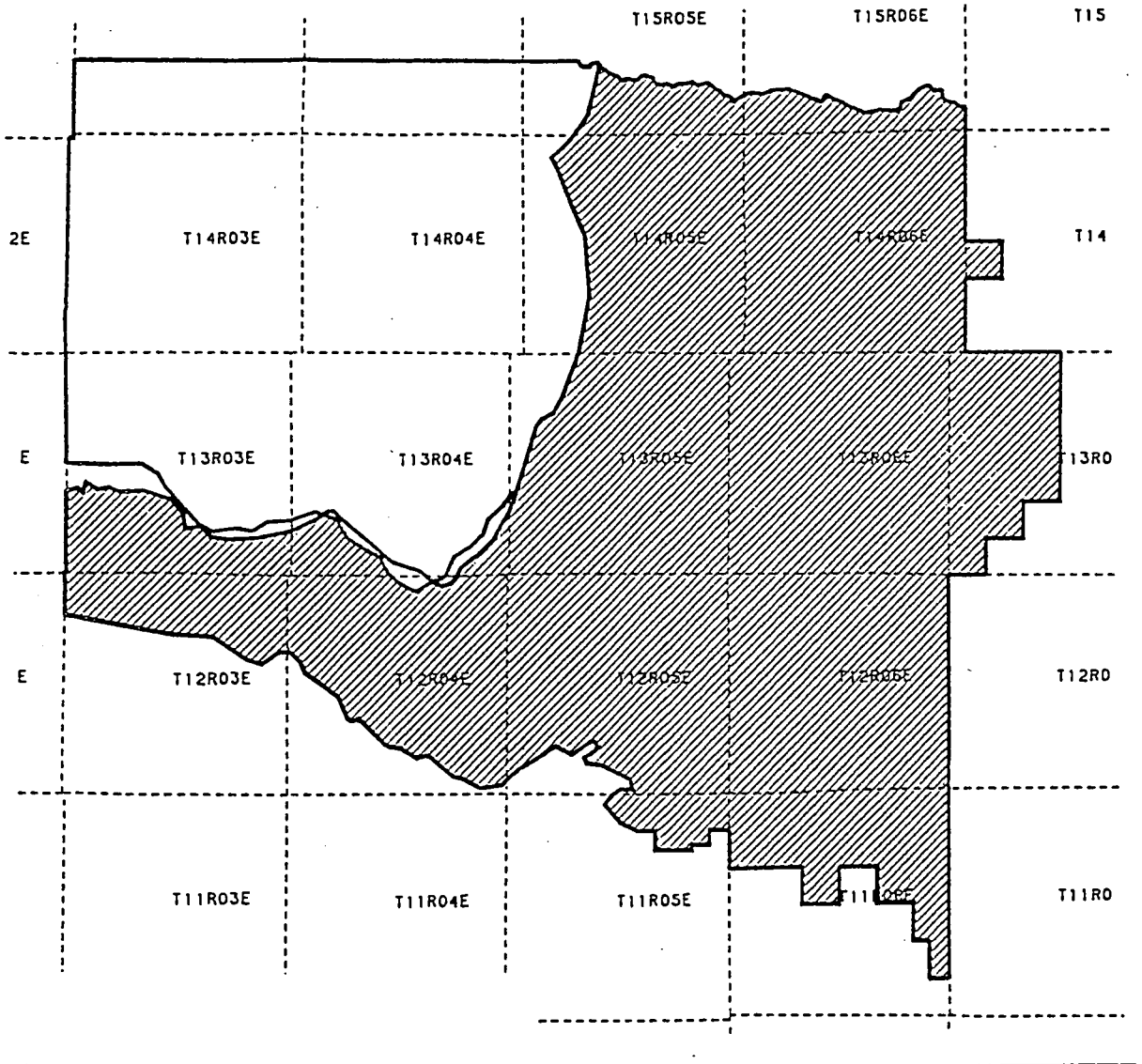
Mineral Block - demographic support and dispersal



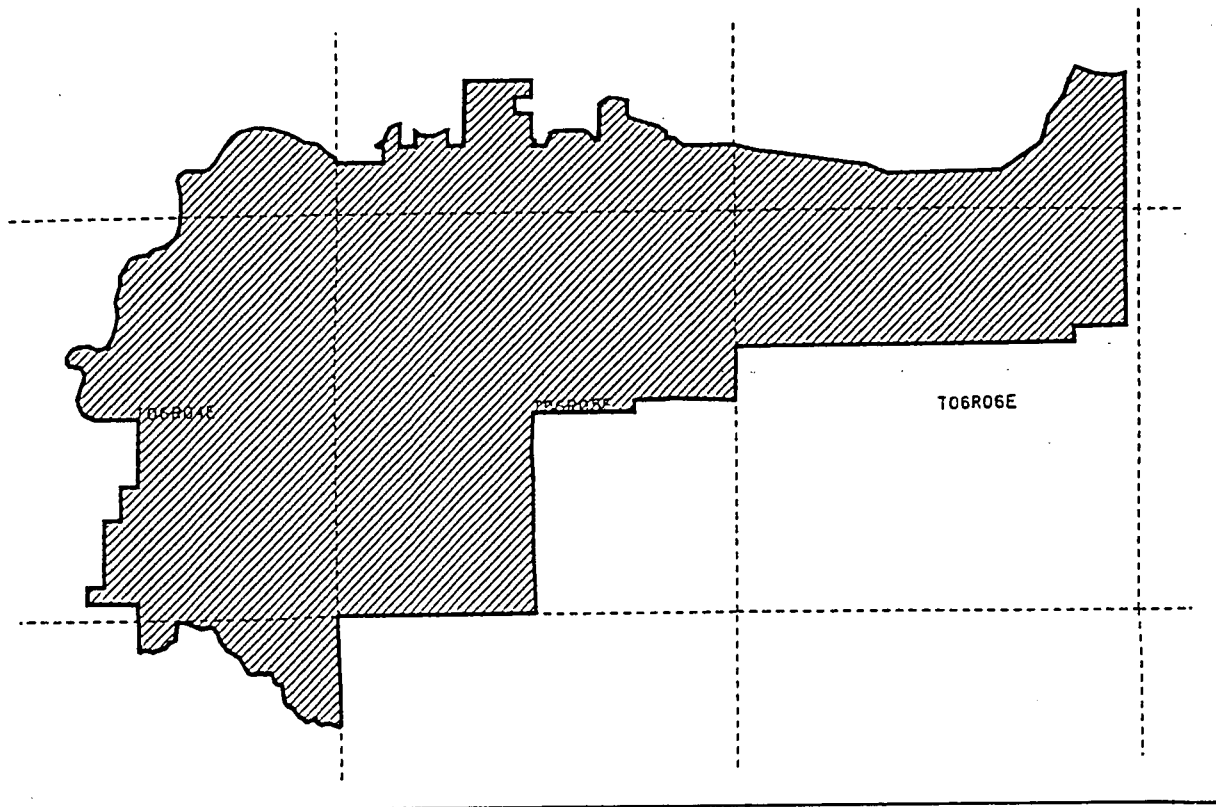
PROPOSED

PROPOSED

Mineral Link - dispersal



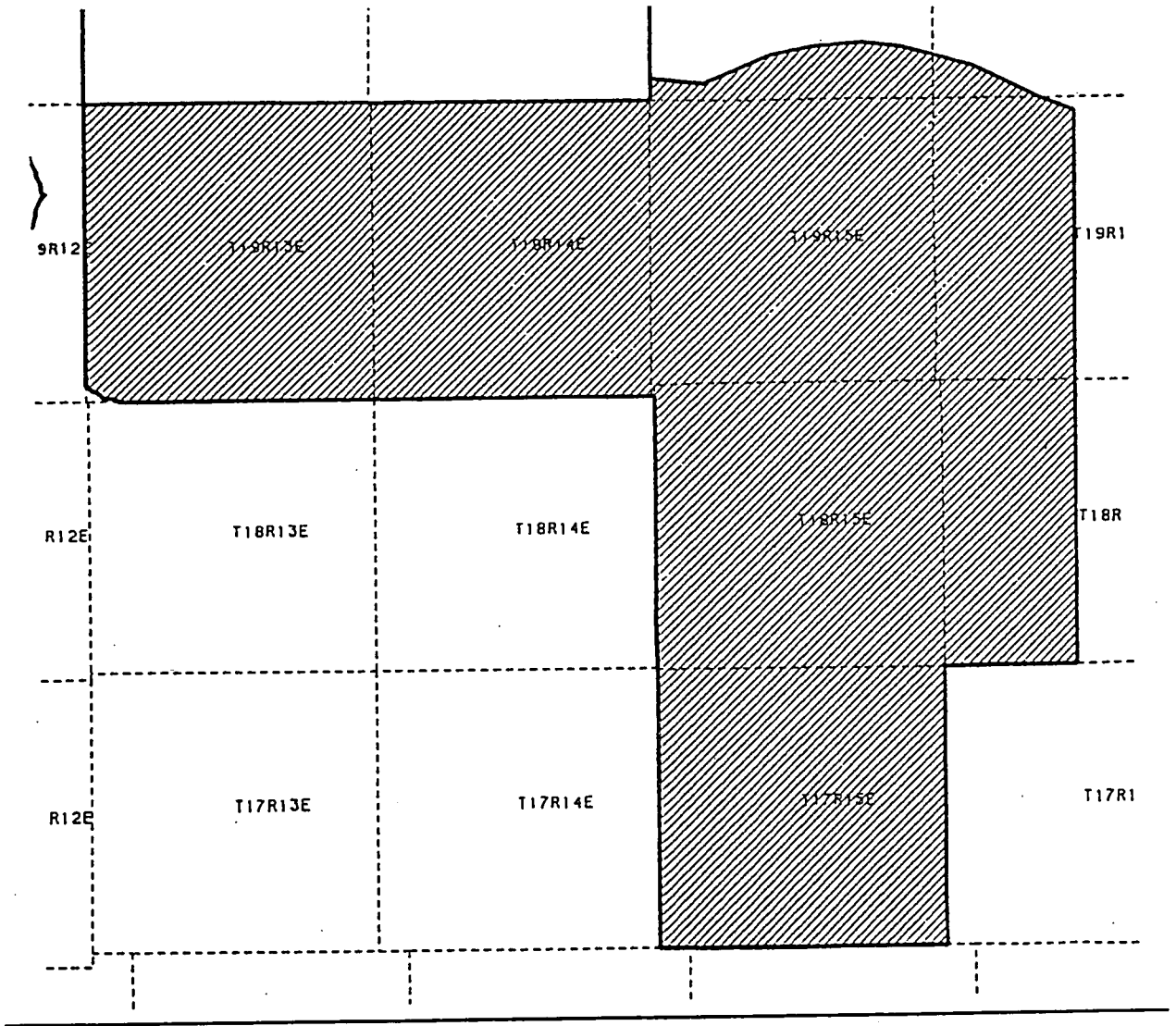
Siouxon - demographic support



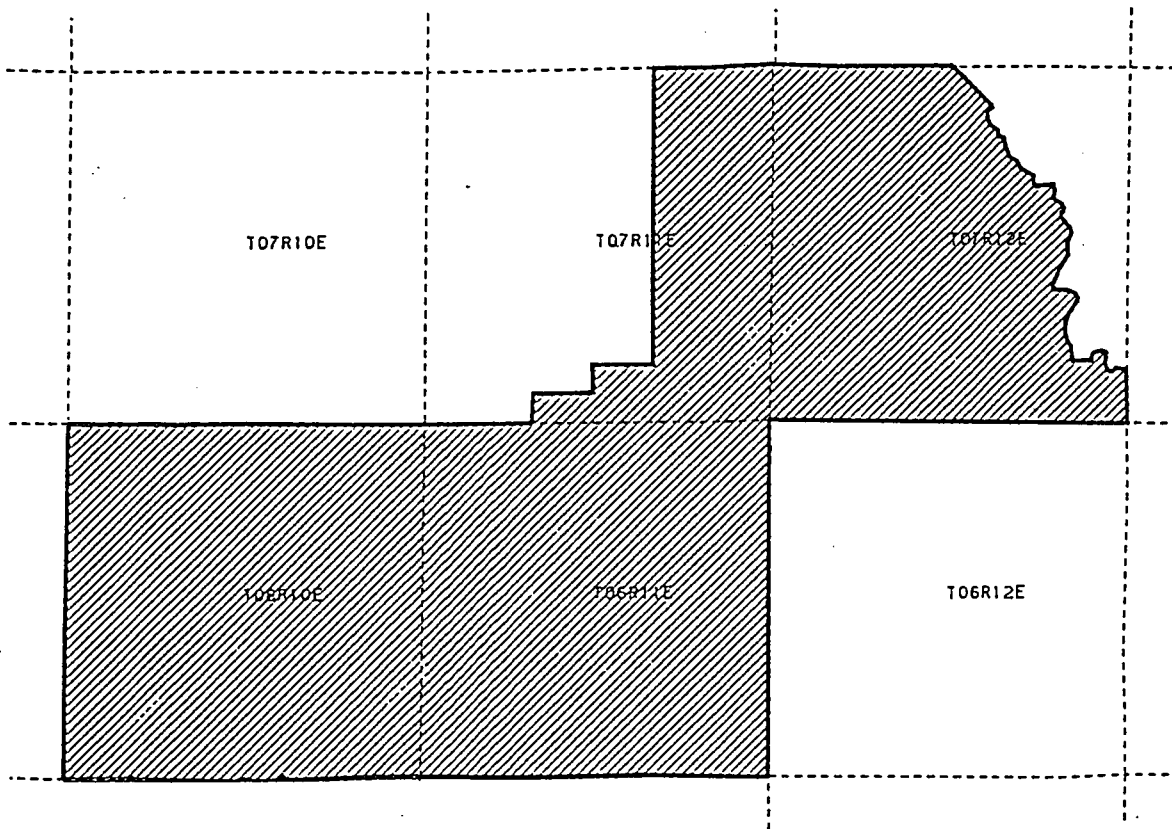
PROPOSED

PROPOSED

Taneum - demographic support



White Salmon - dispersal



PROPOSED

"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.

"Submature habitat" means habitat that provides all of the characteristics needed by northern spotted owls for roosting, foraging and dispersal. Such habitats are characterized by moderate abundance of prey and described as follows:

Western Washington:

- Conifer dominated or conifer-hardwood (at least thirty percent conifer) stands with at least seventy percent canopy closure;
- At least three snag/cavity trees per acre that are at least 20" dbh and at least sixteen feet in height; and
- Either high vertical foliage diversity (BPI score of 2.7 or greater), or appropriate tree density and height (between one hundred fifteen and two hundred eighty trees/acre over 4" dbh and dominant/co-dominants of at least eighty-five feet in height).

Eastern Washington:

- Stands with at least a forty percent fir component;
- At least seventy percent canopy closure;
- At least five percent ground cover of woody debris that is at least four inches in diameter; and
- Either high vertical foliage diversity (two or more canopy layers, numerous intermediate trees, numerous low perches) or appropriate tree density and height (between one hundred ten and two hundred sixty trees/acre at least 4" dbh and dominant/co-dominants of at least ninety feet in height);
- Either three or more snag/cavity trees per acre at least 20" dbh and at least sixteen feet in height or high to moderate dwarf mistletoe infection.

"Suitable spotted owl habitat" means forest stands which meet the definitions of old-forest, submature habitat or young forest marginal habitat. Dispersal habitat is not suitable spotted owl habitat.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"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 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: Irrigation 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.

"Young forest marginal habitat" means habitat that provides some of the characteristics needed by northern spotted owls for roosting, foraging and dispersal. Such habitats are characterized by roosting opportunities and/or with healthy prey populations and are described as follows:

Western Washington:

- Stands with at least seventy percent canopy closure;
- High vertical foliage diversity (BPI value greater than 2.7) or appropriate tree density and height (between one hundred fifteen and two hundred eighty trees/acre at least 4" dbh and dominant/co-dominants at least eighty-five feet in height); and

- Either at least two snag/cavity trees per acre that are at least 20" dbh and at least sixteen feet in height or either at least ten percent ground cover of dead and down wood greater than four inches in diameter OR fifteen to twenty-four percent or sixty-one to seventy percent shrub cover.

Eastern Washington:

- Stands with at least a forty percent fir component;
- At least seventy percent canopy closure; or
- At least fifty percent canopy closure and at least two snag/cavity trees per acre that are at least 20" dbh and at least sixteen feet in height;

- Either at least low vertical foliage diversity (one canopy layer, few intermediate trees, and few low perches); and

- Appropriate tree density and height (between one hundred and three hundred trees/acre at least 4" dbh and dominant/co-dominants at least seventy feet in height).

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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 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 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 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 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 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 wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides (~~on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.~~

~~This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.~~

~~The department shall rely upon the department of wildlife for the determination of status based on the following definitions:~~

~~Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.~~

~~Status 2 Two birds, pair status unknown - the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.~~

~~Status 3 Resident territorial single - the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area)).~~

(i) Within SOSEAs identified in WAC 222-16-010, on suitable spotted owl habitat below the following threshold levels: Western Washington three thousand two hundred

acres within a 2.0 mile radius from known status 1, 2 or 3 site centers; Eastern Washington two thousand four hundred acres within a 2.0 mile radius from known status 1, 2 or 3 site centers.

(ii) Outside the SOSEAs identified in WAC 222-16-010 within the seventy acres of suitable habitat surrounding a known status 1, 2 or 3 site center.

(iii) The following operations that would occur within an owl circle will continue to be a Class I forest practice if they are conducted between August 1 and February 28:

(A) Road maintenance except:

(I) Replacement of bridge and culverts across Type 1,2,3 or flowing Type 4 Waters; or

(II) Movement of material that has a direct potential for entering Type 1,2,3 or flowing Type 4 Waters or Type A or B Wetlands.

(B) Precommercial thinning and pruning.

(iv) If the entire harvestable acreage of an ownership is within a status 1, 2, or 3 northern spotted owl site center in a SOSEA, then timber harvest, road construction or aerial application of pesticides in the habitat that would otherwise be critical habitat (state) are Class III forest practices, and:

(A) All harvesting must comply with disturbance avoidance criteria; and

(B) The annual harvest must be twenty acres or smaller; and

(C) Within a ten-year period, no more than two percent of the ownership between the outer edge of the seventy acres around the site center and the outer edge of the circle can be harvested.

(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.

(2) A site specific special wildlife management plan, or LOP, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner (~~shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of wildlife~~) is preferred. Once approved, subsequent forest practice applications compatible with the plan may incorporate the plan by reference and be approved as a Class III practice unless the practice would be a Class IV practice irrespective of the threatened or endangered species. The plan shall be approved by the department in accordance with the criteria established in this rule.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) 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 wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of 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 15 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)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) 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 wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 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 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.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a habitat conservation plan and permit or an incidental take statement for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; (~~(e)~~)

(b) Forest practices (~~(covered by)~~) consistent with a rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d);

(c) Forest practices within the Olympic Experimental State Forest covered by a plan approved by the U.S. Fish & Wildlife Service pursuant to P.L. 102-435 Title II;

(d) Forest practices covered by an agreement in the nature of a "prelisting agreement" or a habitat management plan accompanied by a "no-take" letter issued by the U.S. Fish & Wildlife Service or National Marine Fisheries Service, as applicable, consistent with that agreement; or

(e) Forest practices beyond seventy acres from any site center covered by an approved dispersal LOP.

Chapter 222-21 WAC LANDOWNER OPTION PLANS

NEW SECTION

WAC 222-21-010 Policy. (1) **Landowner option plans (LOPs)** are to be designed to avoid the potential for substantial impact to northern spotted owls and to maintain the owl populations across the state as a species by incorporating known biological information. These plans are the most efficient and effective way to achieve an appropriate contribution from nonfederal lands for the protection of the northern spotted owl, and are preferred. Within SOSEAs, demographic support for all existing status 1, 2, and 3 owls must be retained unless a landowner option plan is submitted and approved by the department. Within SOSEAs designated as important for demographic support, a LOP can propose to manage a site or habitat within a site differently than required in these rules. Within SOSEAs designated as important for dispersal habitat, a landowner can submit either a dispersal plan that meets the requirements of WAC 222-21-020(1) or a site management plan that meets the requirements of WAC 222-21-020(2).

(2) **Landowner option plans** are intended to be plans which can be developed quickly and with reasonable certainty. A plan may, but is not required to cover multiple ownerships.

(3) **In circles with multiple owners,** any individual owner may submit a plan which provides for maintaining a proportionate amount of the required habitat on the landowner's property. Any net increase in habitat resulting from a LOP can only be counted toward excess habitat by the landowner who created it.

NEW SECTION

WAC 222-21-020 Landowner planning options. Two types of landowner option plans may be developed:

(1) **Dispersal habitat plans.** Dispersal habitat plans are intended to facilitate the movement of juvenile, subadult and adult owls among populations or subpopulations. Dispersal plans shall include all of the landowner's forest land within the WAU in which the northern spotted owl site center is located. The plan does not need to include lands outside the SOSEA. The plan must show how the landowner intends to manage their lands to meet the SOSEA objectives for dispersal habitat over time. The landowner must show how size and spacing of units will meet the dispersal criteria described in this rule.

(2) **Site center management plans.** Site center management plans are designed to provide demographic

support. Plans may, at the landowner's option, cover one or more northern spotted owl site centers.

NEW SECTION

WAC 222-21-030 Elements of a landowner option plan. The level of detail to be included in a landowner option plan 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. Each landowner option plan shall contain the following elements:

(1) **Goals and objectives.** The goals and objectives for the landowners contributions proposed under the LOP within the SOSEA shall be discussed. Unique habitat characteristics provided by adjacent federal lands and how they complement the objectives of the LOP and assist in meeting the SOSEA objectives shall be discussed. Discussions of unique habitat covered by an approved adjacent LOP or federally approved plan is optional. Specific short- (one to five-year) and long-term (greater than five-year) goals and objectives for the LOP should be clearly stated.

(2) **Description of landowner option planning area.** The plan shall describe the boundaries of the landowner option plan.

(a) A landowner option dispersal plan shall not contain less than all of the landowner's forest land within a SOSEA which is within the WAU in which a northern spotted owl site center is located.

(b) A landowner option site center management plan shall not contain less than all the landowner's forest land within 2.0 miles of a known northern spotted owl site center.

(c) At the discretion of the landowners, two or more landowners may submit a joint landowner option plan governing properties in proximity.

(3) **Physical features.** Physical features (e.g., geology, topography, or hydrology) within the LOP that are later used as part of the biological rationale behind the plan shall be described. Details of land use history and unique habitat characteristics that are important for the biological rationale should be described here. The physical description shall be accompanied by an ownership map of the landowner's property within the LOP depicting total area of ownership for the landowner within the LOP (only forest lands owned by the landowner must be mapped), and any important physical features that are mentioned in text.

(4) **Current spotted owl habitat status.** Maps shall be provided depicting the following:

(a) All suitable owl habitats currently on the landowner's property; and

(b) All suitable owl habitat on federal ownership referenced in the LOP and may include state and private lands within approved LOPs.

(c) Current status of the owl habitat should be categorized as old forest, submature, young forest marginal, or dispersal. Landowners may use the habitat definitions for old forest, submature, young forest marginal, and dispersal habitat contained in this rule without further justification. Site specific definitions of suitable habitat may be developed in the landowner option plan with sufficient biological justification. The biological justification may rely upon site specific detections of owls such as known nesting sites,

daytime roost sites, evidence of adequate forage resources, or any other data that might be considered useful.

(5) **Spotted owl status.** All information that is known to the landowner concerning site specific detections and locations of northern spotted owls referenced in the LOP shall be included in this section. A summary of all surveys and subsequent Washington department of fish and wildlife determinations of owl status should be presented. The spotted owl status summary shall be supplemented by map(s) and descriptions of the LOP depicting the following:

(a) All private forest land within two miles of all known status 1, 2, and 3 spotted owl site centers referenced in the LOP. All status 1, 2, and 3 site centers that are within two miles of any of the landowner's property within the LOP must be depicted on the map.

(b) All federal and state forest land within two miles of all known status 1, 2, and 3 spotted owl site centers referenced in the LOP. Public ownership maps may be provided by the department to the landowner at cost.

(c) Any supplementary biological data; habitat-use locations (nest locations, day-time roosting sites, foraging habitat use-sites, radio-telemetry locations) and/or reproductive data known to the landowner.

(6) **Management proposals and operations plans.** Proposed management activities that will alter spotted owl habitat and specific protection measures to be taken during the life of the plan shall be described. In addition, any silvicultural activities that are prescribed in order to accelerate the development of suitable habitat shall be described. For example, if the landowner proposes to accelerate the development of forested stands suitable for dispersal habitat by fertilizing, thinning, and pruning, the acreage and placements of these practices should be described.

(a) Site-specific considerations such as habitat configuration, site productivity, topography, and site center history may be used to develop a management proposal. LOPs will replace site-by-site management planning by incorporating considerations for overall needs for population maintenance and/or dispersal across a defined geographic area. Alternative site-specific definitions of suitable habitat and/or dispersal habitat may be developed as an integral portion of the plan.

(b) The description of management proposals should demonstrate how the specific placement and timing of activities will meet the objectives of the plan, and the objectives for the SOSEA. This section should include an operations map displaying the harvest activities that are proposed for the life of the plan within the LOP. The plan may provide for alteration of those harvest plans to respond to landowner objectives, within limits which will allow the plan to continue to achieve its objectives. To the extent possible, maps indicating all proposed harvests by ___-year increments should be submitted if a plan is proposed for a time period longer than ___ years. Each silvicultural procedure (e.g., thinning, partial harvest, clearcut, etc..) should be depicted separately.

(7) **Projected spotted owl habitats.** This section shall describe the projected extent of suitable habitat within the LOP incrementally during the planning period and at the end of the planning period. This section shall demonstrate how the landowner option plan's objectives are expected to be attained. A projected owl habitat map for the LOP, depict-

ing all suitable owl habitat that is projected to be on the landowner's property by the end of the planning period shall be included.

(8) **Training.** This section shall provide a schedule of employee and contractor training for field implementation of the proposed management plan. It is the responsibility of the landowner to ensure foresters, engineers, and technicians are familiar with all disturbance avoidance and habitat measures outlined in the management proposals and operations plans section of the plan. It is the landowners responsibility to ensure all contractors are familiar with and understand all disturbance avoidance measures outlined in the management proposal and operations plans section of the plan. A written summary of protective measures shall be distributed to all workers working within the planning area during the breeding season.

(9) **Monitoring.** This section shall present details for all monitoring efforts to be conducted by the landowner during the planning period to evaluate the effectiveness of the plan in meeting its goals and objectives. The appropriate intensity of monitoring will depend upon the risk, uncertainty, and magnitude of a proposed activity. If results of proposed management activities are relatively predictable, given known data, then monitoring efforts may be minimal. However, if results have not been previously documented, and the potential risk is relatively high, then initial monitoring may take the form of designed experimentation. In that case the plan should also provide a process for revision of the plan if monitoring discloses unanticipated adverse impacts on the owl.

(a) Surveys for spotted owl occupancy, and/or breeding, and/or reproductive status shall be conducted to evaluate northern spotted owl population objectives. In meeting stated habitat objectives, evaluation (alone, or in combination with habitat-use studies) may be used to determine whether silvicultural activities conducted under the plan are successful in meeting the stated objectives.

(b) Site specific data obtained from the monitoring process may be subsequently used to modify habitat management plans with approval of the department. This adaptive management process should be used where possible to provide for more effective habitat management strategies while increasing a landowner's management flexibility. The ___-year reports required under subsection (10) of this section shall include an evaluation of the monitoring data. The landowner option plan should include, in this section, a process to modify the plan based on the five-year monitoring results if necessary to meet the goals and objectives of the plan.

(10) **Reporting.** This section shall identify a process for submitting annual and periodic reports to the department relating to the implementation of the LOP.

(a) Annual progress reports should be submitted to the department documenting:

(i) All harvest activities conducted within suitable habitat on the landowner's property within the LOP during the previous year;

(ii) A summary of spotted owl status surveys and habitat monitoring efforts conducted during the previous year;

(iii) A summary demonstrating compliance with the approved plan and describing progress toward achieving the plan's goals; and

(iv) Any proposed changes to the plan from the results of monitoring. Forest practices maps should be provided for all harvest activities in which suitable habitats may have been modified.

(b) Periodic reports should be submitted to the department at ___ year intervals. These reports should describe in detail the cumulative results of all monitoring efforts and provide an updated operations outlook for the coming ___ year period.

(11) **Plan modification.** The plan shall include a process to modify the current plan if survey results indicate establishment of new site centers, redesignation of site centers to historic status, or shifts in current site centers, or if monitoring results indicate plan goals and objectives or SOSEAs objectives are not being met or in the event of a natural disaster.

(12) **Duration of the plan.**

(a) A dispersal habitat plan must be for a term of at least thirty years.

(b) A site center management plan is dependent on the specific characteristics associated with habitat and land ownership and as a result, the duration of the plan shall be agreed to by the department and the department of fish and wildlife in advance of submitting the plan for approval.

NEW SECTION

WAC 222-21-040 Approval of plans. The department within sixty days of receipt of a completed plan or plan modifications shall approve or disapprove the plan using criteria set out in this rule. If the plan deviates from the criteria, the department in consultation with the Washington department of fish and wildlife and, if it deems appropriate, may request an independent wildlife biologist with expertise in spotted owl ecology to review the plan prior to plan approval.

(1) Upon receipt of the plan, the department shall provide notice to interested parties as defined in WAC 222-20-100, 222-20-110 and 222-20-120.

(2) Upon approval of the plan, the plan shall be filed at the DNR regional office and interested parties shall be notified of its acceptance.

(3) Upon approval of the plan, the landowner is required to file the LOP with the county(s) for recording.

AMENDATORY SECTION (Amending WSR 92-23-056, filed 11/17/92, effective 12/18/92)

WAC 222-24-030 Road construction. (1) **Right of way timber.** Merchantable 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:

(i) Loose stumps, logs or chunks containing more than 5 cubic feet in the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

(ii) 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.

(iii) 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.

*(5) **Channel clearance.** Clear stream channel of all debris and slash generated during operations prior to the removal of equipment from the vicinity, or the winter season, whichever is first.

*(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 outloping 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 flood level of a Type 1, 2, 3, or 4 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 flood level of Type 1, 2, 3, or 4 Waters or in other 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.

(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.

(10) Disturbance avoidance. Road construction, operation of heavy equipment and blasting shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-050 Felling and bucking. *(1) Falling along water.

(a) No trees will be felled into Type 1, 2 and 3 Waters, or Type A or B Wetlands except trees which cannot practically and safely be felled outside the stream, lake or pond using techniques in general use and these trees must then be removed promptly.

Such felling and removing in Type 1, 2 or 3 Waters shall comply with the hydraulic project approval of the departments of fisheries or wildlife.

(b) Within riparian management 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.

(c) Trees may be felled into Type 4 Water if logs are removed as soon thereafter as practical. See forest practices board manual guidelines for clearing slash and debris from Type 4 and 5 Water.

*(2) **Bucking in water.**

(a) No bucking or limbing shall be done on trees or portions thereof lying between the banks of Type 1, 2 or 3 Waters or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water.

(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. Felling and bucking shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-060 Cable yarding. *(1) Type 1, 2 and 3 Waters. No timber shall be cable yarded in or across a Type 1, 2 or 3 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 departments of fisheries or wildlife.

***(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 and 4 Waters shall not be removed or unnecessarily disturbed without approval of the departments of fisheries or 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 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 or 3 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. The operation of heavy equipment shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

NEW SECTION

WAC 222-30-065 Helicopter yarding. Helicopter yarding shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-070 Tractor and wheeled skidding systems. ***(1) Typed waters and wetlands.**

(a) Tractor and wheeled skidders shall not be used in Type 1, 2 or 3 Water, except with approval by the department and with a hydraulic project approval of the departments of fisheries or 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.

***(2) Riparian management zone.**

(a) Logging will be permitted within the zone. However, any use of tractors, wheeled skidders, or other 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 in or through the riparian management zone is necessary, the number of skidding routes through the zone shall be minimized.

(c) Logs shall be skidded 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.

(b) Where feasible logs shall be skidded 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.

***(4) Deadfalls.** Logs firmly embedded in the bed or bank of Type 1, 2, 3 or 4 Waters shall not be removed or unnecessarily disturbed without hydraulic project approval of the departments of fisheries or wildlife.

***(5) Moisture conditions.** Tractor and wheeled skidders shall not be used on exposed erodible soils or saturated soils when soil moisture content is so high that unreasonable soil compaction, soil disturbance, or wetland, stream, lake or pond siltation would 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 flood level.

(c) Skid trails shall be outloped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

***(8) Skid trail maintenance.** 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.

***(9) Slope restrictions.** Tractor and wheeled skidders shall not be used on slopes where in the opinion of the department this method of operation would cause unnecessary or material damage to a public resource.

(10) The operation of heavy equipment shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

NEW SECTION

WAC 222-30-075 Timber and rock hauling. When the site center is on the applicant's land, the following limits on timber and rock hauling shall apply within 0.25 mile of northern spotted owl site center between March 1 and August 31:

- (1) At all times of the day vehicle speed shall be limited to fifteen miles per hour; and
- (2) Timber and rock hauling shall be limited to one hour after official sunrise to one hour before official sunset; and
- (3) All reasonable attempts shall be made to minimize traffic within suitable habitat, attempt to route traffic through nonhabitat.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-100 Slash disposal or prescribed burning. (1) **Slash disposal techniques:**

* (a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and riparian management zones and on sites where the department determines that a particular method would cause unreasonable risk to 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 zones, slash disposal shall be by hand, unless approved by the department. Scarification shall not be allowed within wetlands. Machine piling is discouraged in 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, 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) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see WAC 332-24-360).

(3) **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) **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 or 4 Waters, to above the 50-year flood level and left in a location or manner minimizing risk of re-entry into the stream, lake or pond and if substan-

tial accumulations of slash exist below the 50-year flood level of Type 1, 2, 3 or 4 Waters, slash disposal is required. See the forest practices board manual for "Guidelines for clearing slash and debris from Type 4 and 5 Waters."

* (5) **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, 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) Burning shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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.** Pesticide treatments within the riparian management zone 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 buffer strip 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.

(b) Apply the initial swath parallel to the buffer strip 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. Avoid applications that might result in drift causing direct entry of pesticides into riparian management zones, Type A and B Wetlands, wetland management zones, and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

(c) Use a bucket or spray device capable of immediate shutoff.

(d) Shut off spray equipment during turns and over open water.

(e) Leave at least a 200 foot buffer strip around residences and 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.

(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 overflight of the area shall be made by the pilot with the marked photos or maps.

(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 aerially 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) 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.

***(7) Hand application of pesticides.**

Apply only to specific targets, such as vegetation, trees, stumps, and burrows, or as bait or in traps.

***(8) 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) 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) Daily records - aerial application of pesticides.** On all aerial applications of pesticides, the operator shall maintain for 3 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.

***(11) 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.

***(12) Disturbance avoidance.** Helicopter operations shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

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.** Fertilizer treatments within a riparian 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 on all Type 1, 2, and 3 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 overflight 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) Ground and hand application of fertilizers.** Prevent fertilizer from entering Type A and B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

***(6) 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.

(7) Disturbance avoidance. Helicopter operations shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

YAKAMA INDIAN NATION-
WASHINGTON ENVIRONMENTAL COUNCIL
PROPOSED RULES FOR THE
NORTHERN SPOTTED OWL

AUGUST 4, 1994

NEW SECTION

WAC 222-10-030 Class IV-Special—Threatened and endangered species. (1) The department shall evaluate the impacts of forest practices on the essential life requisites of the threatened or endangered species. Identified adverse impacts shall be documented.

(2) The department shall evaluate whether these documented impacts on the individual(s) have a probable significant adverse impact on the population or major subpopulation.

(3) The department shall utilize the expertise of the department of fish and wildlife in determining specific essential life requisites; evaluating an application's impacts on those essential life requisites; and determining whether an application's impacts will have a probable significant adverse impact on the population or major subpopulation.

(4) The specific standards outlined above shall be performed in conjunction with the environmental review to assess probable significant adverse environmental impacts.

NEW SECTION

WAC 222-10-040 Specific mitigation measures. Mitigating measures related to prevention of adverse impacts to northern spotted owls shall consider the following:

(1) Habitat essential for maintaining the nesting, roosting and foraging requirements of northern spotted owls varies by province. The following acreages shall be requisite when evaluating habitat requirements for a particular northern spotted owl site center:

(a) For the Olympic province - 3,827 acres of suitable spotted owl habitat within 2.7 miles of the northern spotted owl site center;

(b) For the western Cascades province - 3,586 acres of suitable spotted owl habitat within 2.0 miles of the northern spotted owl site center;

(c) For the eastern Cascades province - 3,249 acres of suitable spotted owl habitat within 1.8 miles of the northern spotted owl site center.

(2) Habitat essential for maintenance of the nesting, roosting and foraging requirements of a particular owl site should be selected to provide the highest probability of maintaining site viability. Selection of essential habitat shall follow these guidelines:

(a) All suitable habitat within 0.7 mile of a northern spotted owl site center is important and should not be utilized for meeting the essential habitat needs of any other site center; and

(b) Beyond 0.7 mile from the northern spotted owl site center, the first priority is old-forest habitat, followed by

submature habitat, followed by young forest marginal habitat; and

(c) Beyond 0.7 mile from the northern spotted owl site center, suitable spotted owl habitat closer to the site center is more important than suitable spotted owl habitat which is further from the site center; and

(d) Dispersal habitat does not meet all spotted owl life requisites and cannot be considered suitable.

(3) Protection of spotted owl sites within the important northern spotted owls landscape is important to:

(a) Provide demographic support by protecting a cluster of spotted owl sites that provide support to spotted owl populations or major subpopulations through increasing the density of owls and the capacity for population expansion; or

(b) Provide demographic interchange through ensuring the dispersal of juvenile, subadult, and adult spotted owls among populations and major subpopulations; or

(c) Maintain the distribution of the species in Washington.

AMENDATORY SECTION (Amending WSR 94-17-033, filed 8/10/94, effective 8/13/94)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"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.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"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.

"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.

"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.

"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.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"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.

"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.

"Degraded habitat" means old-forest habitat which has been altered to such an extent that it becomes submature forest habitat or habitat not suitable for northern spotted owls; submature habitat which has been altered to such an extent that it becomes young forest marginal habitat or habitat not suitable for northern spotted owls; or young forest marginal habitat which has been altered to such an extent that it is no longer suitable northern spotted owl habitat.

"Department" means the department of natural resources.

"Dispersal habitat" includes old-forest, submature, and young forest marginal habitat, as well as other younger forest conditions that provide the characteristics spotted owls need for successful dispersal. Some key important characteristics are insufficient in quantity or quality to support designation as suitable. See the forest practices board manual for the characteristics.

"Disturbance avoidance plan" means a plan designed to mitigate the disturbance of threatened and endangered wildlife species by forest practices. Plans are prepared by the landowner, recommended by the department of fish and wildlife and approved by the department.

"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 state line.

"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.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Essential life requisites for wildlife" means those habitat elements necessary for continued breeding, feeding, sheltering, and travel/migration.

"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) 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.

"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.

"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 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.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"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.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

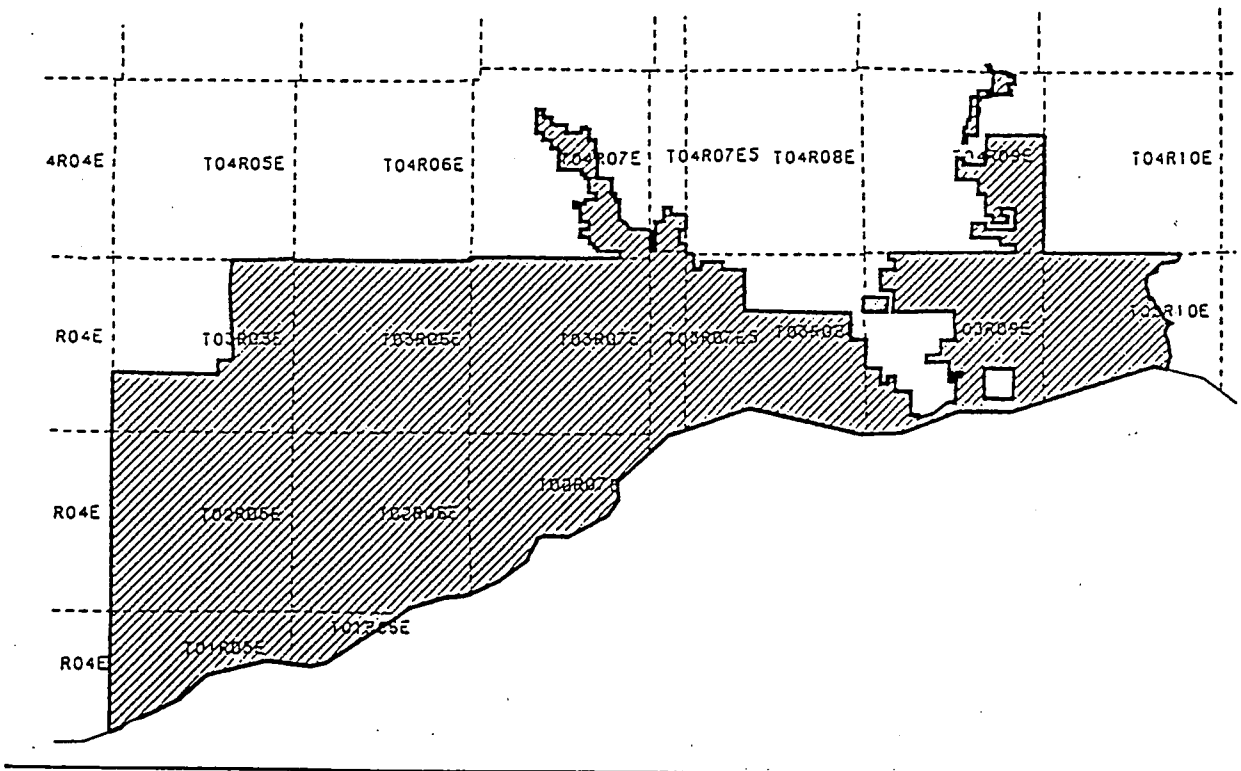
- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Impacts on the population or major subpopulations of northern spotted owls" means any degradation of essential habitat below provincial area requirements at one or more owl sites within important northern spotted owl landscapes.

"Important northern spotted owl landscapes" means the following landscapes:

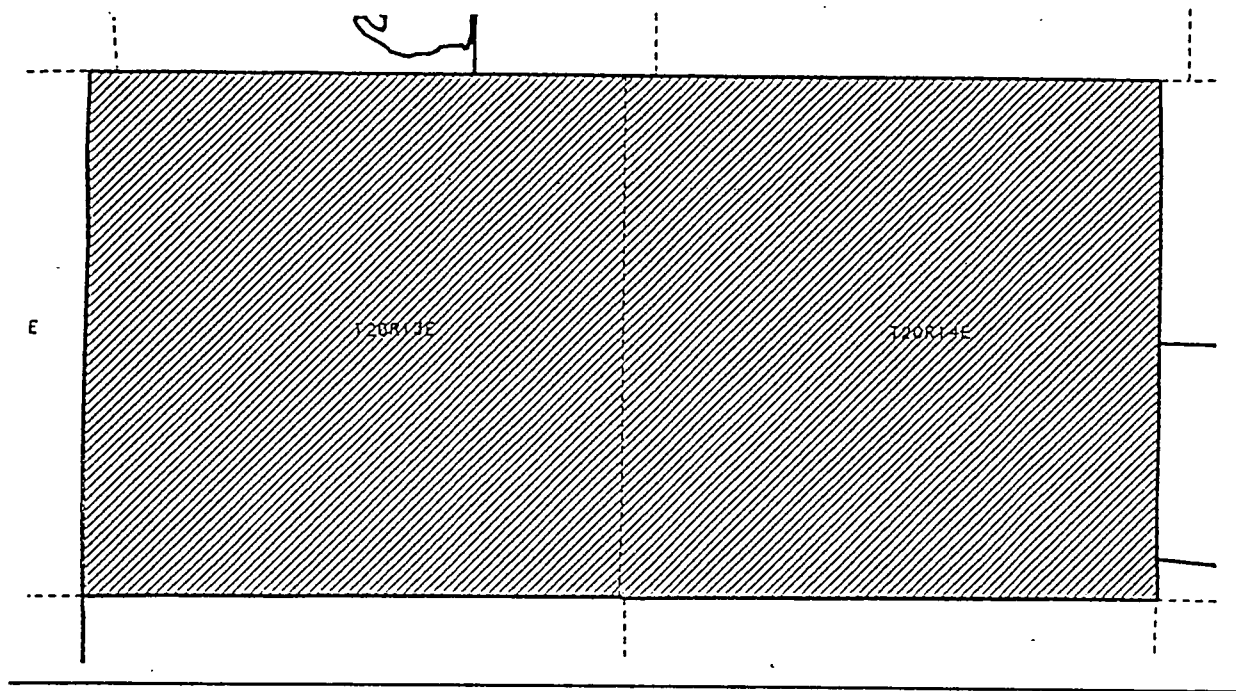
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Columbia Gorge



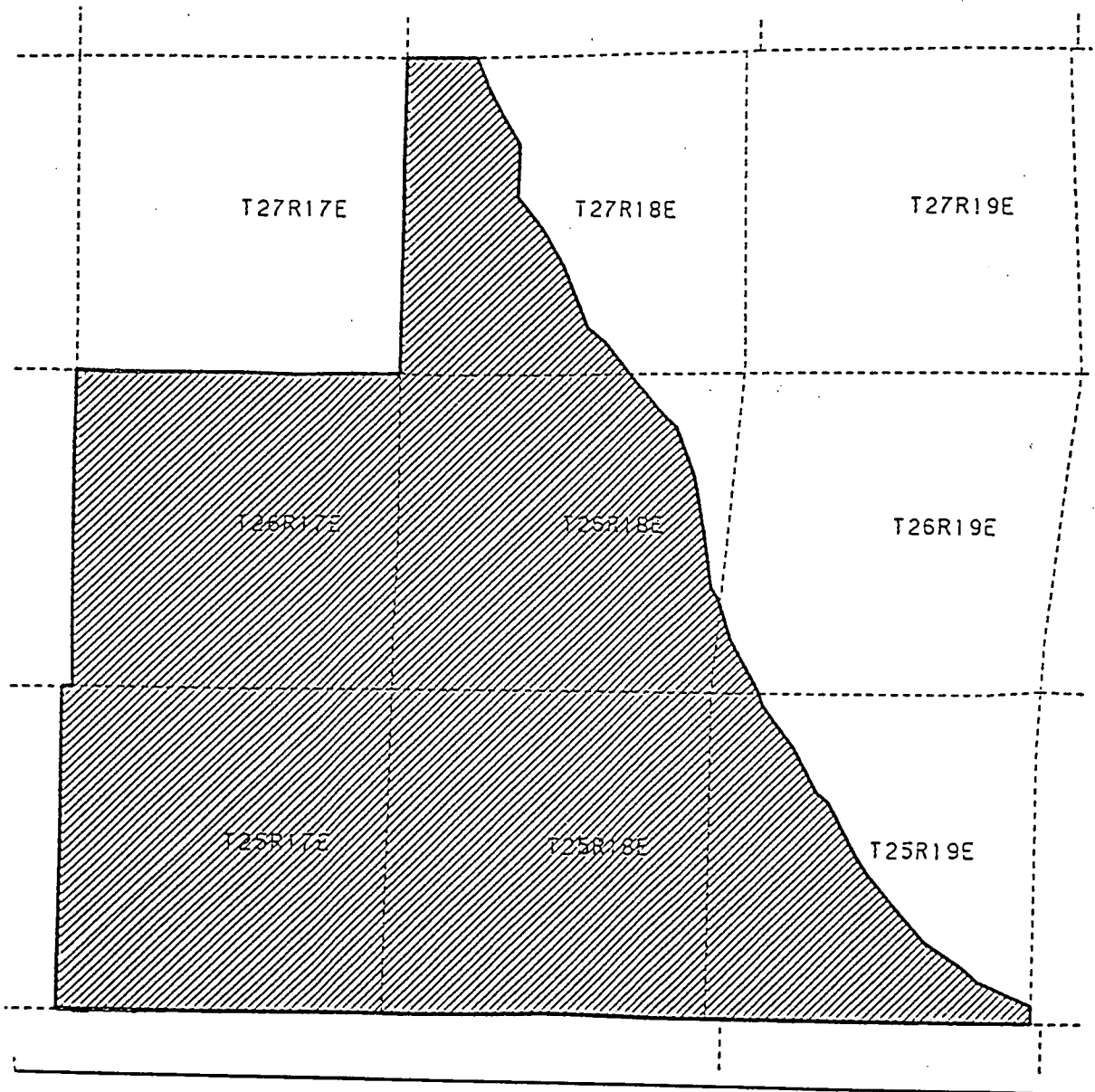
Easton

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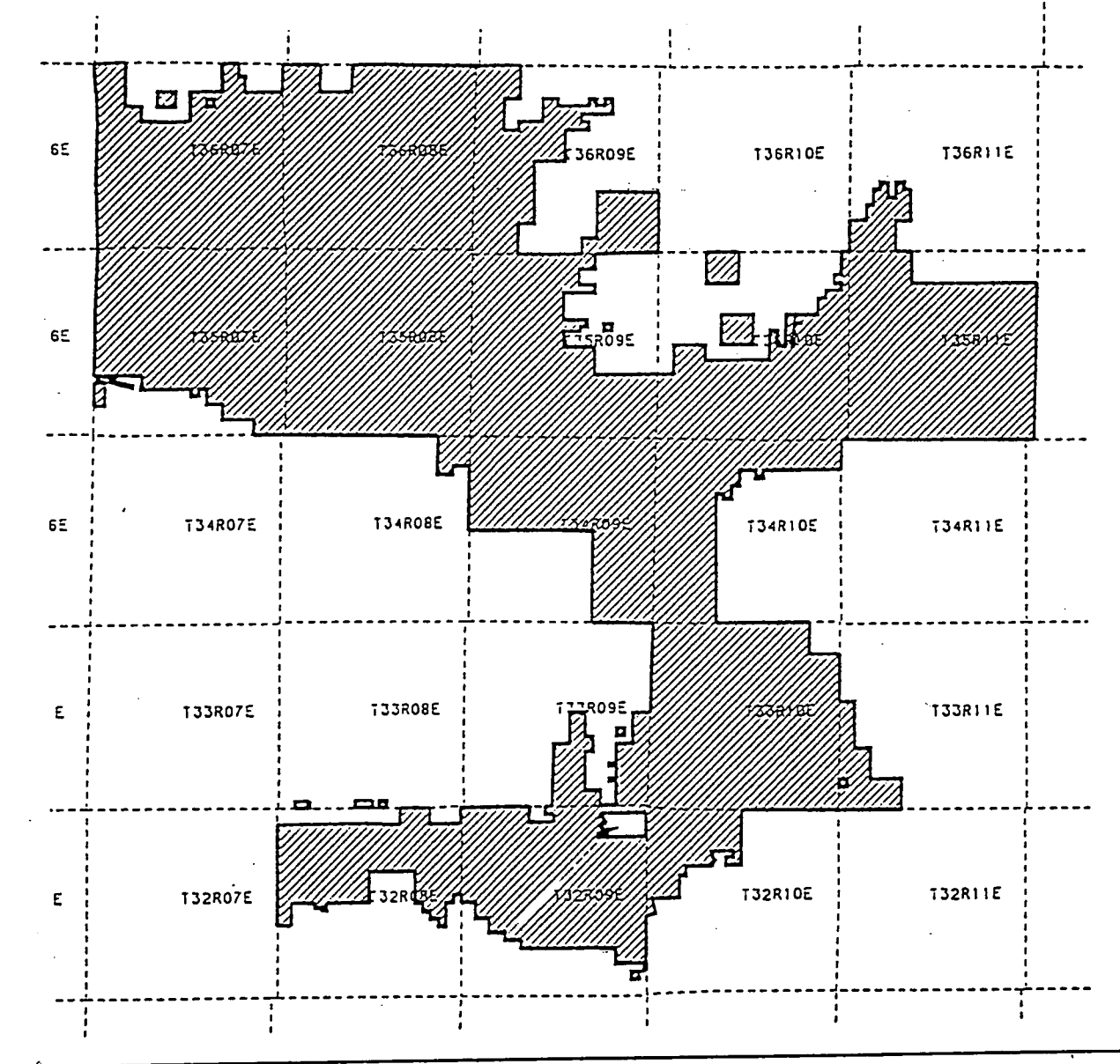
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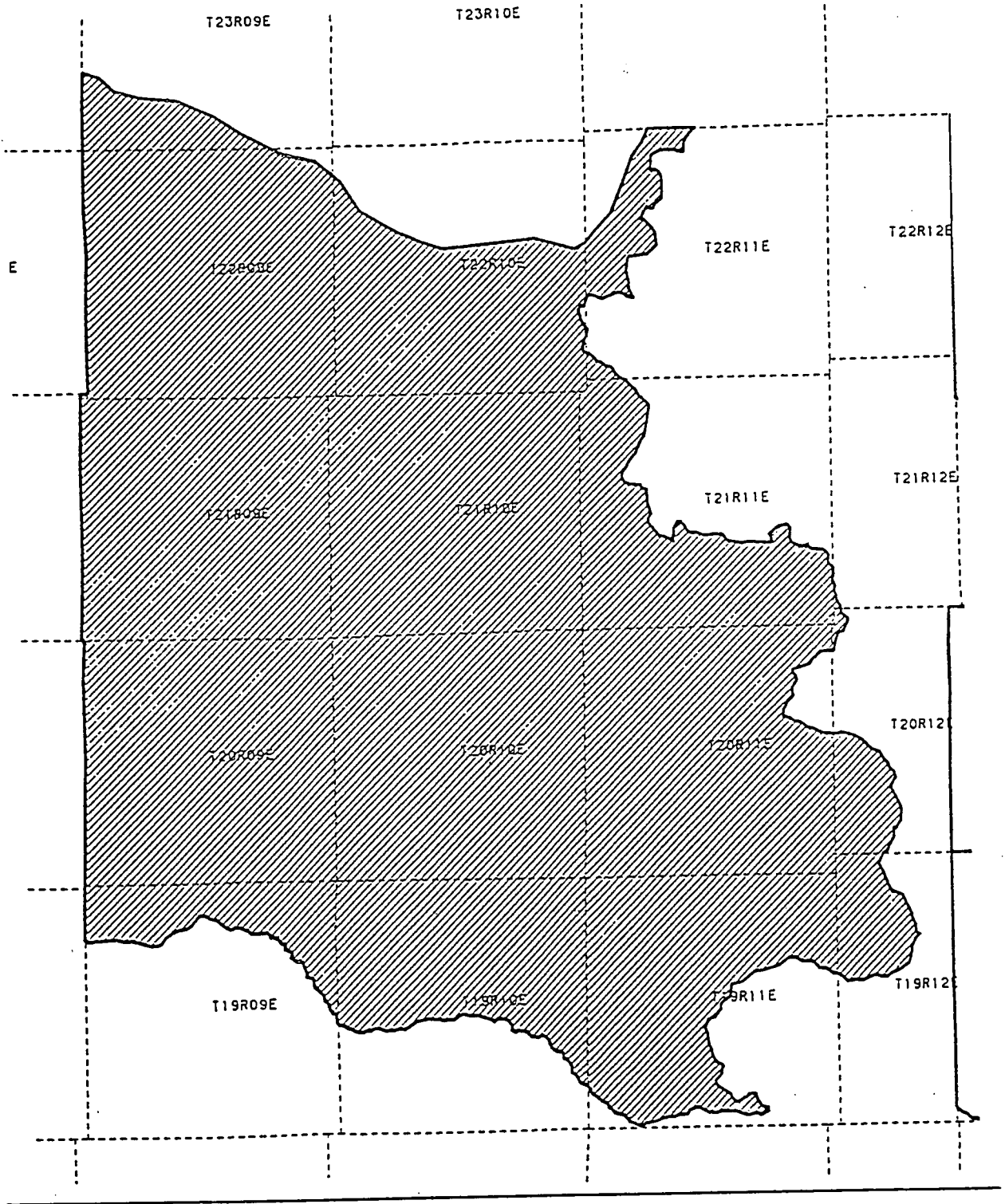
Finney Block

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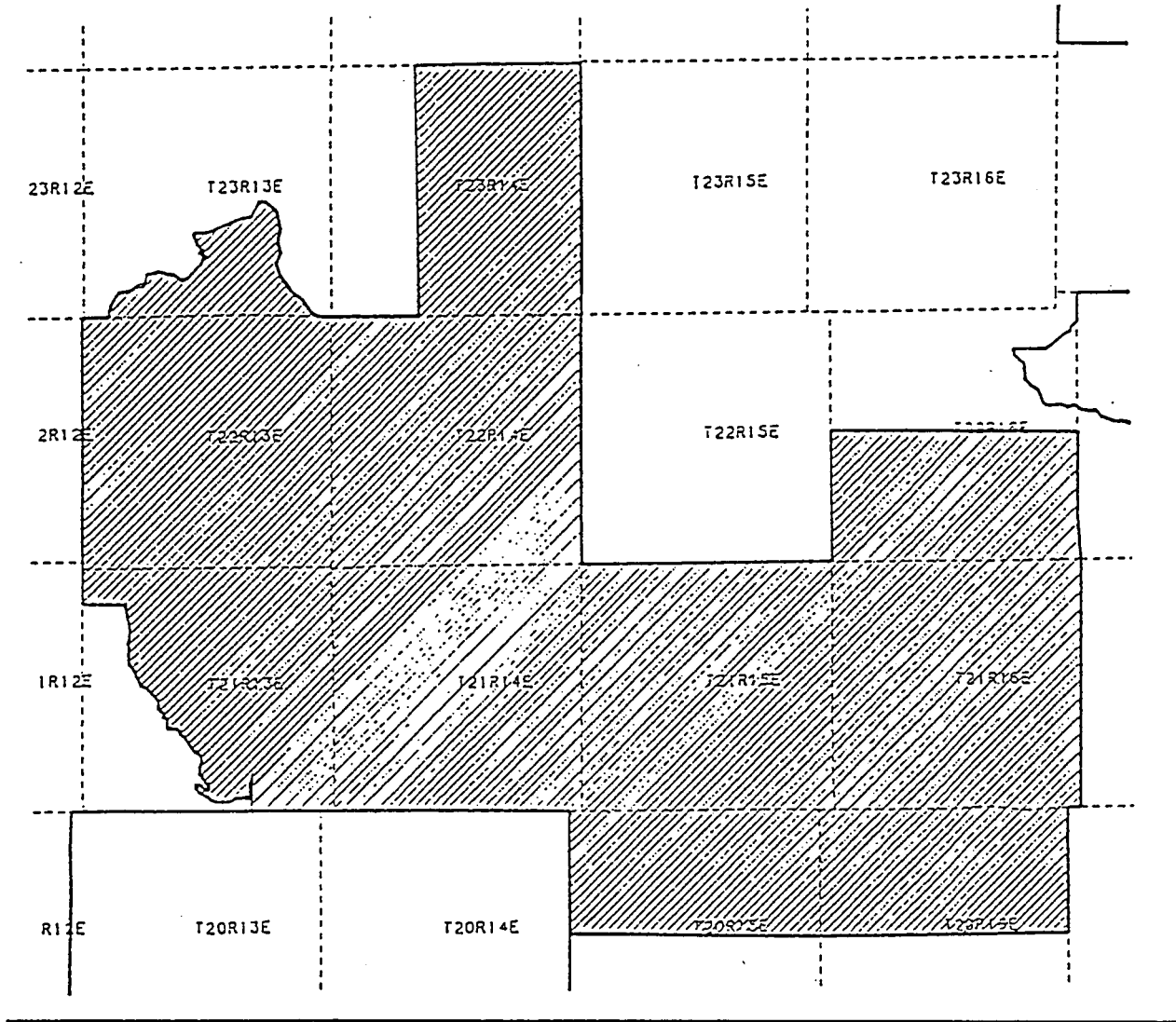
I-90 West

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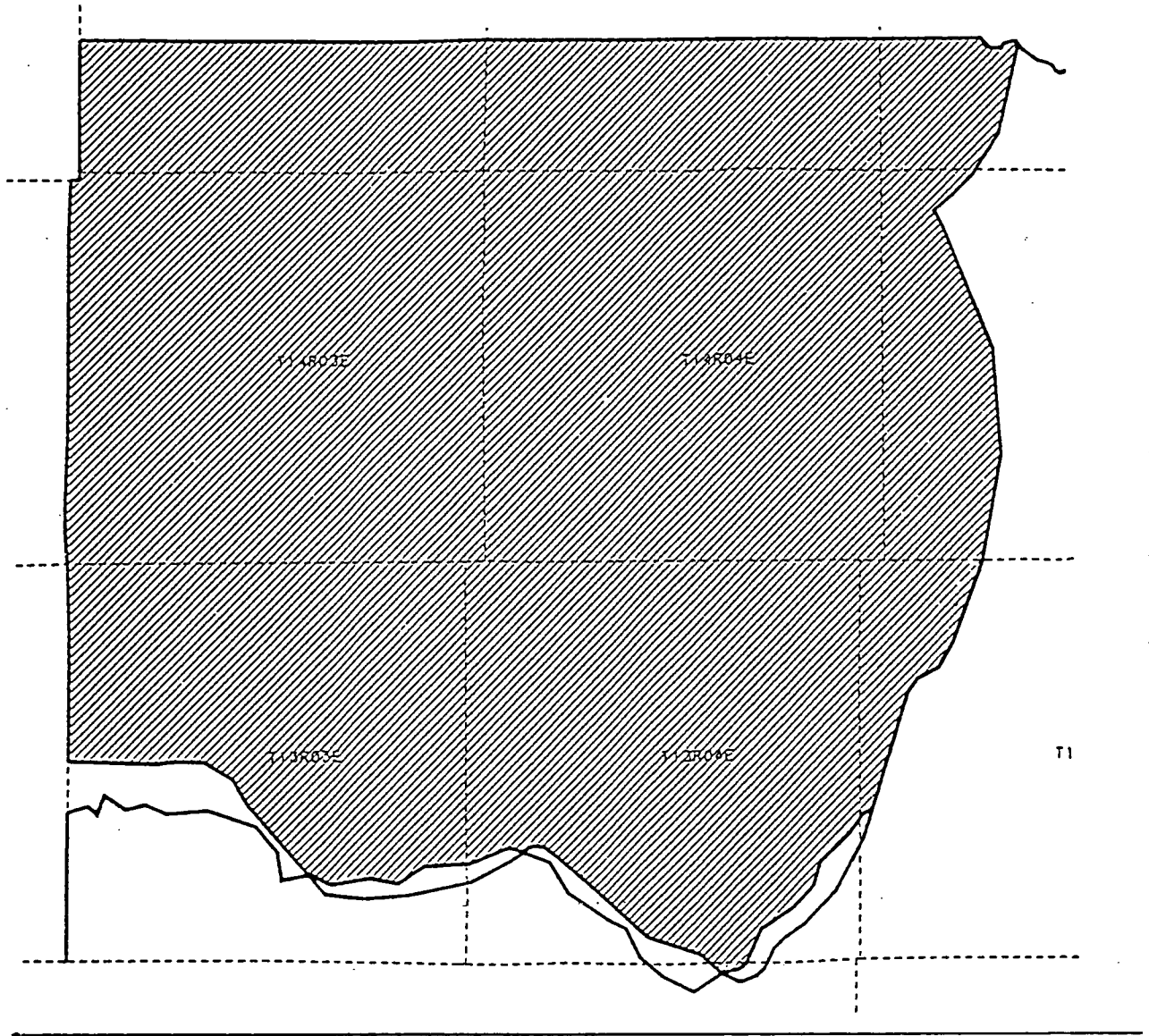
I-90 East/Teaway

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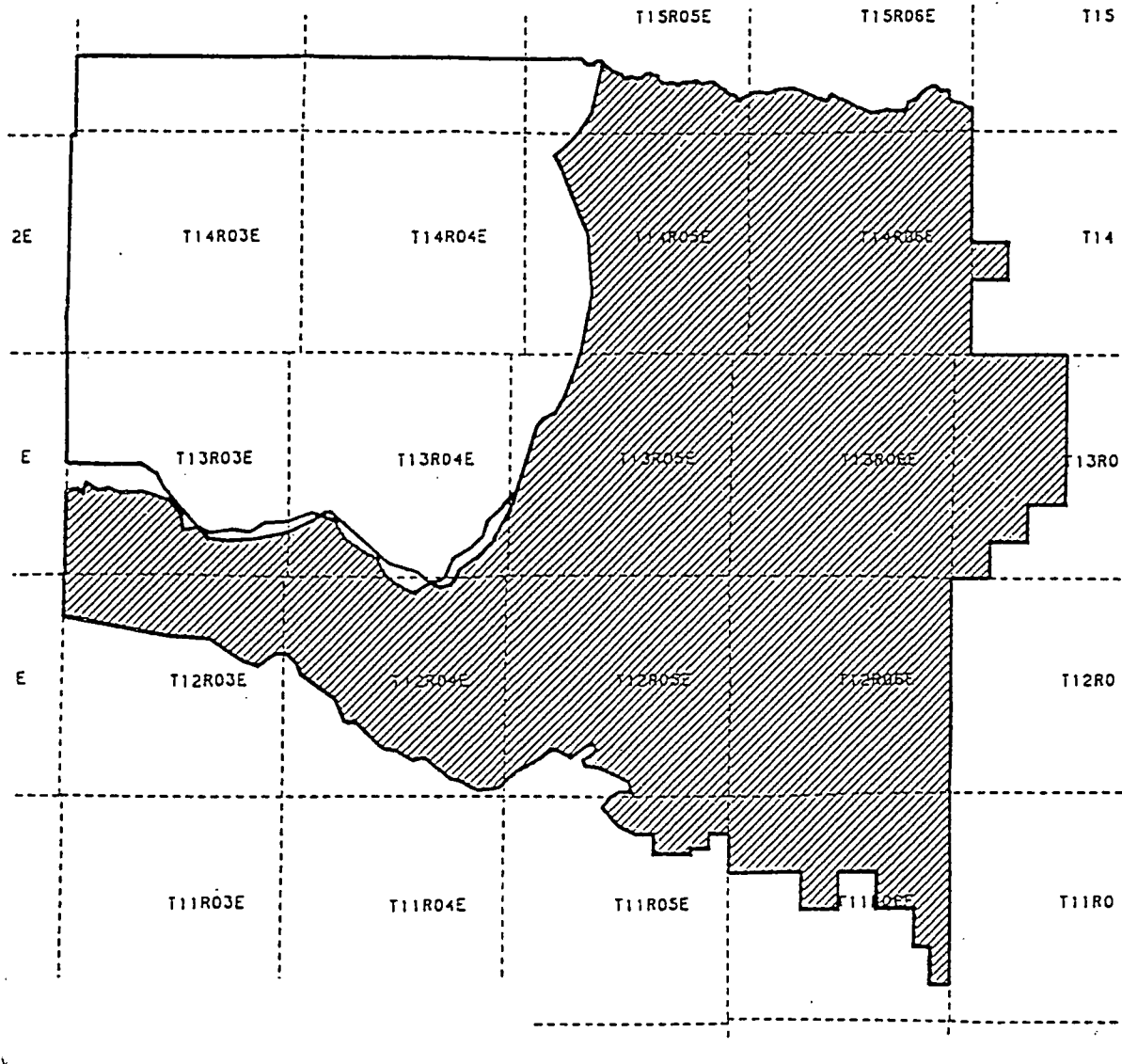


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Mineral Block



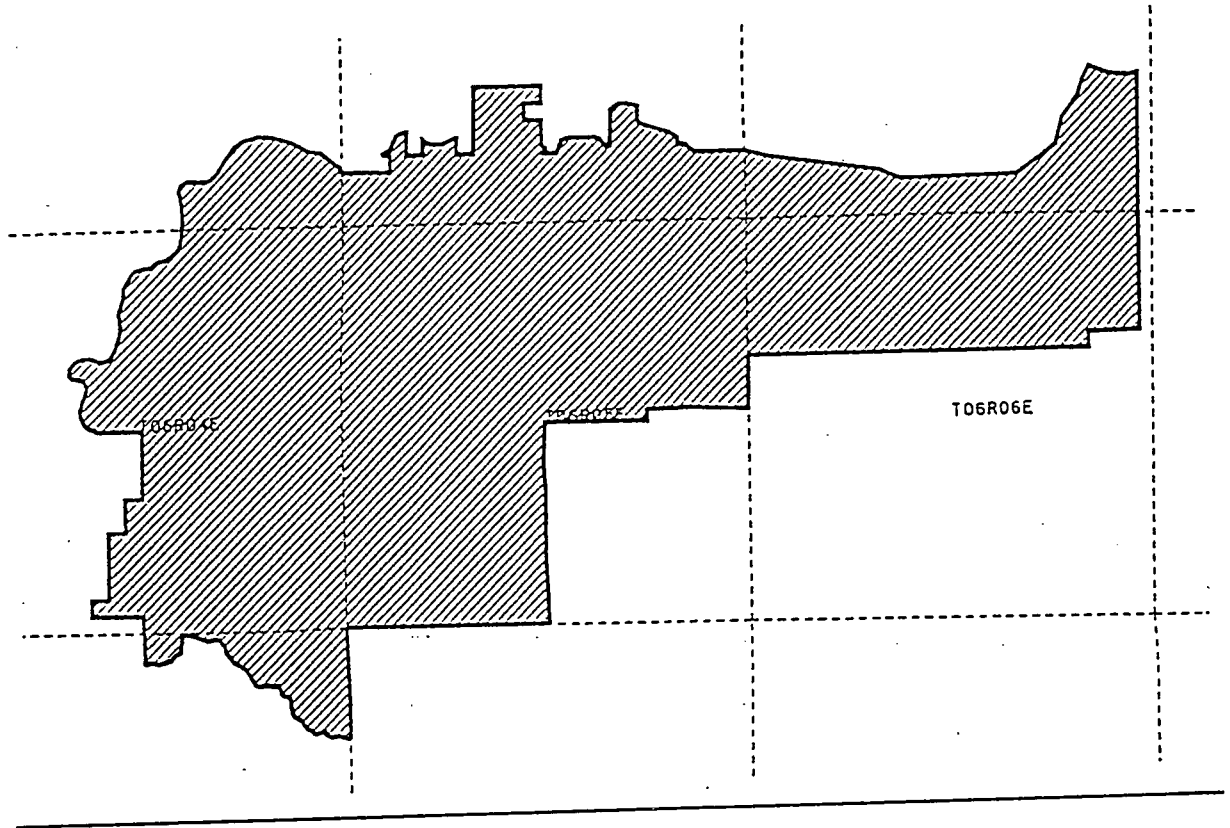
Mineral Link



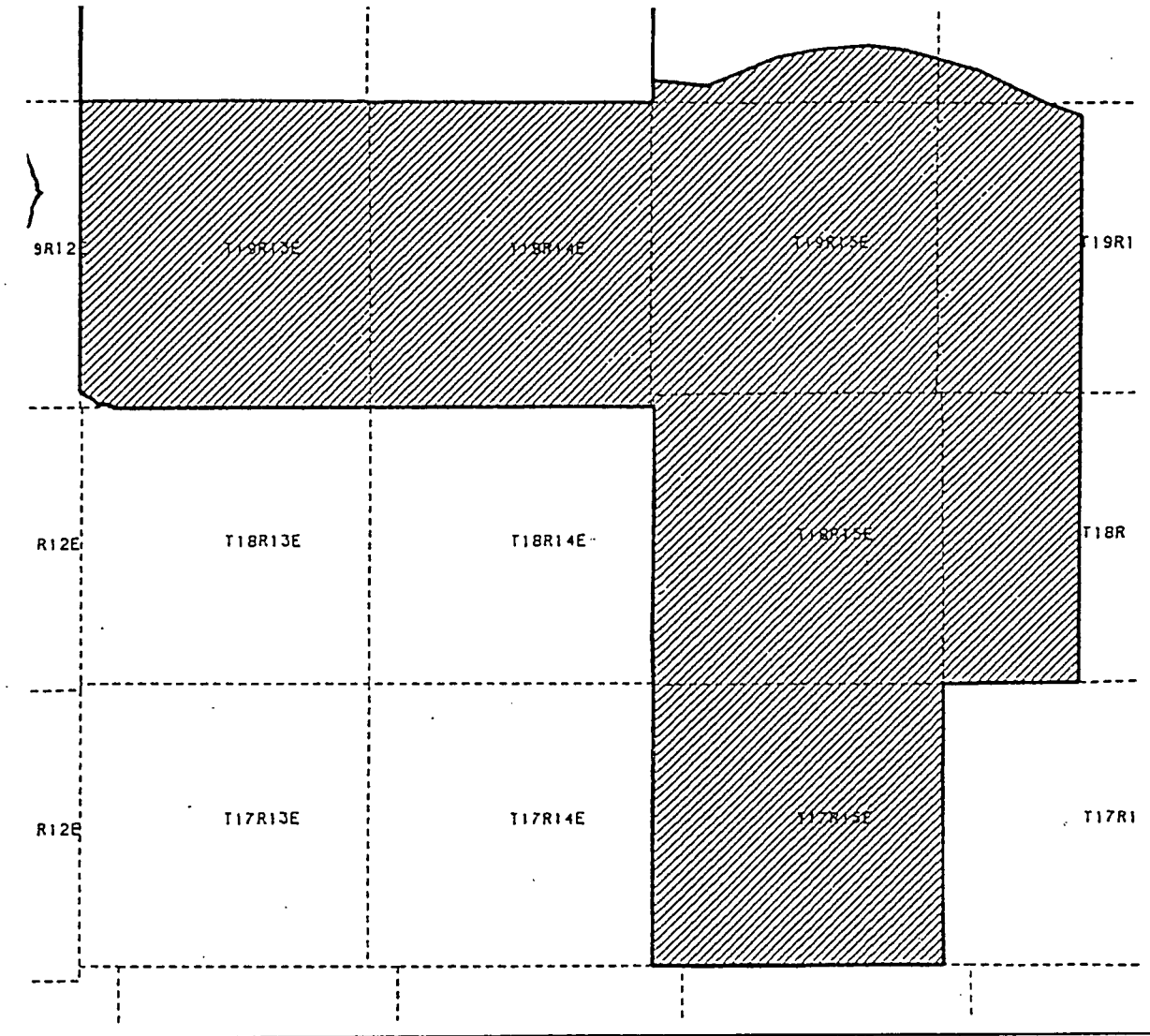
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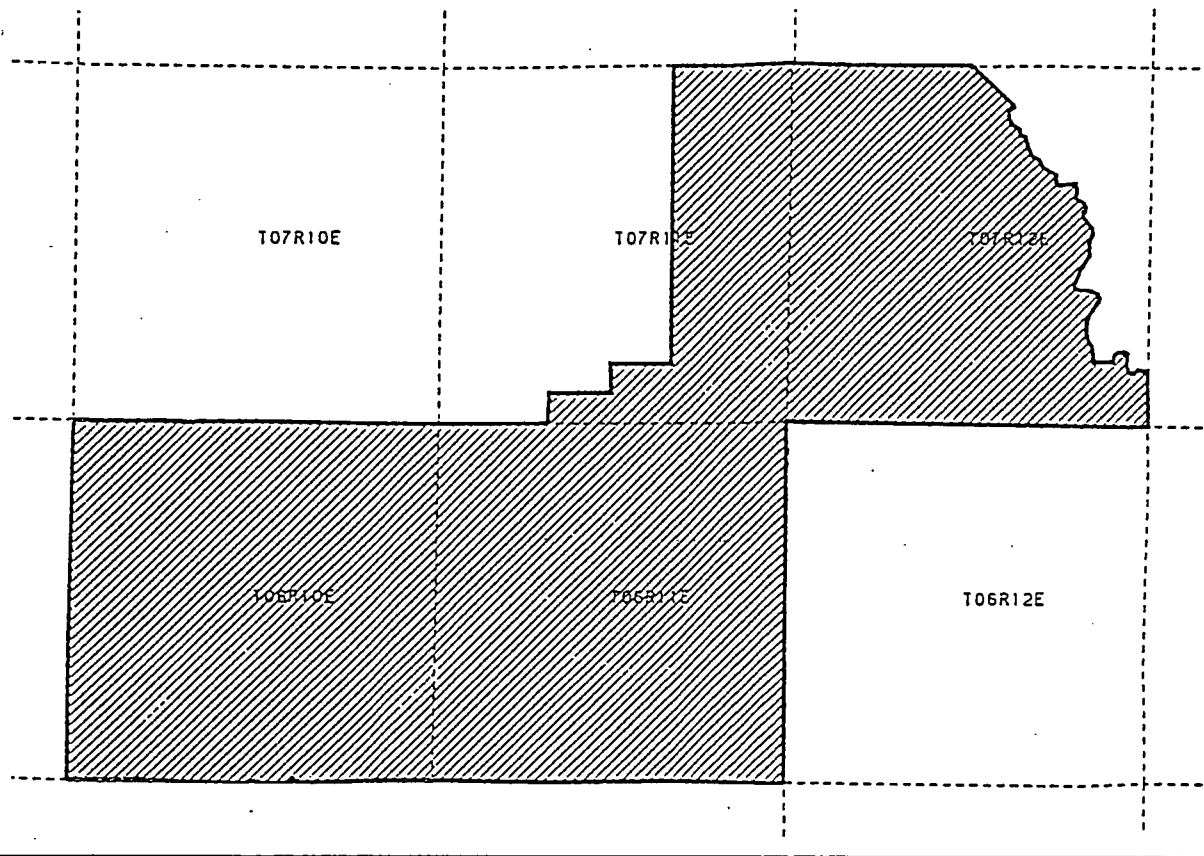
Taneum



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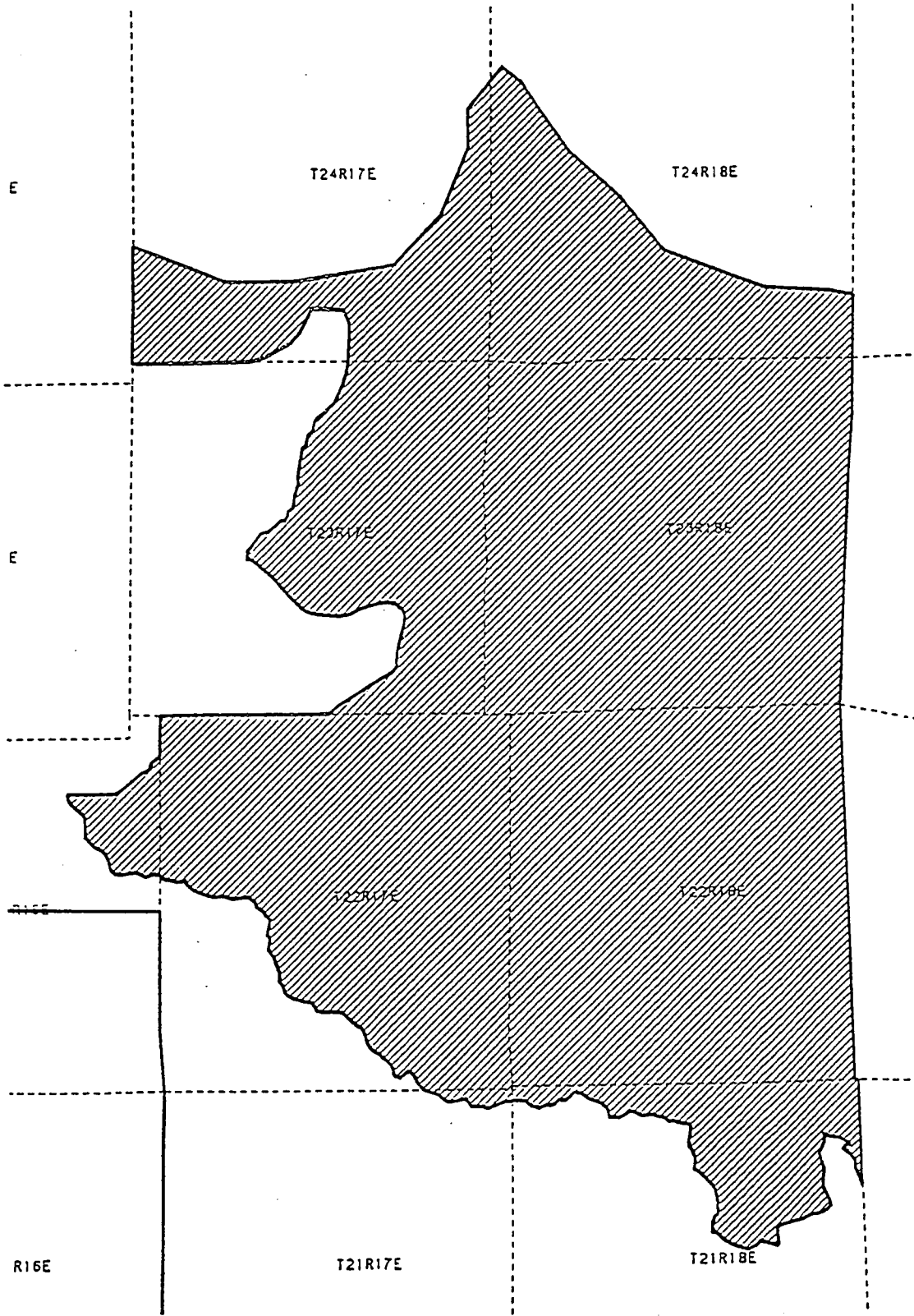
PROPOSED

White Salmon



North Blewett

PROPOSED

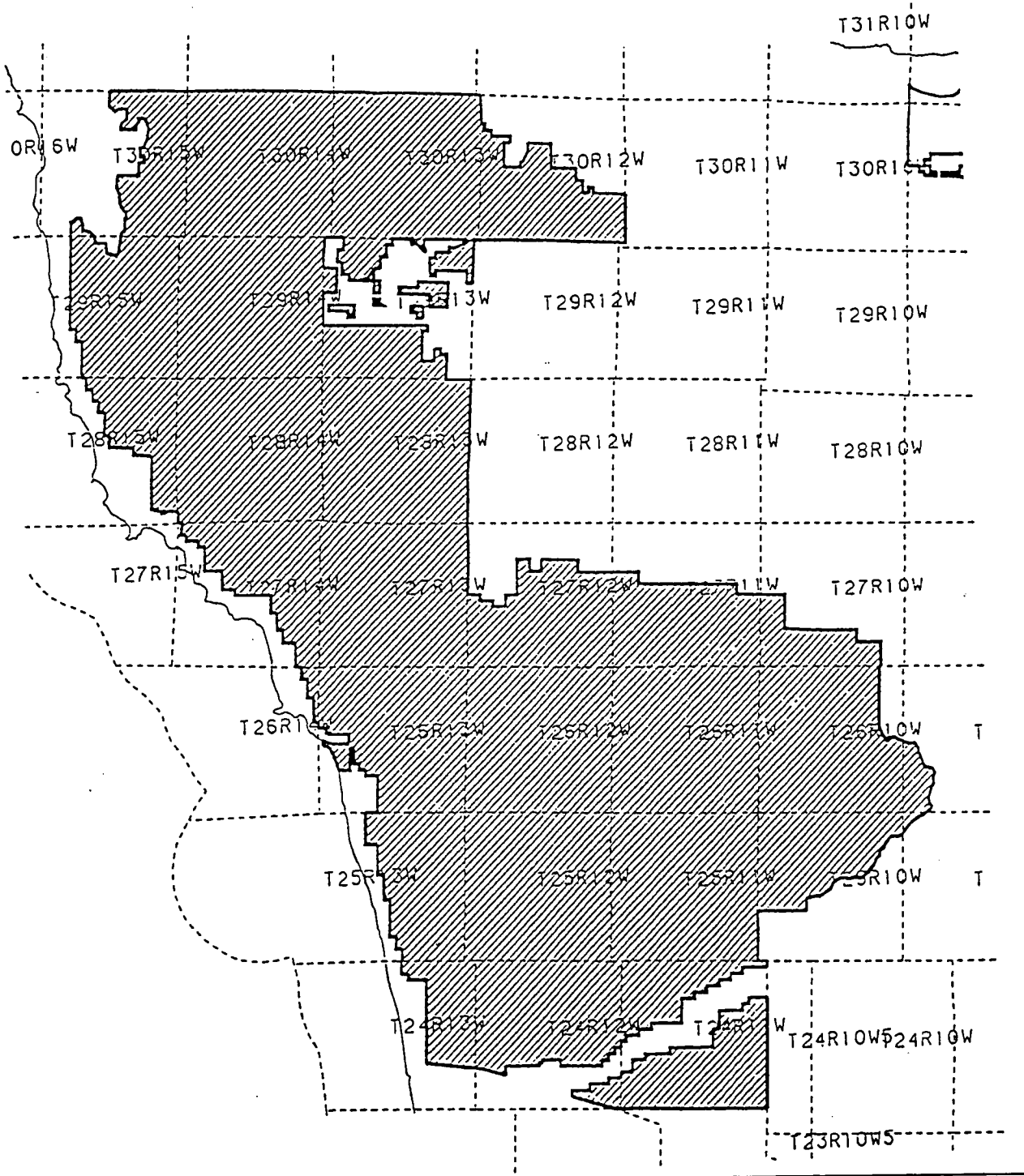


Southwest

PROPOSED



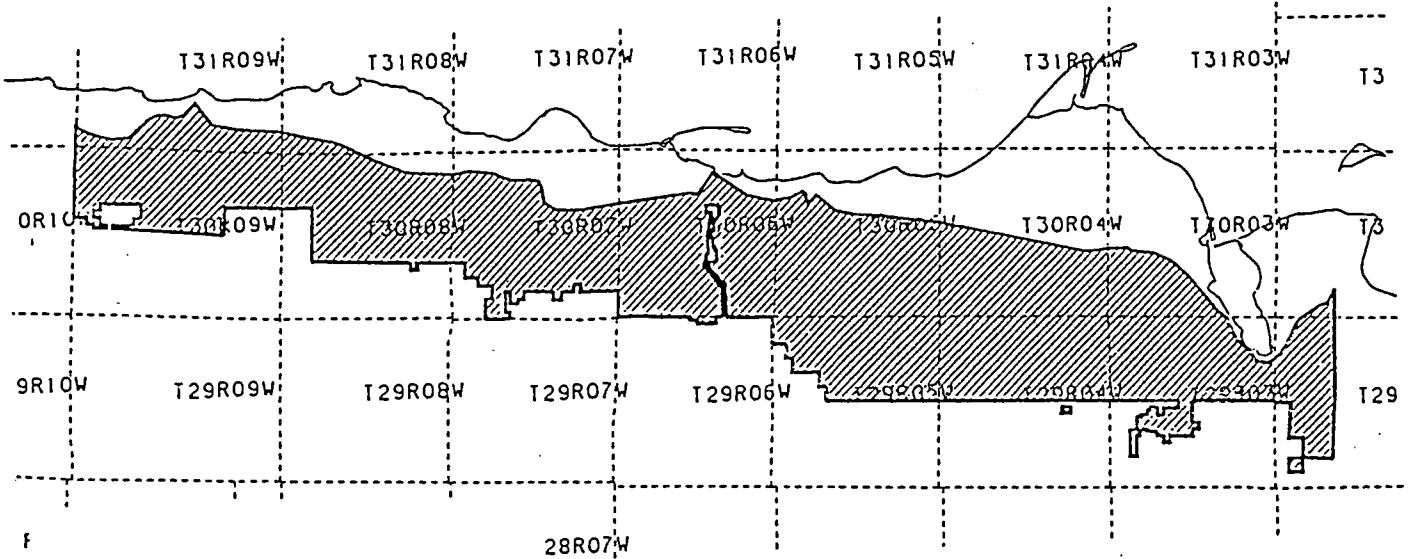
Hoh/Clearwater



PROPOSED

North Olympic Coast

PROPOSED



"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.

"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.

"Modified submature and modified young forest marginal habitat" includes habitat that results from forest practices which meet the following standards:

- The operation shall be conducted in compliance with an operations plan or site plan for the northern spotted owl site center; and

- The operations plan or site plan shall, as a secondary objective, promote the retention and/or the development of suitable spotted owl habitat; and

- The forest practice shall maintain the structural habitat characteristics required for the habitat class (i.e., submature habitat or young forest marginal habitat) that existed before harvest. Any such forest practice shall require a site specific special wildlife management plan as outlined under WAC 222-16-080(2); and

- Modified habitat shall not be considered suitable for two years following modification. In order to determine whether habitat has been degraded, field inspection of modified habitat by the department is required. If at the two-year post treatment inspection, the habitat is determined degraded, no additional modification shall be permitted on any designated spotted owl habitat associated with the site until an equivalent amount of habitat has been restored or added to the site from a comparable or better location; and

- No more than five percent of that portion of a landowner's land which is considered suitable spotted owl habitat essential to a northern spotted owl site center shall be in transition, i.e., considered unsuitable as a result of modification within the past two years, or if over two years, which has not received a department inspection and approved as suitable.

"Northern spotted owl site center" means the location documented by the department of fish and wildlife for Status 1, 2 or 3 northern spotted owls. The department shall rely upon the department of fish and wildlife for the determination of status based on the following definitions:

Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.

Status 2 Two birds, pair status unknown - the presence or response of two birds of the opposite sex where pair status cannot be determined and where at least one member must meet the resident 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 multiple responses over several years (e.g., two responses in year one and one response in year two, for the same general area).

"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.

"Old-forest habitat" means habitat that provides all of the characteristics needed by northern spotted owls for nesting, roosting, foraging and dispersal. Such habitats are characterized by greater abundance of prey, trees with broken tops and large cavities while exhibiting greater horizontal and vertical diversity. See the forest practices board manual for the characteristics.

"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.

"Provincial median home range radii" means for the Olympic province a 2.7 mile radius; for the western Cascades province a 2.0 miles radius; for the eastern Cascades province a 1.8 mile radius.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"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 management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"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.

"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 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.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**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.

"**Submature habitat**" means habitat that provides all of the characteristics needed by northern spotted owls for roosting, foraging and dispersal. Such habitats are characterized by moderate abundance of prey. See the forest practices board manual for the characteristics.

"**Suitable spotted owl habitat**" means forest stands which meet the definitions of old-forest habitat, submature habitat or young forest marginal habitat. Dispersal habitat will contain both suitable and unsuitable forest conditions.

"**Threatened or endangered species**" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"**Timber**" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"**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 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: Irrigation 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.

"**Young forest marginal habitat**" means habitat that provides some of the characteristics needed by northern spotted owls for roosting, foraging and dispersal. Such habitats are characterized by the presence of some of the characteristics that provide roosting opportunities and/or are associated with healthy prey populations. See the forest practices board manual for the characteristics.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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 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 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 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 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 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 wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides (~~on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.~~

~~This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.~~

~~The department shall rely upon the department of wildlife for the determination of status based on the following definitions:~~

~~Status 1 Pair or reproductive — the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.~~

~~Status 2 Two birds, pair status unknown — the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1~~

~~member must meet the resident single requirements.~~

~~Status 3 Resident territorial single — the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area))).~~

(i) Within important northern spotted owl landscapes:

(A) On suitable northern spotted owl habitat within 0.7 miles of a northern spotted owl site center; or

(B) On old-forest habitat within the provincial median home range radii of a northern spotted owl site center; or

(C) On submature or young forest marginal suitable spotted owl habitat within the provincial median home range radii of a northern spotted owl site center where the forest practice will result in degraded habitat, provided that proposed forest practices that will result in modified submature or modified young forest marginal habitat beyond 0.7 miles from a spotted owl site center are not critical wildlife habitat (state); or

(ii) Outside important spotted owl landscapes on the seventy acres of suitable spotted owl habitat which includes a northern spotted owl site center. The seventy acres shall be selected based on the most contiguous habitat of the highest class (i.e., old forest habitat first, submature habitat second, young forest marginal last).

(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.

(2) A site specific special wildlife management plan (~~including a bald eagle site management plan under WAC 232-12-292,~~) developed by the landowner is preferred and shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with (~~and approved by,~~) the department of fish and wildlife and approved by the department. The opinion of the department of fish and wildlife shall be given substantial weight in the decision to approve or disapprove. Appeals of the plan shall be to the director of the department of fish and wildlife and the supervisor of the department or directly to the forest practices appeals board. Appeals must be made within thirty days of the department's decision. For the northern spotted owl the following levels of planning shall be considered as a site specific special wildlife management plan:

(a) Beyond 0.7 miles from a spotted owl site center an operation specific plan which will result in modified submature habitat or modified young forest marginal habitat but not degraded habitat; or

(b) A spotted owl site management plan which considers all essential life requisites to maintain the viability of the northern spotted owl site center; or

(c) A landscape level management plan which considers all essential life requisites to maintain the viability of the existing multiple northern spotted owl site within the landscape.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific

forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) 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 wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of 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 15 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)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) 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 wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 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 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.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by 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).

AMENDATORY SECTION (Amending WSR 92-23-056, filed 11/17/92, effective 12/18/92)

WAC 222-24-030 Road construction. (1) **Right of way timber.** Merchantable 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:

(i) Loose stumps, logs or chunks containing more than 5 cubic feet in the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

(ii) 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.

(iii) 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.

*** (5) Channel clearance.** Clear stream channel of all debris and slash generated during operations prior to the removal of equipment from the vicinity, or the winter season, whichever is first.

*** (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 outsloping 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 flood level of a Type 1, 2, 3, or 4 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 flood level of Type 1, 2, 3, or 4 Waters or in other 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.

(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.

(10) Road construction, operation of heavy equipment (except hauling), and blasting shall not be allowed within 0.25 mile of a northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-050 Felling and bucking. *** (1) Falling along water.**

(a) No trees will be felled into Type 1, 2 and 3 Waters, or Type A or B Wetlands except trees which cannot practically and safely be felled outside the stream, lake or pond using techniques in general use and these trees must then be removed promptly.

Such felling and removing in Type 1, 2 or 3 Waters shall comply with the hydraulic project approval of the departments of fisheries or wildlife.

(b) Within riparian management 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.

(c) Trees may be felled into Type 4 Water if logs are removed as soon thereafter as practical. See forest practices board manual guidelines for clearing slash and debris from Type 4 and 5 Water.

*** (2) Bucking in water.**

(a) No bucking or limbing shall be done on trees or portions thereof lying between the banks of Type 1, 2 or 3 Waters or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water.

(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) Felling and bucking shall not be allowed within 0.25 mile of a northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-060 Cable yarding. *** (1) Type 1, 2 and 3 Waters.** No timber shall be cable yarded in or across a Type 1, 2 or 3 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 departments of fisheries or wildlife.

*** (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 and 4 Waters shall not be removed or unnecessarily disturbed without approval of the departments of fisheries or 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 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 or 3 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) The operation of heavy equipment shall not be allowed within 0.25 mile northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center.

NEW SECTION

WAC 222-30-065 Helicopter yarding. Helicopter operations shall not be allowed within 0.25 mile northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center. Helicopter operations shall maintain a minimum above-ground-level altitude of five hundred feet when flying over designated "critical" spotted owl habitat.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-070 Tractor and wheeled skidding systems. *(1) **Typed waters and wetlands.**

(a) Tractor and wheeled skidders shall not be used in Type 1, 2 or 3 Water, except with approval by the department and with a hydraulic project approval of the departments of fisheries or 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.

*(2) **Riparian management zone.**

(a) Logging will be permitted within the zone. However, any use of tractors, wheeled skidders, or other 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 in or through the riparian management zone is necessary, the number of skidding routes through the zone shall be minimized.

(c) Logs shall be skidded 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.

(b) Where feasible logs shall be skidded 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.

*(4) **Deadfalls.** Logs firmly embedded in the bed or bank of Type 1, 2, 3 or 4 Waters shall not be removed or unnecessarily disturbed without hydraulic project approval of the departments of fisheries or wildlife.

*(5) **Moisture conditions.** Tractor and wheeled skidders shall not be used on exposed erodible soils or saturated soils when soil moisture content is so high that unreasonable soil compaction, soil disturbance, or wetland, stream, lake or pond siltation would 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 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.

*(8) **Skid trail maintenance.** 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.

*(9) **Slope restrictions.** Tractor and wheeled skidders shall not be used on slopes where in the opinion of the department this method of operation would cause unnecessary or material damage to a public resource.

(10) The operation of heavy equipment shall not be allowed within 0.25 mile of a northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center.

NEW SECTION

WAC 222-30-075 Hauling. The following limits on timber, rock, or other forest practices related hauling shall apply within 0.25 mile northern spotted owl site center located during current survey season, between March 1 and August 31. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center:

(1) At all times of the day vehicle speed shall be limited to fifteen miles per hour; and

(2) Timber hauling shall be limited to one hour after official sunrise to one hour before official sunset; and

(3) All reasonable attempts shall be made to minimize traffic within suitable habitat, attempt to route traffic through nonhabitat; or

(4) The forest practice is in compliance with a disturbance avoidance plan.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-100 Slash disposal or prescribed burning. (1) **Slash disposal techniques:**

*(a) Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and riparian management zones and on sites where the department determines that a particular method would cause unreasonable risk to 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 zones, slash disposal shall be by hand, unless approved by the department. Scarification shall not be allowed within wetlands. Machine piling is discouraged in 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, 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) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see WAC 332-24-360).

(3) **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) **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 or 4 Waters, to above the 50-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-year flood level of Type 1, 2, 3 or 4 Waters, slash disposal is required. See the forest practices board manual for "Guidelines for clearing slash and debris from Type 4 and 5 Waters."

*(5) **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, 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) Burning shall not be allowed within 0.25 mile of a northern spotted owl site center located during current survey season, between March 1 and July 31. Burning shall not be allowed within 0.7 mile of a northern spotted owl site center between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. The disturbance avoidance plan should not allow smoke concentration within 0.25 mile of a northern spotted owl site center. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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.** Pesticide treatments within the riparian management zone 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 buffer strip 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.

(b) Apply the initial swath parallel to the buffer strip 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. Avoid applications that might result in drift causing direct entry of pesticides into riparian management zones, Type A and B Wetlands, wetland management zones, and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

(c) Use a bucket or spray device capable of immediate shutoff.

(d) Shut off spray equipment during turns and over open water.

(e) Leave at least a 200 foot buffer strip around residences and 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.

(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 overflight of the area shall be made by the pilot with the marked photos or maps.

(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 aerially 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.

(h) Helicopter operations shall not be allowed within 0.25 mile northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center. Helicopter operations shall maintain a minimum above-ground-level altitude of five hundred feet when flying over designated "critical" spotted owl habitat.

***(6) 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.

***(7) Hand application of pesticides.**

Apply only to specific targets, such as vegetation, trees, stumps, and burrows, or as bait or in traps.

***(8) 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) 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) Daily records - aerial application of pesticides.**

On all aerial applications of pesticides, the operator shall maintain for 3 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.

***(11) 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.

(12) Any application of pesticides shall not be allowed within 0.25 mile of a northern spotted owl site center located during current survey season, between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center.

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.** Fertilizer treatments within a riparian 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 on all Type 1, 2, and 3 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 overflight 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.

(g) Helicopter operations shall not be allowed within 0.25 mile northern spotted owl site center located during current survey season between March 1 and July 31, unless the forest practice is in compliance with a disturbance avoidance plan. Absent a current survey season site center location, distance restriction shall be extended to 0.5 mile from the previously located site center. Helicopter operations shall maintain a minimum above-ground-level altitude of five hundred feet when flying over designated "critical" spotted owl habitat.

***(5) Ground and hand application of fertilizers.** Prevent fertilizer from entering Type A and B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

***(6) 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.

MARbled MURRELET PROPOSED RULES: OCCUPIED STAND APPROACH

AUGUST 4, 1994

AMENDATORY SECTION (Amending WSR 94-17-033, filed 8/10/94, effective 8/13/94)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"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.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"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.

"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.

"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.

"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.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior 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 15.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

PROPOSED

"**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.

"**Department**" means the department of natural resources.

"**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 state line.

"**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.

"**Erodible soils**" means those soils 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) 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.

"**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.

"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 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.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"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.

"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.

"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.

"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.

"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:

• A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occurs:

- A nest is located; or

· Downy chicks or eggs or egg shells are found; or
 · Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
 · Birds calling from a stationary location within the area;

or

· Birds circling above the canopy; or
 · A contiguous forested area which is not 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.

The outer perimeter of the occupied site shall be presumed to be the beginning of any gap greater than three hundred feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat." For sites defined in the above paragraph, it shall be the beginning of any gap greater than three hundred feet wide where one or more of the distinguishing vegetative characteristics important to murrelets is lacking.

The department shall rely upon the department of fish and wildlife for the determination of location of these occupied marbled murrelet sites.

"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.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"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 management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"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.

"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 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.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"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.

"Suitable marbled murrelet habitat" means:

• A contiguous forested area with all of the following characteristics:

• Within forty miles of marine waters;
• Containing at least eight trees per acre equal to or greater than 32 inches dbh;

• At least forty percent of the trees equal to or greater than thirty-two inches are Douglas-fir, western hemlock, western red cedar or sitka spruce; and

• Containing at least two nesting platforms per acre. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than seven inches in diameter and fifty feet or more in height above the ground.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"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 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: Irrigation 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.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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 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

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 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 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 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 wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.

This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.

The department shall rely upon the department of wildlife for the determination of status based on the following definitions:

- Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.
- Status 2 Two birds, pair status unknown - the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.
- Status 3 Resident territorial single - the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area).

(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) Operation of heavy equipment, during the critical nesting season, within an occupied marbled murrelet site.

(iii) Use of aircraft below one thousand three hundred feet above ground level, during the critical nesting season, over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site.

(iv) Harvesting within a three hundred foot wide managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stem stand density of seventy-five trees per acre greater than 6 inches dbh; provided that twenty-five of which shall be greater than 12 inches dbh including five trees greater than 20 inches 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 two hundred feet and extended to maximum of four hundred feet as long as an average of three hundred feet is maintained.

(v) Blasting and slash burning, during the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vi) Harvesting, road construction, operation of heavy equipment, timber hauling, or use of aircraft below one thousand three hundred feet above ground level, during the daily peak activity periods within the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vii) Marbled murrelet critical wildlife habitat (state) shall not include habitat where a current marbled murrelet survey has been conducted and no use of the suitable marbled murrelet habitat by a bird has been detected. Surveys shall be conducted utilizing a survey protocol which is acceptable to the department of fish and wildlife.

(viii) Site status determination and completion of marbled murrelet surveys shall not be a landowner responsibility.

(ix) This rule is intended to be interim and shall be changed as necessary, such as upon completion of a state or federal recovery plan for the marbled murrelet or significant new information.

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner is preferred and shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of fish and wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) 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 wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of 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 15 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)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) 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 wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 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 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.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by 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).

MARBLED MURRELET PROPOSED RULES:

MARBLED MURRELET WATERSHED ADMINISTRATIVE UNIT APPROACH

AUGUST 4, 1994

AMENDATORY SECTION (Amending WSR 94-17-033, filed 8/10/94, effective 8/13/94)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations: "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.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"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.

"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.

"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

PROPOSED

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.

"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.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior 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 15.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"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.

"Department" means the department of natural resources.

"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 state line.

"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.

"Erodible soils" means those soils 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) 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.

"**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.

"**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 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.

"**Green recruitment trees**" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"**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.

"**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.

"**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 - watershed administrative units (MM-WAU)**" means those watershed administrative units containing an occupied marbled murrelet site or in which a marbled murrelet has been detected and documented by the department of fish and wildlife.

"**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.

"**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 a stand of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occurs:

- Stands where a nest is located; or
- Stands where downy chicks or eggs or egg shells are found; or

• Stands where marbled murrelets are detected flying below, through, into or out of the forest canopy within or adjacent to a stand; or

• Birds calling from a stationary location within the stand; or

- Birds circling above the canopy.

The department shall rely upon the department of fish and wildlife for the determination of location of these occupied marbled murrelet sites.

"**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.

"**Public resources**" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"**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 management zone**" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"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.

"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 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.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"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.

"Suitable marbled murrelet habitat" means:

• Timber stands with all of the following characteristics:

• Within forty miles of marine waters;

• Containing at least eight trees per acre equal to or greater than 32 inches dbh;

• At least forty percent of the trees equal to or greater than thirty-two inches are Douglas-fir, western hemlock, western red cedar or sitka spruce; and

• Containing at least two nesting platforms per acre. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than seven inches in diameter and 50 feet or more in height above the ground;

• At least (5) (10) (25) acres in size; or

• Any stand identified as an occupied marbled murrelet site documented by the department of fish and wildlife.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"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 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: Irrigation 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.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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 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 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 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 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 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 wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.

This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape

planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.

The department shall rely upon the department of wildlife for the determination of status based on the following definitions:

Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.

Status 2 Two birds, pair status unknown - the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.

Status 3 Resident territorial single - the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area).

(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 in suitable marbled murrelet habitat within a MM-WAU, provided that, marbled murrelet critical wildlife habitat (state) shall not include suitable marbled murrelet habitat within a MM-WAU where a current marbled murrelet survey has been conducted and no use of the suitable marbled murrelet habitat by a bird has been detected. Surveys shall be conducted utilizing a survey protocol which is acceptable to the department of fish and wildlife.

(iii) Operation of heavy equipment, during the critical nesting season, within an occupied marbled murrelet site.

(iv) Use of aircraft below one thousand three hundred feet above ground level, during the critical nesting season, over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site.

(v) Harvesting within a three hundred foot wide managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stem stand density of seventy-five trees per acre greater than 6 inches dbh; provided that twenty-five of which shall be greater than 12 inches dbh including five trees greater than 20 inches 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 two hundred feet and extended to maximum of four hundred feet as long as an average of three hundred feet is maintained.

(vi) Blasting and slash burning, during the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vii) Harvesting, road construction, operation of heavy equipment, timber hauling, or use of aircraft below one thousand three hundred feet above ground level, during the daily peak activity periods within the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(viii) Site status determination and completion of marbled murrelet surveys shall not be a landowner responsibility.

(ix) This rule is intended to be interim and shall be changed as necessary, such as upon completion of a state or federal recovery plan for the marbled murrelet or significant new information.

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner is preferred and shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of fish and wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) 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 wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of 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 15 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)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) 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 wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 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 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.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by 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).

WSR 95-04-082

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

(By the Code Reviser's Office)

[Filed January 31, 1995, 11:35 a.m.]

WAC 296-155-17621, 296-155-17623, 296-155-17652 and 296-155-17654, proposed by the Department of Labor and Industries in WSR 94-15-094, appearing in issue 94-15 of the State Register, which was distributed on August 3, 1994, 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 95-04-091

PROPOSED RULES

PARKS AND RECREATION

COMMISSION

[Filed January 31, 1995, 4:16 p.m.]

Original Notice.

Title of Rule: Environmental interpretation.

Purpose: Establish and set parameters for an environmental interpretation program within state parks.

Statutory Authority for Adoption: RCW 43.51.060, 43.51.395.

Statute Being Implemented: RCW 43.51.415-[43.51.419, 43.51.052.

Summary: Establishes an environmental interpretation program for state parks.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rex Derr, 7150 Cleanwater Lane, Olympia, 98504-2650, (360) 902-8606.

Name of Proponent: Washington State Parks and Recreation Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The environmental interpretation program will provide services, materials, publications, and/or facilities to enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage. The program will be funded by fees and charges that will offset associated operating expenditures.

Proposal Changes the Following Existing Rules: New rule allows additional public service by providing environmental interpretation with fees and charges going directly to state parks.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. Not required by chapter 19.85 RCW.

Hearing Location: Aberdeen City Hall, Chamber Room, 200 East Market, Aberdeen, WA 98520, on March 10, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Susan Zemek by March 3, 1995, TDD (360) 664-3133, or (360) 902-8562.

Submit Written Comments to: Rex Derr, FAX (360) 586-5875, by March 3, 1995.

Date of Intended Adoption: March 10, 1995.

January 31, 1995
Sharon Howdeshell
Office Manager

AMENDATORY SECTION (Amending WSR 94-23-024, filed 11/7/94, effective 1/1/95)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Boat launch" shall mean any facility located in a state park area designated for the purpose of placing or retrieving any vehicle-born or trailer-born watercraft into or out of the water.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping unit" shall mean a group of people (one or more persons) that is organized, equipped and capable of sustaining its own camping activity.

"Commission" shall mean the Washington state parks and recreation commission.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission.

"Emergency area" is an area in the park separate from the designated overnight camping area, which may be used for camping between the hours of 9 p.m. and 8 a.m. when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELC), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELC)" shall mean those ((designated)) specialized facilities (((formerly called resident group camps))), designated by the director, designed to promote outdoor ((camping)) recreation experiences and environmental education ((by groups in a residential setting. A group can be a formalized group or an organized collection of families wishing to camp or use the ELC. ELCs are located at Camp Wooten, Columbia County; Brooks Memorial State Park, Kllickitat County; Sun Lakes State Park, Grant County; Deception Pass State Park, Island and Skagit Counties; Fort Flagler State Park, Jefferson County; Millersylvania State Park, Thurston County; Moran State Park, San Juan County; Fields' Spring State Park, Asotin County; and Sequim Bay State Park, Clallam County)) in a range of state park settings.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hanggliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Popular destination park" shall mean any state park designated by the director as a popular destination park because, it is typically occupied to capacity by Thursday or Friday night during the high use season and the typical park user plans to stay more than one night.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that more than one hundred persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 43.51.170, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

Camping at a given park for more than twenty days within a thirty-day time period May 1 through September 30; or thirty days within a sixty-day time period October 1 through April 30. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping unit shall be limited to ten consecutive nights May 1 through September 30 and fifteen consecutive nights October 1 through April 30 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal and flush comfort station. Each campsite includes a camp stove and picnic table.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and

specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation area as defined in RCW 43.51.655 and as regulated under chapter 352-36 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 43.51.456.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

AMENDATORY SECTION (Amending Resolution No. 67, filed 4/15/83)

WAC 352-32-037 (~~Reservations for~~) Environmental learning centers. (1) All (~~reservations for~~) ELCs (~~use~~) are (~~to be made through the ELC Reservation Office,~~) reservable by contacting Washington State Parks and Recreation Commission, 7150 Cleanwater Lane, Olympia, WA 98504(~~, except for reservations for schools and school districts for weekdays, excepting legal holidays, during the period the day after Labor Day until the day before Memorial Day. In the latter case, reservations are to be made and coordinated through the office of the superintendent of public instruction. Applications for all other reservations shall be in writing indicating dates and ELC desired on a form provided by the ELC reservation office~~) and paying the appropriate fees and deposits. Use of ELCs shall be on a first-come-first-served basis if the facility is not reserved.

(2) Applications for overnight use of an ELC by any user group, for a maximum of seven consecutive days, during the period from Memorial Day to Labor Day, inclusive (summer season), (~~should~~) shall be filed with the ELC reservation office by September (~~1st~~) 8th of the year next preceding the summer season for which the reservation application is made. (~~Applications submitted prior to September 1 will not be accepted for other than the upcoming summer season.~~) As many applications as are desired may be filed (~~, so long as in the aggregate they do not constitute a request by any one group to use a given ELC for longer than seven consecutive days. The seven consecutive day limitation shall apply in all cases, except where prior existing contract with the state specifies otherwise or after filling initial requests for up to seven days from all groups requesting reservations, space remains available~~). Applications thus submitted by September (~~(+)~~) 8th will be confirmed (and a permit issued) (~~by the following October 31st. The ELC reservation office may schedule and conduct meetings during the period September 1 to October 31st for those requesting at the various ELCs to coordinate scheduling and confirm reservations using (b) through (d) below, in order, to set confirmation priorities~~).

In the event of more than one application for the same dates and ELC, the following priorities, in order, shall be observed:

(a) The group which does not already have a confirmed reservation for the ELC.

(b) The group which has utilized the ELC for the greatest number of consecutive preceding years immediately prior to the year presently being scheduled.

(c) The group which has utilized the ELC the greatest number of previous years.

(d) The group which has utilized the ELC the greatest number of times (during the summer months).

Applications received after September ((+) 8th will be considered on a space available basis ((using the prioritization process)).

~~(3) ((Applications for overnight use of an ELC on holidays and weekends during other than the summer season may be made at any time up to 12 months in advance of the dates requested, and will be confirmed on a first come first served basis.~~

~~(4) Applications for day use of an ELC during the summer season, or on holidays and weekends during other than the summer season, may be submitted at any time, but will not be confirmed any sooner than two weeks prior to the requested dates. Assignments will be made on a first come first served basis.~~

~~(5) A deposit of \$25, up to a maximum of \$150, for each day of requested ELC use is required to be submitted with the reservation application form. Deposits must be made by check or money order, made payable to the Washington state treasurer, and should indicate on their face the name of the user group and requested ELC. Deposits will be applied toward final camp fees incurred, or will be returned if no confirmation is made.~~

~~(6) Cancellation by user of any confirmed reservation must reach the ELC reservation office 60 days prior to the scheduled arrival date as stated on the application or permit, or the deposit will be forfeited.) A facility use fee schedule is available by contacting the ELC Reservation Office, Washington State Parks and Recreation Commission, 7150 Cleanwater Lane, P.O. Box 42650, Olympia, WA 98504-2650.~~

AMENDATORY SECTION (Amending WSR 94-23-024, filed 11/7/94, effective 1/1/95)

WAC 352-32-250 Standard fees charged. The following fees shall be charged in all parks operated by the Washington state parks and recreation commission: *Provided, however,* That the director has the authority to discount fees to a maximum of 50% below the fee amounts listed or referenced in this section in order to take advantage of marketing opportunities to encourage use and increase revenues. Any such discounts shall be effective for a limited period of time less than one year in duration. The director may consider the following factors in discounting fees:

- Prevailing rates for comparable facilities;
- Day of the week;
- Season of the year;
- Amenities of the park area and site;
- Demand for facilities; and

Such other considerations as the director deems appropriate.

(1) Overnight camping - standard campsite: \$10.00 per night;

(2) Overnight camping - utility campsite: \$15.00 per night. Payment for utility campsite will be collected whether utility hookups are actually used or not, except when otherwise specified by a ranger. The electrical hookup surcharge reference in WAC 352-32-252(3) shall be \$3.00 per night;

(3) Overnight camping - primitive campsite: \$5.00 per night for nonmotorized vehicle and \$7.00 per night for motorized vehicle;

(4) Reservation fee: As specified in WAC 352-32-035;

(5) Overnight camping - multiple campsites: Where campsites are designated and posted as a "multiple campsite," an individual may rent the multiple campsite by paying the multiple campsite fee. The multiple campsite fee will be calculated by multiplying the standard utility or primitive campsite fee, as applicable, by the number of individual campsites to be used in the designated multiple campsite;

(6) Group camping area - certain parks: \$1.00 per person for groups of 20 or more per day and/or night; nonrefundable reservation/registration fee - \$25.00. Camping units must pay the primitive campsite fee or other appropriate fee based on facilities available;

~~(7) Environmental (learning center overnight camping: \$6.00 per camper per night;~~

~~(a) Camp Wooten environmental learning center during the season the swimming pool is operational: \$7.25 per camper per night;~~

~~(b) Environmental learning center day use only: \$2.00 multiplied by the minimum capacity established for each environmental learning center or \$2.00 for each member of the group whichever is higher;~~

~~(c) A late check in fee of \$50.00 shall be charged if arrival is more than one hour after the scheduled check in time, unless the group contacts the park ranger prior to scheduled check in time in order to reschedule the check in)) interpretation.~~

(a) Service fees will be established by the director in order to recover, to the maximum extent practicable, all direct and indirect costs of environmental interpretation services on a program-wide basis based on anticipated attendance.

(b) Material and publication fees will be established by the director. All material and publication fees will be deposited in the parks improvement account to be used for purposes specified in RCW 43.51.052.

(c) Facility use, including environmental learning center fees, will be established by the commission. A facility use fee schedule is available by contacting Washington State Parks and Recreation Commission, 7150 Cleanwater Lane, P.O. Box 42650, Olympia, WA 98504-2650;

(8) Hot showers: \$.25 for a maximum of six minutes shower time;

(9) Electric stoves: \$.25 for thirty minutes cooking time;

(10) Adirondacks - not to include those located in ELC areas: Same as fee charged for full utility campsite. Occupancy shall be limited to the number of built-in bunks provided;

(11) Extra vehicle overnight parking fee: \$5.00 per night for each additional unhitched vehicle in excess of the one recreational vehicle allowed at each campsite: *Provided*, An extra vehicle overnight parking fee shall not be imposed when the recreational vehicle and the towed vehicle arrive at the park hitched together, and after the camper has registered for and occupied the assigned campsite either the recreational vehicle or the towed vehicle remain parked at the campsite for the duration of the camper's stay;

(12) Marine park moorage facilities - see WAC 352-12-020 and 352-12-030;

(13) Overnight camping - emergency camp area: The fee shall be the standard campsite fee.

(14) Unattended vehicle overnight parking permit: \$5.00 per night per vehicle. Unoccupied vehicles parked overnight in designated areas must register and pay the nightly permit fee. The permit must be prominently displayed in the vehicle;

(15) Boat launch permit fee - \$4.00 per day per watercraft for use of all designated boat launches with hard surface ramps, maintained bathrooms, parking areas, and docking facilities. \$3.00 per day per watercraft for use of all other designated boat launches with hard surface ramps. Boat launch permit shall not be required for:

(a) Vehicles registered for camping or overnight mooring in the park containing the boat launch area;

(b) Vehicles of persons using any recreational housing or conference facilities at Fort Worden State Park;

(c) Vehicles of persons holding limited-income senior citizen, disability or disabled veteran passes;

(d) Vehicles displaying a valid annual boat launch permit;

(16) Annual boat launch permit fee - \$40.00 per boat launching vehicle per calendar year. Valid January 1 - December 31 at any launch designated by the commission. Permit must be displayed as instructed on permit backing;

(17) Trailer dump station fee - \$3.00 per use: Fee shall not be required for registered camping vehicles in the park containing the dump station;

(18) Popular destination park fee - \$1.00 surcharge for use of standard or utility campsite located in a popular destination park during the period of April 1 through September 30;

(19) Water trail site permits -

(a) Unlimited use within the calendar year, annual fee to be set by the director after consultation with the water trail advisory committee, based on a cumulative charge of \$1.00 per site available for public use at the start of the calendar year;

(b) One day/night use within the calendar year, annual fee to be set by the director after consultation with the water trail advisory committee, based on a cumulative charge of \$.35 per site available for public use at the start of the calendar year;

(c) For children under 13 years of age the permits shall be issued at no cost;

(d) Water trail permits issued to persons by another state or Canadian province will be honored provided that a similar reciprocal provision for Washington water trail permit holders is issued by that state or province;

(e) Water trail permits will be issued to holders of Washington state parks passes (WAC 352-32-251) for the applicable discounts;

(20) A surcharge of \$5.00 per collection shall be assessed for any staff collected fee at a self-registration overnight facility;

(21) Group day use facilities - a minimum daily permit fee of fifty dollars for groups of 20 to 50 persons, plus additional fifty dollar increments as the group increases by increments of 50 people;

(22) Group facilities deposit - for groups of 20 to 50 persons, this deposit shall be \$50. For groups of 51 to 100 persons, this deposit shall be \$100. For groups of 101 to 500 persons, this deposit shall be \$250. For groups in excess of 500, this deposit shall be \$500;

(23) Fort Worden recreational and conference center - see WAC 352-32-25001 and 352-32-25002;

(24) Filming within state parks - see chapter 352-74 WAC.

These fees do not apply in those circumstances set forth in WAC 352-32-280 and 352-32-285 as now or hereafter amended.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-32-036 Environmental learning centers.

**WSR 95-04-096
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS**

[Filed February 1, 1995, 8:51 a.m.]

Original Notice.

Title of Rule: Tariffs, and pilotage rates for the Grays Harbor pilotage district.

Purpose: To establish a Grays Harbor pilotage district annual tariff.

Other Identifying Information: WAC 296-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: RCW 88.16.035.

Summary: The rule would set the tariff to be charged for pilotage services in the Grays Harbor pilotage district for the 1995 tariff year at a rate five percent higher than the 1994 tariff year.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pilotage Commission, 1008 Western Avenue, Seattle, 464-7818.

Name of Proponent: Grays Harbor Pilots Association, private.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage district expire April 30, 1995. New rates must be set annually.

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

PROPOSED

Explanation of Rule, its Purpose, and Anticipated Effects: The rule as proposed by the Grays Harbor Pilots Association would increase the tariff for pilotage services in the Grays Harbor pilotage district by five percent.

Proposal Changes the Following Existing Rules: The proposed rule is a five percent increase over the existing tariff. The board may adopt a rule that varies from the proposed rule upon consideration of presentations from other interested parties and the public.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. The proposed rule is a required annual revision to the rates charged for pilotage services. The application of the five percent increase is clear in the proposed tariff shown below and represents a minor economic impact on shipping costs.

Hearing Location: Eikum Conference Room, 801 Alaskan Way, Pier 52, Seattle, WA 98104-1487, on March 9, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Peggy Larson by March 6, 1995, (206) 464-7818.

Submit Written Comments to: Larry Vognild, Chair, FAX (206) 464-6368, by March 2, 1995.

Date of Intended Adoption: March 9, 1995.

January 31, 1995
Charles F. Adams
Assistant Attorney General

AMENDATORY SECTION (Amending WSR 94-05-006, filed 2/3/94, effective 3/6/94)

WAC 296-116-185 Tariffs, and pilotage rates for the Grays Harbor pilotage district.

CLASSIFICATION OF PILOTAGE SERVICE RATE

Piloting of vessels in the inland waters and tributaries of Grays Harbor:

Each vessel shall be charged according to its draft and tonnage. The draft charges shall be ~~\$(55.95)~~ 58.75 per meter (or ~~\$(17.02)~~ 17.87 per foot) and the tonnage charge shall be ~~\$(0.1784)~~ 0.1873 per net registered ton. The minimum net registered tonnage charge is ~~\$(624.27)~~ 655.48. The charge for an extra vessel (in case of tow) is ~~\$(356.74)~~ 374.58.

Boarding fee:

Per each boarding/deboarding from a boat ~~\$(269.15)~~
282.61

Harbor shifts:

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage ~~\$(447.50)~~
469.88

Delays per hour ~~\$(106.71)~~
112.05

Cancellation charge (pilot only) . . . ~~\$(178.36)~~
187.28

Cancellation charge (pilot boat only) ~~\$(535.09)~~
561.84

Travel allowance:

Boarding or deboarding a vessel off Grays Harbor entrance ~~\$(82.82)~~
86.96

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid ~~\$(624.28)~~ 655.49 for each day or fraction thereof, and the travel expense incurred ~~\$(624.28)~~
655.49

Bridge transit:

Charge for each bridge transited . . . ~~\$(195.90)~~
205.70

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

Adopted ~~((1-27-94))~~ 3-09-95
Filed ~~((2-03-94))~~ 3-24-95
Effective 0001 Hours ~~((3-06-94))~~ 5-01-95 through 2400 Hours ~~((4-30-95))~~ 4-30-96

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 95-04-097
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**
[Filed February 1, 1995, 8:52 a.m.]

Original Notice.

Title of Rule: WAC 460-80-315 Washington uniform franchise offering circular.

Purpose: To amend WAC 460-80-315 in compliance with the Federal Trade Commission adoption of the disclosure requirements of the Uniform Franchise Offering Circular (UFOC) as adopted by the North American Securities Administrators Association, Inc. (NASAA) on April 25, 1993.

Statutory Authority for Adoption: RCW 19.100.250.
Statute Being Implemented: RCW 19.100.030 (4)(a), [19.100].040.

Summary: Adopt UFOC disclosure requirements as amended by NASAA on April 25, 1993.

Reasons Supporting Proposal: To promote uniformity with other franchise registration states and the Federal Trade Commission which have adopted for use the UFOC of April 25, 1993.

Name of Agency Personnel Responsible for Drafting: Brad Ferber, 210 11th Street S.W., 3rd Floor West, (360)

PROPOSED

902-8760; Implementation: John L. Bley, 210 11th Street S.W., 3rd Floor West, (360) 902-8700; and Enforcement: Deborah Bortner, 210 11th Street S.W., 3rd Floor West, (360) 902-8760.

Name of Proponent: Department of Financial Institutions, Securities Division, governmental.

Rule is necessary because of federal law, 16 CFR Part 436.

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 460-80-315 currently adopts the Uniform Franchise Offering Circular (UFOC) as amended by the North American Securities Administrators Association (NASAA) on October 9, 1988. The disclosure format has since been amended, and the Federal Trade Commission and other franchise registration states have adopted the UFOC as amended by NASAA on April 25, 1993. Changes to the format include the requirement that franchisors use plain English in disclosure, expanded use of tables to identify fees, initial investment and other obligations and expanded disclosure of litigation, affiliates, risk factors and government regulation particular to the franchise being offered and sold.

Proposal Changes the Following Existing Rules: The UFOC as adopted by NASAA on April 25, 1993, is intended to result in improved disclosure to potential purchasers of franchises. Changes in the UFOC were formally adopted by NASAA after extensive discussion among state securities administrators, industry groups, and other interested persons.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. Amendment of WAC 460-80-315 is proposed to comply with the Federal Trade Commission adoption of the disclosure requirements of the UFOC of April 25, 1993. The 1993 revised version of the UFOC was approved by the Federal Trade Commission on December 30, 1993.

Hearing Location: Third Floor West Conference Room, 210 11th Street S.W., Olympia, WA 98504, on March 8, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Darlene Bamer by March 8, 1995, TDD (360) 664-8126.

Submit Written Comments to: P.O. Box 9033, Olympia, WA 98507-9033, FAX (360) 586-5068, by March 8, 1995.

Date of Intended Adoption: March 24, 1995.

January 31, 1995
John L. Bley
Director

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

WAC 460-80-315 Washington uniform franchise offering circular. To implement the disclosure requirements of RCW 19.100.030 (4)(a) and 19.100.040, the director adopts the Uniform Franchise Offering Circular (UFOC) as amended by the North American Securities Administrators Association (NASAA) on ~~((October 9, 1988))~~ April 25, 1993.

WSR 95-04-099
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)
[Filed February 1, 1995, 9:18 a.m.]

Original Notice.

Title of Rule: Condom standards.

Purpose: To extend the expiration date of condoms from three to five years.

Other Identifying Information: WAC 246-891-020 and 246-891-030.

Statutory Authority for Adoption: RCW 18.64.0005 [18.64.005].

Summary: [No information supplied by agency.]

Reasons Supporting Proposal: For state residents to be adequately protected and [have an] adequate supply of condoms to prevent disease.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Donald Williams, Olympia, 753-6834.

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: To extend the date of condoms from three to five years, in order for the residents of the state of Washington to have an adequate supply to prevent disease.

Proposal Changes the Following Existing Rules: It will extend the expiration date from three to five years.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. Small businesses will not be adversely affected by the change in these rules.

Hearing Location: University of Washington, Mangusen Health Sciences Center, Seattle, Washington, on March 15, 1995, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Lisa Salmi, Board of Pharmacy by March 8, 1995, (360) 753-6834.

Submit Written Comments to: Donald Williams, Board of Pharmacy, by March 8, 1995.

Date of Intended Adoption: March 15, 1995.

January 31, 1995
Donald Williams
Executive Director

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-891-020 Conditions for the sale of condoms. Condoms sold in this state must meet the following conditions:

(1) All condoms shall be individually sealed in plastic, foil or a comparable type seal to protect the product from deterioration due to exposure to air.

(2) The container in which the condom is sold to the purchaser shall bear the date of manufacture or shall bear an expiration date not more than ~~((three))~~ five years after the date of manufacture. Condoms may not be sold in this state ~~((three))~~ five years after the date of manufacture. Condoms bearing an expiration date may not be sold in this state after their expiration date. Condoms not bearing an expiration

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date may not be sold in this state more than five years after the date of manufacture.

(3) All consumer packages containing one or more individually wrapped condoms shall contain easily understood directions for use.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-891-030 Condom standards. All condoms shall meet the following standards:

~~(1) (Rubber condoms (elastic material) shall be capable of withstanding inflation with one cubic foot of air. They shall be free from holes, imperfect rings and blisters.~~

~~(2) Nonrubber condoms (nonelastic material) shall be of suitable length, not patched, and shall be free from grease or any foreign substances that may be used as a filler for hiding imperfections or discolorations.)~~ Latex rubber condoms shall comply with applicable United States Food and Drug Administration requirements current at the time of manufacture.

(2) Condoms made from materials other than rubber shall conform to applicable United States Food and Drug Administration requirements current at the time of manufacture.

WSR 95-04-100
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 1, 1995, 9:21 a.m.]

Original Notice.

Title of Rule: Radioactive waste-use of commercial disposal site, WAC 246-249-020 Site use permit and 246-249-080 Naturally occurring material (NORM).

Purpose: Rules govern generators and brokers using the commercial disposal site.

Statutory Authority for Adoption: Chapter 70.98 RCW.

Statute Being Implemented: Chapter 70.98 RCW.

Summary: The proposed change to WAC 246-249-020 requires a point of origin inspection of suspended generators to ensure compliance with all applicable requirements and regulations. The rules governing NORM disposal, as outlined in WAC 246-249-080, are proposed to be modified by limiting the amount of NORM and accelerator produced radioactive materials placed in the commercial disposal site. An emergency provision is also proposed.

Reasons Supporting Proposal: The proposed changes to WAC 246-249-020 and 246-249-080 reflects current state policy for low level radioactive waste.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: T. R. Strong, Building 5, Airdustrial Park, Tumwater, Washington, (360) 586-8949.

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: Chapter 246-249 WAC, Radioactive waste—Use of the commercial disposal site, provides rules for the disposal of waste at any commercial disposal facility in the state of

Washington. Two sections of this chapter are proposed to be revised to reflect current state policy. The anticipated effects will be limiting the amount of NORM and accelerated [accelerator] produced radioactive materials disposed in the commercial disposal site. Requiring a point of origin inspection as proposed in WAC 246-249-020 will increase compliance with applicable rules.

Proposal Changes the Following Existing Rules: The proposed revisions to WAC 246-249-080 include limiting the amount of NORM and accelerator produced radioactive materials disposed at a commercial LLRW disposal site with an emergency provision included. The site use permit section, WAC 246-249-020, proposal requires a point of origin inspection of suspended generators.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. There are no small businesses in Washington state expected to be economically impacted by the proposed revisions to WAC 246-249-080. Analysis indicated the point-of-origin inspection economic impact on small businesses is minor and may even be beneficial.

Hearing Location: Richland Public Library, 955 Northgate Drive, Richland, WA, Gallery Room, on March 7, 1995, at 10-11 a.m.; and at the Airdustrial Park, Department of Health, Building 5, Tumwater, Washington, Conference Room, on March 8, 1995, at 10-11 a.m.

Assistance for Persons with Disabilities: Contact 1-800-525-0127 ext. 753-3469, TDD (206) 664-0064.

Submit Written Comments to: Ann Foster, Rules Coordinator, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890, by March 6, 1995.

Date of Intended Adoption: March 8, 1995.

January 31, 1995

Bruce Miyahara
Secretary

AMENDATORY SECTION (Amending Order 187, filed 8/7/91, effective 9/7/91)

WAC 246-249-020 Site use permit. (1) Each generator and each broker of (~~low-level~~) radioactive waste shall possess a valid and unencumbered site use permit prior to the shipment of such waste-to, or the disposal of such waste at any commercial disposal facility in the state of Washington and shall have complied with the permit requirements of the department of ecology.

(2) Suspension or revocation of permit.

(a) The failure of one or more packages in a shipment of waste to be in compliance with one or more of the requirements of the license issued to the commercial low-level radioactive waste disposal site operator, Title 246 WAC, the United States Nuclear Regulatory Commission, the United States Department of Transportation, or conditions of the disposal site operator's radioactive materials license may cause the suspension of the site use permit of the responsible generator and/or broker.

(b) The site use permit of a generator and/or broker may be suspended or revoked if any other licensed commercial low-level radioactive waste disposal site in the United States has refused to accept waste from that generator or broker.

(c) A suspended site use permit may be reinstated provided:

(i) The generator and/or broker submits a quality assurance procedure designed to correct previous problems and to achieve and maintain compliance with all applicable requirements; and

(ii) A point-of-origin inspection by the state of Washington, of the generator's and/or broker's waste management activities, indicates compliance with all applicable requirements and regulations.

(3) Brokered shipments.

(a) It is the broker's responsibility to assure that a generator of waste has a valid unencumbered site use permit prior to shipment of waste for disposal.

(b) A broker, as consignor, assumes coresponsibility with a generator for all aspects of that generator's waste until it can be documented to the department's satisfaction that the broker's sphere of responsibility was limited.

AMENDATORY SECTION (Amending Order 187, filed 8/7/91, effective 9/7/91)

WAC 246-249-080 (~~(Large volumes of)~~) Naturally occurring and accelerator produced material. (1) In addition to requirements for a disposal site use permit contained in WAC 246-249-020, (~~(permittees and)~~) single generators of radioactive wastes shall obtain the specific approval of the department prior to offering naturally occurring or accelerator produced radioactive material, excluding source material, wastes for disposal (~~(which: (a) Contain naturally occurring radioactive material, excluding source material, (b) contain an average total concentration less than, or equal to, 0.002 microcuries per gram, and (c) total in excess of 1,000 cubic feet per year).~~)).

(2) Applications for specific departmental approval shall describe:

(a) The chemical processes which produce or have produced the waste(~~(s)~~);

(b) The volume of waste to be disposed (~~(per year, (c) an estimate of how long the permittee's disposal needs will continue, (d) actions which have been taken or are planned which could decrease the volume of the waste, and (e) alternative methods of disposal which have been considered by the permittee);~~) and

(c) The radionuclides in the waste.

(3) A request for specific approval may be approved if the department finds the material to be: (a) (~~(Consistent with disposal site volume utilization, (b))~~) In conformance with conditions of all licenses and permits issued to the disposal site operator, (~~((e) more appropriately disposed at Hanford than by alternative means consistent with the concepts contained in P.L. 99-240 Low Level Radioactive Waste Policy Amendments Act of 1985, and (d))~~) (b) consistent with protection of the public health, safety and environment.

(4) Naturally occurring and accelerator produced radioactive material, excluding source material, shall be limited to a total site volume of no more than eight thousand six hundred cubic feet per calendar year, and individual generators shall be limited to an annual total volume of one thousand cubic feet per calendar year.

(5) Emergency provision. If the annual total site volume has been met or if an individual generator's annual total volume has been met, and an emergency situation

occurs, permittees and single generators of radioactive wastes may seek emergency approval from the secretary to dispose of naturally occurring or accelerator produced radioactive materials, excluding source materials, in excess of volume limitations. The secretary may approve emergency disposal if he or she finds that an emergency exists based upon the circumstances described by the applicant and the real or potential impact on the public health and safety as determined by the department and that approval of such additional disposal is consistent with protecting the public health and safety of the citizens of the state of Washington.

(6) Denial by the department of a request for specific approval shall not be interpreted as an approval to dispose of naturally occurring or accelerator produced radioactive material without regard to its radioactivity.

WSR 95-04-106

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed February 1, 1995, 10:31 a.m.]

Original Notice.

Title of Rule: Repeal of chapters 51-20, 51-21, 51-22, 51-24, and 51-25 WAC.

Purpose: To repeal the 1991 editions of the Uniform Building Code and Building Code Standards, Uniform Mechanical Code, and Uniform Fire Code and Fire Code Standards, published by the International Conference of Building Officials.

Statutory Authority for Adoption: RCW 19.27.074.

Statute Being Implemented: RCW 19.27.020, [19.27].031, [19.27].074 and chapter 34.05 RCW.

Summary: The proposed rule repeals the 1991 Uniform Building Code and Standards, Mechanical Code, and Fire Code and Standards, along with all state amendments thereto.

Reasons Supporting Proposal: Repealed codes are superseded by recently adopted 1994 editions, chapter 19.27 RCW.

Name of Agency Personnel Responsible for Drafting and Implementation: Judith Darst, P.O. Box 48300, Olympia, WA 98504-8300, (360) 586-2251; and Enforcement: Local jurisdictions.

Name of Proponent: State Building Code Council, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will repeal the 1991 editions of codes which are superseded by previously adopted 1994 editions. Chapters 51-20 and 51-21 WAC are superseded by chapter 51-30 WAC; chapter 51-22 WAC is superseded by chapter 51-32 WAC; and chapters 51-24 and 51-25 WAC are superseded by chapters 51-34 and 51-35 WAC.

Proposal Changes the Following Existing Rules: Proposal repeals chapters 51-20, 51-21, 51-22, 51-24, and 51-25 WAC.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. Statements were prepared for the previously adopted chapters 51-30, 51-32,

51-34, and 51-35 WAC, which supersede the chapters repealed by this rule.

Hearing Location: General Administration Auditorium, 11th and Columbia Street, Olympia, Washington 98504, on March 10, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Krista Braaksma, 753-5927 by February 24, 1995, TDD (360) 753-2200.

Submit Written Comments to: Gene Colin, Chair, State Building Code Council, P.O. Box 48300, Olympia, WA 98504-8300, FAX (360) 586-5880, by March 9, 1995.

Date of Intended Adoption: March 10, 1995.

January 31, 1995
Gene Colin
Chair

WSR 95-04-111
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed February 1, 1995, 11:26 a.m.]

Original Notice.

Title of Rule: Amend WAC 480-120-530 Emergency services. Docket No. UT-941292.

Purpose: To ensure that any dedicated 911 circuit that is owned, operated or maintained by any local exchange company and interexchange telecommunications company is tested at least once every twenty-four hours and repaired or reported immediately.

Statutory Authority for Adoption: RCW 80.01.040.

Summary: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve McLellan, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA, (360) 753-6451.

Name of Proponent: Washington Utilities and Transportation Commission, 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.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? No. It is anticipated that passage of the rule may reduce operating costs to affected local exchange companies or at a minimum result in no additional costs.

Hearing Location: Commission Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on March 8, 1995, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Cheryl Schlenker by February 24, 1995, TTY (360) 586-8203, or (360) 753-6447.

Submit Written Comments to: Steve McLellan, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, by February 28, 1995.

Date of Intended Adoption: March 8, 1995.

January 31, 1995

Steve McLellan
Secretary

AMENDATORY SECTION (Amending Order R-384, Docket No. UT-921192, filed 2/26/93, effective 3/29/93)

WAC 480-120-530 Emergency services. (1) At least once every twenty-four hours, each local exchange company ((that does not monitor the performance)) and each interexchange telecommunications company owning, operating, or maintaining any portion of any dedicated 911 circuit((s-central office to tandem to public service answering point) on a continuous and automatic basis, shall perform manual operational tests)) shall manually test for continuity such portion of the 911 circuit which it owns, operates, or maintains; provided, however, that the foregoing requirement shall not apply to any dedicated 911 circuit, or portion thereof, with respect to which either (a), (b), or (c) of this subsection, or any combination thereof, is satisfied:

(a) The circuit is carried by a transmission system (e.g., T-1 carrier) that is equipped with one or more alarms to detect loss of signal continuity; or

(b) The circuit is equipped with one or more alarms to detect loss of signal continuity; or

(c) The circuit is automatically tested for signal continuity at least once every twenty-four hours. Any dedicated 911 circuit((s)) found to be defective shall be immediately reported to the primary public safety answering point (PSAP) manager, and ((repaired)) repairs shall be undertaken promptly and pursued diligently by the telecommunications company which has responsibility for operating and/or maintaining the circuit. Nothing in this section shall be construed to require any telecommunications company to test or repair any portion of any dedicated 911 circuit which is not owned, operated, or otherwise maintained by it.

(2) Each local exchange company shall develop and institute by April 1, 1993, a circuit identification and protection program for dedicated 911 circuits. The program shall be fully implemented by July 1994. This program shall ensure that all dedicated 911 circuits and associated electronic equipment serving governmental emergency response agencies are clearly identified as such in every central office and remote switch.

WSR 95-04-113
PROPOSED RULES
HEALTH SERVICES COMMISSION

[Filed February 1, 1995, 11:51 a.m.]

Original Notice.

Title of Rule: Provider selection, termination and dispute resolution.

Purpose: The purpose of this amendment is to add sections WAC 245-04-125 through 245-04-195 establishing a petition process for designation as an essential access provider.

Statutory Authority for Adoption: RCW 43.72.100, 43.72.040(21), 48.43.030 (5)(a).

Statute Being Implemented: RCW 43.72.100, 43.72.040(21), 48.43.030 (5)(a).

Summary: The purpose of this amendment is to establish a petition process whereby providers serving underserved populations could request that a plan that has refused to contract with them be required to offer them a contract.

Reasons Supporting Proposal: The purpose of this amendment is to assure that providers who are essential for access for specific populations are not unfairly excluded from plans' networks on the basis of concerns about the cost or difficulty of serving their traditional client population. Certified health plans will be required to offer a contract to designated essential access providers.

Name of Agency Personnel Responsible for Drafting: Carla Epps, 605 Woodland Square Loop S.E., Lacey, WA 98504-1185, (360) 407-0155; **Implementation and Enforcement:** George Schneider, 605 Woodland Square Loop S.E., Lacey, WA 98504-1185, (360) 407-0045.

Name of Proponent: Washington Health Services Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This amendment establishes a petition process for designation of essential access providers by the Health Services Commission. An essential access provider is defined as a provider who provides access for underserved populations or special populations to one or more health services in the uniform benefits package. The purpose of the rules on essential access providers is to maintain and enhance access to health services for all populations, encourage integration of community-based health resources, and improve the health outcomes of individuals and the community. The anticipated effects of the rules are improved access for underserved populations, increased consumer choice of providers, and improved integration of health care resources.

Proposal Changes the Following Existing Rules: It adds substantive and procedural rules for the petition process for designation of essential access providers to existing rules on provider selection, termination, and dispute resolution.

Has a Small Business Economic Impact Statement Been Prepared Under Chapter 19.85 RCW? Yes. A copy of the statement may be obtained by writing to: Francine Spahr, Health Services Commission, P.O. Box 41185, Olympia, WA 98504, phone (360) 407-0209, or FAX (360) 407-0069.

Hearing Location: Attorney General Conference Room, Building 1, RoweSix, 4224 Sixth Avenue S.E., Lacey, WA 98506, on March 13, 1995, at 4:00 p.m.

Assistance for Persons with Disabilities: Contact Terry Taylor, 407-0153 by March 6, 1995, (360) 407-0152.

Submit Written Comments to: Carla Epps, Health Services Commission, P.O. Box 41185, Olympia, WA 98504, FAX (360) 407-0069, by March 7, 1995.

Date of Intended Adoption: March 23, 1995.

February 1, 1995
Bernadene Dochnahl
Commission Chair

WASHINGTON HEALTH SERVICES COMMISSION

Chapter 245-04 WAC CERTIFIED HEALTH PLANS

PROVIDER SELECTION, TERMINATION, AND DISPUTE RESOLUTION

WAC 245-04-090 Policy statement. (1) RCW 48.43.170 directs the Commission to adopt rules requiring certified health plans to publish general criteria for the selection and termination of providers. These rules set forth a process for the fair consideration of the inclusion of providers in the managed care systems of certified health plans.

(2) These rules are intended to ensure that the criteria used by certified health plans for the selection and termination of providers do not have the effect of improperly excluding particular providers based on the category of provider or the population served by the provider. These rules are also intended to provide a process for including providers in plan networks by requiring plans to inform providers of general selection criteria and by requiring plans to have a process for resolving disputes regarding selection and termination of providers.

(3) Certified health plans shall select providers in a manner allowing consumers access to a full range of providers, promoting the delivery of cost-effective and high quality services, and recognizing that preferences and health care needs of enrollees can be affected by sex, ethnicity, and religion, as well as other factors.

Reviser's note: The above section was filed in the agency's proposal; however, there were no amendments made. Pursuant to the requirements of RCW 34.08.040 it is published in the same form as filed by the agency.

WAC 245-04-100 Selection and termination of health care providers. (1) Each certified health plan shall develop and use criteria to select and terminate health care providers. Criteria for the selection and termination of providers must consider the cultural and economic diversity of the plan's service area. A plan shall not discriminate, as further defined in Chapter 49 RCW, against providers based on certain factors, including but not limited to, race, religion, ethnicity, and language.

(2) Each certified health plan may designate those parts of its provider selection and termination criteria it deems to be proprietary or competitive in nature. The plan must describe the basis for its designation. Disclosure of criteria is proprietary or anticompetitive if revealing them would have the tendency to cause providers to alter their practice patterns in a manner that would harm efforts to contain health care costs. Disclosure of criteria is proprietary if revealing them would cause the plan's competitors to obtain valuable business information.

(3) Upon request, each certified health plan shall make available to anyone its general criteria for the selection and termination of providers.

(4) If a certified health plan uses unpublished criteria to judge the quality and cost-effectiveness of a provider's

PROPOSED

practice under any specific program within the plan, the plan may not reject or terminate the provider participating in that program, until the provider has been informed of the criteria that his or her practice fails to meet and is given a reasonable opportunity to conform to the criteria. An opportunity is reasonable if the plan gives the provider participating in that program written information regarding unmet criteria, including the items examined by the plan in determining the provider had failed to meet the criteria. Once the provider has been given this information, the provider must be allowed a minimum of 120 days to meet the criteria. If the provider fails to meet the criteria after 120 days, the provider may be terminated with 60 days notice.

Reviser's note: The above section was filed in the agency's proposal; however, there were no amendments made. Pursuant to the requirements of RCW 34.08.040 it is published in the same form as filed by the agency.

WAC 245-04-110 Standards for health care provider selection criteria. (1) Whenever a certified health plan uses cost criteria that rely on a profile of a provider's practice patterns in its health care provider selection process, the plan shall:

(a) Also use other criteria, as appropriate, including, but not limited to, location, patient satisfaction, peer evaluation, and quality of care; and

(b) Include adjustments for case mix and severity in a manner that allows consideration of cost criteria in the context of a provider's overall practice. For example, if cost criteria were the only criteria used by a plan in isolation from other factors, a particular provider's practice pattern might appear inefficient and costly. Further review of other factors could reveal that the cost patterns are the result of treating patients with above average health care needs.

(2) The inability of a plan to establish a profile on a provider due to the absence of sufficient claims data or medical encounter information shall not be the sole grounds for a plan to exclude a provider from joining its network.

(3) To meet statutory requirements that plans permit every category of provider to deliver health services included in the uniform benefits package, every plan must include in its selection criteria specific procedures for consideration of all categories of health care providers as defined in RCW 43.72.010(12), in accordance with the following standards:

(a) The provisions of health services is within the provider's permitted scope of practice; and

(b) The provider agrees to abide by certified health plan standards related to:

(i) Provision, utilization review, quality improvement, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(3) Except where the Attorney General makes a determination in accord with RCW 48.43.170 (3)(a) and (b) that a certified health plan's exclusion of providers would result in substantial inability of providers to continue their practice, or where required by any other provision of law, including requirements for service in rural areas, a plan is not required to include in its network all providers who meet the plan's selection criteria.

(4) This chapter shall not be construed to require a federally qualified health maintenance organization to contract with or employ the services of providers or to follow procedures contained herein to the extent that 43 U.S.C. § 300e preempts this chapter.

Reviser's note: The above section was filed in the agency's proposal; however, there were no amendments made. Pursuant to the requirements of RCW 34.08.040 it is published in the same form as filed by the agency.

Reviser's note: The typographical errors in 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.

WAC 245-04-115 Resolution of provider disputes.

(1) All participating provider contracts issued by certified health plans must contain specific provisions for the resolution of disputes arising out of the contract, including but not limited to termination of the contract.

(2) The dispute resolution process must provide a range of mechanisms, beginning with a reasonable, timely and effective means of appealing decisions within the plan. If the dispute cannot be resolved within the plan, the option of using mediation or arbitration, at the request of either party, must be available to resolve a dispute. If the dispute between the provider and the plan relates to enrollee care or treatment, the plan shall provide timely, written notice of the dispute to the enrollee.

(3) A certified health plan must also have a process for the resolution of disputes regarding the plan's decision not to include a provider and shall notify the provider of this process.

(4) The commission will not act to arbitrate or mediate disputes between a provider and a certified health plan regarding the plan's decision not to include a provider or regarding any other dispute between a provider and plan arising under, or by reason of, a provider contract or its termination.

Reviser's note: The above section was filed in the agency's proposal; however, there were no amendments made. Pursuant to the requirements of RCW 34.08.040 it is published in the same form as filed by the agency.

NEW SECTION

WAC 245-04-125 Provisions to assure inclusion of providers essential to community access — Scope and applicability. The provisions of WAC 245-04-130 through WAC 245-04-195 shall govern contracts and conduct among health care providers, health care facilities, and certified health plans. These rules do not apply to intergovernmental agreements.

(1) Nothing in these rules shall be deemed or interpreted to waive, alter or otherwise diminish the sovereign rights of tribal governments to negotiate with certified health plans. Participation in the petition process by tribal governments shall be voluntary and shall not be deemed to prohibit tribal governments from engaging in other negotiation activities with certified health plans.

NEW SECTION

WAC 245-04-130 Definitions. (1) "Applicant" means a health care provider, organization, or agency involved in the delivery of health services.

(2) "Certified health plan" or "plan" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, health maintenance organization as defined in RCW 48.46.020, or an entity certified in accordance with RCW 48.43.020 through 48.43.120.

(3) "Essential access provider" means a provider who provides access for underserved populations or special populations to one or more health services in the uniform benefits package.

(4) "Petition" means the document that shall be filed with the commission by an applicant in order to request designation as an essential access provider.

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.

NEW SECTION

WAC 245-04-135 Policy statement. (1) The commission recognizes that barriers to access to health care services for underserved and special populations will remain during a transition to a reformed system. These rules are intended to establish a process for including providers serving these populations in certified health plans as needed to assure adequate access. A certified health plan must offer contracts to providers designated as essential access providers in the plan's service area.

(2) Because the health services market place is evolving and access barriers vary by community, it would not be appropriate to require plans to include specific categories of providers. The commission finds that the determination of essential access provider status is made most appropriately on a case by case basis with consideration of both the plan's and the provider's ability to meet the needs of a particular population.

NEW SECTION

WAC 245-04-140 General requirements for essential access provider designation. (1) An applicant may petition the commission for designation as an essential access provider. Such petitions shall include information demonstrating:

(a) The applicant is located in a federal or state designated underserved area or provides a substantial amount of direct health services in the uniform benefits package to populations designated as underserved.

(b) The applicant meets one or more of the following criteria:

(i) Is proficient in providing linguistically appropriate services.

(ii) Has developed an explicit culturally and/or developmentally appropriate program for providing access to an underserved population.

(iii) Is capable of providing of primary care services, confidential services and/or services with an impact on public health. Confidential services include services related

to mental health services, family planning, and sexually transmitted diseases. Services with an impact on public health include services related to communicable diseases and environmental exposures.

(c) The applicant has participated in or has demonstrated knowledge of existing community needs assessments for the area or populations served.

(d) The applicant meets the credentialing standards of the plan and is able and willing to comply with the plan's procedures including quality assurance and improvement program and utilization management procedures.

(e) The applicant's services are necessary to assure adequate access for underserved populations to services in the uniform benefits package.

(2) When reviewing an application, the commission will consider whether plans serving the area have demonstrated their ability to assure adequate access without contracting with the applicant such as having existing agreements with other community providers that meet the criteria for essential access provider.

(3) Designation as an essential access provider will identify the specific provider, the scope of services for which plans must contract with the provider, and the underserved geographic areas or population groups whose access to services is protected by the designation.

(4) The commission will review designations annually if requested by the certified health plan.

NEW SECTION

WAC 245-04-145 Procedural rules—Purpose. The purpose of WAC 245-04-150 through WAC 245-04-195 is to set forth the form and procedure for written petitions to the commission requesting designation as an essential access provider.

NEW SECTION

WAC 245-04-150 Form of petition. A petition shall adhere generally to the following form:

(1) At the top of the page shall appear the wording "before the Washington Health Services Commission." On the left side of the page, below the foregoing, the following caption shall be set out "In the Matter of [name of applicant]." Opposite the foregoing caption shall appear the words "petition."

(2) The materials required by WAC 245-04-150 shall be attached to the foregoing.

(3) The petition shall be signed and dated by the entity named in the first paragraph. The original and five (5) copies shall be filed with commission as described in WAC-04-155.

(4) Information required by this chapter may be submitted in hard copy or in machine readable form:

(a) If hard copy, documents shall be submitted and organized by request;

(b) If in machine readable form, the data should comply with specifications acceptable to the commission and attorney general, which will be provided upon request.

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.

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 245-04-155 Contents of requests for written petitions. The following information shall accompany any written petition submitted to the commission:

(1) Identification of parties. Identify all parties to the petition and for each one state:

(a) The name(s) under which it is doing business, or proposes to do business, in Washington;

(b) Its business address(es);

(c) Its type of business organization;

(d) A brief description of the nature or type of business conducted at each of its business locations within the state of Washington; and

(e) The person to whom questions regarding the petition should be directed.

(2) Nature and description of health services and programs provided. State or describe:

(a) The services involved;

(b) The geographic area served;

(c) Whether the same services as listed in (c) above, are currently offered within thirty (30) miles of the geographic area(s) identified in (c), above, and if so, by whom.

(3) Description of how provider will enhance access to health services. The applicant will provide a narrative description of how the services the applicant provides will ensure adequate access to underserved populations.

NEW SECTION

WAC 245-04-160 Submission of information. The applicant submitting a written petition shall direct the written petition to the Chair of the Commission at the Washington Health Services Commission, P.O. Box 41185, Olympia, Washington 98504-1185.

NEW SECTION

WAC 245-04-165 Public notice and comment. (1) The commission may solicit comments from the public on the petition by causing notice to be published in the state register of the subject matter of a petition, and indicating how, when and where persons may comment.

(2) No later than three day after its publication in the state register, the commission shall cause a copy of the notice of a petition to be mailed to each person who has made a request to the agency for a mailed copy of such notice. The commission will charge for the actual cost of providing individual mailed copies of these notices.

NEW SECTION

WAC 245-04-170 Notice of modification or withdrawal of authorization. If at any time, the commission determines that reason exists to revoke or modify a designation of essential access provider, the commission shall immediately notify the applicant in writing. An applicant may submit a new petition or request a review of additional materials in support of its original petition by the commission within thirty (30) days of receipt of the notice. If no

review is requested by the applicant within thirty (30) days of receipt of the notice, the commission shall immediately revoke or modify its authorization.

NEW SECTION

WAC 245-04-175 Adjudicative proceeding—Rules of proceeding. The petition filed with the commission shall constitute an application for an adjudicatory proceeding under RCW 34.05.413. Except as set forth in WAC 245-04-165 through WAC 245-04-195, the commission adopts for its use the Model Rules of Procedure set forth in chapter 10-08 WAC.

NEW SECTION

WAC 245-04-180 Adjudicative proceedings—Notice of hearing. (1) Within thirty (30) days of receipt of a petition, the commission shall notify the applicant of any obvious errors or omissions, request any additional information it requires and is permitted by law to require regarding the application for adjudicative proceeding or petition, and notify the applicant of the name, mailing address, and telephone number that may be contacted regarding the application.

(2) Within sixty (60) days after receipt of the petition, the commission shall commence an adjudicative proceeding by serving notice of hearing on the applicant and all other persons required by RCW 34.05.434 or RCW 34.05.417 (1)(b).

NEW SECTION

WAC 245-04-185 Presiding officer. The determination of the presiding officer for an adjudicative proceeding before the commission shall be governed by RCW 34.05.425.

NEW SECTION

WAC 245-04-190 Commission to retain jurisdiction. Approval or denial of a petition shall be deemed a final order of the commission.

NEW SECTION

WAC 245-04-195 Adjudicative proceedings—Reconsideration. A petition for reconsideration of a final order under RCW 24.05.470 shall be filed with the commission.

WSR 95-04-114

PROPOSED RULES

HEALTH SERVICES COMMISSION

[Filed February 1, 1995, 11:52 a.m.]

Original Notice.

Title of Rule: Health services information system, advisory council.

Purpose: The purpose of the rules is to form a public and private structure for collaboratively overseeing implementation and operation of the health services information system.

Statutory Authority for Adoption: RCW 70.170.100, 70.170.110, 70.170.130, 70.170.140, 43.72.040, 43.72.040(17).

Statute Being Implemented: RCW 70.170.100.

Summary: The statewide health data system will be a decentralized and integrated network of uniform and compatible data systems used by: Providers for delivering health services to their patient; plans for administration and management; purchasers for selecting insurance coverage; consumers for selecting health plans and providers; and legislators and agencies for making critical health policy decisions. The advisory council offers a structure through which diverse data needs across multiple constituencies can be equitably negotiated to the benefit of all, taking into consideration the cost of collecting data and the value the data provides to users. The council also offers a mechanism for garnering needed consumer and private entity advice to the Department of Health as it implements HSIS and to the commission as it establishes datasets for monitoring the health system.

Name of Agency Personnel Responsible for Drafting: Michelle Vest, Policy Analyst, P.O. Box 41185, Lacey, WA 98506, (360) 407-0153; Implementation and Enforcement: George Schneider, Commissioner, P.O. Box 41185, Lacey, WA 98506, (360) 407-0045.

Name of Proponent: Health Services Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of the rules is to form a public and private structure for collaboratively overseeing implementation and operation of the health services information system. The statewide health data system will be a decentralized and integrated network of uniform and compatible data systems used by: Providers for delivering health services to their patients; plans for administration and management; purchasers for selecting insurance coverage; consumers for selecting health plans and providers; and legislators and agencies for making critical health policy decisions. The advisory council offers a structure through which diverse data needs across multiple constituencies can be equitably negotiated to the benefit of all, taking into consideration the cost of collecting data and the anticipated value the data offers to users. The council also offers a mechanism for garnering needed consumer and private entity advice to the Department of Health as it implements HSIS and to the commission as it monitors the health system. The advisory council will have oversight responsibilities over confidentiality, dissemination, and data modeling policies and procedures as well as act within an advisory role in rule-making activities for HSIS. However, rule-making authority continues to reside with the Department of Health and the Health Services Commission.

Proposal does not change existing rules.

Is a Small Business Economic Impact Statement Required by Chapter 19.85 RCW? No.

Hearing Location: Attorney General Conference Room, Building 1, RoweSix, 4224 6th Avenue S.E., Lacey, WA 98506, on March 13, 1995, at 4:00 p.m.

Assistance for Persons with Disabilities: Contact Terry Taylor, (360) 407-0153, by March 6, 1995.

Submit Written Comments to: Michelle Vest, Health Policy Analyst, P.O. Box 41185, Lacey, WA 98506, FAX (360) 407-0069, by March 7, 1995.

Date of Intended Adoption: March 23, 1995.

February 1, 1995

Bernadene Dochnahl
Chair

WASHINGTON HEALTH SERVICES COMMISSION

Washington Administrative Code (WAC) Chapter 245-08

PROPOSED RULES FOR GOVERNANCE AND MANAGEMENT OF HSIS

NEW SECTION

WAC 245-08-010 Definitions. Unless the context requires otherwise, the definitions contained in WAC 245-08-010 apply to the provisions set forth in WAC 245-08-020 through WAC 245-08-990.

(1) "HSIS" means the statewide health services information system and includes both the central sub-system and plan based sub-systems.

(2) "Central Sub-System" means the statewide centralized data repositories that include consolidations of information captured, reported, and used by multiple public and private entities.

(3) "Plan Based Sub-Systems" are the decentralized data repositories for information related to on-going operations and management of patient care services through providers and health plans.

(4) "Council" means the health services information system advisory council.

(5) "Department" means the department of health.

NEW SECTION

WAC 245-08-020 Purpose. The purpose of this chapter is to describe the statewide health services information system, including its administrative oversight structure and to ensure compliance with the provisions of Chapter 70.170 RCW. The statewide health services information system shall include data that supports informed decision making by consumers, providers, health plans, and state agencies. The commission is required to oversee the design, implementation, and operation of the statewide health services information system with the ongoing assistance and counsel of consumers, private entities, and public agencies responsible for collecting, reporting and using health data.

The rules set forth in WAC 245-08-010 through WAC 245-08-990:

(a) secure consumer, public and private participation in the health services information system;

(b) guarantee that health entities contribute to decisions about data that are collected and reported;

(c) ensure that data capture and reporting are administratively efficient with minimal duplication across reporting entities;

(d) achieve balance between competing needs across diverse users of health data; and

(e) ensure that the burdens of data capture and reporting are justified based on cost and the value of information.

NEW SECTION

WAC 245-08-030 Health services information system advisory council. (1) The statewide health services information system shall be guided by an advisory council of representatives from health plans, providers, public agencies, and consumer groups. This council shall be chaired by a voting member of the commission.

(2) Membership of the governing council will include: (a) department of health; (b) office of the insurance commissioner; (c) three consumers; (d) three health plan representatives; (e) three provider representatives; and (f) three ad hoc representatives.

(3) The commission, in collaboration with the department, will select members from a list of candidates whose nominations will be solicited annually through published announcements. Members within each category will be selected based on:

- (a) geographic distribution;
- (b) diversity;
- (c) experience and expertise;
- (d) urban and rural participation; and
- (e) other factors important to the commission.

Advisory council members will serve at the pleasure of the commission for a term of three years. The commission may reappoint the member for a second three year term or appoint a new representative. Each member will be limited to two terms.

(4) The responsibilities of the advisory council are to oversee (a) data standardization; (b) confidentiality and security of all patient, plan, and provider identifiable data; (c) user fees for accessing and disseminating data held in the central sub-system; (d) management and administration of the central sub-system; (e) oversight of HSIS implementation timelines; (f) data dissemination procedures and protocols; and (g) cost/benefit analyses to justify collection of health data.

(5) The commission will be responsible for carrying forward any rule making which may be necessary to implement data policies and standards recommended by the advisory council.

(6) The advisory council may establish committees, providing technical assistance in substantive areas of HSIS design, implementation and custody. The chairs of each committee will participate as voting members of the advisory council throughout the duration of the committee's existence. Upon completion of its specified tasks, the committee may be dissolved by the advisory council.

Reviser's note: The typographical errors in 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 unnecessary deletion mark 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 245-08-040 Advisory council duties. (1) The council shall establish a dictionary of standardized data definitions, processes and procedures to be adopted by all public and private health entities. Use and application of the data dictionary will conform to the following:

(a) all data elements will have a single, standardized definition that all health care entities shall use in abstracting data elements from or reporting data elements to the central sub-system and plan based sub-system, and

(b) the data dictionary will build upon existing data standards and definitions that are consistent with reform and, incorporate national standards if they exist. If needed, the council shall develop policy recommendations for rule making by the commission to implement the data dictionary.

(2) The council shall establish procedures for, and oversee activities for, auditing data accuracy and measuring compliance with data standards among health care reporting entities. The advisory council may recommend that the commission contract with private vendors to carry out audit and compliance procedures. If needed, the advisory council shall develop policy recommendations for rule making by the commission to enforce audit and compliance procedures across all participants in HSIS.

(3) The advisory council shall establish processes and procedures to assure that data capture and reporting requirements do not overburden providers and health care reporting entities. The purpose of the processes and procedures is to assure that data collection requirements are cost justified and provide value to users. The cost/benefit processes will facilitate discussions between:

(a) entities proposing that new or different data be collected; and

(b) entities responsible for collecting and reporting the data.

(4) The advisory council will mediate the discussions and make decisions about adding, deleting and modifying the data dictionary based on the merits and costs of the proposed data collection effort. If needed, the council shall develop policy recommendations for rule making by the commission to implement the data capture and reporting requirements.

(5) The advisory council shall initiate discussions with local, state, and federal agencies which mandate health data reporting requirements. The purpose of the discussions are to:

(a) ensure consistency with the data dictionary;

(b) minimize duplication of data reporting efforts across multiple jurisdictions; and

(c) facilitate discussions on information requirements mandated by external authorities to align the requirements with the data dictionary and data requirements associated with managed care and health reform.

(6) The advisory council shall develop processes and procedures for accessing, disseminating, and disclosing health data for use by

(a) consumers;

(b) providers;

(c) state agencies;

(d) health plans;

(e) researchers; and

(f) purchasers, including employers and other purchasing entities.

(7) Procedures will assure confidentiality of patient identifiable information at all times, and provider confidentiality when appropriate. If needed, the council shall develop policy recommendations for rule making by the commission to facilitate implement the processes and procedures.

(8) The advisory council shall develop processes and procedures for authorizing access to and disclosure of patient or provider identifiable data. Processes and procedures shall be guided by:

(a) the minimum requirements under Title 45 Part 46 of the Code of Federal Regulations related to institutional review boards;

(b) Chapter 42.48 RCW on release of records for research; and

(c) the DSHS/DOH Guide to Policy on Protection of Human Subjects, March, 1990.

(9) The purpose is to assure that users of patient identifiable data have met confidentiality standards for protecting individual patients, and when appropriate individual providers, from unauthorized or inappropriate disclosure of personal information. It is also the purpose of these processes and procedures to assure that use and application of the data are technically and methodologically valid. All entities seeking access to patient and/or provider identifiable data will be subject to the data access and disclosure process and procedures. The advisory council shall develop policy recommendations for rule making by the commission to implement processes and procedures authorizing access to and disclosure of patient or provider identifiable data.

(10) The advisory council shall oversee the budgeting process for the central sub-system, including ongoing monitoring of expenditures and fee collection activities. The council shall be responsible for informing the commission on a quarterly basis of the financial status of the central sub-system.

(11) The advisory council shall oversee the department of health's periodic updates of the statewide health services information data plan to assure that the plan reflects the needs of all data users and is consistent with the HSIS vision as modified by the commission. The updates include revised cost estimates and timelines for implementing HSIS and will be submitted to the commission for review and approval.

(12) The advisory council shall coordinate with the American Indian Health commission and its task force on health data to design, develop, and implement a Native American Health Services Information System.

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 245-08-050 Duties of the chair of the advisory council. The chair of the advisory council shall:

- (a) preside over all meetings of the advisory council;
- (b) oversee the department of health's administration and management of the central sub-system;
- (c) report to the commission on advisory council activities and central sub-system operations; and
- (d) recommend policies for action by the commission.



**WSR 95-02-021
PERMANENT RULES
COLUMBIA RIVER
GORGE COMMISSION**

[Filed December 27, 1994, 11:15 a.m., effective February 1, 1995]

Date of Adoption: December 13, 1994.

Purpose: Amendments clarify specific sections of the land use ordinance.

Citation of Existing Rules Affected by this Order: Amending 350-80-020, 350-80-040, 350-80-070, 350-80-110, 350-80-120, 350-80-130, 350-80-150, 350-80-160, 350-80-190, 350-80-200, 350-80-230, 350-80-270, 350-80-280, 350-80-340, 350-80-370, 350-80-380, 350-80-420, 350-80-430, 350-80-520, 350-80-530, 350-80-540, 350-80-560, 350-80-570, 350-80-600 and 350-80-620; and new section 350-80-025 and 350-80-335.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: 16 USC § 544.

Pursuant to notice filed as WSR 94-20-127 on October 5, 1994.

Changes Other than Editing from Proposed to Adopted Version: Proposed amendments to rules 350-80-080, 350-80-100, and 350-80-550 were not adopted.

Effective Date of Rule: February 1, 1995.

December 23, 1994

Jan Brending

Rules Coordinator

COLUMBIA RIVER GORGE COMMISSION

Chapter 350

Division 80

[Klickitat County] Land Use Ordinance

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

350-80-010. Purposes.

The purposes of the Land Use Ordinance are to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect and support the economy of the Columbia River Gorge by allowing future economic development in a manner that enhances the scenic, cultural, recreational, and natural resources of the Gorge.

350-80-020. Area Affected.

Commission Rule 350-80 shall apply to all lands in Klickitat County, Washington, Clark County, Washington, and Hood River County, Oregon within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act.

Commission Rule 350-80 becomes effective 30 days after adoption and filing by the Columbia River Gorge Commission with the exception of those portions of Commission Rule 350-80 pertaining to the Special Management Areas, which become effective upon concurrence by the Secretary of Agriculture.

[Those portions of Commission Rule 350-80 pertaining to the General Management Area are no longer effective once Klickitat County has submitted a land use ordinance and the Columbia River Gorge Commission finds it consistent with the Management Plan. Those portions of Commission Rule 350-80 pertaining to the Special Management Area remain effective until the Secretary of Agriculture concurs on the ordinances adopted by Klickitat County.]

Those portions of Commission Rule 350-80 pertaining to the General Management Area shall no longer be effective in a county which has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission.

Those portions of Commission Rule 350-80 pertaining to the Special Management Area shall no longer be effective in a county which has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission and concurred on by the Secretary of Agriculture.

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.

350-80-025. Maps.

The Land Use Designation, Landscape Settings, and Recreation Intensity Classes maps adopted by the Columbia River Gorge Commission as part of the Management Plan for the Columbia River Gorge National Scenic Area are hereby incorporated by reference into this land use ordinance.

350-80-030. Review and Approval Required.

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-80, when considered under the applicable procedural and substantive guidelines of this Rule.

350-80-040. Definitions.

As used in Commission Rule 350-80, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) **Accepted agricultural practice:** A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) **Accessory building:** A building or structure whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use.

(3) **Active wildlife site:** A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) **Agency official:** The federal, state, or local agency head or designee who has authority over a proposed project.

(5) **Agricultural structure:** A structure located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(6) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture-related government program.

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.

(c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices.

Agricultural use does not include livestock feedlots.

(7) **Anadromous fish:** Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(8) **Anaerobic:** A condition in which molecular oxygen is absent (or effectively so) from the environment.

(9) **Aquaculture:** The cultivation, maintenance, and harvesting of aquatic species.

(10) **Aquatic area:** The water area of a stream, pond, or lake measured at the ordinary high water mark.

(11) **Archaeological resources:** See cultural resource.

(12) **Archival research:** Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(13) **Bed and breakfast inn:** An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(14) **Best management practices:** Conservation techniques and management measures that

(a) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

(b) minimize adverse effects to groundwater and surface-water flow and circulation patterns; and

(c) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(15) **Biodiversity (SMA):** A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(16) **Boat landing:** Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(17) **Buffer zone:** An area adjacent to a wetland, stream, pond, or other sensitive area that is established and

managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(18) **Building:** Any structure used or intended for supporting or sheltering any use or occupancy.

(19) **Camping or recreational vehicle:** A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit and subject to review for consistency with Commission Rule 350-80 if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period and is not part of a legally operating designated campground.

(20) **Campsite:** Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(21) **Capability:** The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(22) **Cascadian architecture (SMA):** Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(23) **Catastrophic situations (SMA):** Forces such as fire, insect and disease infestations, and earth movements.

(24) **Childcare center:** A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(25) **Clearcut:** A created opening of 1 acre or more.

(26) **Columbia River Gorge National Scenic Area Graphic Signing System:** Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(27) **Commercial development/use:** Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(28) **Commercial forest products:** These include timber for lumber, pulp, and firewood for commercial purposes.

(29) **Commercial recreation:** Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(29) **Community facility:** Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities,

schools, roads and highways. This does not include sanitary landfills.

(30) **Consulting parties (cultural resources):** Organizations or individuals who submit substantive written comments to the Development Review Officer in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(31) **Contiguous land:** Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(32) **Counties:** The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(33) **Created opening (SMA):** A created forest opening with less than 80 percent crown cover closure of trees averaging less than 20 feet tall.

(34) **Creation (wetlands):** A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(35) **Cultivation:** Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(36) **Cultural resource:** Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

(a) **Archaeological resources.** Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material by-products from tool and utensil-making activities; and graves, human remains, and associated artifacts.

(b) **Historic buildings and structures.** Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

(c) **Traditional cultural properties.** Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities.

Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(37) **Cumulative effects:** The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(38) **Cut:** An area where soil or earth is excavated or removed in conjunction with development activities.

(39) **Dedicated site:** An area actively devoted to the current use and as delineated on the site plan.

(40) **Deer and elk winter range:** Areas normally used, or capable of being used, by deer and elk from December through April.

(41) **Destruction of wetlands:** Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(42) **Developed recreation:** Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(43) **Development:** Any land division or structure, including but not limited to, new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(44) **Diameter at breast height (dbh):** The diameter of a tree as measured at breast height.

(45) **Duplex:** A building containing two dwelling units and designed for occupancy by two families.

(46) **Dwelling, single-family:** A detached building containing one dwelling unit and designed for occupancy by one family only.

(47) **Dwelling unit:** A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(48) **Effect on treaty rights:** To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(49) **Endemic:** Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(50) **Enhancement (natural resources):** A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(51) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(52) **Existing use or structure:** A legally established use that existed before the effective date of the Scenic Area Act, the Management Plan, or a land use ordinance estab-

lished pursuant to the Scenic Area Act. "Legally-established" means established in accordance with the law in effect at the time of establishment of the use.

(53) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(54) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(55) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(56) **Forbs:** Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(57) **Foreground (SMA):** One-half mile on either side of a traveled road or trail.

(58) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(59) **Forest practices:** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(60) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(61) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(62) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(63) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(64) **Height of building:** The vertical distance from the grade to the highest point of the roof.

(65) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(66) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(67) **Historic buildings and structures:** See cultural resource.

(68) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(69) **Horses, boarding of:** The stabling, feeding, and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks.

(70) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(71) **In-kind replacement:** A development or land use which is the same as or smaller than an existing or destroyed use or structure. An in-kind building or structure may be shorter in height, smaller mass, and contained entirely within the existing footprint of the existing use or destroyed use or structure.

(7[1]2) **In-lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(7[2]3) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakima Indian Nation (Tribal Council).

(7[3]4) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(7[4]5) **Industrial uses:** Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products;
(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit;

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service; or

(d) Production of electric power for commercial purposes.

(7[5]6) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(7[6]7) **Key components:** The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(7[7]8) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. Key viewing areas include the entire feature, road, or place within the boundary of the National Scenic Area, including those portions of the feature, road, or place located in urban areas. Consideration of General Management Area viewsheds from urban areas does not constitute

review of development located within urban areas. These include:

Historic Columbia River Highway
 Crown Point
 Highway I-84, including rest stops
 Multnomah Falls
 Washington State Route 14
 Beacon Rock
 Panorama Point Park
 Cape Horn
 Dog Mountain Trail
 Cook-Underwood Road
 Rowena Plateau and Nature Conservancy Viewpoint
 Portland Women's Forum State Park
 Bridal Veil State Park
 Larch Mountain
 Rooster Rock State Park
 Bonneville Dam Visitor Centers
 Columbia River
 Washington State Route 141
 Washington State Route 142
 Oregon Highway 35
 Sandy River
 Pacific Crest Trail
SMA only:
 Old Washington State Route 14 (County Road 1230)
 Wyeth Bench Road
 Larch Mountain Road
 Sherrard Point on Larch Mountain

(7[8]9) **Land division:** The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

([79]80) **Landscape setting:** The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(8[0]1) **Livestock feedlot:** Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(8[1]2) **Lot line adjustment:** Transfer of a portion of a parcel from one owner to the owner of an adjacent parcel resulting in no increase in the number of parcels.

(8[2]3) **Management plan:** The document entitled Management Plan for the Columbia River Gorge National Scenic Area adopted October 14, 1991. The Management Plan becomes effective upon approval of land use ordinances by the Commission for the General Management Area and concurrence of land use ordinances by the Secretary of Agriculture for the Special Management Area.

(8[3]4) **Mitigation:** The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(8[4]5) **Multifamily dwelling:** A dwelling constructed or modified into two or more single-family units.

(8[5]6) **Native species:** Species that naturally inhabit an area.

(8[6]7) **Natural resources:** Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(8[7]8) **Natural resource specialist:** A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(8[8]9) **Natural resource-based recreation (SMA):** Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

([89]90) **Nonprofit organization:** An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(9[0]1) **Old growth:** Any stand of trees 10 acres or greater generally containing the following characteristics:

(a) contain mature and overmature trees in the overstory and are well into the mature growth state;

(b) in coniferous forests, will usually contain a multilayered canopy and trees of several age classes;

(c) in coniferous forests, standing dead trees and down material are present; and

(d) evidences of man's activities may be present, but do not significantly alter the other characteristics and would be a subordinate factor in description of such a stand.

(9[1]2) **Open Spaces:** Unimproved lands not designated as agricultural lands or forest lands by the Management Plan and designated as open space by the Management Plan. Open spaces include:

(a) Scenic, cultural, and historic areas;

(b) Fish and wildlife habitat;

(c) Lands which support plant species that are endemic to the Scenic Area or which are listed as rare, threatened or endangered species pursuant to State or Federal Endangered Species Acts;

(d) Ecologically and scientifically significant natural areas;

(e) Outstanding scenic views and sites;

(f) Water areas and wetlands;

(g) Archaeological sites, Indian burial grounds and village sites, historic trails and roads and other areas which are culturally or historically significant;

(h) Potential and existing recreation resources; and

(i) Federal and state wild, scenic, and recreation waterways.

(9[2]3) **Ordinary high water mark:** The mark on all streams, ponds, and lakes that will be found by examining the bed 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 vegetative character distinct from that of the abutting upland.

In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(9[3]4) Parcel:

(a) Any parcel legally created by a short division, partition, or subdivision.

(b) Any unit of land legally created and separately described by deed or sales contract prior to November 17, 1986, if there were no applicable planning, zoning, and land division ordinances or regulations.

(c) In the state of Washington, a unit of land created and separately described by deed or sales contract after November 17, 1986 if the unit created was approved by the Gorge Commission or the Forest Service Scenic Area Office.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

(A) Is a unit of land created solely to establish a separate tax account;

(B) Lies in different counties;

(C) Lies in different sections or government lots;

(D) Lies in different land use or zoning designations; or

(E) Is dissected by a public or private road.

(9[4]5) Partial retention: A visual quality objective that provides for management activities that may be evident but must remain visually subordinate to the characteristic landscape. Activities may repeat form, line, color, or texture common to the characteristic landscape, but changes in their qualities of size, amount, intensity, direction, pattern, etc., shall remain visually subordinate to the characteristic landscape.

(9[5]6) Practicable: Able to be done, considering technology and cost.

(9[6]7) Preexisting: Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(9[7]8) Primarily: A clear majority as measured by volume, weight, or value.

(9[8]9) Project area: The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

([99]100) Public use facility: Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(10[0]1) Rare plant species: Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(10[1]2) Recreation facility: A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(10[2]3) Reconnaissance survey: Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, subsurface testing, and ethnographic research.

(10[3]4) Recreation Opportunity Spectrum (ROS): A means of classifying areas in relation to the types of

recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

(a) Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.

(b) Semiprimitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.

(c) Roded Natural: Roded areas with moderately frequent human encounters and with resource modifications evident.

(d) Rural: Roded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) Suburban: Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) Urban: Highly accessible, roded areas dominated by human encounters and human-related structures.

(10[4]5) Recreation resources: Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(10[5]6) Rehabilitation (natural resources): A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(10[6]7) Repair and maintenance: An activity that restores the size, scope, configuration, and design of a serviceable structure to its previously authorized and undamaged condition. Activities that change the size, scope, and configuration of a structure beyond its original design are not included in this definition.

(10[7]8) Resource-based recreation: Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(10[8]9) Restoration (wetlands): A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(1[09]10) Retention: A visual quality objective that provides for management activities that are not visually evident to the casual visitor. Management activities may only repeat form, line, color, and texture that are frequently found in the characteristic landscape. Changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be evident.

(11[0]1) Review uses: Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(11[1]2) Riparian area: The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the

water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(11[2]3) **Road:** The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right-of-way, such as bridges.

(11[3]4) **Scenic Area:** The Columbia River Gorge National Scenic Area.

(11[4]5) **Scenic travel corridor:** In the General Management Area, those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

In addition to those Scenic Travel Corridors listed above, in the Special Management Area, those portions of Larch Mountain Road, Wyeth Bench Road, and Klickitat County Road 1230 which are located in the Special Management Area are scenic travel corridors.

(11[5]6) **Secretary:** The Secretary of Agriculture.

(11[6]7) **Sensitive plant species:** Plant species that are

(a) endemic to the Columbia River Gorge and vicinity;

(b) listed as endangered or threatened pursuant to federal or state endangered species acts; or

(c) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the Special Management Area, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(11[7]8) **Sensitive wildlife species:** Animal species that are

(a) listed as endangered or threatened pursuant to federal or state endangered species acts;

(b) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission;

(c) listed as sensitive by the Oregon Fish and Wildlife Commission; or

(d) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the Special Management Area, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(11[8]9) **Service station:** A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(1[19]20) **Serviceable:** Presently useable.

(12[0]1) **Shall:** Action is mandatory.

(12[1]2) **Should:** Action is encouraged.

(12[2]3) **Shrub:** A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(12[3]4) **Sign:** Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(12[4]5) **Significant cultural resource (SMA):** A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(12[5]6) **Skyline:** The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(12[6]7) **Soil Capability Class:** A classification system developed by the U.S. Department of Agriculture Soil Conservation Service to group soils as to their capability for agricultural use.

(12[7]8) **Special habitat area:** Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(12[8]9) **Special streams:** Streams that are primary water supplies for fish hatcheries and rearing ponds.

(1[29]30) **Stand:** A group of trees possessing uniformity in regard to type, age, vigor, or size.

(13[0]1) **Story:** A single floor level of a structure, as defined by the Uniform Building Code.

(13[1]2) **Streams:** Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream

means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(13[2]3) **Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(13[3]4) **Subsurface testing:** Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(13[4]5) **Suitability:** The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(13[5]6) **Travelers accommodations:** Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(13[6]7) **Treaty rights or other rights:** Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(13[7]8) **Tributary fish habitat:** Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(13[8]9) **Undertaking:** Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.2(o)].

(1[39]40) **Unimproved lands:** Lands that generally do not have developments such as buildings or structures.

(14[0]1) **Upland:** Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(14[1]2) **Uses allowed outright:** New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(14[2]3) **Utility facility:** Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(14[3]4) **Viewshed:** A landscape unit seen from a key viewing area.

(14[4]5) **Visual Quality Objective (VQO):** A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention and partial retention, and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(14[5]6) **Visually subordinate:** A description of the relative visibility of a structure where that structure does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings.

(14[6]7) **Water-dependent:** Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(14[7]8) **Water-related:** Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(14[8]9) **Wetlands:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(1[49]50) **Wetlands functions:** The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(15[0]1) **Woody plant:** A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

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.

350-80-050. Exempt Land Uses and Activities.

Commission Rule 350-80 shall not apply to:

- (1) Any treaty or other rights of any Indian tribes.
- (2) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the

exemption shall commence upon selection by the U.S. Army Corps of Engineers.

(3) Rights to surface or ground water.

(4) Water transportation activities on the Columbia River or its tributaries. The term "activities" includes those facilities necessary for navigation.

(5) The operation, maintenance and modification of existing transmission facilities of the Bonneville Power Administration.

(6) Laws, rules or regulations pertaining to hunting or fishing.

(7) The operation, maintenance and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material.

(8) In the General Management Area, the rights and responsibilities of non-federal timber landowners under the Washington and Oregon Forest Practices Acts, or under county regulations that supersede those acts.

350-80-060. Prohibited Land Uses and Activities.

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

(1) Solid waste disposal sites or sanitary landfills within the Special Management Area.

(2) New industrial development in the Scenic Area outside of the Urban Areas.

(3) Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:

(a) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening soil.

(b) Removal or clearing of native grasses, shrubs, and trees.

(c) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.

(d) Barns, silos, and other agricultural buildings.

(e) Irrigation systems.

(f) Exploration, development, and production of mineral resources.

(g) Utility facilities, public use facilities, and roads.

350-80-070. Existing Uses.

Except as otherwise provided below, existing uses in the Scenic Area may continue, notwithstanding the provisions of Commission Rule 350-80.

(1) Except as otherwise provided, any use or structure existing on the effective date of the Management Plan, may continue so long as it is used in the same manner and for the same purpose as on that date.

(2) Any use or structure damaged or destroyed by fire shall be treated as an existing use or structure if an application for replacement in kind and in the same location is filed within one year of such damage or destruction. Such replacement uses or structures shall be subject to compliance with guidelines for protection of scenic resources involving

color, reflectivity and landscaping. Replacement of an existing use or structure by a use or structure different in purpose, size or scope shall be subject to Commission Rule 350-80, except sections .170 through .510.

The applicant shall be responsible for providing necessary information to demonstrate that the replacement structure is in-kind as defined by guideline .040(71). This may include photos and building plans.

(3) Replacement or reestablishment of a use or structure discontinued for more than one year shall be subject to Commission Rule 350-80. Except as otherwise provided, an existing use or structure may be replaced within one year of discontinuation if used for the same purpose at the same location. This includes replacing an existing mobile home with a framed residence.

(4) In the Special Management Area, existing commercial and multi-family residential uses may expand as necessary for successful operation on the dedicated site, subject to Commission Rule 350-80-520 through 350-80-620 to minimize adverse effects on scenic, cultural, natural and recreation resources. Expansion beyond the dedicated site is prohibited. Commercial uses discontinued for 1 year or more shall no longer be considered as an existing use and shall no longer be permitted, in accordance with the provisions this rule.

(5) Existing industrial uses in the General Management Area may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(6) In the General Management Area, existing industrial uses may convert to less intensive uses. A less intensive use is a commercial, recreation or residential use with fewer adverse effects upon scenic, cultural, natural and recreation resources.

(7) In the General Management Area, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to Commission Rule 350-80 if any of the following conditions exist:

(a) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain which was merely leveled or cleared of vegetation.

(b) The site has not maintained a required state permit.

(c) The site has not operated legally within 5 years before the date of adoption of the Management Plan.

(8) Uses involving the exploration, development or production of sand, gravel or crushed rock in the Special Management Area may continue when:

(a) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the Special Management Area.

(b) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural or recreation resources.

(9) Except as otherwise provided, whether a use has a vested right to continue will be determined by the law on vested rights in the appropriate state.

Reviser's note: The typographical errors in 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.

350-80-080. Application for Review and Approval.

(1) Prior to initiating any use or development which requires review and approval by the Development Review Officer, an application shall be completed pursuant to Commission Rule 350-80-080. The Development Review Officer shall accept and review the application pursuant to Commission Rule 350-80-100 through 350-80-170 for consistency with the appropriate guidelines of this rule. Review of a proposed use or development shall commence upon the acceptance of an application by the Development Review Officer. The Commission may charge a fee for review of applications.

(2) Standard application forms shall be available at county and city planning offices, the offices of the Columbia River Gorge Commission and the Forest Service.

(3) Applications for the review and approval of a proposed use or development shall provide the following information:

(a) The applicant's name, address and telephone number;

(b) The land owner's name, address and telephone number (if different from applicant's);

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

(e) The street address of the proposed use or development;

(f) The tax lot number(s) and size in acres of the parcel(s) involved;

(g) A description of the current land use for the parcel(s) involved and adjoining lands;

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.

(i) A list of Key Viewing Areas from which the proposed use would be visible.

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Development Review Officer to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

(A) North arrow.

(B) Map scale.

(C) Boundaries, dimensions, and size of the subject parcel.

(D) Significant terrain features or landforms.

(E) Groupings and species of trees or other vegetation on the parcel.

(F) Location and species of vegetation that would be removed or planted.

(G) Bodies of water and watercourses.

(H) Location and width of existing and proposed roads, driveways, and trails.

(I) Location and size of existing and proposed structures.

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.

(K) Location and depth of all proposed grading and ditching.

(k) In the Special Management Area, applications and/or site plans shall contain the natural resources information required in Commission Rule 350-80-600(2).

(l) Any additional information which the applicant feels will assist in the evaluation of the proposal including, but not limited to, maps, drawings, and development plans.

(m) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.

(n) The signature of the property owner on a statement that authorizes the Development Review Officer or the Development Review Officer's designee reasonable access to the site in order to evaluate the application.

(4) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-80 or by the Development Review Officer:

(a) All buildings, roads, or mining and associated activities proposed on lands visible from Key Viewing Areas, pursuant to 350-80-520 (2)(d).

(b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-80-520 (1)(e), 350-80-520 (2)(d), (2)(e), (2)(v), and (2)(w).

(c) In the General Management Area, any structural development involving more than 100 cubic yards of grading on sites visible from key viewing areas and which slope is between 10 and 30 percent, pursuant to 350-80-520 (2)(u).

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-80-520 (4)(d).

(e) Large-scale uses as defined by guideline 350-80-540 (1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-80-540 (1)(c)(F), and (G).

(f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-80-540 (1)(c)(H)(iii).

(g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-80-150 (8)(a)(A).

(h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to Commission Rule 350-80-560 (1)(b).

(i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to Commission Rule 350-80-570 (1)(b).

(j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-80-580 (1)(b). Large-scale uses as defined by 350-80-580(3) shall also include field survey information, pursuant to 350-80-580 (3)(e).

(k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to Commission Rule 350-80-590(b). Large-scale uses as defined by 350-80-590(3) shall also include field survey information, pursuant to Commission Rule 350-80-590 (3)(e).

(l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to Commission Rule 350-80-190 (1)(e), and if applicable, 350-80-190 (1)(f).

(m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-80-190 (1)(n).

(n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-80-190 (1)(h).

(o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to Commission Rule 350-80-270 (1)(a), (c), and (l).

(p) In the Special Management Area, on lands designated Forest, a single-family dwelling, pursuant to Commission Rule 350-80-270 (2)(j).

(q) In the Special Management Area, on lands designated Forest, forest practices, pursuant to Commission Rule 350-80-270 (2)(b).

(r) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to Commission Rule 350-80-340 (11).

(s) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-80-190 (1)(h).

(t) In the Special Management Area, on lands designated Agriculture, a single-family dwelling necessary and accessory to agricultural use, pursuant to Commission Rule 350-80-190 (2)(b).

(u) In the Special Management Area, on lands designated Agriculture, farm labor housing and agricultural buildings, pursuant to Commission Rule 350-80-190 (2)(d).

(v) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to Commission Rule 350-80-270 (1)(b).

(w) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family dwelling in conjunction with agricultural use pursuant to Commission Rule 350-80-190 (1)(e).

(x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to Commission Rule 350-80-270 (1)(o).

(y) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to Commission Rule 350-80-240.

(z) Other uses as deemed necessary by the Development Review Officer.

(5) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

350-80-090. Pre-Application Conference.

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-80, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

350-80-100. Acceptance of Application.

Within 14 days of the receipt of an application, the Development Review Officer shall review the application for completeness and adequacy. The Development Review Officer shall accept a complete and adequate application within 14 days of receipt of the application.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Development Review Officer shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application.

(2) No application shall be accepted which the Development Review Officer deems cannot be acted upon reasonably within 72 days, pursuant to 350-80-130(3), except when the applicant consents to a longer period for action.

(3) No application shall be accepted unless accompanied by a list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in Commission Rule 350-80-630. A statement from the County Assessor or appropriate agency confirming the accuracy of the list shall accompany the list.

(4) No application for a proposed use which is explicitly prohibited by Commission Rule 350-80-060 shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Development Review Officer, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

350-80-110. Notice of Development Review.

(1) Within 7 days of the acceptance of an application, the Development Review Officer shall issue notice of a proposed development review. The notice shall provide the following information:

(a) The name of the applicant;

(b) The general and specific location of the subject property;

(c) A brief description of the proposed action;

(d) The deadline for rendering a decision; and
 (e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(4) The notice shall be mailed to:

(a) The Forest Service, the applicable state, Indian Tribes and the applicable county and/or city; and

(b) Owners of property within a radius of the subject parcel(s) as determined by 350-80-630; and

(c) Other agencies and interested parties which request a notice or which the Development Review Officer determines should be notified.

(4)5 The notice shall be posted at the Commission and Forest Service offices and shall be made available for posting at the applicable county or city planning office(s) and applicable library or libraries.

(5)6 For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(6)7 A copy of the notice shall be filed in the records of the Commission.

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.

350-80-120. Comment Period

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Development Review Officer relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-80:

(1) Within 7 days of the close of the comment period, the Development Review Officer shall determine if a wildlife management plan pursuant to Commission Rule[s] 350-80-580(6), or a rare plant protection and rehabilitation plan pursuant to Commission Rule[s] 350-80-590(6) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Development Review Officer shall forward the survey to the applicable State Historic Preservation Officer[s], and Indian Tribes pursuant to Commission Rules 350-80-540 (1)(b) and (2)(b)(A).

(3) Within 7 days of the close of the 30 day reconnaissance survey comment period for State Historic Preservation Officers and Indian Tribes, the Development Review Officer shall determine if an evaluation of significance pursuant to Commission Rules 350-80-540(3) is required.

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.

350-80-130. Decision of the Development Review Officer.

(1) In making a decision on a proposed use or development the Development Review Officer shall:

(a) Consult with the applicant and such agencies as the Development Review Officer deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-80-120; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Development Review Officer shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-80. In approving a proposed development action, the Development Review Officer may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-80.

(3) The Development Review Officer shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-80 within 72 days after acceptance of the application except in one or more of the following situations:

(a) The applicant consents to an extension of time.

(b) The Development Review Officer determines that additional information is required pursuant to Commission Rule 350-80-120.

(c) The Development Review Officer determines that additional information is necessary to evaluate the impacts of the proposed use to scenic, cultural, natural, and recreation resources.

(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Development Review Officer shall mail a copy of the decision to the applicant, the Commission, the Forest Service, the applicable state, the Indian Tribes, the applicable county and/or city and each person who submitted comments under Commission Rule 350-80-150. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Development Review Officer shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70.

(6) The decision of the Development Review Officer approving a proposed development action shall become void

(a) when the development action is not undertaken within two years of the decision, or

(b) when the development action is discontinued for any reason for one year or more.

(7) An applicant may request an extension of the validity of a development approval. Such request shall be considered an administrative action and shall be submitted to the Development Review Officer prior to the expiration of such approval, in writing, stating the reason why an extension should be granted.

The Development Review Officer may grant an extension of up to 12 months in the validity of a development approval if it is determined that conditions, for which the applicant was not responsible, would prevent the applicant

from commencing his operation within the original time limitation.

The Development Review Officer shall not grant an extension if the site characteristics and/or new information indicates that the proposed use may adversely affect scenic, cultural, natural or recreation resources in the National Scenic Area.

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.

350-80-140. Changes or Alterations to an Approved Action.

Any change or alteration to a development action approved by the Commission or Development Review Officer pursuant to this rule shall be processed as new action, except that the Development Review Officer may approve minor changes or alterations deemed to be consistent with the guidelines of Commission Rule 350-80 and the findings and conclusions for the original action.

350-80-150. General Guidelines.

The following uses may be permitted when allowed by the land use designation, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(1) Land Divisions and Cluster Development

Land Divisions within the Columbia River Gorge National Scenic Area may be allowed subject to the following:

(a) New land divisions are not allowed in the Special Management Area, unless the creation of a new parcel will facilitate land acquisition by the federal government to achieve the policies and guidelines of the Management Plan.

(b) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land except a lot-line adjustment shall be subject to the guidelines in Commission Rule 350-80.

(c) In cases where a land division is requested on a parcel which is split by land use designation boundaries, the resulting parcels shall conform to the specified minimum parcel sizes of each land use designation.

[(c)d] At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

[(d)e] Adjustment of the boundary between two or more contiguous parcels that does not result in the creation of an additional parcel may be allowed if none of the parcels larger than the minimum parcel size before the adjustment becomes smaller than the specified minimum parcel size after the adjustment.

[(e)f] The minimum size for new parcels created for commercial uses within a Rural Center shall be based upon the site requirements (sewerage, parking, building, size, etc.) for the proposed use. Parcel size shall be determined by the Development Review Officer on a case-by-case basis.

[(f)g] The minimum size for new parcels created for residential uses within a Rural Center shall be 1 acre.

To encourage the efficient use of land, provide public amenities and standards for quality developments, and reduce the cost of providing services within Rural Centers, the Development Review Officer may allow a minimum parcel size of less than 1 acre within Rural Centers if a planned unit development approach is used for the subject parcel, incorporating features such as consolidated access and commonly shared open areas.

[(g)h] When allowed by a land use designation, a land division in the General Management Area may create parcels smaller than the designated minimum size and may include a bonus, as specified below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To approve a cluster development, the Development Review Office must find that clustering new dwellings will provide an opportunity not available through conventional parcel-by-parcel development to site new dwellings to:

(A) Be located in areas with screening vegetation or other features which reduce visibility of development as seen from Key Viewing Areas.

(B) Avoid significant landscape features.

(C) Protect the existing character of the landscape setting.

(D) Reduce interference with movement of deer or elk in winter range.

(E) Avoid areas of known cultural resources.

(F) Consolidate road access, septic drainfields or other development features in order to reduce impacts associated with grading or ground disturbance.

(G) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites or other natural resources,

(H) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.

[(h)i] In the General Management Area, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. Approval of a cluster development shall include provisions for the permanent protection of open areas. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or a 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.

[(i)j] In the General Management Area, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more parcels on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.

[(j)k] In the General Management Area, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.

[(k)l] In the General Management Area, contiguous parcels in the same ownership or in separate ownership may

be consolidated and redivided to take advantage of cluster development bonuses.

(2) Agricultural Buffer Zones

All new buildings shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands designated Large-Scale or Small-Scale Agriculture and which are currently used for or are suitable for agricultural use:

(a) Setback Guidelines

Type of	Type of Buffer (size in feet)		8-foot Berm or Terrain Barrier
	Open or Fenced	Natural or Created Vegetation Barrier	
<u>Agriculture</u>			
Orchards	250'	100'	75'
Row crops/vegetables	300'	100'	75'
Livestock grazing pasture, haying	100'	15'	20'
Grains	200'	75'	50'
Berries, vineyards	150'	50'	30'
Other	100'	50'	30'

(b) Earth berms may be used to satisfy, in part, the setback guidelines. Berms shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees and/or grasses shall be planted on the berm to control erosion and achieve a finished height of 15 feet.

(c) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and be continuous.

(d) The necessary berming and/or planting must be completed during the first phase of development and maintained in good condition.

(e) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

(f) A variance to buffer setbacks may be granted upon a demonstration that the guidelines of Commission Rule 350-80-150(7) have been satisfied.

(3) Temporary Use Hardship Dwelling

(a) The temporary placement of a mobile home in the General Management Area may be granted under the following circumstances:

(A) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

(B) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

(C) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural and recreation resources of Commission Rule 350-80-520 through 350-80-620.

(b) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this rule and any other conditions of approval.

(c) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.

(d) A new permit may be granted upon a finding that a family hardship continues to exist.

(4) Home Occupations and Cottage Industries

Home occupations and cottage industries may be established as specified in various land use designations consistent with the following conditions:

(a) A home occupation may employ only residents of the home.

(b) A cottage industry may employ up to three outside employees.

(c) No more than 25 percent of the total actual living space of the dwelling may be utilized for the home occupation or cottage industry.

(d) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

(e) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.

(f) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.

(g) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in Commission rule 350-80-150(5).

(h) One non-animated, non-illuminated sign, not exceeding 2 square feet in area may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.

(i) Parking not associated with residential use shall be screened so it is not visible from Key Viewing Areas.

(j) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of Commission Rules 350-80-150 (4) and (5).

(k) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of Commission Rules 350-80-150 (4) and (5), except Commission Rule 350-80-150 (5)(a).

(5) Bed and Breakfast Inns

Bed and breakfast inns may be established as authorized in specified land use designations subject to the following:

(a) Guests may not occupy a facility for more than 14 consecutive days.

(b) One non-animated, non-illuminated sign not exceeding 4 square feet in area may be permitted on the structure or within the yard containing the structure.

(c) Parking areas shall be screened so as to not be visible from Key Viewing Areas.

(d) In the Special Management Area, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

(6) Docks

(a) New private docks and boathouses serving only one family and one property shall be limited to a maximum of 120 square feet in size.

PERMANENT

(b) New private docks and boathouses serving more than one family and property shall be limited to a maximum of 200 square feet in size.

(c) Public docks open and available for public use shall be allowed.

(7) Variances from Setbacks and Buffers within the General Management Area.

Variances from setbacks and buffers within the General Management Area may be allowed subject to the following approval criteria:

(a) When setbacks or buffers for the protection of scenic, cultural, natural, recreation, agricultural or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that:

(A) A setback or buffer to protect one resource would cause the proposed use to fall within a setback or buffer to protect another resource; and

(B) Variation from the specified setbacks or buffers would, on balance, best achieve the protection of the affected resources.

(b) A setback or buffer for protection of scenic, cultural, natural, recreation, agricultural or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that:

(A) The land use designation otherwise authorizes a residence on the tract;

(B) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer;

(C) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

(c) The Development Review Officer may grant a variance to the setback and buffer requirements in Commission Rule 350-80-610, upon a finding that the following conditions exist:

(A) The proposed project is a public use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a Scenic Travel Corridor.

(B) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.

(C) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.

(D) The variance is the minimum necessary to accommodate the use.

(d) The Development Review Officer may grant a variance of up to 10 percent to the guidelines of General Management Area and Special Management Area Recreation Intensity Class 4 for parking and campground units upon demonstration that:

(A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be

relied upon to meet this criterion in the absence of current applicable studies.

(B) The proposed use is dependent on resources present at the site.

(C) Reasonable alternative sites, including those in nearby Urban Areas, offering similar opportunities have been evaluated and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(D) The proposed use is consistent with the goals, objectives and policies in Chapter 4, Part I of the Management Plan.

(E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural or cultural resources, and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(8) Indian Tribal Treaty Rights and Consultation in the General Management Area

(a) Tribal Government Notice

(A) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(i) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(ii) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:

(I) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(II) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(III) List tribal ceremonial fishing seasons in the project vicinity.

(IV) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(B) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

(C) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Development Review Officer. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(b) Tribal Government Consultation

(A) When substantive written comments are submitted to a Development Review Officer in a timely manner, the project applicant shall offer to meet with the Development Review Officer and the Indian tribal government that

submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

Consultation meetings should provide an opportunity for the project application and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(B) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.

(C) The Development Review Officer shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Development Review Officer.

(c) Conclusion of the Treaty Rights Protection Process

(A) The Development Review Officer shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments, the Development Review Officer must justify how it reached an opposing conclusion.

(B) The treaty rights protection process may conclude if the Development Review Officer determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

(C) A finding by the Development Review Officer that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that such uses adversely affect or modify treaty or other tribal rights.

(9) Indian Tribal Treaty Rights and Consultation in the Special Management Area

For new development and uses in the Special Management Area, the Forest Service shall determine effects on treaty rights and shall notify the Development Review Officer of the determination.

([9]10) If new buildings or structures may detract from the use and enjoyment of established recreation sites on adjacent parcels, an appropriate buffer shall be established between the building/structure and the parcel.

([10]11) Section 8(o) of the National Scenic Act, [16 USC § 544 f(o)], is hereby incorporated by reference.

(12) In the Special Management Area, new developments and land uses shall not displace existing recreational use.

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 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.

350-80-160. Signs.

(1) Signs may be allowed [pursuant] in all land use designations in the General Management Area pursuant to the following provisions:

(a) Except for signs along public highways necessary for public safety, traffic control or road construction which are consistent with the Manual for Uniform Traffic Control Devices, the following signs are prohibited:

(A) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays and other signs which are internally illuminated, exclusive of seasonal holiday light displays.

(B) New billboards.

(C) Signs with moving elements.

(D) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(b) Any sign which does not conform with a provision of 350-80-160 and has existed prior to adoption of the Management Plan, shall be considered non-conforming and subject to the following:

(A) Alteration of existing non-conforming signs shall comply with Commission Rule 350-80-160.

(B) Any non-conforming sign used by a business must be brought into conformance concurrent with any expansion or change in use which requires a development permit.

(c) The following may be permitted without review, subject to consistency with Commission Rule 350-80-160 (1)(a):

(A) Ordinary repair and maintenance of signs.

(B) Election signs which are not displayed for more than 60 days. Removal shall be accomplished within 30 days of election day.

(C) "For Sale" signs not greater than 12 square feet. Removal shall be accomplished within 30 days of close of sale.

(D) Temporary construction site identification, public service company, safety or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal shall be accomplished within 30 days of project completion.

(E) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet.

(F) Temporary signs advertising civil, social, or political gatherings and activities not exceeding 12 square feet. Removal shall be accomplished within 30 days of the close of the event.

(G) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the message intended.

(H) Signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings, not on roofs or marquees.

(d) All signs shall meet the following guidelines unless they conflict with the *Manual for Uniform Traffic Control Devices* for public safety, traffic control or highway construction signs. In such cases, the standards in the *Manual for Uniform Traffic Control Devices* shall supersede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Colors of signs shall blend with their setting to the maximum extent practicable.

(C) Backs of all signs shall be unobtrusive, non-reflective, and blend in with the setting.

(D) Spot lighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(e) Business identification or facility entry signs located on the premises may be allowed, subject to Commission Rule 350-80-160 (1)(d).

(f) Other signs not addressed or expressly prohibited by this rule may be permitted without review.

(2) Signs in the Special Management Area shall be allowed pursuant to the following provisions:

(a) Prohibited Signs

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning or safety.

(b) Pre-existing signs are allowed to continue provided no changes occur in size, structure, color, or message.

(c) Temporary signs shall be permitted without review when in compliance with subsection (f) below and the following:

(A) One political sign per parcel road frontage. The sign shall be no greater than 12 square feet in area and displayed for no more than 60 calendar days. Removal shall be accomplished within 30 days of election day.

(B) "For Sale" signs not greater than 12 square feet, removal shall be accomplished within 30 days of close of sale.

(C) One temporary construction site identification sign which is not greater than 32 square feet. Removal shall be accomplished within 30 days of project completion.

(D) Signs providing direction to and announcement of temporary garage/yard sales provided placement duration does not exceed three days and the signs are not greater than two square feet in area.

(E) Temporary signs, not exceeding 12 square feet and placed no longer than 10 days in advance of the event, advertising civil, social, or political gatherings and activities. Removal must be accomplished within 30 days of the close of the event.

(F) Temporary signs of public service companies indicating danger and/or service and safety information. Removal must be accomplished upon project completion.

(d) New signs shall be allowed as specified in the applicable land use designation.

(e) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.

(f) All new signs shall meet the following guidelines, and be consistent with the *Manual for Uniform Traffic Control Devices*:

(A) Signs shall be maintained in a neat, clean and attractive condition.

(B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.

(C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.

(D) Signs shall be unobtrusive and have low contrast with the setting.

(E) The visual impact of the support structure shall be minimized.

(F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.

(G) Backs of all signs shall be visually unobtrusive, nonreflective, and blend in with the setting.

(H) Sign internal illumination or backlighting shall not be permitted except for highway construction, warning or safety.

(g) Public signs shall meet the following guidelines in addition to subsections (b) through (f) above:

(A) The Graphic Signing System provides design guidelines for public signs in and adjacent to public road rights-of-way. All new and replacement public signs shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, route marker, interpretive, guide, directional, and urban area entry.

(B) Signs located outside public road rights-of-way are encouraged to be designed in such a way as to be consistent with similar purpose signs described in the Graphic Signing System.

(C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(h) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to subsections (b) through (f):

(A) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than two square feet.

(B) Any sign advertising or relating to a business which is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.

(C) Any signs relating to, or advertising, a business shall be brought into conformance with these sign guidelines

prior to any expansion or change in use which is subject to review.

(D) Off-site and on-site directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted on-site, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(E) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(F) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encouraged to be of a low profile, monument type, and shall conform to the Graphic Signing System.

(i) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.

(j) Directional and safety signs are allowed to the extent necessary to satisfy requirements for smooth traffic flow and public safety. All parties and jurisdictions placing such signs must do so in accordance with the Graphic Signing System, consistent with the standards in the *Manual on Uniform Traffic Control Devices*.

(k) Interstate 84 shall not have interpretive signing, except for signs permitted for services. Regulatory, warning, service, and other signs as provided for in the Graphic Signing System are allowed.

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.

350-80-170. Agricultural Land Designations.

Commission Rule 350-80-170 through 350-80-240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA-Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

350-80-180. Uses Allowed Outright-Agricultural Land.

(1) The following uses are allowed on lands designated Large-Scale or Small-Scale Agriculture without review:

(a) Agricultural use, except new cultivation.

(b) Forest practices that do not violate conditions of approval for other approved uses.

(c) Repair, maintenance, and operation of existing structures, trails, roads, railroads and utility facilities.

(d) Buildings less than 60 square feet in floor area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

(2) The following uses are allowed on land designated SMA-Agriculture without review:

(a) New agricultural uses and open space uses allowed under Commission Rule 350-80-340(10), except where there would be potential impact to cultural or natural resources.

(b) Maintenance, repair and operation of existing dwellings, structures, agricultural buildings, trails, roads, railroads, and utility facilities.

(c) Accessory structures less than 60 square feet in area and less than 18 feet in height measured at the roof peak.

(3) The following uses may be allowed on lands designated Agriculture-Special without review:

(a) Existing livestock grazing. A livestock operation ceases to be existing when the land on which it is conducted has lain idle for more than 5 years.

(b) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads, and utility facilities.

(c) Low-intensity recreation uses that occur with the knowledge and permission of the landowner, including hunting, fishing, trapping, native plant study, birdwatching, photography, horseback riding, and hiking.

(d) Temporary livestock facilities, such as portable livestock pens and corrals.

(e) New fences that exclude livestock from lands that are not part of an existing livestock operation.

350-80-190. Review Uses-Agricultural Land.

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with the scenic, cultural, natural, and recreation resource guidelines (Commission Rule 350-[2]80-520 through 350-80-620):

(a) New cultivation, subject to compliance with Commission Rule 350-80-540 through 350-80-590.

(b) Agricultural buildings in conjunction with agricultural use.

(c) Buildings greater than 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.

(d) The temporary use of a mobile home in the case of a family hardship, subject to Commission Rule 350-80-150(3).

(e) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. Current use includes a minimum area which would satisfy subsection (e)(C)(iv) below; and

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership;

(ii) Type(s) of agricultural uses (crops, livestock) and acreage;

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area; and

(iv) Income capability. The farm or ranch, and all its constituent parcels, is capable of producing at least \$40,000 in gross annual income. This determination shall be made using the following formula:

(A)(B)(C) = I where:

A = Average yield of the commodity per acre, or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income Capability

(f) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling which is included in, or is eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria for use in evaluating the eligibility of cultural resources contained in the National Register Criteria for Evaluation (36 CFR 60.4).

(g) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

(h) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister;

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator; and

(C) The operation is a commercial enterprise as determined by Commission Rule 350-80-190 (1)(e)(C).

(i) Construction, reconstruction or modifications of roads not in conjunction with agriculture.

(j) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.

(k) Structures associated with hunting and fishing operations.

(l) Towers and fire stations for forest fire protection.

(m) Agricultural labor housing upon a showing that:

(A) The proposed housing is necessary and accessory to a current agricultural use;

(B) The housing shall be seasonal unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months; and

(C) The housing will be located to minimize the conversion of lands capable of production of farm crops or livestock and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(n) On lands designated Large-Scale Agriculture, on a parcel which was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands;

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be utilized in conjunction with other agricultural operations in the area;

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in Commission Rule 350-80-150(2), or any abutting parcel designated Commercial Forest Land or Large or Small Woodland, as required in Commission Rule 350-80-310;

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland; and

(E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(o) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in Commission Rule 350-80-150(1). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(p) Life estates, pursuant to Commission Rule 350-80-210.

(q) Land divisions when all resulting parcels satisfy the minimum lot sizes as designated on the land use designation map.

(2) The following uses may be allowed on lands designated SMA-Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Commission Rule 350-80-520 through 350-80-620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock:

(a) Forest uses and practices as allowed in Commission Rule 350-80-270 (2)(b).

(b) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the

land. The farm or ranch must currently satisfy guideline (C)(iv), below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

(A)(B)(C) = I where:

A = Average yield of the commodity per acre or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

(D) Minimum parcel size of 40 contiguous acres.

(c) Accessory structures, greater than 60 square feet.

(d) Farm labor housing and agricultural buildings upon a showing that the following conditions exist:

(A) The proposed housing or building is necessary and accessory to a current agricultural use and a showing that the operation is a commercial agricultural enterprise as determined by Commission Rule 350-80-190 (2)(b)(C).

(B) The housing or building shall be seasonal unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed nine months.

(C) The housing or building shall be located to minimize the conversion of lands capable of production of farm crops and livestock and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(e) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(f) Bed and breakfast inns subject to Commission Rule 350-80-150(5). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(g) Fruit stands and produce stands upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(h) Aquaculture.

(i) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the Special Management Area.

(j) Utility facilities necessary for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(k) Temporary asphalt/batch plant operations related to public road projects, not to exceed six months.

(l) Signs as specified in Commission Rule 350-80-160(2).

(m) Community facilities and non-profit facilities related to agricultural resource management.

(n) Expansion of existing non-profit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(o) Recreation, interpretive and educational developments and uses consistent with Commission Rule 350-80-620.

(p) Road and railroad construction and reconstruction.

(q) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

(r) Structures and vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

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.

350-80-200.

Review Uses with Additional Approval Criteria — Large-Scale or Small-Scale Agriculture and Agriculture-Special Designations.

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (Commission Rule 350-80-520 through 350-80-620) and Commission Rule 350-80-220.

(a) Utility facilities and railroads necessary for public service upon a showing that:

(A) There is no practicable alternative location with less adverse effect on agricultural or forest lands, and

(B) The size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in existing residential or accessory structures, subject to Commission Rule 350-80-150(4).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with on-site viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.

(e) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(f) Exploration, development and production of mineral and geothermal resources [subject to Commission Rule 350-80-520].

(g) Personal-use airstrips including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted, except for aircraft emergencies, to use by the owner and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airstrip other than those owned or controlled by the owner of the airstrip.

(h) Aquaculture.

(i) Recreation development, subject to Commission Rule 350-80-610 and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(j) Boarding of horses.

(k) Temporary portable asphalt/batch plants related to public road projects, not to exceed six months.

(l) Bed and breakfast inns in single-family dwellings, subject to Commission Rule 350-80-150(5) and provided that the residence:

(A) Is included in the National Register of Historic Places; or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation; or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(m) Non-profit, environmental learning or research facilities.

(n) Expansion of existing schools or places of worship.

(2) The following uses may be allowed on lands designated Agriculture-Special subject to compliance with the appropriate scenic, natural, cultural, and recreation resource guidelines (Commission Rule 350-80-520 through 350-80-620) and Commission Rule 350-80-230:

(a) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.

(b) New fences, livestock watering facilities, and corrals.

(c) Soil, water, and vegetation conservation uses.

(d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(e) Fish and wildlife management uses, educational activities, and scientific research.

(f) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(g) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in Commission Rule 350-80-190 (1)(n). The buffer guidelines for non-agricultural dwellings may be waived if they would prevent the optimum siting of a dwelling.

(h) Recreation uses, subject to the provisions for recreation intensity classes (Commission Rule 350-80-6[2]10).

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 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.

350-80-210.

Approval Criteria for Life Estates — Large-Scale or Small-Scale Agriculture Designations.

A landowner who sells or otherwise transfers real property on lands designated Large-Scale or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in Commission Rule 350-80-040. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines in Commission Rule 350-80-520 through 350-80-620 for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using guideline 350-80-190 (1)(e).

(2) Upon termination of the life estate, the original or second dwelling shall be removed.

350-80-220.

Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture.

Uses identified in Commission Rule 350-80-200(1) may be allowed only if they meet both of the following criteria:

(1) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use; and

(2) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

350-80-230.

Approval Criteria for Review Uses on Lands Designated Agriculture-Special.

Uses identified in Commission Rule 350-80-200(2) may be allowed only if they meet all of the following criteria:

(1) A range conservation plan pursuant to Commission Rule 350-80-240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken [review uses (a), (b) and (c) in Commission Rule 350-80-[190(3)]200(2)].

(2) The Development Review Officer shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an

application and/or plan is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address any written comments submitted by the state heritage program in the development review order.

(3) Based on the comments from the state heritage program, the Development Review Officer shall make a final decision on whether the proposed use is consistent with the Agriculture-Special policies of the Management Plan. If the final decision contradicts the comments submitted by the state heritage program, the Development Review Officer shall justify how it reached an opposing conclusion.

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.

350-80-240. Range Conservation Plans.

(1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts. Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.

(2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:

(a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.

(b) Preserve native trees and shrubs.

(c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.

(3) Range conservation plans shall include the following elements:

(a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.

(b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.

(c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferral periods and sequence. Management plans shall project livestock movements for at least 3 years.

(d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

350-80-250. Forest Land Designations.

Commission Rule 350-80-250 through 350-80-310 shall apply to those areas designated Commercial Forest Land, Large or Small Woodland and SMA-Forest on the Scenic Area Land Use Designation Map.

350-80-260.

Uses Allowed Outright — Forest Land.

(1) The following uses are allowed on lands designated Commercial Forest Land or Large or Small Woodland without review:

(a) Forest practices that do not violate conditions of approval for other approved uses.

(b) Agricultural use, except new cultivation.

(c) Repair, maintenance, and operation of existing structures, trails, roads, railroads and utility facilities.

(d) Buildings less than 60 square feet in floor area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

(2) The following uses are allowed on land designated SMA-Forest without review:

(a) New agricultural uses as allowed in Commission Rule 350-80-180(2) and the open space uses allowed in Commission Rule 350-80-340(10), except where there would be potential impact to cultural or natural resources.

(b) Maintenance, repair, and operation of existing dwellings, signs, structures, trails, roads, railroads, and utility facilities.

(c) Accessory structures of less than 60 square feet in area and less than 18 feet in height measured at the roof peak.

350-80-270.

Review Uses — Forest Land.

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the Development Review Officer. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the "Approval Criteria for the Siting of Dwellings on Forest Land" (Commission Rule 350-80-310) and "Approval Criteria for Fire Protection in Forest Zones" (Commission Rule 350-80-300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with Commission Rule 350-80-300 and Commission Rule 350-80-310. A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contribut[e]ing to the current agricultural use of a farm pursuant to Commission Rule 350-80-190 (1)(e). The siting of the dwelling shall comply with Commission Rule 350-80-300.

(d) Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure shall be located on-site, temporary in nature, and not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when the particular forest practice for which it was approved has concluded.

(e) Temporary portable facilities for the primary processing of forest products grown on a parcel or contiguous parcels in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.

(g) Structures associated with hunting and fishing operations

(h) Towers and fire stations for forest fire protection.

(i) New agricultural structures subject to Commission Rule 350-80-300.

(j) The temporary use of a mobile home in the case of a family hardship, subject to Commission Rule 350-80-150(3), 350-80-300 and 350-80-310.

(k) Accessory building(s) greater than 60 square feet in floor area and/or exceeding 18 feet in height as measured at the roof peak; subject to Commission Rule 350-80-300 and 350-80-310.

(l) A second single-family dwelling for a farm operator's relative, subject to Commission Rule 350-80-190 (1)(h), 350-80-300 and 350-80-310.

(m) Private roads serving a residence, subject to Commission Rule 350-80-300 and 350-80-310.

(n) Recreation development, subject to Commission Rule 350-80-610 and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(o) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(p) Agricultural labor housing upon a showing that:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed nine months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock and will not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to Commission Rule 350-80-300 and 350-80-310.

([4]r) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" [Commission Rule 350-80-150(1)]. If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(s) New cultivation, subject to compliance with Commission Rule 350-80-540, 350-80-560, 350-80-570, 350-80-580 and 350-80-590.

(t) Life Estates on lands designated Large or Small Woodland, pursuant to Commission Rule 350-80-320.

(u) On parcels in Small Woodland, land divisions when all resulting parcels satisfy the minimum lot sizes as designated on the land use designation map.

(2) The following uses may be allowed on lands designated SMA-Forest subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620). The use or development will be sited to minimize the loss of land suitable for the production of forest products:

(a) Any use listed in Commission Rule 350-80-190(2).

(b) Forest practices in accordance with a site plan for forest practices approved by the Oregon Department of Forestry or Washington Department of Natural Resources, or other designated forest practices review agency, including the following:

(A) The following information, in addition to the site plan requirements of Commission Rule 350-80-080, shall be included on the site plan:

(i) Boundary of proposed commercial forest practice.

- (ii) Location of proposed rock or aggregate sources.
- (iii) Timber types.
- (iv) Harvest units.
- (v) Silvicultural prescriptions.
- (vi) Road and structure construction and/or reconstruction design.
- (vii) Major skid trails, landings, and yarding corridors.
- (viii) Commercial firewood cutting areas.
- (ix) Existing and proposed rock pit development plans.
- (x) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(B) A discussion of slash disposal methods.

(C) A reforestation plan as reviewed by the appropriate state forest practices agency.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the Special Management Area.

(e) Silvicultural nurseries.

(f) Utility facilities for public service upon a finding that:

(A) There is no alternative location with less adverse effect on Forest Land, and

(B) The size is the minimum necessary to provide the service.

(g) Structures or vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments and uses consistent with Commission Rule 350-80-620.

(j) One dwelling on a parcel of 40 contiguous acres or larger if an approved Forest Management Plan demonstrates that such dwelling is necessary for and accessory to forest uses. The Forest Management Plan shall demonstrate the following:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement shall indicate a relationship between ongoing forest management and the need for dwelling on the subject property.

(B) The subject parcel has been enrolled in the state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the Development Review Officer. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute towards the successful management of the property.

(D) There are no other dwellings on the parcel that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with all applicable building code and fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures over 60 square feet.

(l) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4).

(m) Temporary portable facility for the processing of forest products.

(n) Towers and fire stations for forest fire protection.

(o) Community facilities and nonprofit facilities related to forest resource management.

(p) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(q) Signs as specified in Commission Rule 350-80-160(2).

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.

350-80-280.

Review Uses with Additional Approval Criteria — Commercial Forest Land, or Large or Small Woodland Designations.

The following uses may be allowed on lands designated Commercial Forest Land, or Large or Small Woodland, subject to compliance with the appropriate scenic, cultural, natural, or recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620) and Commission Rule 350-80-290:

(1) Utility facilities and railroads necessary for public service upon a showing that (a) there is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and (b) the size is the minimum necessary to provide the service.

(2) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in Commission Rule 350-80-150(4).

(3) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(4) Wineries, in conjunction with onsite viticulture, upon a showing that processing and sales of wine is from grapes grown on the subject farm or in the local region.

(5) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(6) Exploration, development, and production of mineral and geothermal resources[, subject to Commission Rule 350-80-520 through 350-80-530].

(7) Aquaculture.

(8) Boarding of horses.

(9) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(10) Expansion of existing nonprofit group camps, retreats, or conference centers.

(11) Bed and breakfast inns in single-family dwellings, subject to Commission Rule 350-80-150(5) and provided that the residence:

(a) Is included in the National Register of Historic Places, or

(b) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(c) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(12) Nonprofit, environmental learning or research facilities.

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.

350-80-290. Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland.

Uses identified in Commission Rule 350-80-280 may be allowed only if they meet the following criteria:

(1) The owners of land designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision;

(2) The use will not interfere seriously with accepted forest or agricultural practices on nearby lands devoted to resource use;

(3) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands; and

(4) The use will not significantly increase fire hazard, fire suppression costs or risks to fire suppression personnel and will comply with Commission Rule 350-80-300.

350-80-300. Approval Criteria for Fire Protection in Forest Designations.

All uses, as specified, shall comply with the following fire safety guidelines:

(1) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

(2) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

(3) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

(4) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turnouts shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district, and the Washington Department of Natural Resources in Washington, or the Oregon Department of Forestry in Oregon.

(5) Within one year of the occupancy of a dwelling, the Development Review Officer shall conduct a review of the development to assure compliance with these guidelines.

(6) Telephone and power supply systems shall be underground whenever possible.

(7) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.

(8) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrestor.

(9) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.

(10) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant.

350-80-310. Approval Criteria for Siting of Dwellings on Forest Land.

The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

(1) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.

(2) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry

because of existing nonforest uses, adjacent dwellings, or land productivity.

(3) Dwellings shall be located to minimize the risks associated with fire. Dwellings should be located on gentle slopes and in any case not on slopes which exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty in gaining access to the structure in the case of fire. Dwellings should be located to make the access roads as short and flat as possible.

(4) A variance to the siting guidelines of this rule may be granted pursuant to the provisions of Commission Rule 350-80-150(7).

350-80-320. Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland.

A landowner who sells or otherwise transfers real property on lands designated Commercial Forest Land or Large or Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel. A second dwelling unit on lands designated Commercial Forest Land or Large or Small Woodland may be allowed, subject to compliance with the guidelines in Commission Rule 350-80-520 through 350-80-620 for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(1) The proposed dwelling is in conjunction with agricultural use, using guideline 350-80-190 (1)(e).

(2) On lands designated Large Woodland, the dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The proposed dwelling shall comply with guideline 350-80-270 (1)(a).

(3) On lands designated Small Woodland, the proposed dwelling complies with guideline 350-80-270 (1)(b).

(4) Upon termination of the life estate, the original or second dwelling shall be removed.

350-80-330. Open Space Designations.

Commission Rule 350-80-330 through 350-80-340 shall apply to those areas designated GMA-Open Space and SMA-Open Space on the Scenic Area Land Use Designation Map.

350-80-335. Uses Allowed Outright - Open Space.

The following uses may be allowed on lands designated GMA-Open Space without review:

(1) Operation of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.

(2) Emergency repair and maintenance of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities including removal of fallen timber, rock, or other materials from road surfaces, railroads lines, and utility structures. The term "repair and maintenance" is defined in 350-80-040(107).

(3) Non-emergency repair and maintenance of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities provided that:

(a) ground disturbing activities only occur on sites that have been previously disturbed by human activities and do not exceed the depth and extent of existing ground disturbance;

(b) clearing of vegetation, including tree removal, only occurs on sites that have been regularly cleared for maintaining utility facilities.

350-80-340. Review Uses — Open Space.

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(a) Low intensity recreation, subject to Commission Rule 350-80-610(2).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural or recreation resources.

(c) [Repair, maintenance, operation and improvement of existing structures, trails, roads, railroads, utility facilities and hydroelectric facilities.] Non-emergency repair and maintenance of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities that involve new ground disturbing activities or those which differ in depth and extent from past ground disturbance.

(d) [Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.] Improvement of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.

(e) Placement of structures for public safety.

(2) The following uses may be allowed on land designated GMA-Open Space in the Gorge Walls, Canyonlands and Wildlands landscape setting:

(a) All uses listed in Commission Rule 350-80-340(1).

(b) Livestock grazing.

(c) Fish and wildlife management uses conducted by federal, state or tribal resource agencies.

(d) Soil, water or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.

(e) Harvesting of wild crops.

(f) Educational or scientific research.

(g) Continued operation of existing quarries if they are determined to be consistent with guidelines to protect scenic, cultural, natural and recreation resources (Commission Rule 350-80-520 through 350-80-620).

([5]3) The following uses may be allowed on land designated GMA-Open Space within the Mosley Lakes Natural Area:

(a) All those uses allowed in Commission Rule 350-80-340(1).

(b) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(c) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(d) Commercial trapping.

(4) The following uses may be allowed on land designated GMA-Open Space within the Chenoweth Table Natural Area:

(a) All those uses allowed in Commission Rule 350-80-340(1).

(b) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Oregon Natural Heritage Program.

(c) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.

(d) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(5) The following uses may be allowed on land designated GMA-Open Space within the Squally Point Natural Area:

(a) Except as limited by guideline (5)(b) below, all those uses allowed in Commission Rule 350-80-340(1).

(b) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Oregon Natural Heritage Program.

(c) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(6) The following uses may be allowed on land designated GMA-Open Space within the Klickitat River Wildlife and Natural Area:

(a) All those uses allowed in Commission Rule 350-80-340(1).

(b) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Washington Natural Heritage Program and Washington Department of Wildlife.

(c) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(d) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(7) The following uses are allowed on land designated GMA-Open Space within the Balch Lake Wetland Area:

(a) All those uses allowed in Commission Rule 350-80-340(1).

(b) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Wildlife.

(c) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(d) Educational and scientific research, after consultation with the Washington Department of Wildlife.

(e) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Washington Department of Wildlife.

(8) The following uses may be allowed on lands designated GMA-Open Space within the mouth of the Wind River Wildlife Area:

(a) All those uses allowed in Commission Rule 350-80-340(1).

(b) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(c) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(d) Harvesting of wild crops.

(e) Educational or scientific research, after consultation with the Washington Department of Wildlife or Fisheries.

(f) Commercial fishing and trapping.

(g) Low-intensity recreation, subject to the guidelines for recreation intensity classes 350-80-610(2), after consultation with the Washington Department of Wildlife.

(9) The following uses may be allowed on lands designated GMA-Open Space within state parks:

(a) All uses listed in Commission Rule 350-80-340(1).

(b) Fish and wildlife management uses conducted by federal, state or tribal resource agencies.

(c) Soil, water or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(d) Harvesting of wild crops.

(e) Educational or scientific research.

(10) On land designated SMA-Open Space, the maintenance, repair, and operation of existing dwellings, structures, trails, roads, railroads, and utility facilities may occur without review.

(11) The following uses may be allowed on lands designated SMA-Open Space, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620) and when consistent with an open space plan approved by the U.S. Forest Service pursuant to guideline (12) below:

(a) Changes in existing uses including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(b) Structures or vegetation management activities, including scientific research, related to scenic, cultural, recreational, and natural resource enhancement projects.

(c) Low intensity recreation uses, including educational and interpretive facilities, consistent with Commission Rule 350-80-620.

(d) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Open Space land.

(B) The size is the minimum necessary to provide the service.

(e) New signs, pursuant to Commission Rule 350-80-160.

(12) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

(a) Direction for resource protection, enhancement, and management.

(b) Review of existing uses to determine compatibility with Open Space values.

(c) Consultation with members of the public and with agency and resource specialists.

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.

350-80-350. Residential Land Designations.

Commission Rule 350-80-350 through 350-80-390 shall apply to those areas designated Residential on the Scenic Area Land Use Designation Map.

350-80-360. Uses Allowed Outright — Residential Land.

(1) The following uses are allowed on lands in the General Management Area designated Residential without review:

- (a) Agricultural use, except new cultivation.
- (b) Forest practices that do not violate conditions of approval for other approved uses.
- (c) Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.
- (d) Buildings less than 60 square feet in area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

(2) The following uses are allowed on land in the Special Management Area designated Residential without review:

- (a) Agricultural uses except where there would be potential impact to cultural or natural resources.
- (b) Maintenance, repair, and operation of dwellings, signs, structures, existing trails, roads, railroads, and utility facilities.
- (c) Accessory structures of less than 60 square feet in area and 18 feet in height measured at the roof peak.

350-80-370. Review Uses — Residential Land.

(1) The following uses may be allowed on lands in the General Management Area designated Residential, subject to compliance with the scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(a) One single-family dwelling per legally created parcel.

(A) [If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland, the use shall comply with the buffer and notification requirements of Commission Rule 350-80-150(2), 350-80-310(1), and the notification requirements of Commission Rules 350-80-190 (1)(n)(E) and 350-80-290(1); and]

If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture or Commercial Forest Land or Large or Small Woodland, the use shall comply with the buffer and notification requirements of Commission Rule 350-80-150(2) and 350-80-190 (1)(n)(E) for agriculture designations or Commission Rule 350-80-310(1) and 350-80-290(1) for forest land designations.

(B) If the subject parcel is located adjacent to lands designated Commercial Forest Land or Large or Small

Woodland, the placement of a dwelling shall also comply with the fire protection guidelines of Commission Rule 350-80-300.

(b) Buildings exceeding 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.

(c) The temporary use of a mobile home in the case of a family hardship, subject to Commission Rule 350-80-150(3).

(d) Construction or reconstruction of roads.

(e) On parcels 10 acres or larger designated Residential-5, or 20 acres or larger designated Residential-10, a land division creating new parcels smaller than the designated minimum parcel size, subject to the provisions of Commission Rule 350-80-150(1).

(f) New cultivation, subject to compliance with Commission Rule 350-80-540 and 350-80-[6]560 through 350-80-590.

(g) Land divisions, subject to the minimum lot size as indicated on the Land Use Designation Map.

(2) The following uses may be allowed on lands in the Special Management Area designated Residential subject to compliance with the scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(a) One single-family dwelling per legally created lot or consolidated parcel, subject to the guidelines of Commission Rule 350-80-270 (2)(j)(E).

(b) Accessory structures over 60 square feet.

(c) New utility facilities.

(d) Fire stations.

(e) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4).

(f) Bed and breakfast inns in structures that are included in, or eligible for inclusion in, the National Register of Historic Places, pursuant to 350-80-150(5).

(g) Community parks and playgrounds.

(h) Road and railroad construction and reconstruction.

(i) Forest practices, pursuant to the provisions of Commission Rule 350-80-270(2).

(j) Signs, as specified in Commission Rule 350-80-160(2).

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.

350-80-380. Review Uses with Additional Approval Criteria — Residential Land.

The following uses may be allowed on lands in the General Management Area designated Residential subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-390:

(1) Accredited child care centers on land designated 1-acre Residential or 2-acre Residential. A child care center may be allowed in other Residential designations within an existing church or community building.

(2) Schools within an existing church or community building.

- (3) Utility facilities and railroads.
- (4) Home occupations and cottage industries pursuant to Commission Rule 350-80-150(4).
- (5) Fire stations.
- (6) Recreation development, subject to compliance with Commission Rule 350-80-610.
- (7) Community parks and playgrounds, consistent with the guidelines of the National Park and Recreation Society regarding the need for such facilities.
- (8) Bed and breakfast inns in single-family dwellings located on lands designated Residential-5 or Residential-10, pursuant to 350-80-150(5) and 350-80-150 (4)(j) if applicable.

350-80-390. Approval Criteria for Specified Review Uses on Lands Designated Residential.

The uses identified in Commission Rule 350-80-3[9]80 may be allowed only if they meet all of the following:

- (1) The proposed use will be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area, traffic generation, and noise, dust and odors.
- (2) The proposed use will not require public services other than those existing or approved for the area.
- (3) If the subject parcel is located within 500 feet of lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, new buildings associated with the proposed use shall comply with Commission Rule 350-80-150(2).
- (4) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land or Large or Small Woodland, new buildings associated with the proposed use shall comply with Commission Rule 350-80-300.

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.

350-80-400. Rural Center.

Commission Rule 350-80-400 through 350-80-420 shall apply to those areas designated Rural Center on the Scenic Area Land Use Designation Map.

350-80-410. Uses Allowed Outright — Rural Center.

The following uses are allowed on lands designated Rural Center without review:

- (1) Agricultural use, except new cultivation.
- (2) Forest practices that do not violate conditions of approval for other approved uses.
- (3) Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.
- (4) Buildings less than 60 square feet in area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

350-80-420. Review Uses — Rural Center.

The following uses may be allowed on lands designated Rural Center subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

- (1) One single-family dwelling per legally created parcel.
- (2) Buildings greater than 60 square feet in area and/or 18 feet in height as measured at the roof peak, which are accessory to a dwelling.
- (3) The temporary use of a mobile home in the case of a family hardship, pursuant to Commission Rule 350-80-150(3).
- (4) Duplexes.
- (5) Fire stations.
- (6) Libraries.
- (7) Government buildings.
- (8) Community centers and meeting halls.
- (9) Schools.
- (10) Accredited child care centers.
- (1[8]1) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.
 - (a) Grocery stores.
 - (b) Variety and hardware stores.
 - (c) Shops, offices and repair shops.
 - (d) Personal services such as barber and beauty shops.
 - (e) Travelers accommodations, bed and breakfast inns.
 - (f) Restaurants.
 - (g) Taverns and bars.
 - (h) Gas stations.
 - (i) Gift shops.
- (12) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to Commission Rule 350-80-150(4).
- (13) Utility facilities and railroads.
- (14) Recreation development, subject to Commission Rule 350-80-610.
- (15) Places of worship.
- (16) New cultivation, subject to compliance with Commission Rules 350-80-540 and 350-80-560[, 350-80-570, 350-80-580 and] through 350-80-590.
- (17) Land divisions subject to Commission rule 350-80-150(1).
- (18) Planned developments incorporating features such as consolidated access and commonly shared open areas.

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.

350-80-430. Commercial Land.

Commission Rule 350-80-430 through 350-80-[3]460 shall apply to those areas designated Commercial on the Scenic Area Land Use Designation Map.

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.

350-80-440. Uses Allowed Outright — Commercial Land.

The following uses are allowed on lands designated Commercial without review:

- (1) Agricultural use, except new cultivation.
- (2) Forest practices that do not violate conditions of approval for other approved uses.
- (3) Repair, maintenance and operation of existing structures, trails, roads, railroads and utility facilities.
- (4) Buildings less than 60 square feet in area and not exceeding 18 feet in height measured at the roof peak, which are accessory to a dwelling.

350-80-450. Review Uses with Additional Approval Criteria — Commercial Land.

The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-460:

- (1) Travelers accommodations, bed and breakfast inns subject to Commission Rule 350-80-150(5).
- (2) Restaurants.
- (3) Gift shops.
- (4) Home occupations or cottage industries in an existing residence or accessory structure, pursuant to Commission Rule 350-80-150(4).
- (5) One single-family dwelling per legally created parcel.
- (6) Utility facilities and railroads.

350-80-460. Approval Criteria for Review Uses on Lands Designated Commercial.

The uses identified in Commission Rule 350-80-450 may be allowed only if they meet both of the following criteria:

- (1) The proposal is limited to 5,000 square feet of floor area per building or use.
- (2) The proposed use would be compatible with the surrounding areas, including review for impacts associated with the visual character of the area, traffic generation and noise, dust and odors.

350-80-470. Recreation.

Commission Rule 350-80-470 through 350-80-510 shall apply to those areas designated Public Recreation and Commercial Recreation on the Scenic Area Land Use Designation Map.

350-80-480. Uses Allowed Outright — Public Recreation and Commercial Recreation.

(1) The following uses are allowed on lands in the General Management Area designated Public Recreation and Commercial Recreation without review:

(a) Forest practices that do not violate conditions of approval for other approved development.

(b) Repair, maintenance and operation of existing structures, trails, roads, railroads, and utility facilities.

(c) Agricultural uses, except for new cultivation.

(2) The following uses are allowed on lands in the Special Management Area designated Public Recreation without review:

(a) Agricultural use, except where there would be potential impact to cultural or natural resources.

(b) Maintenance, repair, and operation of existing dwellings, structures, trails, roads, railroads, utility facilities, and public recreation facilities.

(c) Accessory structures less than 60 square feet in area and 18 feet in height measured at the roof peak.

350-80-490. Review Uses — Public Recreation and Commercial Recreation.

(1) The following uses are allowed on all lands in the General Management Area designated Public Recreation:

(a) The following uses may be allowed on lands in the General Management Area designated Public Recreation, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and where applicable Commission Rule 350-80-610 (5)(a) and (c) through (g):

(A) Publicly-owned, resource-based recreation uses consistent with Commission Rule 350-80-610.

(B) Commercial uses and non-resource based recreation uses that are part of an existing or approved, resource-based public recreation use consistent with guidelines contained in this section.

(C) New cultivation, subject to compliance with Commission Rule 350-80-540 and 350-80-560 through 350-80-590.

(b) The following uses may be allowed on lands in the General Management Area designated Public Recreation, subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-500:

(A) Residences and accessory structures, limited to one single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(B) Agricultural buildings.

(C) Utility transmission, transportation, communication and public works facilities.

(c) Land divisions, subject to compliance with Commission Rule 350-80-500(3).

(2) The following uses are allowed on all lands in the General Management Area designated Commercial Recreation:

(a) The following uses may be allowed on lands in the General Management Area designated Commercial Recreation, subject to compliance with the appropriate scenic,

cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and where applicable Commission Rule 350-80-610 (5)(a) and (c) through (g):

(A) Commercially-owned, resource-based recreation uses consistent with Commission Rule 350-80-610.

(B) Overnight accommodations that are part of a commercially-owned resource-based recreation use, where such resource-based recreation use occurs on the subject site or is accessed through the site on adjacent lands, and which meet the following guidelines:

(i) Buildings containing individual units are no larger than 1,500 square feet in total floor area and no higher than two and one-half stories.

(ii) Buildings containing more than one unit are no larger than 5,000 square feet in total floor area and no higher than two and one-half stories.

(iii) The total number of individual units shall not exceed 25, unless the proposed development complies with guidelines for clustered accommodations in subsection (iv) below

(iv) Clustered overnight travelers accommodations meeting the following guidelines may include up to 35 individual units:

(I) Average total floor area of all units is 1,000 square feet or less per unit;

(II) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas);

(III) The facility is in an area classified for high intensity recreation (Recreation Intensity Class 4).

(C) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and nonresource-based recreation uses which are part of an existing or approved resource-based commercial recreation use consistent with the guidelines contained in this section.

(D) New cultivation, subject to compliance with Commission Rule 350-80-540 and 350-80-560 through 350-80-590.

(b) The following uses may be allowed, subject to compliance with the appropriate scenic, cultural, natural, and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620), and Commission Rule 350-80-510:

(A) Residences and accessory structures limited to one single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(B) Agricultural buildings.

(C) Utility transmission, transportation and communication facilities.

(c) Land divisions, subject to compliance with Commission Rule 350-80-510(3).

(3) The following uses are allowed on lands in the Special Management Area designated Public Recreation subject to compliance with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620):

(a) Forest uses and practices as allowed in Commission Rule 350-80-270(2).

(b) Public trails, consistent with Commission Rule 350-80-620.

(c) Public recreational facilities, consistent with Commission Rule 350-80-620.

(d) Public non-profit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) All dwellings and accessory structures larger than 60 square feet.

(f) Home occupations and cottage industries, pursuant to Commission Rule 350-80-150(4).

(g) Road and railroad construction and reconstruction.

(h) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(i) New signs pursuant to 350-80-160(2).

(j) Structures or vegetation management activities for the purpose of wildlife, fisheries, or plant habitat enhancement projects.

(k) Agricultural uses as allowed in Commission Rule 350-80-190(2).

(4) New commercial recreation facilities shall be allowed in Forest Land and Agricultural Land use designations, consistent with the guidelines established for the recreation intensity classes Commission Rule 350-80-620.

350-80-500.

Approval Criteria for Non-Recreation Uses in Public Recreation Designations.

The uses identified in Commission Rule 350-80-490 (1)(b) may be allowed only if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigation measures to comply with this criterion may include onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance or otherwise improve recreational uses on the site.

350-80-510.

Approval Criteria for Non-Recreation Uses in Commercial Recreation Designations.

The uses identified in Commission Rule 350-80-490 (2)(b) may be allowed only if they meet the following criteria:

(1) The proposed use will not interfere with existing or approved commercial recreation uses on the subject property or adjacent lands. Mitigation measures to comply with this criterion may include onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(2) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(3) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance or otherwise improve recreational uses on the site.

350-80-520. General Management Area Scenic Review Criteria.

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All Review Uses:

(a) New buildings and roads shall be sited and designed to retain the existing topography and reduce necessary grading to the maximum extent practicable.

(b) New buildings shall be generally consistent with the height and size of existing nearby development.

(c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in Commission Rule 350-80-520.

(d) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

(e) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable.

Such a plan shall be approved by the appropriate state agency for uses under their jurisdiction, or approved by the Development Review Officer with technical assistance from applicable state agencies for uses not under state agency jurisdiction. At a minimum, such reclamation plans shall include:

(A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail, with 10 foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch-basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing and equipment areas employed for the duration of the use.

(B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

(C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.

(D) Description of drainage/erosion control features to be employed for the duration of the use.

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(2) All Review Uses visible from Key Viewing Areas shall comply with the following applicable guidelines:

(a) Size, height, shape, color, reflectivity, landscaping, siting or other aspects of proposed development shall be evaluated to ensure that such development is visually subordinate to its setting as seen from Key Viewing Areas.

(b) The extent and type of conditions applied to a proposed development to achieve visual subordination should be proportionate to its potential visual impacts as seen from Key Viewing Areas. Primary factors influencing the degree of potential visual impact include: the amount of area of the building site exposed to Key Viewing Areas, the degree of existing vegetation providing screening, the distance from the building site to the Key Viewing Areas from which it is visible, the number of Key Viewing Areas from which it is visible, and the linear distance along the Key Viewing Areas from which the building site is visible (for linear Key Viewing Areas, such as roads). Written reports on determination of visual subordination and final conditions of approval shall include findings addressing each of these factors.

(c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

(d) For all buildings, roads or mining and associated activities proposed on lands visible from Key Viewing Areas, the following supplemental site plan information shall be submitted in addition to the site plan requirements in Commission Rule 350-80-080 and 350-80-520 (1)(e) for mining and associated activities:

(A) For buildings, a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used, number, size, locations of plantings, and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(B) Elevation drawings showing the appearance of proposed building(s) when built and surrounding final ground grades, for all buildings over 400 square feet in area.

(e) For proposed mining and associated activities on lands visible from Key Viewing Areas, in addition to submittal of plans and information pursuant to Commission Rule 350-80-520 (1)(e) and subsection (d) above, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable Key Viewing Areas.

(f) New buildings or roads shall be sited on portions of the subject property which minimize visibility from Key Viewing Areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, sensitive wildlife sites or conflict with the protection of cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

(g) In siting new buildings and roads, use of existing topography and vegetation to screen such development from Key Viewing Areas shall be given priority over other means of achieving visual subordination, such as planting of new vegetation or use of artificial berms to screen the development from Key Viewing Areas.

(h) Driveways and buildings shall be designed and sited to minimize grading activities and visibility of cut banks and fill slopes from Key Viewing Areas.

(i) The exterior of buildings on lands seen from Key Viewing Areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all Key Viewing Areas by existing topographic features.

(j) Exterior lighting shall be directed downward and sited, hooded and shielded such that it is not highly visible from Key Viewing Areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(k) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of colors specified in the design guidelines for the subject property's landscape setting.

(l) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from Key Viewing Areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

(m) The silhouette of new buildings shall remain below the skyline of a bluff, cliff or ridge as seen from Key Viewing Areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use, and may be applied only after all reasonable efforts to modify the design, building height, and site to comply with the guideline have been made.

(n) An alteration to a building built prior to November 17, 1986, which already protrudes above the skyline of a bluff, cliff or ridge as seen from a Key Viewing Area, may itself protrude above the skyline if:

(A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration; and

(B) There is no practicable alternative means of altering the building without increasing the protrusion.

(o) New main lines on lands visible from Key Viewing Areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

(p) New communication facilities (antennae, dishes, etc.) on lands visible from Key Viewing Areas, which require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(q) New communications facilities may protrude above a skyline visible from a Key Viewing Area only upon demonstration that:

(A) The facility is necessary for public service;

(B) The break in the skyline is seen only in the background; and

(C) The break in the skyline is the minimum necessary to provide the service.

(r) Overpasses, safety and directional signs and other road and highway facilities may protrude above a skyline visible from a Key Viewing Area only upon a demonstration that:

(A) The facility is necessary for public service; and

(B) The break in the skyline is the minimum necessary to provide the service.

(s) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to the setback may be authorized.

(t) New buildings shall not be permitted on lands visible from Key Viewing Areas with slopes in excess of 30 percent. A variance may be authorized if the property would be rendered unbuildable through the application of this guideline. In determining the slope, the average percent slope of the proposed building site shall be used.

(u) All proposed structural development involving more than 100 cubic yards of grading on sites visible from Key Viewing Areas and which slope between 10 and 30 percent shall include submittal of a grading plan. This plan shall be reviewed by the Development Review Officer for compliance with Key Viewing Area policies. The grading plan shall include the following:

(A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail, with contour intervals of at least 5 feet, including:

(i) Existing and proposed final grades;

(ii) Location of all areas to be graded, with cut banks and fill slopes delineated; and

(iii) Estimated dimensions of graded areas.

(B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

(i) Its purpose;

(ii) An estimate of the total volume of material to be moved;

(iii) The height of all cut banks and fill slopes;

(iv) Provisions to be used for compaction, drainage, and stabilization of graded areas (preparation of this information by a licensed engineer or engineering geologist is recommended);

(v) A description of all plant materials used to revegetate exposed slopes and banks, including type of species, number of, size and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and

(vi) A description of any other interim or permanent erosion control measures to be utilized.

(v) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest Key Viewing Areas from which it is visible may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this chapter have been met.

(B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any Key Viewing Areas.

(C) A reclamation plan to restore the site to a natural appearance which blends with and emulates surrounding

landforms to the maximum extent practicable has been approved. The plan shall be approved by the applicable state agency with jurisdiction, or approved by the Development Review Officer with technical assistance from applicable state agencies for uses not under state agency jurisdiction. At minimum, the reclamation plan shall comply with Commission Rule 350-80-520 (1)(e).

(D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from Key Viewing Areas, including:

(i) A list of Key Viewing Areas from which exposed mining surfaces (and associated facilities/activities) would be visible;

(ii) An estimate of the surface area of exposed mining surfaces that would be visible from those Key Viewing Areas;

(iii) The distance from those Key Viewing Areas and the linear distance along those Key Viewing Areas from which proposed mining surfaces are visible;

(iv) The slope and aspect of mining surfaces relative to those portions of Key Viewing Areas from which they are visible;

(v) The degree to which potentially visible mining surfaces are screened from Key Viewing Areas by existing vegetation, including winter screening considerations.

(vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(w) Unless addressed by guideline (v) above, new production and/or development of mineral resources may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this section have been met;

(B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc. associated with the use would be fully screened from any Key Viewing Area; and

(C) A reclamation plan to restore the area to a natural appearance which blends with and emulates surrounding landforms to the maximum extent practicable has been approved by the applicable state agency with jurisdiction, or approved by the Development Review Officer with technical assistance from applicable state agencies for uses not under state agency jurisdiction. At minimum, the reclamation plan shall comply with Commission Rule 350-80-520 (1)(e).

(x) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible Key Viewing Area shall be established prior to approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(y) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible Key Viewing Area shall be established prior to approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarrying activity occurring prior to achieving compliance

with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(z) Compliance with specific approval conditions to achieve visual subordination (such as landscaped screening), shall occur within a period not to exceed 2 years after the date of development approval. This guideline shall apply to all development regulated by this section except mining and associated uses.

(3) All Review Uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

(A) New development shall be compatible with the general scale (height, dimensions, overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) Accessory structures, outbuildings and accessways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures and farm fields.

(C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.

(ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(v) The exteriors of structures shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520 (2)(k) or (l).

(D) Compatible recreation uses include resource-based recreation uses of a very low or low-intensity nature (as defined by Commission Rule 350-80-610), occurring infrequently in the landscape.

(b) Coniferous Woodland

(A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) Structure height shall remain below the forest canopy level.

(C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from Key Viewing Areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(iv) The exteriors of structures shall be either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520 (2)(k) or (l).

(D) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland

(A) New development shall be compatible with the general scale (height, dimensions, and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development.

(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.

(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

For substantially wooded portions:

(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from Key Viewing Areas shall be retained.

(iv) The exteriors of structures shall be either natural or earth-tone colors, unless specifically exempted [pursuant to] by Commission Rule 350-80-520 (2)(k) or (l).

For treeless portions or portions with scattered tree cover:

(v) Structures shall be sited on portions of the property that provide maximum screening from Key Viewing Areas, using existing topographic features.

(vi) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.

(vii) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(viii) The exteriors of structures shall be dark and either natural or earth-tone colors, unless specifically exempted [pursuant to] by Commission Rule 350-80-520 (2)(k) or (l).

(D) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks).

More intensive recreation uses may be compatible where allowed [pursuant to] by Commission Rule 350-80-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland

(A) New development shall be compatible with the general scale (height, dimensions, and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

(C) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Structures shall be sited on portions of the property that provide maximum screening from Key Viewing Areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar, black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(iv) The exteriors of structures shall be dark and either natural or earth-tone colors, unless specifically exempted [pursuant to] by Commission Rule 350-80-520 (2)(k) or (l).

(D) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential

(A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

(C) In portions of this setting visible from Key Viewing Areas, and not exempt from visual subordination guidelines (pursuant to the "Developed Settings and Visual Subordination Policies" Section in Part I, Chapter 1 of the Management Plan) the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(iv) Structures' exteriors shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520 (2)(k) or (l).

(D) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as small scenic overlooks).

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

(A) New development in this setting shall meet the design guidelines for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(g) Residential

(A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In portions of this setting visible from Key Viewing Areas and not exempt from visual subordination guidelines (pursuant to the "Developed Settings and Visual Subordination Policies" section of Part I, Chapter 1 of the Management Plan), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from Key Viewing Areas shall be retained.

(ii) Structures' exteriors shall be non-reflective unless fully screened from Key Viewing Areas with existing vegetation and/or topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(v) The exteriors of structures shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520 (2)(k) or (l).

(C) Compatible recreation uses are limited to community park facilities.

(h) Village

(A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 and 1/2 stories or less.

(C) For new commercial, institutional (churches, schools, government buildings) or multi-family residential uses on parcels fronting a Scenic Travel Corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.

(D) New vehicular access points to the Scenic Travel Corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(E) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly-shared landscaped open areas, etc.

(F) New commercial, institutional or multi-family residential uses fronting a Scenic Travel Corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet in width between the new use and the Scenic Travel Corridor roadway.

(ii) The landscape strip required in guideline (F)(i) above shall include shrubs, vegetative ground cover and, at minimum, one tree spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(G) The use of building materials that reinforce the Village Setting's character, such as wood, logs or stone, and that reflect community desires, should be encouraged.

(H) Architectural styles characteristic of the area (such as 1 and 1/2 story dormer roof styles in Corbett), and that reflect community desires, should be encouraged. Entry signs should be consistent with such architectural styles.

(I) Design features which create a "pedestrian friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc. should be encouraged.

(J) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(K) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(L) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands

(A) New development shall be compatible with the general scale (height, dimensions and overall mass) of development in the vicinity. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In portions of this setting visible from Key Viewing Areas, the following guidelines shall be employed to achieve

visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from Key Viewing Areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include: black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas fir, western red cedar and western hemlock (west Gorge) and various native willow species.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(iv) The exteriors of structures shall be dark and either natural or earth-tone colors unless specifically exempted by Commission Rule 350-80-520 (2)(k) or (l).

(C) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

(i) their designs emphasize retention and/or enhancement of native riparian communities,

(ii) structures and parking areas are visually subordinate, and

(iii) they are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons and Wildlands

(A) New development and expansion of existing development shall be screened so it is not seen from Key Viewing Areas, to the maximum extent practicable.

(B) All trees planted to screen permitted development and uses from Key Viewing Areas shall be native to the area.

(C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.

(D) All structures shall be limited in height to a maximum of 1 and 1/2 stories.

(E) All structures' exteriors shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway guidelines require otherwise.

(G) Compatible recreation uses are limited to very low or low-intensity, resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies

(A) New development in areas listed in subsections (i) through (vi) shall be compatible with the setting, but not necessarily visually subordinate.

New uses and developments in these particular areas are subject to only the following guidelines for scenic resources: 350-80-520 (1)(a) through (e); 350-80-520 (2)(d), (e), (f), and (u); depending upon which setting the subject parcel is located in: 350-80-520 (3)(e)(A), (B) and (D), 350-80-520 (3)(g)(A) and (C), or 350-80-520 (3)(h)(A) through (L); and 350-80-520 (4)(a), (d), (e), and (f).

(i) Corbett Rural Center (Village)

(ii) Skamania Rural Center (Village)

(iii) West of Hood River Urban Area, east of Country Club Road (Rural Residential)

(iv) Murray's Addition Subdivision, The Dalles (Residential)

(v) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Rural Residential and Residential)

(vi) Portion of Underwood Heights along Cooper Avenue, south of Cook Underwood Road (Rural Residential/Residential)

(4) All Review Uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

(a) For the purposes of implementing this section, the foreground of a Scenic Travel Corridor shall include those lands within one-quarter mile of the edge of pavement of the Scenic Travel Corridor roadway.

(b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway. A variance to this setback requirement may be granted pursuant to Commission Rule 350-80-150(7). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the Scenic Travel Corridor roadway, to the maximum extent practicable.

(c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a Scenic Travel Corridor roadway except in a Rural Center designation (village landscape setting), shall comply with guideline (4)(b) above to the maximum extent practicable.

(d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:

(A) An evaluation of potential visual impacts of the proposed project as seen from any Key Viewing Area;

(B) An inventory of any rare plants, sensitive wildlife habitat, wetlands or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable guidelines to protect the resources.

(e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the Columbia River Gorge National Scenic Area Corridor Visual Inventory prepared in April, 1990.

(f) New production and/or development of mineral resources proposed within one-quarter mile of the edge of pavement of a Scenic Travel Corridor may be allowed upon a demonstration that full visual screening of the site from the Scenic Travel Corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed

project. An exception to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a Scenic Travel Corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within time frames specified in Commission Rule 350-80-520 (2)(y).

(g) Expansion of existing quarries may be allowed pursuant to Commission Rule 350-80-520 (2)(v). Compliance with visual subordination requirements shall be achieved within time frames specified in Commission Rule 350-80-520 (2)(x).

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.

350-80-530. Special Management Area Scenic Review Criteria.

The following scenic review guidelines shall apply to all Review Uses in the Special Management Area of the Columbia River Gorge National Scenic Area with the exception of rehabilitation or modification of historic structures eligible or on the National Register of Historic Places when such modification is in compliance with the [n]National [r]Register of [h]Historic [p]Places guidelines:

(1) All Review Uses in the Special Management Area regardless of location or landscape setting shall comply with the following applicable guidelines:

(a) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from Key Viewing Areas.

(b) Size, scale, shape, color, texture, siting, height, building materials, lighting, or other features of a proposed structure shall be visually subordinate in the landscape and have low contrast in the landscape.

(c) Colors shall be used in a manner so that developments are visually subordinate to the natural and cultural patterns in the landscape setting. Colors for structures and signs should be slightly darker than the surrounding background.

(d) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.

(e) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.

(f) Any exterior lighting shall be sited, limited in intensity, shielded or hooded in a manner that prevents lights from being highly visible from Key Viewing Areas and from noticeably contrasting with the surrounding landscape setting except for road lighting necessary for safety purposes.

(h) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed three months duration.

(i) Reflectivity of structures and site improvements shall be minimized.

(j) Right-of-way vegetation shall be managed to minimize visual impact of clearing and other vegetation removal as seen from Key Viewing Areas. Roadside vegetation management (vista clearing, planting, etc.) should enhance views from the highway.

(k) Encourage existing and require new road maintenance warehouse and stockpile areas to be screened from view from Key Viewing Areas.

(2) New developments and land uses shall be evaluated to ensure that scenic resources are not adversely affected, including cumulative effects, based on visibility from Key Viewing Areas.

(3) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(4) New land uses or developments shall comply with the following applicable design guidelines:

(a) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.

(A) New developments and forest practices shall meet the Visual Quality Objective of partial retention.

(B) The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows as commonly found in the landscape setting is encouraged.

(C) Exterior colors of structures shall be earth-tone colors which will result in low contrast with the surrounding landscape.

(D) Exterior colors of structures may be white, except for the roof, only in the Mt. Pleasant and Dodson-Warendale areas where other white structures are evident in the setting.

(b) Coniferous Woodlands and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous and Oak/Pine Woodland landscape.

(A) New developments and land uses in lands designated Federal Forest or Open Space shall meet the Visual Quality Objective of retention; all other land use designations shall meet the Visual Quality Objective of partial retention as seen from Key Viewing Areas.

(B) Forest practices on National Forest lands included in the Mt. Hood National Forest Plans shall meet the Visual Quality Objective identified for those lands in those plans.

(C) Buildings in the Coniferous Woodland landscape setting shall be encouraged to have a vertical overall appearance and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

(D) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(E) The exteriors of structures in the Coniferous Woodland landscape setting shall be dark earth-tone colors which will result in low contrast with the surrounding landscape as seen from the Key Viewing Areas.

(F) Exterior colors of structures in Oak-Pine Woodland landscape setting shall be earth-tone colors which will result

in low contrast with the surrounding landscape as seen from the Key Viewing Areas.

(c) Residential: The Residential setting is characterized by concentrations of dwellings.

(A) New developments and land uses shall meet the Visual Quality Objective of partial retention.

(B) At Rowena Dell, new buildings shall have a rustic appearance and use natural materials and earth-tone colors.

(C) At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(D) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native appearing characteristics.

(d) River Bottomlands: River bottomland shall retain the overall visual character of a floodplain and associated islands.

(A) New developments and land uses shall meet the Visual Quality Objective of partial retention, except in areas designated Open Space which shall meet the Visual Quality Objective of retention.

(B) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(C) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(D) Exterior colors of structures shall be earth-tone or water-tone colors which will result in low contrast with surrounding landscape.

(e) Gorge Walls, and Canyonlands and Wildlands: New developments and land uses shall retain the overall visual character of the natural appearing landscape.

(A) New developments and land uses shall meet the Visual Quality Objective of retention as seen from Key Viewing Areas.

(B) Structures, including signs, shall have a rustic appearance, use non-reflective materials, and have low contrast with the surrounding landscape and be of a Cascadian architectural style.

(C) Temporary roads shall be promptly closed and revegetated.

(D) New utilities shall be below ground surface, where feasible.

(E) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

(F) Exterior colors of structures shall be dark earth tones that will result in the structure having low contrast with the surrounding landscape.

(5) For forest practices the following guidelines shall apply:

(a) Forest practices must meet the design guidelines and Visual Quality Objective for the landscape setting designated for the management area.

(b) Not more than 16 percent of each total ownership within a viewshed shall be in created openings at any one time. The viewshed boundaries shall be delineated by the Forest Service.

(c) Size, shape, and dispersal of created openings shall maintain the natural patterns in the landscape.

(d) The maximum size of any created opening is 15 acres. In the foreground of Key Viewing Areas, the maximum size of created openings shall be five acres.

(e) Clearcutting shall not be used as a harvest practice on land designated Federal Forest Lands.

(f) Created openings shall not create a break or opening in the vegetation in the skyline as viewed from a Key Viewing Area.

(g) Created openings shall be dispersed to maintain at least 400 feet of closed canopy between openings. Closed canopy shall be at least 20 feet tall.

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.

350-80-540.

General Management Area Cultural Resource Review Criteria.

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in Commission Rule 350-80-504 (1)(c)(A)(ii) below.

(ii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile

homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer

zone delineations for large-scale uses shall be the responsibility of the project applicant.

For Commission Rule 350-80-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

- (i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.
- (ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

- (i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.
- (ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.
- (iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Development Review Officer as to whether affected cultural resources are significant.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

(A) When written comments are submitted to the Development Review Officer within the comment period provided in Commission Rule 350-80-120, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons.

Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

(A) The Development Review Officer shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Development Review Officer shall make a final decision on whether the proposed use would be consistent with Commission Rule 350-80-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Development Review Officer shall justify how it reached an opposing conclusion.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, [and] no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2 (b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(C) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(i) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(ii) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The

project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Development Review Officer question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Development Review Officer shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Development Review Officer, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Development Review Officer within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Development Review Officer shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Development Review Officer shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Development Review Officer determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.9) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.8.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.9(a)].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.9(b)]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Development Review Officer shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Development Review Officer shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Development Review Officer shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Development Review Officer determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal govern-

ments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.8(d), including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Development Review Officer.

(v) Copies of any written recommendations submitted to the Development Review Officer or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Development Review Officer shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Development Review Officer. The Development Review Officer shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Development Review Officer shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Development Review Officer shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(6) Cultural Resources Discovered After Construction Begins

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Development Review Officer and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Development Review Officer [and the Gorge Commission] within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 273.705, ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [Commission Rule 350-80-540 (1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [Commission Rule 350-80-540 (3)(a)].

Based on the survey and evaluation report and any written comments, the Development Review Officer shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

(7) Discovery of Human Remains

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Development Review Officer, the Gorge Commission, and the Indian tribal governments shall be contacted immediately.

(c) **Inspection.** The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) **Jurisdiction.** If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) **Treatment.** In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [Commission Rule 350-80-540 (5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [Commission Rule 350-80-540 (5)(c)] are met and the mitigation plan is executed.

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 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.

350-80-550. Special Management Area Cultural Resource Review Criteria.

(1) **General Guidelines for Implementing the Cultural Resources Protection Process**

(a) All cultural resource information shall remain confidential, according to Section 6 (a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(b) All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in Commission Rule 350-80-550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(2) The procedures and guidelines in Commission Rule 350-80-540 shall be used to review all proposed developments and land uses other than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and Commission Rule 350-80-550(4) shall be used by the Development Review Officer and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800 shall be used to assess potential effects to cultural resources.

(a) **Literature Review and Consultation**

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

(D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Development Review Officer determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

(b) **Field Inventory**

(A) Tribal representatives shall be invited to participate in the field inventory.

(B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

(i) **Complete survey:** the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

(ii) **Sample survey:** the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

(C) A field inventory report shall be prepared, and shall include the following:

(i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.

(ii) A description of the field inventory methodology used, including the type and extent of field inventory,

supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.

(E) The field inventory report shall be presented to the Forest Service or the Development Review Officer for review.

(c) Evaluations of Significance

(A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with the criteria of the National Register of Historic Places (36 CFR 60.4).

(B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.

(D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36 CFR 60.4). The Forest Service or the Development Review Officer shall review evaluations for adequacy.

(E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(F) An assessment of effect shall be required if the Forest Service or the Development Review Officer determines that the inventoried cultural resources are significant.

(d) Assessment of Effect

(A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Development Review Officer shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.8, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Requirements" of 36 CFR 800.8(a).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.9(b) to a significant cultural resource, the type and extent of

"adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).

(D) If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 ("Documentation Requirements").

(e) Mitigation

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects. These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(C) The Forest Service or the Development Review Officer shall review all mitigation proposals for adequacy.

(5) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Forest Service or the Development Review Officer if cultural resources are discovered during construction or development.

(a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.

(b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(A) The applicant shall stop all work in the vicinity of the discovery.

(B) The applicant shall immediately notify the Development Review Officer, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Development Review Officer shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to Commission Rule 350-80-550 (4)(c) and report the results to the Forest Service or the Development Review Officer.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Development Review Officer determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to Commission Rule 350-80-550 (4)(e) if the Forest Service or the Development Review Officer determines that the cultural resource is significant.

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.

350-80-560. General Management Area Wetland Review Criteria.

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Federal Interagency Committee for Wetland Delineation, 1989), and any subsequent amendments.

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Development Review Officer may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Development Review Officer shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(2) Uses allowed outright in wetlands and wetlands buffer zones.

(a) Commission Rule 350-80-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-80, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(b) The following uses are allowed in wetlands and wetlands buffer zones without review, if they:

(A) Are conducted using best management practices;

(B) Do not require structures, grading, draining, flooding, ditching, vegetation removal, or dredging beyond the extent specified below; and

(C) Comply with all applicable federal, state, and county laws:

(i) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

(ii) Soil, water, and vegetation conservation uses that protect and enhance wetlands acreage and functions.

(iii) Low-intensity recreation uses, including hunting, fishing, trapping, bird watching, hiking, boating, swimming, and canoeing.

(iv) Non-commercial harvesting of wild crops, such as ferns, moss, berries, tubers, tree fruits, and seeds in a manner that does not injure natural plant reproduction or impact sensitive plant species.

(v) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. For this guideline cultivation and vegetation removal may be allowed in conjunction with a home garden.

(vi) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

(vii) Commercial fishing and trapping.

(viii) Educational uses and scientific research.

(ix) Navigation aids, including structures covered by Section 17 (a)(3) of the Scenic Area Act.

(x) Forest practices that do not violate conditions of approval for other approved uses.

(xi) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in Commission Rule 350-80-560(5), and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, or

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in Commission Rule 350-80-560 (2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to Commission Rule 350-80-560(6) and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i) Restoration:	2:1
(ii) Creation:	3:1
(iii) Enhancement:	4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(A) Forest communities: 75 feet

(B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials

or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

350-80-570.**General Management Area Stream, Pond, Lake and Riparian Area Review Criteria.**

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(2) Uses allowed outright in streams, ponds, lakes, and their buffer zones.

(a) Commission Rule 350-80-[6]570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(b) The following uses are allowed in streams, ponds, lakes, and their buffer zones without review, if they:

(A) Are conducted using best management practices;

(B) Do not require structures, grading, draining, flooding, ditching, vegetation removal, or dredging beyond the extent specified below; and

(C) Comply with all applicable federal, state, and county laws:

(i) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

(ii) Soil, water, and vegetation conservation uses that protect water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas.

(iii) Low-intensity recreation uses, including hunting, fishing, trapping, bird watching, hiking, boating, swimming, and canoeing.

(iv) Non-commercial harvesting of wild crops, such as ferns, moss, berries, tubers, tree fruits, and seeds in a manner

that does not injure natural plant reproduction or impact sensitive plant species.

(v) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation and shall require a review use permit. For this guideline cultivation and vegetation removal may be allowed in conjunction with a home garden.

(vi) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

(vii) Commercial fishing and trapping.

(viii) Educational uses and scientific research.

(ix) Navigation aids, including structures covered by Section 17 (a)(3) of the Scenic Area Act.

(x) Forest practices that do not violate conditions of approval for other approved uses.

(xi) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant Commission Rule 350-80-570(5), and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in Commission Rule 350-80-570 (2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to Commission Rule 350-80-570(6) and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related

structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in [wetlands] streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by Commission Rule 350-80-560 (6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by Commission Rule 350-80-560 (6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 1986). In Washington, the Washington Department of Wildlife and Washington Department of Fisheries shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by Commission Rule 350-80-560 (7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Development Review Officer may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Development Review Officer shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

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.

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350-80-580. General Management Area Sensitive Wildlife Review Criteria.

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

- Bald eagle habitat
- Deer and elk winter range
- Elk habitat
- Mountain goat habitat
- Peregrine falcon habitat
- Pika colony area
- Pileated woodpecker habitat
- Pine marten habitat
- Shallow water fish habitat (Columbia R.)
- Special streams
- Special habitat area
- Spotted owl habitat
- Sturgeon spawning area
- Tributary fish habitat
- Turkey habitat
- Waterfowl area
- Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, and prairie falcon).

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) The following uses may be allowed within 1,000 feet of sensitive wildlife areas and sites without review, if they do not involve new structures, vegetation removal, or actions that disturb the ground, such as grading, or ditching beyond the extent specified below:

(a) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation.

(b) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands

that have not been cultivated, or have lain idle, for more than 5 years.

(c) Forest practices that do not violate conditions of approval for other approved uses.

(d) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

(e) Fish and wildlife management uses conducted by federal, state, or Indian tribal resource agencies.

(3) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(4) Uses not listed in Commission Rule 350-80-580(2) may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to Commission Rule 350-80-580(5) and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

(5) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

(B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

(A) Biology of the affected wildlife species.

(B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Wildlife has prepared similar guidelines for a variety of species, including

the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Development Review Officer, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Development Review Officer, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Development Review Officer will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Development Review Officer, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Development Review Officer shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Development Review Officer.

The Development Review Officer shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Development Review Officer will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Development Review Officer shall justify how the opposing conclusion was reached.

The Development Review Officer shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(6) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and

mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(7) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

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350-80-590. General Management Areas Rare Plant Review Criteria.

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) endemic to the Columbia River Gorge and vicinity,

(B) listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) The following uses may be allowed within 200 feet of a sensitive plant without review, if they do not involve new structures, vegetation removal, or actions that disturb the ground, such as grading or ditching beyond the extent specified below:

(a) Low-intensity recreation uses, including hunting, fishing, trapping, native plant study, bird watching, boating, swimming, and hiking. Regarding sensitive plants, horse-back riding is not considered a low-intensity use.

(b) Agriculture, except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation.

(c) Ditching, tilling, dredging, or grading conducted solely for the purpose of repairing and maintaining existing irrigation and drainage systems necessary for agriculture, provided that such uses are not undertaken to cultivate lands that have not been cultivated, or have lain idle, for more than 5 years.

(d) Forest practices that do not violate conditions of approval for other approved uses.

(e) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads and utility facilities.

(3) Field Survey

A field survey to identify sensitive plants shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(4) Uses not listed in Commission Rule 350-80-590(2) may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to Commission Rule 350-80-590(5), and reviewed under the applicable provisions of Commission Rule 350-80-520 through 350-80-620.

(5) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Development Review Officer. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with

recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Development Review Officer, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones, except those listed in Commission Rule 350-80-590(2).

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with Commission Rule 350-80-150(7), the project applicant shall prepare a protection and rehabilitation plan pursuant to Commission Rule 350-80-590(6).

(e) The Development Review Officer shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Development Review Officer.

The Development Review Officer shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

Based on the comments from the Natural Heritage Program staff, the Development Review Officer will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Development Review Officer shall justify how the opposing conclusion was reached.

(6) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Development Review Officer an annual report that documents milestones, successes, problems, and contingency actions.

(7) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Development Review Officer shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Development Review Officer.

The Development Review Officer shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Development Review Officer will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Development Review Officer shall justify how the opposing conclusion was reached.

350-80-600. Special Management Areas Natural Resource Review Criteria.

All new developments and land uses shall be evaluated to ensure that the natural resources on a site, or natural resources in danger of degradation or destruction from individual or cumulative off-site impacts, are protected from adverse effects. The Forest Service will provide the natural resource site evaluation and project analysis and evaluation for new uses and developments, except those sponsored by non-Forest Service federal and state agencies.

(1) Buffer zones shall be undisturbed unless it has been shown that no practicable alternatives exist, pursuant to Commission Rule 350-80-560 (6)(a)(A) through (C), substituting the name of the resource as appropriate. New developments and uses may only be allowed in the buffer zone upon demonstration in the natural resources mitigation plan that no adverse effects would result.

(2) The applicant's site plan shall include the following additional information to facilitate evaluation for compliance with minimum natural resource protection guidelines:

(a) Location of the following sites and areas. The Forest Service will provide this information to the applicant.

(A) Sites of sensitive wildlife and sensitive plant species.

(B) Location of riparian and wetland areas. The exact location of the wetlands boundaries shall be delineated using the procedures specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Federal Inter-agency Committee for Wetland Delineation, 1989). Changes to this manual shall not apply to wetlands in the Special Management Area unless the Management Plan has been amended.

(b) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(3) Site plans shall be submitted to the Forest Service, and the Oregon Department of Fish and Wildlife or Washington Department of Wildlife. The site plan shall be reviewed by the Forest Service in consultation with the appropriate state or federal agency and reviewed and approved by the Development Review Officer.

(4) Review of the site plan shall consider the following:

(a) Biology and habitat requirements of the flora or fauna of concern.

(b) Historic, current, and proposed uses in the vicinity of sensitive species, including cumulative effects.

(c) Existing condition of the site and the surrounding habitat and the useful life of the site.

(d) Physical characteristics of the subject parcel and vicinity, including topography, vegetation, and soil and hydrological characteristics.

(e) Minimum natural resource protection guidelines including buffer zones.

(f) Closure of forest practice roads necessary to protect natural resources.

(g) Comments from state and federal agencies.

(5) Minimum natural resource protection guidelines include:

(a) Sites of sensitive wildlife and sensitive plant species.

(A) A 200-foot buffer zone shall be created for sensitive plant species.

(B) A buffer zone for sites of sensitive wildlife species, such as nesting, roosting and perching sites, as defined by species requirements shall be as determined by a Forest Service biologist in consultation with other state or federal agency biologists.

(b) Riparian areas, wetlands, parks, and lakes.

(A) Wetlands shall not be destroyed except within roads and railroad rights-of-way as provided in [guideline 6] 350-80-600 (5)(b)(G). Riparian areas shall not be destroyed, except for water-dependent uses, such as boat ramps, and road construction and reconstruction. The above-stated exceptions to riparian destruction policy shall meet minimum natural resource protection standards and be reviewed for meeting resource protection guidelines.

(B) Adding any fill or draining of wetlands is prohibited.

(C) A minimum 200-foot buffer zone shall be created on the landward side of each wetland, pond or lake; or a wider variance from this requirement shall be determined during the site plan analysis of the wetland or riparian area and those species inhabiting the area as determined by the Forest Service biologist in consultation with state and/or federal agencies;

(D) A 200 foot buffer zone shall be created along each fish-bearing and perennial stream.

(E) A 50-foot buffer zone shall be created along intermittent streams.

(F) Revegetation shall use only species native to the Columbia River Gorge, and shall provide and maintain habitat diversity beneficial to the fish, wildlife and native plants.

(G) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all the following:

(i) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way;

(ii) The wetland is not critical habitat; and

(iii) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(c) Fish and wildlife habitat:

(A) Structures such as bridges, culverts, and utility corridors shall be designed so as not to impede the passage of fish and wildlife.

(B) New developments and uses shall not interfere with fish passage.

(C) Filling of shallow-water fishery habitat shall be allowed only after an analysis shows that no other practicable sites exist. Filling shall only be considered for water-dependent uses, and mitigation shall be required.

(D) New developments and uses shall occur during periods when fish and wildlife are least sensitive to activities. This would include, among others, nesting and brooding periods (from nest building to fledgling of young), and those periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Dept. of Fish and Wildlife 1986).

(E) In areas of big game winter range, adequate thermal cover shall be maintained as determined by the appropriate state wildlife agency.

(F) Forest practices shall maintain the following:

(i) Six live trees per acre, three of which shall be of the largest tree size available and three of which shall be of various sizes to provide replacements as snags and wildlife trees; and three dead trees per acre, of the largest tree size available; and three down trees per acre in the largest tree size available. All trees shall be unburned.

In areas with mixed oak and conifer stands, at least one of the three dead trees per acre shall be an oak snag of the largest tree size and one additional live conifer per acre of 16-inch diameter at breast height (dbh) or greater, preferably with limbs down to the ground, shall be maintained.

(ii) Snags and wildlife trees shall be maintained either as clumps or evenly distributed over the forest practice area.

(iii) Down logs shall be relatively solid and no area greater than two acres in size and capable of supporting forested conditions shall be without a minimum of two down logs.

(d) Bio-diversity.

(A) New uses shall avoid disturbance to old-growth forests.

(B) Forest practices shall maintain species composition at existing proportions in the activity area.

(C) Forest practices in areas with existing oak species, shall maintain a minimum of 25 square feet basal area per acre of oak in areas with predominantly oak trees of 1-foot dbh or more, or maintain a minimum forty percent oak canopy cover per 40 acres in which 10 trees per acre must be of the largest tree size, in areas with predominantly oak trees less than 1-foot dbh. No area greater than 10 acres in size and supporting existing oak species shall be devoid of oak trees.

(D) A mix in age and size of hardwoods shall be maintained to provide vertical diversity and replacement.

(E) For revegetation purposes, only plants species native to the Columbia River Gorge shall be encouraged.

(e) Soil productivity.

(A) New developments and land uses shall control all soil movement within the area shown on the site plan.

(B) The soil area disturbed by new development or land uses shall not exceed 15 percent of the project area.

(C) Within one year of project completion 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

(D) Forest practices shall maintain the following:

(i) Soil organic matter shall be provided at a minimum of 15 tons per acre and 25 tons per acre of dead and down woody material in the east and west side vegetation communities, respectively.

(ii) Potential ground disturbance activities shall be designed to minimize disturbance to the soil organic horizon.

(f) Air and water quality.

(A) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(B) All new developments shall be carried out to comply with state water quality requirements.

(C) County, state, and federal regulations for air and water quality and for pesticide use shall be followed.

(D) Existing levels of air visibility shall not be degraded.

(g) The applicant shall develop a natural resource mitigation plan for all new developments or uses proposed within a buffer zone. The applicant's mitigation plan shall:

(A) Include existing natural and cultural features.

(B) Include proposed actions within and adjacent to the buffer zone.

(C) Include mitigation measures as necessary to comply with the minimum natural resource protection guidelines and protect natural resources from adverse effects.

(D) Be prepared by a natural resource specialist as defined.

(E) Demonstrate mitigation measures that would offset the adverse effects of the proposed new use or developments and that would ensure protection, long-term viability, and function of the resource being protected by the buffer zone.

(F) Be reviewed to ensure the proposed mitigation measures are adequate and comply with minimum natural resource protection guidelines. The mitigation plan shall be reviewed by the Forest Service in consultation with appropriate state or federal agencies, and reviewed and approved by the Development Review Officer.

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350-80-610. General Management Areas Recreation Resource Review Criteria.

The following uses may be allowed, subject to compliance with Commission Rule 350-80-610 (5) and (6).

(1) Recreation Intensity Class 1 - Very Low Intensity

(a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.

(b) Trails for hiking, equestrian and mountain biking use.

(c) Pathways for pedestrian and bicycling use.

(d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).

(e) Scenic viewpoints and overlooks.

(f) Wildlife/botanical viewing and nature study areas.

(g) River access areas.

(h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.

(i) Entry name signs not to exceed 10 square feet per sign.

(j) Boat docks, piers or wharfs.

(k) Picnic areas.

(l) Rest-rooms/comfort facilities.

(2) Recreation Intensity Class 2 - Low Intensity

(a) All uses permitted in Recreation Intensity Class 1.
(b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.

(c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.

(d) Entry name signs not to exceed 20 square feet per sign.

(e) Boat ramps, not to exceed two lanes.

(f) Campgrounds for 20 units or less, tent sites only.

(3) Recreation Intensity Class 3 - Moderate Intensity

(a) All uses permitted in Recreation Intensity Classes 1 and 2.

(b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.

(c) Interpretive signs, displays and/or facilities.

(d) Visitor information and environmental education signs, displays or facilities.

(e) Entry name signs not to exceed 32 square feet per sign.

(f) Boat ramps, not to exceed three lanes.

(g) Concessions stands, pursuant to applicable policies in Chapter 4, Part I of the Management Plan.

(h) Campgrounds for 50 individual units or less for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the individual campground units or parking area maximums allowed as described herein.

(4) Recreation Intensity Class 4 - High Intensity

(a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.

(b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.

(c) Horseback riding stables and associated facilities.

(d) Entry name signs, not to exceed 40 square feet per sign.

(e) Boat ramps.

(f) Campgrounds for 175 individual units or less for tents and/or recreation vehicles with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to 3 group campsite areas, in addition to individual campsite units or parking area maximums allowed as described herein.

(5) Approval Criteria for Recreation Uses

All proposed recreation projects outside of Public Recreation or Commercial Recreation land use designations shall comply with the appropriate scenic, cultural, natural and recreation resources guidelines (Commission Rule 350-80-520 through 350-80-620) and shall satisfy the following:

(a) Compliance with Commission Rule 350-80-520 through 610.

(b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.

(c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland:

(A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be

used to partially or fully comply with this criterion, depending upon project design and/or site conditions.

(B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land or Large or Small Woodland.

(d) For proposed projects including facilities for outdoor fires for cooking or other purposes or proposed campgrounds:

The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities. In addition, in order to provide access for fire-fighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to fire-fighting equipment.

(e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.

(f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.

(g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in Part IV, Chapter 3, Indian Tribal Treaty Rights and Consultation in the Management Plan.

(h) For proposed projects which include interpretation of natural or cultural resources:

A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.

(i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access):

A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

(6) Facility Design Guidelines for All Recreation Projects

(a) Recreation facilities which are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses

and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.

(b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another.

To be considered a separate facility from other developments or improvements within the same Recreation Intensity Class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from Key Viewing Areas.

(d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from Key Viewing Areas and satisfy requirements for perimeter and interior landscaped buffers.

(e) Parking areas providing over 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.

(f) Lineal frontage of parking areas and campsite loops to Scenic Travel Corridors shall be minimized to the greatest extent practicable.

(g) Ingress/egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.

(h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.

(i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from Key Viewing Areas.

(j) Innovative designs and materials which reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduce required minimum interior or perimeter landscaped buffers. Upon determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Development Review Officer may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.

(k) A majority of trees, shrubs and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).

(l) All structures shall be designed such that height, exterior colors, reflectivity, mass and siting result in the

structures blending with and not noticeably contrasting with their setting.

(m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or less, 20 feet for 50 vehicles or less, 30 feet for 100 vehicles or less, and 40 feet for 250 vehicles or less.

(n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas over 50 spaces in size. The minimum width of interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.

(o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover and other plant materials.

(p) Minimum required perimeter landscape buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Development Review Officer, if existing vegetation stands and/or existing topography are utilized such that the development is not visible from any Key Viewing Area.

(q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.

(r) All parking areas and campsites shall be set back from Scenic Travel Corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from Scenic Travel Corridors shall be measured from the edge of road pavements.

(s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.

(t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.

(u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly devoted to boat access) shall comply with Commission Rule 350-80-610 (5)(i) regarding provision of mass transportation access.

350-80-620.

Special Management Area Recreation Resource Review Criteria.

(1) The following shall apply to all new recreation developments and land uses in the Special Management Area:

[(a)] New developments and land uses shall not displace existing recreational use.]

[(b)a] Only natural resource-based recreation shall be allowed.

[(c)b] Recreation resources shall be protected from adverse effects by evaluating new developments and land uses as proposed in the site plan. An analysis of both on and off site cumulative effects shall be required.

[(d)c] New pedestrian or equestrian trails shall not have motorized uses, except for emergency services and motorized wheelchairs.

[(e)d] Mitigation measures shall be provided to preclude adverse effects on the recreation resource.

[(f)e] The facility guidelines contained in Commission Rule 350-80-620(1) are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another. Recreation developments or improvements to be considered a separate facility from other developments or improvements within the same Recreation Intensity Class must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

[(g)f] New development and reconstruction of scenic routes (see Part III, Chapter 1 of the Management Plan) shall include provisions for bicycle lanes.

[(h)g] The Development Review Officer may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that:

(A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from National Scenic Area recreation demand studies shall be relied upon to meet the criterion in the absence of current applicable studies.

(B) The proposed use is dependent on resources present at the site.

(C) Reasonable alternative sites, including those in Urban Areas, offering similar opportunities have been evaluated and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(D) The proposed use is consistent with the goals, objectives, and policies in Chapter 4, Part I of the Management Plan.

(E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural or cultural resources, and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(G) Mass transportation shall be considered and implemented, if feasible, for all proposed variances to Recreation Intensity Class 4.

[(i)h] Accommodations of facilities for mass transportation (bus parking, etc.) shall be required for all new high-

intensity (Recreation Class 3 and 4) day-use recreation sites, except for sites predominantly devoted to boat access.

(2) Special Management Areas Recreation Intensity Class Guidelines

(a) Recreation Intensity Class 1 - Very Low Intensity
Emphasis is to provide opportunities for semi-primitive recreation opportunities.

(A) Permitted uses are those in which people participate in outdoor activities to realize experiences such as solitude, tension reduction, and nature appreciation.

(B) The maximum site design capacity shall not exceed 35 people at one time on the site. The maximum design capacity for parking areas shall be 10 vehicles.

(C) The following uses may be permitted:

- (i) Trails and trailheads.
- (ii) Parking areas.
- (iii) Dispersed campsites accessible only by a trail.
- (iv) Viewpoints and overlooks.
- (v) Picnic areas.
- (vi) Signs.
- (vii) Interpretive exhibits and displays.
- (viii) Rest-rooms.

(b) Recreation Intensity Class 2 - Low Intensity
Emphasis is to provide semi-primitive recreation opportunities.

(A) Permitted uses are those that provide settings where people can participate in activities such as physical fitness, outdoor learning, relaxation, and escape from noise and crowds.

(B) The maximum site design capacity shall not exceed 70 people at one time on the site. The maximum design capacity shall be 25 vehicles.

(C) All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class 2. The following uses may also be permitted:

- (i) Campground with vehicle access.
- (ii) Boat anchorages designed for no more than 10 boats at one time.
- (iii) Swimming areas.

(c) Recreation Intensity Class 3 - Moderate Intensity
Emphasis is on facilities with design themes emphasizing the natural qualities of the area. Developments are complementary to the natural landscape, yet can accommodate moderate numbers of people.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as group socialization, nature appreciation, relaxation, cultural learning, and physical activity.

(B) Maximum site design capacity shall not exceed 250 people at one time on the site. The maximum design capacity shall be 50 vehicles. The General Management vehicle capacity level of 75 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 10% of the site.

(C) All uses permitted in Recreation Intensity Classes 1 and 2 are permitted in Recreation Intensity Class 3. The following uses may also be permitted:

- (i) Campgrounds improvement may include water, power, sewer, and sewage dump stations.
- (ii) Boat anchorages designed for not more than 15 boats.

(iii) Public visitor, interpretive, historic, and environmental education facilities.

(iv) Full service rest-rooms, may include showers.

(v) Boat ramps.

(vi) Riding stables.

(d) Recreation Intensity Class 4 - High Intensity

Emphasis is for providing road natural, rural, and suburban recreation opportunities with a high level of social interaction.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as

socialization, cultural and natural history appreciation, and physical activity.

(B) The maximum design capacity shall not exceed 1000 people at one time on the site. The maximum design capacity for parking areas shall be 200 vehicles. The General Management Area vehicle capacity of 250 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 20 percent of the site.

(C) All uses permitted in Recreation Intensity Classes 1, 2, and 3 are permitted in Recreation Intensity Class 4.

350-80-630.

NOTICE OF APPLICATION REQUIREMENTS

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
GENERAL MANAGEMENT AREA								
Residential LUD - Review uses except SFDs located adjacent to Agriculture & Forest LUDs, and those uses within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Residential LUD - SFDs adjacent to Agriculture & Forest LUDs except those within 1000' of sensitive wildlife area or site, or a rare plant	X	X	X	X		X		
Residential LUD - Review uses within 1000' of a sensitive wildlife area or site except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X		X	
Residential LUD - SFDs adjacent to Agriculture & Forest LUDs within 1000' of a sensitive wildlife area or site	X	X	X	X		X	X	
Residential LUD - Review uses within 1000' of a rare plant except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X			X
Residential LUD - SFDs adjacent to Agriculture & Forest LUDs within 1000' of rare plant	X	X	X	X		X		X

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Agriculture LUD - Review uses except non-farm SFD in Large-Scale Agriculture LUD and uses within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Agriculture LUD - Review uses within 1000' of sensitive wildlife area or site except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X		X	
Agriculture LUD - Review uses within 1000' of a rare plant except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X			X
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture LUD, except those within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of sensitive wildlife area or site	X	X	X	X		X	X	
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of rare plant	X	X	X	X		X		X

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	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Forest LUD - Review uses except utility facilities, railroads, home occupations, cottage industries, wineries, ag. product process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and those review uses within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and not within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Forest LUD - Review uses within 1000' of a sensitive wildlife area or site, except utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X		X	

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Forest LUD - Review uses within 1000' of a rare plant except utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X			X
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a sensitive wildlife area or site	X	X	X	X		X	X	
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. & pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a rare plant	X	X	X	X		X		X
Commercial LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Commercial LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Commercial LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Recreation LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Recreation LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Recreation LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Open Space LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Open Space LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Open Space LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Agriculture-Special LUD - Review uses	X	X	X	X	X			X
SPECIAL MANAGEMENT AREAS								
Review Uses - All LUDs	X	X	X	X	X		X	

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.

**WSR 95-04-005
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 18, 1995, 4:32 p.m., effective March 1, 1995]

Date of Adoption: January 18, 1995.

Purpose: In chapter 296-81 WAC, the purpose is to correct the effective date for the adoption of the national code ANSI A17.1-1990 Edition; adopt ANSI A17.1-1993 Edition; add back in a section on door operation that was repealed in error in 1992; and make a correction in the door jamb marking designation requirement. In chapter 296-86 WAC, the purpose is to establish an annual operating permit fee for casket lifts. In chapter 296-95 WAC, the purpose is to amend one section concerning access to elevator pits to make our requirement equal to that of the national code; add a requirement for stop switches in elevator pits, as required in the national code; and make one housekeeping change to correct a code reference.

Citation of Existing Rules Affected by this Order: Amending chapter 296-81 WAC, Safety rules governing elevators, dumbwaiters, escalators, and other lifting devices—Moving walks, WAC 296-81-007 National Elevator Code adopted and 296-81-350 Door jamb marking; chapter 296-86 WAC, Regulations and fees for freight and passenger elevators, manlifts, dumbwaiters, escalators, moving walks,

automobile parking elevators, and other lifting devices, WAC 296-86-060 Annual operating permit fees; and chapter 296-95 WAC, Electric elevators—Direct plunger and roped hydraulic elevators—Escalators used to transport passengers—Electric and hand-powered dumbwaiters and hand-powered elevators, WAC 296-95-130 Access to pits, 296-95-272 Electrical protective devices and 296-95-318 Pump relief valve.

Statutory Authority for Adoption: Chapter 70.87 RCW. Pursuant to notice filed as WSR 94-22-085 on November 2, 1995.

Changes Other than Editing from Proposed to Adopted Version: As a result of the comments received on the proposed amendments, the amendments are adopted as proposed with the following changes: WAC 296-81-007 National Elevator Code adopted, the January 1, 1995, effective date of ANSI A17.1, 1993 Edition is changed to March 1, 1995, to be consistent with the effective date of this filing package adoption; and WAC 296-81-350 Door jamb marking, the spelling of the word "jam" is corrected to "jamb."

Effective Date of Rule: March 1, 1995.

January 18, 1995
Mark O. Brown
Director

AMENDATORY SECTION (Amending WSR 92-24-065, filed 12/1/92, effective 1/1/93)

WAC 296-81-007 National Elevator Code adopted.
(1) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks,

American National Standards Institute A17.1, as amended or revised through 1971, is adopted as the standards in this state for elevators, dumbwaiters, escalators, and moving walks installed from February 25, 1972, through June 30, 1982.

(2) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1981 edition, is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after July 1, 1982 through January 9, 1986.

(3) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1984 edition is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after January 10, 1986, with the exception of ANSI A17.1, part XIX. For all elevators, dumbwaiters, escalators, and moving walks installed on or after November 1, 1988, the requirements of ANSI A17.1, 1984 edition apply, with the exception of ANSI A17.1, part XIX and ANSI A17.1, part II, Rule 211.3b, which is replaced by WAC 296-81-275.

(4) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1987 edition is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after January 1, 1989, with the exception of ANSI A17.1, part XIX, and ANSI A17.1, part II, Rule 211.3b, which is replaced by WAC 296-81-275.

(5) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1990 Edition is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after (~~July 1, 1992~~) January 1, 1993, with the exceptions of ANSI A17.1, Part XIX, and ANSI A17.1, Part V, Section 513, which is replaced by chapter 296-94 WAC.

(6) The American National Standard Safety Code For Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1993 Edition is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after March 1, 1995, with the exceptions of ANSI A17.1, Part XIX, and ANSI A17.1, Part V, Section 513, which is replaced by chapter 296-94 WAC.

NEW SECTION

WAC 296-81-306 Door protective and reopening device. Doors closed by automatic means shall be provided with a door reopening device which will function to stop and reopen a car door and adjacent hoistway door in case the car door is obstructed while closing. This reopening device shall also be capable of sensing an object or person in the path of a closing door without requiring contact for activation at a nominal 5 and 29 inches above the floor.

AMENDATORY SECTION (Amending WSR 92-24-065, filed 12/1/92, effective 1/1/93)

WAC 296-81-350 Door ((~~jam~~)) jamb marking. The floor designation shall be provided at each hoistway entrance on both sides of jamb visible from within the car and the elevator lobby at a centerline height of (60) inches above the floor. Designations shall be on contrasting color background (2) inches high and raised ((~~.30~~)) (.03) inch, and shall be

accompanied by Grade ((Z)) 2 Braille. Applied plates permanently attached shall be acceptable.

AMENDATORY SECTION (Amending WSR 92-24-065, filed 12/1/92, effective 1/1/93)

WAC 296-86-060 Annual operating permit fees. Fees for annual operation shall be paid in accordance with the following schedule and no operating permit shall be issued for the operation of a conveyance until such fees have been received.

CONVEYANCE	ANNUAL FEE
Each hydraulic elevator	\$ 70.00
Each cable elevator	90.00
	plus \$7.00 for
	each hoistway opening
	in excess of two.
Each cable elevator traveling	
more than 25 ft.	10.00 for each 25 ft.
without opening	of travel without openings.
Each sidewalk freight elevator	70.00
Each hand power freight elevator	45.00
Each hand power manlift	45.00
Each incline elevator in other than a	
private residence	90.00
Each belt manlift	70.00
Each boat launching elevator	70.00
Each auto parking elevator	70.00
Each escalator	70.00
Each moving walk	70.00
Each dumbwaiter in other than a private residence	45.00
Each people mover	60.00
Each stair lift in other than a private residence	45.00
Each wheel chair lift in other than a private	
residence	45.00
Each personnel elevator	70.00
Each material hoist	70.00
Each casket lift	70.00
Each inclined stairway chair lift in	
private residence	15.00
Each inclined wheelchair lift in private residence	20.00
Each vertical wheelchair lift in private residence	25.00
Each inclined elevator at a private residence	70.00
Each dumbwaiter in private residence	20.00
Each private residence elevator	45.00
Each private residence elevator installed with	
variance in other than a private residence	70.00

AMENDATORY SECTION (Amending WSR 92-24-065, filed 12/1/92, effective 1/1/93)

WAC 296-95-130 Access to pits. Means of access for authorized personnel shall be provided to all pits. Access doors, if provided, shall be kept closed and locked. Access ladders shall be installed in elevator pits ((4)) 3 feet and deeper.

AMENDATORY SECTION (Amending WSR 92-24-065, filed 12/1/92, effective 1/1/93)

WAC 296-95-272 Electrical protective devices. Electrical protective devices shall be provided in accordance with the following:

(1) Slack-rope switch. Winding drum machines shall be provided with a slack-rope device equipped with a slack-rope switch of the enclosed manually rest type which shall cause the electric power to be removed from the elevator driving machine motor and brake if the suspension ropes become slack.

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(2) Motor-generator running switch. Where generator-field control is used, means shall be provided to prevent the application of power to the elevator driving machine motor and brake unless the motor generator set connections are properly switched for the running condition of the elevator. It is not required that the electrical connections between the elevator driving machine motor and the generator be opened in order to remove power from the elevator motor.

(3) Compensating rope sheave switch. Compensating rope sheaves shall be provided with a compensating rope sheave switch or switches mechanically opened by the compensating rope sheave before the sheave reaches its upper or lower limit of travel to cause the electric power to be removed from the elevator driving machine motor and brake.

(4) Broken rope, tape, or chain switches used in connection with machine room normal terminal stopping switches. Broken rope, tape, or chain switches conforming to the requirements of WAC 296-95-236 shall be provided in connection with normal terminal stopping devices located in machine rooms of traction elevators. Such switches shall be opened by a failure of the rope, tape, or chain.

(5) Stop switch on top of car. A stop switch shall be provided on the top of every elevator car, which shall cause the electric power to be removed from the elevator driving machine motor and brake, and:

- (a) Be of the manually operated and closed type;
- (b) Have red operating handles or buttons;
- (c) Be conspicuously and permanently marked "stop" and shall indicate the stop and run positions;
- (d) Be positively opened mechanically (opening shall not be solely dependent on springs).

(6) Car-safety mechanism switch. A switch shall be required where a car safety is provided.

(7) Speed governor overspeed switch. A speed governor overspeed switch shall be provided when required by WAC 296-95-236.

(8) Final terminal stopping devices. Final terminal stopping devices shall be provided for every elevator.

(9) Emergency terminal speed limiting device. Where reduced stroke oil buffers are provided, emergency terminal speed limiting devices are required.

(10) Motor generator overspeed protection. Means shall be provided to cause the electric power to be removed automatically from the elevator driving machine motor and brake should a motor generator set, driven by a direct current motor, overspeed excessively.

(11) Motor field sensing means. Where direct current is supplied to an armature and shunt field of an elevator driving machine motor, a motor field current sensing means shall be provided, which shall cause the electric power to be removed from the motor armature and brake unless current is flowing in the shunt field of the motor.

A motor field current sensing means is not required for static control elevators provided with a device to detect an overspeed condition prior to, and independent of, the operation of the governor overspeed switch. This device shall cause power to be removed from the elevator driving machine motor armature and machine brake.

(12) Buffer switches for oil buffers used with Type C car safeties. Oil level and compression switches shall be provided for all oil buffers used with Type C safeties.

(13) Hoistway door interlocks or hoistway door electric contacts. Hoistway door interlocks or hoistway door electric contacts shall be provided for all elevators.

(14) Car door or gate electric contacts. Car door or gate electric contacts shall be provided for all elevators.

(15) Normal terminal stopping devices. Normal terminal stopping devices shall be provided for every elevator.

(16) Car side emergency exit electric contact. An electric contact shall be provided on every car side emergency exit door.

(17) Electric contacts for hinged car platform sills. Hinged car platform sills, where provided, shall be equipped with electric contacts.

(18) Stop switch in elevator pit. A stop switch shall be installed in all elevator pits. It shall be located between 36 in. to 48 in. above the bottom landing floor, and accessible from outside the hoistway.

AMENDATORY SECTION (Amending WSR 92-24-065, filed 12/1/92, effective 1/1/93)

WAC 296-95-318 Pump relief valve. (1) Pump relief valve required. Each pump or group of pumps shall be equipped with a relief valve conforming to the following requirements, except as covered by ~~((WAC 296-95-418))~~ subsection (2) of this section:

(a) Type and location. The relief valve shall be located between the pump and the check valve and shall be of such a type and so installed in the by-pass connection that the valve cannot be shut off from the hydraulic system.

(b) Setting. The relief valve shall be preset to open at a pressure not greater than one hundred twenty-five percent of working pressure.

(c) Size. The size of the relief valve and by-pass shall be sufficient to pass the maximum rated capacity of the pump without raising the pressure more than twenty percent above that at which the valve opens. Two or more relief valves may be used to obtain the required capacity.

(d) Sealing. Relief valves having exposed pressure adjustments, if used, shall have their means of adjustment sealed after being set to the correct pressure.

(2) Pump relief valve not required. No relief valve is required for centrifugal pumps driven by induction motors, provided the shutoff, or maximum pressure which the pump can develop, is not greater than one hundred thirty-five percent of the working pressure at the pump.

**WSR 95-04-006
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 18, 1995, 4:30 p.m., effective March 10, 1995]

Date of Adoption: January 18, 1995.

Purpose: Chapter 296-62 WAC, General occupational health standards, federal-initiated amendments to chapter 296-62 WAC, General occupational health standards, published in Federal Register Volume 59, Number 137, dated July 19, 1994, are made to be identical to the federal standards. Amendments add new subsection (12) to WAC

296-62-05411 Labels and other forms of warning. The amendments relate to maintaining Department of Transportation hazard warning placards, labels and warnings on all hazardous material containers or packages until the containers or packages are empty and adequately purged, and the potential hazard no longer exists. The requirements are applicable to all forms of packaging and containers including mobile equipment, portable tanks, rail cars, aircraft or ships. Federal-initiated amendments and a new section are made to be identical to the federal final rule relating to hazardous waste operations and emergency response, published in Federal Register Volume 59, Number 161, dated August 22, 1994. The United States Department of Labor, Occupational Safety and Health Administration (OSHA) has updated reference sources listed in Appendix B, 29 CFR 1910, Hazardous Waste Operations and Emergency Response and has added a new Appendix E that provides suggested guidelines for a more effective training curriculum and program. The state has the existing Appendix B that specifically addresses the reference sources. However, WISHA does not have the OSHA suggested guidelines for an effective training curriculum and program, Appendix E. The provisions of these amended and new appendices provide more comprehensive guidelines for employers and employees who work in hazardous waste operations or respond to emergencies under the scope of this standard. Federal-initiated housekeeping amendments to WAC 296-62-3170 Appendix B, are made to correct, define, and clarify references. A new section, WAC 296-62-3195 Appendix E, is made to include the suggested guidelines for an effective training curriculum and program; and chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking, federal-initiated amendments are made to be identical to the federal final rule relating to safety standards for ship repairing, shipbuilding and shipbreaking, published in Federal Register Volume 59, Number 141, dated July 25, 1994. OSHA has made revisions to 29 CFR Part 1915, to amend Subparts A and B to include confined and enclosed spaces and other dangerous atmospheres in shipyard employment. Subpart A revises the criteria for a competent person. Subpart B is revised to include requirements for a shipyard competent person, a marine chemist, a certified industrial hygienist, or a Coast Guard authorized person to evaluate conditions within a confined or enclosed space and to institute measures to ensure that entrants are protected. It also contains requirements for posting unsafe spaces, for safe performance of cleaning, cold work, and hot work, and for classifying a person as a shipyard competent person. The state has existing requirements in chapter 296-304 WAC, that follow OSHA requirements. Federal-initiated amendments to WAC 296-304-010 and 296-304-01001 are made to clarify and amend WISHA definitions and expand on the requirements of the competent person, to be substantially identical to the OSHA final rule. Federal-initiated amendments to WAC 296-304-020 through 296-304-02015, are made to clarify and amend the scope and application and requirements of working in confined and enclosed spaces and other dangerous atmospheres in shipyard employment to be identical to the OSHA final rule. Compliance with the provisions of these amended and new standards will effectively provide more comprehensive protection to employees

who work in confined or enclosed spaces from injury or death.

Citation of Existing Rules Affected by this Order: Amending chapter 296-62 WAC, General occupational health standards, WAC 296-62-05411 Labels and other forms of warning and 296-62-3170 Appendix B—General description and discussion of the levels of protection and protective gear; chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking, WAC 296-304-010 Scope and application, 296-304-01001 Definitions, 296-304-020 Explosive and other dangerous atmospheres—Scope and application, 296-304-02001 Competent person, 296-304-02003 Precautions before entering, 296-304-02005 Cleaning and other cold work, 296-304-02007 Certification before hot work is begun, 296-304-02009 Maintaining gas free conditions, 296-304-02011 Warning signs, 296-304-03001 Toxic cleaning solvents, 296-304-03005 Mechanical paint removers, 296-304-03007 Painting, 296-304-04001 Ventilation and protection in welding, cutting and heating, 296-304-04005 Welding, cutting and heating in way of preservative coatings, 296-304-06013 Health and sanitation, and 296-304-08009 Powder actuated fastening tools.

Statutory Authority for Adoption: Chapter 49.17 RCW.

Pursuant to notice filed as WSR 94-22-086 on November 2, 1994.

Changes Other than Editing from Proposed to Adopted Version: One written letter of testimony was received supporting proposed amendments to chapter 296-62 WAC. The amendments will be adopted as proposed with no changes.

Effective Date of Rule: March 10, 1995.

January 18, 1995

Mark O. Brown

Director

AMENDATORY SECTION (Amending WSR 94-16-145, filed 8/3/94, effective 9/12/94)

WAC 296-62-05411 Labels and other forms of warning. (1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

- (a) Identity of the hazardous chemical(s);
- (b) Appropriate hazard warnings; and
- (c) Name and address of the chemical manufacturer, importer, or other responsible party.

(2)(a) For solid metal (such as a steel beam or a metal casting), solid wood, or plastic items that are not exempted as articles due to their downstream use, or shipments of whole grain, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes;

(b) The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment; and

(c) This exception to requiring labels on every container of hazardous chemicals is only for the solid material itself and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the material and to

which employees handling the items in transit may be exposed (for example, cutting fluids or pesticides in grain).

(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this part in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) and regulations issued under that act by the department of transportation.

(4) If the hazardous chemical is regulated by WISHA or OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

(5) Except as provided in subsection (6) and (7) of this section, the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

(a) Identity of the hazardous chemical(s) contained therein; and

(b) Appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide the employees with the specific information regarding the physical and health hazards of the hazardous chemical.

(6) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by subsection (5) of this section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(7) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. For purposes of this part, drugs which are dispensed by a pharmacy to a health care provider for direct administration to a patient are exempted from labeling.

(8) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(9) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(10) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this part if existing labels already convey the required information.

(11) Chemical manufacturers, importers, distributors, or employers who become newly aware of any significant information regarding the hazards of a chemical shall revise the labels for the chemical within three months of becoming

aware of the new information. Labels on containers of hazardous chemicals shipped after that time shall contain the new information. If the chemical is not currently produced or imported, the chemical manufacturer, importers, distributor, or employer shall add the information to the label before the chemical is shipped or introduced into the workplace again.

(12) Retention of DOT markings, placards and labels.

(a) Any employer who receives a package of hazardous material which is required to be marked, labeled or placarded in accordance with the U.S. Department of Transportation's Hazardous Materials Regulations (49 CFR Parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials which require the marking or placarding are sufficiently removed to prevent any potential hazards.

(c) Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

(d) For nonbulk packages which will not be reshipped, the provision of this section are met if a label or other acceptable marking is affixed in accordance with the Hazard Communication Standard chapter 296-62 WAC.

(e) For the purposes of this section, the term "hazardous material" and any other terms not defined in this section have the same definition as in the Hazardous Materials Regulations (49 CFR Parts 171 through 180).

AMENDATORY SECTION (Amending Order 90-14, filed 10/1/90, effective 11/15/90)

WAC 296-62-3170 Appendix B—General description and discussion of the levels of protection and protective gear. (1) This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

(2) As required by the standard, PPE must be selected which will protect employees from the specific hazards which they are likely to encounter during their work on-site.

(3) Selection of the appropriate PPE is a complex process which must take into consideration a variety of factors. Key factors involved in this process are identification of the hazards or suspected hazards, their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact), and the performance of the PPE materials (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations.

(4) Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, must be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

(5) The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

(6) The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and reselection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

(7) Personal protective equipment has been divided into four categories based on the degree of protection afforded (see subsection (8) of this section for further explanation of Levels A, B, C, and D hazards):

(a) Level A. To be selected when the greatest level of skin, respiratory, and eye protection is required. The following constitute Level A equipment; it may be used as appropriate:

(i) Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied-air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).

(ii) Totally-encapsulating chemical-protective suit.

(iii) Coveralls.*

(iv) Long underwear.*

(v) Gloves, outer, chemical-resistant.

(vi) Gloves, inner, chemical-resistant.

(vii) Boots, chemical-resistant steel toe and shank.

(viii) Hard hat (under suit).*

(ix) Disposable protective suit, gloves, and boots.

(Depending on suit construction, may be worn over totally-encapsulating suit.)

*Optional, as applicable.

(b) Level B. The highest level of respiratory protection is necessary but a lesser level of skin protection is needed. The following constitute Level B equipment; it may be used as appropriate:

(i) Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied-air respirator with escape SCBA (NIOSH approved).

(ii) Hooded chemical-resistant clothing (coveralls and long-sleeved jacket, coveralls, one or two-piece chemical-splash suit, disposable chemical-resistant coveralls).

(iii) Coveralls.*

(iv) Gloves, outer, chemical-resistant.

(v) Gloves, inner, chemical-resistant.

(vi) Boots, outer, chemical-resistant steel toe and shank.

(vii) Boot-covers, outer, chemical-resistant (disposable).*

(viii) Hard hat.

(ix) Face shield.*

*Optional, as applicable.

(c) Level C. The concentration(s) and type(s) of airborne substance(s) is known and the criteria for using air purifying respirators are met. The following constitute Level C equipment; it may be used as appropriate.

(i) Full-face or half-mask, air purifying respirators (NIOSH approved).

(ii) Hooded chemical-resistant clothing (coveralls; two-piece chemical-splash suit; disposable chemical-resistant coveralls).

(iii) Coveralls.*

(iv) Gloves, outer, chemical-resistant.

(v) Gloves, inner, chemical-resistant.

(vi) Boots (outer), chemical-resistant steel toe and shank.*

(vii) Boot-covers, outer, chemical-resistant (disposable).*

(viii) Hard hat.

(ix) Escape mask.*

(x) Face shield.*

*Optional, as applicable.

(d) Level D. A work uniform affording minimal protection: Used for nuisance contamination only. The following constitute Level D equipment; it may be used as appropriate.

(i) Coveralls.

(ii) Gloves.*

(iii) Boots/shoes, chemical-resistant steel toe and shank.

(iv) Boots, outer, chemical-resistant (disposable).*

(v) Safety glasses or chemical splash goggles.*

(vi) Hard hat.

(vii) Escape mask.*

(viii) Face shield.*

*Optional, as applicable.

(8) Part B. The types of hazards for which Levels A, B, C, and D protection are appropriate are described below:

(a) Level A - Level A protection should be used when:

(i) The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the intact skin;

(ii) Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or

(iii) Operations are being conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.

(b) Level B protection should be used when:

(i) The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;

(ii) The atmosphere contains less than 19.5 percent oxygen; or

(iii) The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the skin.

Note: This involves atmospheres with IDLH concentrations of specific substances that present severe inhalation hazards and that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

(c) Level C protection should be used when:

(i) The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;

(ii) The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and

(iii) All criteria for the use of air-purifying respirators are met.

(d) Level D protection should be used when:

(i) The atmosphere contains no known hazard; and

(ii) Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

(9) As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association (~~is developing~~) (NFPA) has developed standards on chemical protective clothing. (~~These~~) The standards (~~are currently undergoing public review prior to adoption, including~~) that have been adopted include:

(a) NFPA 1991 - Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing);

(b) NFPA 1992 - Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing);

(c) NFPA 1993 - Standard on Liquid Splash-Protective Suits for Nonemergency, Nonflammable Hazardous Chemical Situations (EPA Level B Protective Clothing).

(10) These standards (~~would~~) apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements (~~would be~~) are labelled as compliant with the appropriate standard. (~~When these standards are adopted by the National Fire Protection Association,~~) It is recommended that chemical protective suits (~~which~~) that meet these standards be used.

NEW SECTION

WAC 296-62-3195 Appendix E—Training curriculum guidelines. The following nonmandatory general criteria may be used for assistance in developing site-specific training curriculum used to meet the training requirements of

WAC 296-62-3040, 296-62-3140(7), 296-62-3140(8)(c), 296-62-3112(6), and 296-62-3112(7).

These are generic guidelines and they are not presented as a complete training curriculum for any specific employer. Site-specific training programs must be developed on the basis of a needs assessment of the hazardous waste site, RCRA/TSD, or emergency response operation in accordance with this chapter (chapter 296-62 WAC, Part P).

The guidance set forth here presents a highly effective program that in the areas covered would meet or exceed the regulatory requirements. In addition, other approaches could meet the regulatory requirements.

Suggested general criteria:

Definitions:

"Competent" means possessing the skills, knowledge, experience, and judgment to perform assigned tasks or activities satisfactorily as determined by the employer.

"Demonstration" means the showing by actual use of equipment or procedures.

"Hands-on training" means training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.

"Initial training" means training required prior to beginning work.

"Lecture" means an interactive discourse with a class lead by an instructor.

"Proficient" means meeting a stated level of achievement.

"Site-specific" means individual training directed to the operations of a specific job site.

"Training hours" means the number of hours devoted to lecture, learning activities, small group work sessions, demonstration, evaluations, or hands-on experience.

Suggested core criteria:

(1) Training facility. The training facility should have available sufficient resources, equipment, and site locations to perform concise and hands-on training when appropriate. Training facilities should have sufficient organization, support staff, and services to conduct training in each of the courses offered.

(2) Training director. Each training program should be under the direction of a training director who is responsible for the program. The training director should have a minimum of two years of employee education experience.

(3) Instructors. Instructors should be deemed competent on the basis of previous documented experience in their area of instruction, successful completion of a "train-the-trainer" program specific to the topics they will teach, and an evaluation of instructional competence by the training director.

(a) Instructors should be required to maintain professional competency by participating in continuing education or professional development programs or by successfully completing an annual refresher course and having an annual review by the training director.

(b) The annual review by the training director should include observation of an instructor's delivery, a review of those observations with the trainer, and an analysis of any instructor or class evaluations completed by the students during the previous year.

(4) Course materials. The training director should approve all course materials to be used by the training provider. Course materials should be reviewed and updated at least annually. Materials and equipment should be in good working order and maintained properly.

(a) All written and audio-visual materials in training curricula should be peer reviewed by technically competent outside reviewers or by a standing advisory committee.

(b) Reviewers should possess expertise in the following disciplines were applicable: Occupational health, industrial hygiene and safety, chemical/environmental engineering, employee education, or emergency response. One or more of the peer reviewers should be an employee experienced in the work activities to which the training is directed.

(5) Students. The program for accepting students should include:

(a) Assurance that the student is or will be involved in work where chemical exposures are likely and that the student possesses the skills necessary to perform the work.

(b) A policy on the necessary medical clearance.

(6) Ratios. Student-instructor ratios should not exceed thirty students per instructor. Hands-on activity requiring the use of personal protective equipment should have the following student-instructor ratios: For Level C or Level D personal protective equipment the ratio should be ten students per instructor. For Level A or Level B personal protective equipment the ratio should be five students per instructor.

(7) Proficiency assessment. Proficiency should be evaluated and documented by the use of a written assessment and a skill demonstration selected and developed by the training director and training staff. The assessment and demonstration should evaluate the knowledge and individual skills developed in the course of training. The level of minimum achievement necessary for proficiency shall be specified in writing by the training director.

(a) If a written test is used, there should be a minimum of fifty questions. If a written test is used in combination with a skills demonstration, a minimum of twenty-five questions should be used. If a skills demonstration is used, the tasks chosen and the means to rate successful completion should be fully documented by the training director.

(b) The content of the written test or of the skill demonstration shall be relevant to the objectives of the course.

The written test and skill demonstration should be updated as necessary to reflect changes in the curriculum and any update should be approved by the training director.

(c) The proficiency assessment methods, regardless of the approach or combination of approaches used, should be justified, documented and approved by the training director.

(d) The proficiency of those taking the additional courses for supervisors should be evaluated and documented by using proficiency assessment methods acceptable to the training director. These proficiency assessment methods must reflect the additional responsibilities borne by supervisory personnel in hazardous waste operations or emergency response.

(8) Course certificate. Written documentation should be provided to each student who satisfactorily completes the training course. The documentation should include:

(a) Student's name.

(b) Course title.

(c) Course date.

(d) Statement that the student has successfully completed the course.

(e) Name and address of the training provider.

(f) An individual identification number for the certificate.

(g) List of the levels of personal protective equipment used by the student to complete the course.

(i) This documentation may include a certificate and an appropriate wallet-sized laminated card with a photograph of the student and the above information.

(ii) When such course certificate cards are used, the individual identification number for the training certificate should be shown on the card.

(9) Recordkeeping. Training providers should maintain records listing the dates courses were presented, the names of the individual course attendees, the names of those students successfully completing each course, and the number of training certificates issued to each successful student. These records should be maintained for a minimum of five years after the date an individual participated in a training program offered by the training provider. These records should be available and provided upon the student's request or as mandated by law.

(10) Program quality control. The training director should conduct or direct an annual written audit of the training program. Program modifications to address deficiencies, if any, should be documented, approved, and implemented by the training provider. The audit and the program modification documents should be maintained at the training facility.

Suggested Program Quality Control Criteria:

Factors listed here are suggested criteria for determining the quality and appropriateness of employee health and safety training for hazardous waste operations and emergency response.

(1) Training plan. Adequacy and appropriateness of the training program's curriculum development, instructor training, distribution of course materials, and direct student training should be considered, including:

(a) The duration of training, course content, and course schedules/agendas;

(b) The different training requirements of the various target populations, as specified in the appropriate generic training curriculum;

(c) The process for the development of curriculum, which includes appropriate technical input, outside review, evaluation, program pretesting.

(d) The adequate and appropriate inclusion of hands-on, demonstration, and instruction methods;

(e) Adequate monitoring of student safety, progress, and performance during the training.

(2) Program management, training director, staff, and consultants. Adequacy and appropriateness of staff performance and delivering an effective training program should be considered, including:

(a) Demonstration of the training director's leadership in assuring quality of health and safety training;

(b) Demonstration of the competency of the staff to meet the demands of delivering high quality hazardous waste employee health and safety training;

(c) Organization charts establishing clear lines of authority;

(d) Clearly defined staff duties including the relationship of the training staff to the overall program;

(e) Evidence that the training organizational structure suits the needs of the training program;

(f) Appropriateness and adequacy of the training methods used by the instructors;

(g) Sufficiency of the time committed by the training director and staff to the training program;

(h) Adequacy of the ratio of training staff to students;

(i) Availability and commitment of the training program of adequate human and equipment resources in the areas of:

(i) Health effects;

(ii) Safety;

(iii) Personal protective equipment (PPE);

(iv) Operational procedures;

(v) Employee protection practices/procedures;

(j) Appropriateness of management controls;

(k) Adequacy of the organization and appropriate resources assigned to assure appropriate training;

(1) In the case of multiple-site training programs, adequacy of management of the satellite centers.

(3) Training facilities and resources. Adequacy and appropriateness of the facilities and resources for supporting the training program should be considered, including:

(a) Space and equipment to conduct the training;

(b) Facilities for representative hands-on training;

(c) In the case of multiple-site programs, equipment and facilities at the satellite centers;

(d) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(e) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(f) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(g) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(4) Quality control and evaluation. Adequacy and appropriateness of quality control and evaluation plans for training programs should be considered, including:

(a) A balanced advisory committee and/or competent outside reviewers to give overall policy guidance;

(b) Clear and adequate definition of the composition and active programmatic role of the advisory committee or outside reviewers;

(c) Adequacy of the minutes or reports of the advisory committee or outside reviewers' meetings or written communication;

(d) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(e) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(f) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(g) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(5) Students. Adequacy and appropriateness of the program for accepting students should be considered, including:

(a) Assurance that the student already possess the necessary skills for their job, including necessary documentation;

(b) Appropriateness of methods the program uses to ensure that recruits are capable of satisfactorily completing training;

(c) Review and compliance with any medical clearance policy.

(6) Institutional environment and administrative support. The adequacy and appropriateness of the institutional environment and administrative support system for the training program should be considered, including:

(a) Adequacy of the institutional commitment to the employee training program;

(b) Adequacy and appropriateness of the administrative structure and administrative support.

(7) Summary of evaluation questions. Key questions for evaluating the quality and appropriateness of an overall training program should include the following:

(a) Are the program objectives clearly stated?

(b) Is the program accomplishing its objectives?

(c) Are appropriate facilities and staff available?

(d) Is there an appropriate mix of classroom, demonstration, and hands-on training?

(e) Is the program providing quality employee health and safety training that fully meets the intent of regulatory requirements?

(f) What are the program's main strengths?

(g) What are the program's main weaknesses?

(h) What is recommended to improve the program?

(i) Are instructors instructing according to their training outlines?

(j) Is the evaluation tool current and appropriate for the program content?

(k) Is the course material current and relevant to the target group?

Suggested Training Curriculum Guidelines:

The following training curriculum guidelines are for those operations specifically identified in this Part P, as requiring training. Issues such as qualifications of instructors, training certification, and similar criteria appropriate to all categories of operations addressed in this Part P, have been covered in the preceding section and are not readdressed in each of the generic guidelines. Basic core requirements for training programs that are addressed include: (1) *General hazardous waste operations*; (2) *RCRA operations—Treatment, storage, and disposal facilities*; and (3) *Emergency response*.

(1) General hazardous waste operations and site-specific training.

(a) Off-site training. Training course content for hazardous waste operations, required by WAC 296-62-3040, should include the following topics or procedures:

(i) Regulatory knowledge.

(A) A review of this Part P and the core elements of an occupational safety and health program.

(B) The content of a medical surveillance program as outlined in WAC 296-62-3050.

(C) The content of an effective site safety and health plan consistent with the requirements of WAC 296-62-3010 (4)(b).

(D) Emergency response plan and procedures as outlined in WAC 296-24-567 and 296-62-3110.

(E) Adequate illumination.

(F) Sanitation recommendation and equipment.

(G) Review and explanation of WISHA's hazard-communication standard chapter 296-62 WAC, Part C, and chapter 296-24 WAC, Part A-4, safety procedures for the control of hazardous energy (lockout/tagout).

(H) Review of other applicable standards including but not limited to those in the construction standards, chapter 296-155 WAC.

(I) Rights and responsibilities of employers and employees under applicable WISHA/OSHA and department of ecology (DOE)/Environmental Protection Association (EPA) regulations and laws.

(ii) Technical knowledge.

(A) Type of potential exposures to chemical, biological, and radiological hazards; types of human responses to these hazards and recognition of those responses; principles of toxicology and information about acute and chronic hazards; health and safety considerations of new technology.

(B) Fundamentals of chemical hazards including but not limited to vapor pressure, boiling points, flash points, pH, other physical and chemical properties.

(C) Fire and explosion hazards of chemicals.

(D) General safety hazards such as but not limited to electrical hazards, powered equipment hazards, motor vehicle hazards, walking-working surface hazards, excavation hazards, and hazards associated with working in hot and cold temperature extremes.

(E) Review and knowledge of confined space entry procedures in chapter 296-62 WAC, Part M.

(F) Work practices to minimize employee risk from site hazards.

(G) Safe use of engineering controls, equipment, and any new relevant safety technology or safety procedures.

(H) Review and demonstration of competency with air sampling and monitoring equipment that may be used in a site monitoring program.

(I) Container sampling procedures and safeguarding; general drum and container handling procedures including special requirement for laboratory waste packs, shock-sensitive wastes, and radioactive wastes.

(J) The elements of a spill control program.

(K) Proper use and limitations of material handling equipment.

(L) Procedures for safe and healthful preparation of containers for shipping and transport.

(M) Methods of communication including those used while wearing respiratory protection.

(iii) Technical skills.

(A) Selection, use maintenance, and limitations of personal protective equipment including the components and procedures for carrying out a respirator program to comply with chapter 296-62 WAC Part E, Respiratory Protection.

(B) Instruction in decontamination programs including personnel, equipment, and hardware; hands-on training

including Levels A, B, and C ensembles and appropriate decontamination lines; field activities including the donning and doffing of protective equipment to a level commensurate with the employee's anticipated job function and responsibility and to the degree required by potential hazards.

(C) Sources for additional hazard information; exercises using relevant manuals and hazard coding systems.

(iv) Additional suggested items.

(A) A laminated, dated card or certificate with photo, denoting limitations and level of protection for which the employee is trained should be issued to those students successfully completing a course.

(B) Attendance should be required at all training modules, with successful completion of exercises and a final written or oral examination with at least fifty questions.

(C) A minimum of one-third of the program should be devoted to hands-on exercises.

(D) A curriculum should be established for the eight-hour refresher training required by WAC 296-62-4040(10), with delivery of such courses directed toward those areas of previous training that need improvement or reemphasis.

(E) A curriculum should be established for the required eight-hour training for supervisors. Demonstrated competency in the skills and knowledge provided in forty-hour and eighty-hour courses should be prerequisites for supervisor training.

(b) Refresher training. The eight-hour annual refresher training required in WAC 296-62-3040(10) should be conducted by qualified training providers. Refresher training should include at a minimum the following topics and procedures:

(i) Review of and retraining on relevant topics covered in the forty-hour and eighty-hour programs, as appropriate, using reports by the students on their work experiences.

(ii) Update on developments with respect to material covered in the forty-hour and eighty-hour courses.

(iii) Review of changes to pertinent provisions of DOE/EPA or WISHA/OSHA standards or laws.

(iv) Introduction of additional subject areas as appropriate.

(v) Hands-on review of new or altered PPE or decontamination equipment or procedures. Review of new developments in personal protective equipment.

(vi) Review of newly developed air and contaminant monitoring equipment.

(c) On-site training. The employer should provide employees engaged in hazardous waste site activities with information and training prior to initial assignment into their work area, as follows:

(i) The requirements of the hazard communication program including the location and availability of the written program, required lists of hazardous chemicals, and material safety data sheets.

(ii) Activities and locations in their work area where hazardous substance may be present.

(iii) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearances, or other evidence (sight, sound or smell)) of hazardous chemicals being released, and applicable alarms from monitoring devices that record chemical releases.

(iv) The physical and health hazards of substances known or potentially present in the work area.

(v) The measures employees can take to help protect themselves from worksite hazards, including specific procedures the employer has implemented.

(vi) An explanation of the labeling system and material safety data sheets and how employees can obtain and use appropriate hazard information.

(vii) The elements of the confined space program including special PPE, permits, monitoring requirements, communication procedures, emergency response, and applicable lockout procedures.

(d) The employer should provide hazardous waste employees with information and training and should provide a review and access to the site safety and health plan as follows:

(i) Names of personnel and alternate responsible for site safety and health.

(ii) Safety and health hazards present on the site.

(iii) Selection, use, maintenance, and limitations of personal protective equipment specific to the site.

(iv) Work practices by which the employee can minimize risks from hazards.

(v) Safe use of engineering controls and equipment available on site.

(vi) Safe decontamination procedures established to minimize employee contact with hazardous substances, including:

(A) Employee decontamination;

(B) Clothing decontamination; and

(C) Equipment decontamination.

(vii) Elements of the site emergency response plan, including:

(A) Preemergency planning.

(B) Personnel roles and lines of authority and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures not covered by the site safety and health plan.

(H) Emergency medical treatment and first aid.

(I) Emergency equipment and procedures for handling emergency incidents.

(e) The employer should provide hazardous waste employees with information and training on personal protective equipment used at the site, such as the following:

(i) PPE to be used based upon known or anticipated site hazards.

(ii) PPE limitations of materials and construction; limitations during temperature extremes, heat stress, and other appropriate medical considerations; use and limitations of respirator equipment as well as documentation procedures as outlined in chapter 296-62 WAC, Part E, Respiratory Protection.

(iii) PPE inspection procedures prior to, during, and after use.

(iv) PPE donning and doffing procedures.

(v) PPE decontamination and disposal procedures.

(vi) PPE maintenance and storage.

(vii) Task duration as related to PPE limitations.

(f) The employer should instruct the employee about the site medical surveillance program relative to the particular site, including:

(i) Specific medical surveillance programs that have been adapted for the site.

(ii) Specific signs and symptoms related to exposure to hazardous materials on the site.

(iii) The frequency and extent of periodic medical examinations that will be used on the site.

(iv) Maintenance and availability of records.

(v) Personnel to be contacted and procedures to be followed when signs and symptoms of exposures are recognized.

(g) The employees will review and discuss the site safety and health plan as part of the training program. The location of the site safety and health plan and all written programs should be discussed with employees including a discussion of the mechanisms for access, review, and references described.

(2) RCRA operations training for treatment, storage and disposal facilities.

(a) As a minimum, the training course required in WAC 296-62-3140 should include the following topics:

(i) Review of the applicable parts of this Part P and the elements of the employer's occupational safety and health plan.

(ii) Review of relevant hazards such as, but not limited to, chemical, biological, and radiological exposures; fire and explosion hazards; thermal extremes; and physical hazards.

(iii) General safety hazards including those associated with electrical hazards, powered equipment hazards, lockout/tagout procedures, motor vehicle hazards and walking-working surface hazards.

(iv) Confined space hazards and procedures.

(v) Work practices to minimize employee risk from workplace hazards.

(vi) Emergency response plan and procedures including first aid meeting the requirements of WAC 296-62-3140(8).

(vii) A review of procedures to minimize exposure to hazardous waste and various type of waste streams, including the materials handling program and spill containment program.

(viii) A review of hazard communication programs meeting the requirements of chapter 296-62 WAC, Part C.

(ix) A review of medical surveillance programs meeting the requirements of WAC 296-62-3050 and 296-62-3140(3) including the recognition of signs and symptoms of overexposure to hazardous substance including known synergistic interactions.

(x) A review of decontamination programs and procedures meeting the requirements of WAC 296-62-3100 and 296-62-3140(4).

(xi) A review of an employer's requirements to implement a training program and its elements.

(xii) A review of the criteria and programs for proper selection and use of personal protective equipment, including respirators.

(xiii) A review of the applicable appendices to this Part P (Appendices A through E).

(xiv) Principles of toxicology and biological monitoring as they pertain to occupational health.

(xv) Rights and responsibilities of employees and employers under applicable WISHA/OSHA and DOE/EPA regulations and laws.

(xvi) Hands-on exercises and demonstrations of competency with equipment to illustrate the basic equipment principles that may be used during the performance of work duties, including the donning and doffing of PPE.

(xvii) Sources of reference, efficient use of relevant manuals, and knowledge of hazard coding systems to include information contained in hazardous waste manifests.

(xviii) At least eight hours of hands-on training.

(xix) Training in the job skills required for an employee's job function and responsibility before they are permitted to participate in or supervise field activities.

(b) The individual employer should provide hazardous waste employees with information and training prior to an employee's initial assignment into a work area. The training and information should cover the following topics:

(i) The emergency response plan and procedures including first aid.

(ii) A review of the employer's hazardous waste handling procedures including the materials handling program and elements of the spill containment program, location of spill response kits or equipment, and the names of those trained to respond to releases.

(iii) The hazardous communication program meeting the requirements of chapter 296-62 WAC, Part C.

(iv) A review of the employer's medical surveillance program including the recognition of signs and symptoms of exposure to relevant hazardous substance including known synergistic interactions.

(v) A review of the employer's decontamination program and procedures.

(vi) A review of the employer's training program and the parties responsible for that program.

(vii) A review of the employer's personal protective equipment program including the proper selection and use of PPE based upon specific site hazards.

(viii) All relevant site-specific procedures addressing potential safety and health hazards. This may include, as appropriate, biological and radiological exposures, fire and explosion hazards, thermal hazards, and physical hazards such as electrical hazards, powered equipment hazards, lockout/tagout hazards, motor vehicle hazards, and walking-working surface hazards.

(ix) Safe use of engineering controls and equipment on-site.

(x) Names of personnel and alternates responsible for safety and health.

(3) Emergency response training.

(a) General considerations. Emergency response organizations are required to consider the topics listed in WAC 296-62-3112(6). Emergency response organizations may use some or all of the following topics to supplement those mandatory topics when developing their response training programs. Many of the topics would require an interaction between the response provider and the individuals responsible for the site where the response would be expected.

(i) Hazard recognition, including:

(A) Nature of hazardous substances present;

(B) Practical applications of hazard recognition, including presentations on biology, chemistry, and physics.

(ii) Principles of toxicology, biological monitoring, and risk assessment.

(iii) Safe work practices and general site safety.

(iv) Engineering controls and hazardous waste operations.

(v) Site safety plans and standard operating procedures.

(vi) Decontamination procedures and practices.

(vii) Emergency procedures, first aid, and self-rescue.

(viii) Safe use of field equipment.

(ix) Storage, handling, use and transportation of hazardous substances.

(x) Use, care, and limitations of personal protective equipment.

(xi) Safe sampling techniques.

(xii) Rights and responsibilities of employees under WISHA and other related regulations and laws concerning right-to-know, safety and health, compensations and liability.

(xiii) Medical monitoring requirements.

(xiv) Community relations.

(b) Suggested criteria for specific courses.

(i) First responder awareness level.

(A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.

(B) Hands-on experience with the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG) and familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(C) Review of the principles and practices for analyzing an incident to determine both the hazardous substances present and the basic hazard and response information for each hazardous substance present.

(D) Review of procedures for implementing actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including emergency notification procedures and follow-up communications.

(E) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(F) Awareness and knowledge of the competencies for the First Responder at the Awareness Level covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(ii) First responder operations level.

(A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.

(B) Hands-on experience with the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation

containers and vehicles, the types and selection of the appropriate defensive strategy for containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practice of personnel and equipment decontamination.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the First Responder at the Operations Level covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(iii) Hazardous materials technician.

(A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.

(B) Hands-on experience with written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, the likely behavior of the hazardous substance and its container, the types of hazardous substance transportation containers and vehicles involved in the release, the appropriate strategy for approaching release sites and containing the release.

(D) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, and the current edition of DOT's ERG including extended emergency notification procedures and follow-up communications.

(E) Review of the principles and practice for proper selection and use of personal protective equipment.

(F) Review of the principles and practices of establishing exposure zones, proper decontamination and medical surveillance stations and procedures.

(G) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(H) Awareness and knowledge of the competencies for the Hazardous Materials Technician covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(iv) Hazardous materials specialist.

(A) Review of and demonstration of competency in performing the applicable skills of WAC 296-62-3112.

(B) Hands-on experience with retrieval and use of written and electronic information relative to response decision making including but not limited to the U.S. Department of Transportation's *Emergency Response Guidebook* (ERG), manufacturer material safety data sheets, CHEMTREC/CANUTEC, shipper or manufacturer contacts, computer data bases and response models, and other relevant sources of information addressing hazardous substance releases. Familiarization with chapter 296-62 WAC, Part C, the hazard communication standard.

(C) Review of the principles and practices for analyzing an incident to determine the hazardous substances present, their physical and chemical properties, and the likely behavior of the hazardous substance and its container, vessel, or vehicle.

(D) Review of the principles and practices for identification of the types of hazardous substance transportation containers, vessels and vehicles involved in the release; selecting and using the various types of equipment available for plugging or patching transportation containers, vessels or vehicles; organizing and directing the use of multiple teams of hazardous material technicians and selecting the appropriate strategy for approaching release sites and containing or stopping the release.

(E) Review of procedures for implementing continuing response actions consistent with the local emergency response plan, the organization's standard operating procedures, including knowledge of the available public and private response resources, establishment of an incident command post, direction of hazardous material technician teams, and extended emergency notification procedures and follow-up communications.

(F) Review of the principles and practice for proper selection and use of personal protective equipment.

(G) Review of the principles and practices of establishing exposure zones and proper decontamination, monitoring and medical surveillance stations and procedures.

(H) Review of the expected hazards including fire and explosions hazards, confined space hazards, electrical hazards, powered equipment hazards, motor vehicle hazards, and walking-working surface hazards.

(I) Awareness and knowledge of the competencies for the Off-site Specialist Employee covered in the National Fire Protection Association's Standard No. 472, Professional Competence of Responders to Hazardous Materials Incidents.

(v) Incident commander.

The incident commander is the individual who, at any one time, is responsible for and in control of the response effort. This individual is the person responsible for the direction and coordination of the response effort. An incident commander's position should be occupied by the most senior, appropriately trained individual present at the response site. Yet, as necessary and appropriate by the level of response provided, the position may be occupied by many individuals during a particular response as the need for greater authority, responsibility, or training increases. It is possible for the first responder at the awareness level to assume the duties of incident commander until a more senior and appropriately trained individual arrives at the response site.

Therefore, any emergency responder expected to perform as an incident commander should be trained to fulfill the obligations of the position at the level of response they will be providing including the following:

(A) Ability to analyze a hazardous substance incident to determine the magnitude of the response problem.

(B) Ability to plan and implement an appropriate response plan within the capabilities of available personnel and equipment.

(C) Ability to implement a response to favorably change the outcome of the incident in a manner consistent with the local emergency response plan and the organization's standard operating procedures.

(D) Ability to evaluate the progress of the emergency response to ensure that the response objectives are being met safely, effectively, and efficiently.

(E) Ability to adjust the response plan to the conditions of the response and to notify higher levels of response when required by the changes to the response plan.

AMENDATORY SECTION (Amending Order 89-03, filed 5/15/89, effective 6/30/89)

WAC 296-304-010 Scope and application. (1) The provisions and standards of the general safety and health standards, chapters 296-24 and 296-62 WAC, and such other codes and standards as are promulgated by the ~~((division of industrial safety and health))~~ department of labor and industries which are applicable to all industries, shall be applicable in the ship repairing, shipbuilding, or shipbreaking industries whenever the employees are covered under the Washington State Industrial Safety and Health Act, chapter 49.17 RCW. The rules of this chapter and the rules of the aforementioned chapters 296-24 and 296-62 WAC are applicable to all ship repairing, shipbuilding, and shipbreaking industries and operations, provided that such rules shall not be applicable to those operations under the exclusive safety jurisdiction of the federal government.

(2) The responsibility for compliance with these regulations is placed upon "employers" as defined in WAC 296-304-01001(3).

(3) It is not the intent of these regulations to place additional responsibilities or duties on owners, operators, agents or masters of vessels unless such persons are acting as employers, nor is it the intent of these regulations to relieve such owners, operators, agents or masters of vessels from responsibilities or duties now placed upon them by law, regulation or custom.

(4) The responsibilities placed upon the competent person herein shall be deemed to be the responsibilities of the employer.

(5) Safety standards for ship repairing, shipbuilding, and shipbreaking are written, promulgated, and applicable to workplace hazards found in shipyards and boatyards located on navigable waters, provided such installations are not under the exclusive safety jurisdiction of the federal government or the United States Coast Guard. Such operations shall include adjoining shore installations such as wharves, drydocks, graving docks, terminals, building ways, marine railways, and other adjoining areas customarily used by the employer in ship repairing, shipbuilding, or shipbreaking operations.

(6) Small vessel manufacturing operations not located on navigable waters shall be cited from General safety and health standards, chapters 296-24 and 296-62 WAC.

AMENDATORY SECTION (Amending Order 76-7, filed 3/1/76)

WAC 296-304-01001 Definitions. (1) "Shall" indicates provisions which are mandatory.

(2) "Director" means the director of the department of labor and industries or his/her designated representative.

(3) "Employer" means an employer any of whose employees are employed, in whole or in part, in ship repair or related employments as defined in these standards on the navigable waters of the United States, including dry docks, graving docks and marine railways.

(4) "Employee" means any ~~((ship repairman or other))~~ person engaged in ship ~~((repair))~~ repairing, shipbuilding, or shipbreaking or related employments on the navigable waters of the United States, including dry docks, graving docks and marine railways, other than the master, ship's officers, crew of the vessel, or any person engaged by the master to repair any vessel under 18 net tons.

(5) "Gangway" means any ramp-like or stair-like means of access provided to enable personnel to board or leave a vessel including accommodation ladders, gangplanks and bows.

(6) "Vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

(7) For purposes of WAC 296-304-05007, the term "barge" means an unpowered, flat bottom, shallow draft vessel including scows, carfloats and lighters. For purposes of these standards, the term does not include ship shaped or deep draft barges.

(8) For purposes of WAC 296-304-05007, the term "river tow boat" means a shallow draft, low free board, self-propelled vessel designed to tow river barges by pushing ahead. For purposes of these standards, the term does not include other towing vessels.

(9) "Shipbreaking" means any breaking down of a vessel's structure for the purpose of scrapping the vessel, including the removal of gear, equipment or any component part of a vessel.

(10) "Shipbuilding" means the construction of a vessel, including the installation of machinery and equipment.

(11) "Ship repair" means any repair of a vessel including, but not restricted to, alterations, conversions, installations, cleaning, painting, and maintenance work.

(12) ~~((a))~~ ~~For ship repairing,~~ "Related employment((s))" means any employment((s)) performed as an incident to or in conjunction with ship ~~((repair))~~ repairing, shipbuilding or shipbreaking work, including, but not restricted to, inspection, testing and employment as a watchman.

~~((b))~~ ~~For shipbuilding, "related employment" means any employments performed as an incident to or in conjunction with shipbuilding work, including, but not restricted to inspection, testing trials and employment as a watchman.~~

~~((c))~~ ~~For shipbreaking, "related employments" means any employments performed as an incident to or in conjunction~~

~~with shipbreaking work, including, but not restricted to, inspection, survey and employment as a watchman.)~~

(13) "Hazardous substance" means a substance which by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritant, or otherwise harmful is likely to cause injury.

~~(14) "Competent person" means ((one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective action to eliminate them))~~ a person who is capable of recognizing and evaluating employee exposure to hazardous substances or to other unsafe conditions and is capable of specifying the necessary protection and precautions to be taken to ensure the safety of employees as required by the particular regulation under the condition to which it applies. For the purposes of WAC 296-304-020, explosives and other dangerous atmospheres, WAC 296-304-030, surface preparation and preservation, and WAC 296-304-040, welding, cutting and heating, except for WAC 296-304-03007 (2)(h) and 296-304-03009 (1)(e), to which the above definition applies, the competent person must also meet the additional requirements of WAC 296-304-01005, Competent person.

~~(15) "Confined space" means ((any space having a limited means of egress which is subject to the accumulation of toxic or flammable contaminants or an oxygen deficient atmosphere. Confined spaces include, but are not limited to storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines and open top spaces more than 4 feet in depth, such as pits, tubes, vaults and vessels))~~ a compartment of small size and limited access such as a double bottom tank, cofferdam, or other space which by its small size and confined nature can readily create or aggravate a hazardous exposure.

(16) "Enclosed space" means any space, other than a confined space, which is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

(17) "Hot-work" means riveting, welding, burning or other fire or spark producing operations.

(18) "Cold-work" means any work which does not involve riveting, welding, burning or other fire or spark producing operations.

(19) "Portable unfired pressure vessel" means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to ICC regulations under 49 CFR Part 78, Subparts C and H.

(20) "Powder actuated fastening tool" means a tool or machine which drives a stud, pin, or fastener by means of an explosive charge.

(21) For purposes of WAC 296-304-06013, the term "hazardous material" means a material which has one or more of the following characteristics: (a) Has a flash point below 140°F., closed cup, or is subject to spontaneous heating; (b) has a threshold limit value below 500 p.p.m. in the case of a gas or vapor, below 500 mg./m.³ for fumes, and below 25 m.p.p.c.f. in case of a dust; (c) has a single dose oral LD₅₀ below 500 mg./kg.; (d) is subject to polymerization with the release of large amounts of energy; (e)

is a strong oxidizing or reducing agent; (f) causes first degree burns to skin in short time exposure, or is systemically toxic by skin contact; or (g) in the course of normal operations, may produce dusts, gases, fumes, vapors, mists, or smokes which have one or more of the above characteristics.

NEW SECTION

WAC 296-304-01005 Competent person. (1) Application. This section applies to shipyard employment.

(2) Designation.

(a) One or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section, unless the requirements of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011, are always carried out by a marine chemist.

Exception: The employer may designate any person who meets the applicable portions of the criteria set forth in subsection (3) of this section as a competent person who is limited to performing testing to the following situations:

(i) Repair work on small craft in boat yards where only combustible gas indicator tests are required for fuel tank leaks or when using flammable paints below decks;

(ii) Building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is required;

(iii) The breaking of vessels where there is no fuel oil or other flammable hazard; and

(iv) Tests and inspections performed to comply with WAC 296-304-03007 (2)(h) and 296-304-03009 (1)(e).

(b) The employer shall maintain either a roster of designated competent persons or a statement that a marine chemist will perform the tests or inspections which require a competent person.

(c) The employer shall make the roster of designated persons or the statement available to employees, the employee's representative, or the director upon request.

(d) The roster shall contain, as a minimum, the following:

(i) The employer's name;

(ii) The designated competent person's name(s); and

(iii) The date the employee was trained as a competent person.

(3) Criteria. The employer shall ensure that each designated competent person has the following skills and knowledge:

(a) Ability to understand and carry out written or oral information or instructions left by marine chemist, Coast Guard authorized persons and certified industrial hygienists;

(b) Knowledge of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(c) Knowledge of the structure, location, and designation of spaces where work is done;

(d) Ability to calibrate and use testing equipment including but not limited to, oxygen indicators, combustible gas indicators, carbon monoxide indicators, and carbon

dioxide indicators, and to interpret accurately the test results of that equipment;

(e) Ability to perform all required tests and inspections which are or may be performed by a competent person as set forth in WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(f) Ability to inspect, test, and evaluate spaces to determine the need for further testing by a marine chemist or a certified industrial hygienist; and

(g) Ability to maintain records required by this section.

(4) Recordkeeping.

(a) When tests and inspections are performed by a competent person, marine chemist, or certified industrial hygienist as required by any provisions of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, or WAC 296-304-080 through 296-304-08011, the employer shall ensure that the person performing the test and inspection records the location, time, date, location of inspected spaces, and the operations performed, as well as the test results and any instructions.

(b) The employer shall ensure that the records are posted in the immediate vicinity of the affected operations while work in the spaces is in progress. The records shall be kept on file for a period of at least three months from the completion date of the specific job for which they were generated.

(c) The employer shall ensure that the records are available for inspection by the director, and employees and their representatives.

AMENDATORY SECTION (Amending Order 92-15, filed 2/3/93, effective 3/15/93)

WAC 296-304-020 (~~Explosive and other dangerous atmospheres—Scope and application.~~) **Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.** ((All sections of this chapter which include WAC 296-304-020 in the section number apply to explosive and other dangerous atmospheres.

(1) WAC 296-304-02003 to 296-304-02009 applies to ship repairing and shipbreaking.

(2) WAC 296-304-02011 applies to ship repairing.

(3) WAC 296-62-076 through 296-62-07672, relating to 4,4' Methyleneedianiline (MDA) shall apply to every employee in every employment and place of employment covered by this chapter, in lieu of any different standard on exposure to MDA which would otherwise be applicable by virtue of those sections.) **Scope, application and definitions applicable to this subsection:** (1) **Scope and application.** This section applies to work in confined and enclosed spaces and other dangerous atmospheres in shipyard employment, including vessels, vessel sections, and on land-side operations regardless of geographic location.

(2) **Definitions applicable to this section:**

Adjacent spaces means those spaces bordering a subject space in all directions, including all points of contact, corners, diagonals, decks, tank tops, and bulkheads.

Certified industrial hygienist (CIH) means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

Coast Guard authorized person means an individual who meets the requirement of WAC 296-304-02015, Appendix B, for tank vessels, for passenger vessels, and for cargo and miscellaneous vessels.

Dangerous atmosphere means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space), injury, or acute illness.

Director means the director of the department of labor and industries or his/her designated representative.

Enter with restrictions denotes a space where entry for work is permitted only if engineering controls, personal protective equipment, clothing, and time limitations are as specified by the marine chemist, certified industrial hygienist, or the shipyard competent person.

Entry means the action by which a person passes through an opening into a space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

Hot work means any activity involving riveting, welding, burning, the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations are also considered hot work except when such operations are isolated physically from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

Immediately dangerous to life or health (IDLH) means an atmosphere that poses an immediate threat to life or that is likely to result in acute or immediate severe health effects.

Inert or inerted atmosphere means an atmospheric condition where:

(a) The oxygen content of the atmosphere in the space is maintained at a level equal to or less than 8.0 percent by volume or at a level at or below 50 percent of the amount required to support combustion, whichever is less; or

(b) The space is flooded with water and the vapor concentration of flammable or combustible materials in the free space atmosphere above the water line is less than 10 percent of the lower explosive limit for the flammable or combustible material.

Labeled means identified with a sign, placard, or other form of written communication, including pictograms, that provides information on the status or condition of the work space to which it is attached.

Lower explosive limit (LEL) means the minimum concentration of vapor in air below which propagation of a flame does not occur in the presence of an ignition source.

Marine chemist means an individual who possesses a current marine chemist certificate issued by the National Fire Protection Association (NFPA).

NFPA means National Fire Protection Association.

Nationally Recognized Testing Laboratory (NRTL) means an organization recognized by OSHA, in accordance with Appendix A of 29 CFR 1910.7, which tests for safety and lists or labels or accepts equipment and materials that

meet all the criteria found in Section 1910.7(b)(1) through (b)(4)(ii).

Not safe for hot work denotes a space where hot work may not be performed because the conditions do not meet the criteria for "safe for hot work."

Not safe for workers denotes a space where an employee may not enter because the conditions do not meet the criteria for "safe for workers."

Oxygen-deficient atmosphere means an atmosphere having an oxygen concentration of less than 19.5 percent by volume.

Oxygen-enriched atmosphere means an atmosphere that contains 22.0 percent or more oxygen by volume.

Safe for hot work denotes a space that meets all of the following criteria:

(a) The oxygen content of the atmosphere does not exceed 22.0 percent by volume;

(b) The concentration of flammable vapors in the atmosphere is less than 10 percent of the lower explosive limit;

(c) The residues or materials in the space are not capable of producing a higher concentration than permitted in (a) or (b) of the above, under existing atmospheric conditions in the presence of hot work and while maintained as directed by the marine chemist or competent person; and

(d) All adjacent spaces have been cleaned, or inerted, or treated sufficiently to prevent the spread of fire.

Safe for workers denotes a space that meets the following criteria:

(a) The oxygen content of the atmosphere is at least 19.5 percent and below 22.0 percent by volume;

(b) The concentration of flammable vapors is below 10 percent of the lower explosive limit (LEL);

(c) Any toxic materials in the atmosphere associated with cargo, fuel, tank coatings, or inerting media are within permissible concentrations at the time of the inspection; and

(d) Any residues or materials associated with the work authorized by the marine chemist, certified industrial hygienist, or competent person will not produce uncontrolled release of toxic materials under existing atmospheric conditions while maintained as directed.

Space means an area on a vessel or vessel section or within a shipyard such as, but not limited to: Cargo tanks or holds; pump or engine rooms; storage lockers; tanks containing flammable or combustible liquids, gases, or solids; rooms within buildings; crawl spaces; tunnels; or accessways. The atmosphere within a space is the entire area within its bounds.

Upper explosive limit (UEL) means the maximum concentration of flammable vapor in air above which propagation of flame does not occur on contact with a source of ignition.

Vessel section means a subassembly, module, or other component of a vessel being built, repaired, or broken.

Visual inspection means the physical survey of the space, its surroundings and contents to identify hazards such as, but not limited to, restricted accessibility, residues, unguarded machinery, and piping or electrical systems.

AMENDATORY SECTION (Amending Order 76-7, filed 3/1/76)

WAC 296-304-02001 (~~Competent person.~~ (1) Designation:

(a) ~~For the purposes of these standards, one or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section unless the requirements of this section are always carried out by a National Fire Protection Association Certified Marine Chemist.~~

(2) ~~Criteria. The following criteria shall guide the employer in designating employees as competent persons:~~

(a) ~~Ability to understand the meaning of designations on certificates and of any qualifications relating thereto and to carry out any instructions, either written or oral, left by the National Fire Protection Association Certified Marine Chemist or person authorized by the U.S. Coast Guard referred to in WAC 296-304-02007.~~

(b) ~~Ability to use and interpret the readings of an oxygen indicator and a combustible gas indicator. The ability to use and interpret the readings of a carbon monoxide indicator and a carbon dioxide indicator, if the operations involve such hazardous gases.~~

(c) ~~Familiarity with an understanding of WAC 296-304-02001 through 296-304-04013 and 296-304-080 through 296-304-08011.~~

(i) ~~Familiarity with the structure and knowledge of the location and designation of spaces of the types of vessels on which breaking work is done.~~

(d) ~~Familiarity with the structure and knowledge of the location and designation of spaces of the types of vessels on which repair work is done.~~

(e) ~~Capability to perform the tests and inspections required by these standards and to write the required logs.~~

(3) ~~Logging of inspections and tests:~~

(a) ~~When tests and inspections, required to be performed by a competent person by any provisions of these standards, are made, a record of the locations, operations performed and date, time, and results of the tests and any instructions resulting therefrom shall be recorded. A separate form shall be used for each vessel on which tests and inspections are made.~~

(b) ~~This record shall be available for inspection in the immediate vicinity of the affected operations while they are in progress. This record or copy thereof shall be kept on file for a period of at least three months from the date of the completion of the job.~~

(c) ~~A copy of any certificate issued in accordance with WAC 296-304-02007 and of any instructions issued by the National Fire Protection Association Certified Marine Chemist shall be kept on file with the log for a period of at least 3 months from the date of the completion of the job. The certificate and instructions issued by the person doing the fumigation referred to in WAC 296-304-02003 (2)(a)(ii) shall also be kept on file for a period of at least 3 months from the date of the completion of the job.~~

(4) ~~Application. The provisions of WAC 296-304-02001 are intended to apply in their entirety to employers engaged in general shipbreaking, shipbuilding and ship repair work. They do not apply to employers whose work involves situations to which WAC 296-304-02001 through 296-304-~~

04013 are not applicable, such as general cleaning work in which flammable and toxic atmospheres are not involved. Any employer whose work involves only certain portions of said sections, such as work on small craft in boat yards where only combustible gas indicator tests are necessary for fuel tank leaks or when using flammable paints below decks, may designate persons as competent on the basis of the applicable portion of the criteria set forth in (2) of this section.)) Reserved.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-304-02003 Precautions before entering confined and enclosed spaces and other dangerous atmospheres. ((~~(1) Flammable atmospheres and residues.~~

~~(a) Before employees are initially permitted to enter any of the ship's spaces designated in (1) and (2) of this section, the atmosphere within the space to be entered shall be tested by a competent person to determine the concentration of flammable vapors or gases within the space.~~

~~(i) Cargo spaces or other spaces containing or having last contained combustible or flammable liquids or gases in bulk.~~

~~(ii) Spaces immediately adjacent to those described in (1) of this section.~~

~~(b) If the tests indicate that the atmosphere in the space to be entered contains a concentration of flammable vapor or gas greater than 10 percent of the lower explosive limit, the space shall be ventilated to reduce the concentration below 10 percent of the lower explosive limit before men are permitted to enter.~~

~~(c) If the atmosphere in the space to be entered is found to contain a concentration of flammable vapor or gas below the level immediately dangerous to life as defined in chapter 296-62 WAC Part E, but above the threshold limit value, employees shall be protected in accordance with the requirements of chapter 296-62 WAC Part E.~~

~~(2) Toxic atmospheres and residues.~~

~~(a) Before employees are initially permitted to enter any of the ship's spaces designated in (1), (2) and (3) of this section, the atmosphere in the space to be entered shall be tested for toxic atmospheric contaminants, and the space inspected for the presence of toxic or corrosive residues by a marine chemist, industrial hygienist or other person qualified to make these tests and inspections.~~

~~(i) Cargo spaces or other spaces containing or having last contained bulk liquids, gases, or solids of a toxic, corrosive, or irritant nature.~~

~~(ii) Spaces which have been fumigated.~~

~~(iii) Spaces immediately adjacent to those described in (1) and (2) of this section.~~

~~(b) If the tests indicate that the atmosphere in the space to be entered contains a concentration of toxic contaminants above the level which is immediately dangerous to life, the space shall be ventilated to reduce the concentration below the level immediately dangerous to life as defined in chapter 296-62 WAC Part E.~~

~~(c) If the atmosphere in the space to be entered is found to contain a concentration of toxic contaminants below the level immediately dangerous to life as defined in WAC 296-304-02003 (2)(a), but above the threshold limit value,~~

~~employees shall be protected in accordance with the requirements of WAC 296-304-09003.~~

~~(d) The person qualified to make the tests and inspections referred to in (1)(a) of this section shall make a record of the tests, inspections and instructions pertaining to (1)(c) and (2)(b) and (c) of this section, which shall be available for inspection and kept on file in accordance with WAC 296-304-02001 (3)(b).~~

~~(3) Oxygen deficient atmospheres.~~

~~(a) Before employees are initially permitted to enter any of the ship's spaces designated in (1) through (3) of this section, the atmosphere in the spaces to be entered shall be tested by a competent person with an oxygen indicator or other suitable device to ensure that it contains at least 19.5 percent oxygen.~~

~~(i) Spaces in which the tests required by (1) and (2) of this section indicate that no flammable or toxic contaminants are present in the atmosphere.~~

~~(ii) Compartments which have been sealed.~~

~~(iii) Spaces which have been coated and closed up.~~

~~(iv) Nonventilated compartments which have been freshly painted.~~

~~(v) Cargo spaces containing cargoes or residues of cargoes which absorb oxygen, such as scrap iron, fresh fruit and molasses, and various vegetable drying oils in bulk.~~

~~(b) If the tests indicate that the atmosphere in the space to be entered contains less than 19.5 percent oxygen, the space shall be ventilated until tests indicate an oxygen content above this level.~~

~~(4) Exceptions. In emergencies and in cases of work of brief duration necessary to accomplish the ventilation required or to start operations, work may be performed in atmospheres containing concentrations of flammable contaminants above the upper explosive limit or otherwise immediately dangerous to life, provided employees are protected in accordance with the requirements of WAC 296-304-09003.))~~

(1) Oxygen content.

(a) The employer shall ensure that the following spaces are visually inspected and tested by a competent person to determine the atmosphere's oxygen content prior to initial entry into the space by an employee:

(i) Spaces that have been sealed, such as, but not limited to, spaces that have been coated and closed up, and nonventilated spaces that have been freshly painted;

(ii) Spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases;

(iii) Spaces and adjacent spaces that contain or have contained liquids, gases, or solids that are toxic, corrosive, or irritant;

(iv) Spaces and adjacent spaces that have been fumigated; and

(v) Spaces containing materials or residues of materials that create an oxygen-deficient atmosphere.

(b) If the space to be entered contains an oxygen deficient atmosphere, the space shall be labeled "not safe for workers" or, if oxygen-enriched, "not safe for workers—not safe for hot work." If an oxygen-deficient or oxygen-enriched atmosphere is found, ventilation shall be provided at volumes and flow rates sufficient to ensure that the oxygen content is maintained at or above 19.5 percent and below 22.0 percent by volume. The warning label may be

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removed when the oxygen content is equal to or greater than 19.5 and less than 22.0 percent by volume.

(c) An employee may not enter a space where the oxygen content, by volume, is below 19.5 percent or above 22.0 percent.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment necessary to start work in the space provided:

(i) The atmosphere in the space is monitored for oxygen content, by volume, continuously; and

(ii) Respiratory protection and other appropriate personal protective equipment and clothing are provided in accordance with WAC 296-304-090 through 296-304-09007.

Note to (a): Other provisions for work in IDLH atmospheres are located in WAC 296-304-090 through 296-304-09007.

(2) Flammable atmospheres.

(a) The employer shall ensure that spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases are:

(i) Inspected visually by the competent person to determine the presence of combustible or flammable liquids; and

(ii) Tested by a competent person prior to entry by an employee to determine the concentration of flammable vapors and gases within the space.

(b) If the concentration of flammable vapors or gases in the space to be entered is equal to or greater than 10 percent of the lower explosive limit, the space shall be labeled "not safe for workers" and "not safe for hot work." Ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapors is maintained below 10 percent of the lower explosive limit. The warning labels may be removed when the concentration of flammable vapors is below 10 percent of the lower explosive limit.

(c) An employee may not enter a space where the concentration of flammable vapors or gases is equal to or greater than 10 percent of the lower explosive limit. Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment necessary to start work in the space, provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) The atmosphere in the space is maintained above the upper explosive limit; and

(iv) Respiratory protection and other appropriate personal protective equipment and clothing are provided in accordance with WAC 296-304-090 through 296-304-09007.

Note 1 to (2): Additional provisions for work in IDLH atmospheres are located in WAC 296-304-090 through 296-304-09007.

Note 2 to (2): Additional provisions for work in spaces containing a flammable substance which also has a permissible exposure limit, are located in subsection (3) of this section and chapter 296-62 WAC, Part H.

(3) Toxic, corrosive, irritant or fumigated atmospheres and residues.

(a) The employer shall ensure that spaces or adjacent spaces that contain or have contained liquids, gases, or solids that are toxic, corrosive or irritant are:

(i) Inspected visually by the competent person to determine the presence of toxic, corrosive, or irritant residue contaminants; and

(ii) Tested by a competent person prior to initial entry by an employee to determine the air concentration of toxics, corrosives, or irritants within the space.

(b) If a space contains an air concentration of a material which exceeds a chapter 296-62 WAC, Part H, permissible exposure limit (PEL) or is IDLH, the space shall be labeled "not safe for workers." Ventilation shall be provided at volumes and flow rates which will ensure that air concentrations are maintained within the PEL or, in the case of contaminants for which there is no established PEL, below the IDLH. The warning label may be removed when the concentration of contaminants is maintained within the PEL or below IDLH level.

(c) If a space cannot be ventilated to within the PELs or is IDLH, a marine chemist or CIH must re-test until the space can be certified "enter with restrictions" or "safe for workers."

(d) An employee may not enter a space whose atmosphere exceeds a PEL or is IDLH.

Exception: An employee may enter for emergency rescue, or for a short duration for installation of ventilation equipment provided:

(i) The atmosphere in the space is monitored continuously;

(ii) Respiratory protection and other necessary and appropriate personal protective equipment and clothing are provided in accordance with WAC 296-304-090 through 296-304-09007.

Note to (3): Other provisions for work in IDLH atmospheres are located in WAC 296-304-090 through 296-304-09007.

(4) Training of employees entering confined and enclosed spaces or other dangerous atmospheres.

(a) The employer shall ensure that each employee that enters a confined or enclosed space and other areas with dangerous atmospheres is trained to perform all required duties safely.

(b) The employer shall ensure that each employee who enters a confined space, enclosed space, or other areas with dangerous atmospheres is trained to:

(i) Recognize the characteristics of the confined space;
(ii) Anticipate and be aware of the hazards that may be faced during entry;

(iii) Recognize the adverse health effects that may be caused by the exposure to a hazard;

(iv) Understand the physical signs and reactions related to exposures to such hazards;

(v) Know what personal protective equipment is needed for safe entry into and exit from the space;

(vi) Use personal protective equipment; and

(vii) Where necessary, be aware of the presence and proper use of barriers that may be needed to protect an entrant from hazards.

(c) The employer shall ensure that each entrant into confined or enclosed spaces or other dangerous atmospheres is trained to exit the space or dangerous atmosphere whenever:

(i) The employer or his or her representative orders evacuation;

(ii) An evacuation signal such as an alarm is activated;
or

(iii) The entrant perceives that he or she is in danger.

(d) The employer shall provide each employee with training:

(i) Before the entrant begins work addressed by this chapter; and

(ii) Whenever there is a change in operations or in an employee's duties that presents a hazard about which the employee has not previously been trained.

(e) The employer shall certify that the training required by (a) through (d) of this subsection has been accomplished.

(i) The certification shall contain the employee's name, the name of the certifier, and the date(s) of the certification.

(ii) The certification shall be available for inspection by the director, employees, and their representatives.

(5) Rescue teams. The employer shall either establish a shipyard rescue team or arrange for an outside rescue team which will respond promptly to a request for rescue service.

(a) Shipyard rescue teams shall meet the following criteria:

(i) Each employee assigned to the shipyard team shall be provided with and trained to use the personal protective equipment he or she will need, including respirators and any rescue equipment necessary for making rescues from confined and enclosed spaces and other dangerous atmospheres.

(ii) Each employee assigned to the shipyard rescue team shall be trained to perform his or her rescue functions including confined and enclosed and other dangerous atmosphere entry.

(iii) Shipyard rescue teams shall practice their skills at least once every 12 months. Practice drills shall include the use of mannequins and rescue equipment during simulated rescue operations involving physical facilities that approximate closely those facilities from which rescue may be needed.

Note to (5)(a)(iii): If the team performs an actual rescue during the 12 month period, an additional practice drill for that type of rescue is not required.

(iv) At least one person on each rescue team shall maintain current certification in basic first aid which includes maintenance of an airway, control of bleeding, maintenance of circulation and cardiopulmonary resuscitation (CPR) skills.

(b) The employer shall inform outside rescue teams of the hazards that the team may encounter when called to perform confined and enclosed space or other dangerous atmosphere rescue at the employer's facility so that the rescue team can be trained and equipped.

Note to (5): The criteria for in-house rescue, listed in (5)(a) can be used by the employer in evaluating outside rescue services.

(6) Exchanging hazard information between employers. Each employer whose employees work in confined and enclosed spaces or other dangerous atmospheres shall ensure that all available information on the hazards, safety rules, and emergency procedures concerning those spaces and atmospheres is exchanged with any other employer whose employees may enter the same spaces.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-02005 **Cleaning and other cold work.**
~~((1) Employees shall be permitted to perform manual cleaning to remove residue materials, scale, and debris or to perform other cold work in spaces described in WAC 296-304-02003 (1)(a)(i) and (ii) and (2)(a)(i) through (iii) before they have been certified as gas free only under the following conditions:~~

~~(a) Liquid residues of flammable and toxic materials shall be removed from the spaces as thoroughly as practicable before employees start actual cleaning operations in these spaces. Drippings and spills of these materials on deck or elsewhere alongside the vessel shall be cleaned up as the work progresses. Special care shall be taken to prevent the spilling or the draining of these materials into the water surrounding the vessel.~~

~~(b) Continuous natural or mechanical ventilation shall be provided to keep the concentration of flammable vapors below ten percent of the lower explosive limit in all parts of the space, provided that if, because of the high volatility of the residues, a uniform concentration of less than ten percent of the lower explosive limit cannot be achieved, sufficient exhaust ventilation shall be provided to reduce the concentration to or below that level in the major portions of the compartment.~~

~~(c) Tests shall be made by a competent person prior to commencement of cold work and with sufficient frequency thereafter, in accordance with temperature, volatility of the residues and other existing conditions in and about the spaces, to ensure that the concentration stated in (1)(b) of this section is not exceeded.~~

~~(d) Cold work only shall be permitted.~~

~~(e) Tests shall be made by a competent person to ensure that the exhaust vapors from these spaces are not accumulating in other areas within or around the vessel, marine railway, dry dock, graving dock, or under the pier where sources of ignition may be present. Should such accumulations be found, any sources of ignition within the affected area shall be removed or extinguished.~~

~~(2) Only approved explosion-proof, self-contained, battery fed, portable lamps shall be used in spaces described in WAC 296-304-02007(1) before the spaces have been certified as "safe for men." Battery fed, portable lamps bearing the approval of the Underwriters' Laboratories for use in Class I, Group D atmospheres, or approved as permissible by the U.S. Bureau of Mines, and such lamps listed by the U.S. Coast Guard as approved for such use are deemed to meet the requirements of this paragraph.~~

~~(3) Signs shall be posted on the open deck adjacent to the access to spaces described in WAC 296-304-02007(1) prohibiting smoking and the use of open flames.~~

~~(4) The metallic parts of air moving devices, including fans, blowers, and jet type air movers, and all duct work shall be electrically bonded to the vessel's structure.~~

~~(5) All motors and control equipment shall be of the explosion proof type. Fans shall have nonferrous blades. Portable air ducts shall also be of nonferrous materials. All motors and associated control equipment shall be properly maintained and grounded.~~

(6) In spaces described in WAC 296-304-02009(1) which have been certified "safe for men," either battery lamps or explosion proof lights, approved by the Underwriters' Laboratories for use in Class I, Group D atmospheres, or approved as permissible by the U.S. Bureau of Mines or the U.S. Coast Guard, shall be used, provided the lights are mounted to the space openings from the exterior, or suspended within the space with the cables so led as to protect them from injury.

(7) In spaces certified "safe for fire" nonexplosion proof lights may be used.) (1) Locations covered by this section. The employer shall ensure that manual cleaning and other cold work are not performed in the following spaces unless the conditions of subsection (2) of this section have been met:

(a) Spaces containing or having last contained bulk quantities of combustible or flammable liquids or gases; and

(b) Spaces containing or having last contained bulk quantities of liquids, gases or solids that are toxic, corrosive or irritating.

(2) Requirements for performing cleaning or cold work.

(a) Liquid residues of hazardous materials shall be removed from work spaces as thoroughly as practicable before employees start cleaning operations or cold work in a space. Special care shall be taken to prevent the spilling or the draining of these materials into the water surrounding the vessel, or for shore-side operations, onto the surrounding work area.

(b) Testing shall be conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work.

(c) Continuous ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration(s) of:

(i) Flammable vapor is maintained below 10 percent of the lower explosive limit; and

Note to (2)(c)(i): Spaces containing highly volatile residues may require additional ventilation to keep the concentration of flammable vapors below 10 percent of the lower explosive limit and within the permissible exposure limit.

(ii) Toxic, corrosive, or irritant vapors are maintained within the permissible exposure limits and below IDLH levels.

(d) Testing shall be conducted by the competent person as often as necessary during cleaning or cold work to assure that air concentrations are below 10 percent of the lower explosive limit and within the PELs and below IDLH levels. Factors such as, but not limited to, temperature, volatility of the residues and other existing conditions in and about the spaces are to be considered in determining the frequency of testing necessary to assure a safe atmosphere.

Note to (2)(d): See WAC 296-304-02013—Appendix A, for additional information on frequency of testing.

(e) Spills or other releases of flammable, combustible, toxic, corrosive, and irritant materials shall be cleaned up as work progresses.

(f) An employee may not enter a confined or enclosed space or other dangerous atmosphere if the concentration of

flammable or combustible vapors in work spaces exceeds 10 percent of the lower explosive limit.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) The atmosphere in the space is maintained above the upper explosive limit; and

(iv) Respiratory protection, personal protective equipment, and clothing are provided in accordance with WAC 206-304-090 through 296-304-09007.

Note to (2)(f): Other provisions for work in IDLH and other dangerous atmospheres are located in WAC 296-304-090 through 296-304-09007.

(g) A competent person shall test ventilation discharge areas and other areas where discharged vapors may collect to determine if vapors discharged from the spaces being ventilated are accumulating in concentrations hazardous to employees.

(h) If the tests required in (g) of this subsection indicate that concentrations of exhaust vapors that are hazardous to employees are accumulating, all work in the contaminated area shall be stopped until the vapors have dissipated or been removed.

(i) Only explosion-proof, self-contained portable lamps, or other electric equipment approved by a National Recognized Testing Laboratory (NRTL) for the hazardous location shall be used in spaces described in subsection (1) of this section, until such spaces have been certified as "safe for workers."

Note to (2)(i): Battery-fed, portable lamps or other electric equipment bearing the approval of a NRTL for the class, and division of the location in which they are used are deemed to meet the requirements of (i) of this subsection.

(j) The employer shall prominently post signs that prohibit sources of ignition within or near a space that has contained flammable or combustible liquids or gases in bulk quantities:

(i) At the entrance to those spaces;

(ii) In adjacent spaces; and

(iii) In the open area adjacent to those spaces.

(k) All air moving equipment and its component parts, including duct work, capable of generating a static electric discharge of sufficient energy to create a source of ignition, shall be bonded electrically to the structure of a vessel or vessel section or, in the case of land-side spaces, grounded to prevent an electric discharge in the space.

(l) Fans shall have nonsparking blades, and portable air ducts shall be of nonsparking materials.

Note to (2): See WAC 296-304-02003(3) and applicable requirements of chapter 296-62 WAC, general occupational health standards, for other provisions affecting cleaning and cold work.

AMENDATORY SECTION (Amending Order 76-7, filed 3/1/76)

WAC 296-304-02007 ((Certification before)) Hot work ((is begun)). ((1) Employees shall not be permitted to engage in hot work or the use of powder actuated fasten-

ing tools in or on the following spaces, boundaries or pipe lines until a certificate setting forth that the hot work can be done in safety is issued. Such certificate shall be acceptable only if issued by a marine chemist certificated by the National Fire Protection Association, except that a certificate issued by another person authorized by the U.S. Coast Guard pursuant to the provisions of 46 CFR 35.01-1 (e)(1) for tank vessels, 46 CFR 71.60-1 (e)(1) for passenger vessels, and 46 CFR 91.50-1 (e)(1) for cargo and miscellaneous vessels is acceptable for a particular inspection:

(a) On tank vessels.

(i) Within or on the boundaries of cargo tanks which have been used to carry combustible or flammable liquids and gases in bulk, or within spaces adjacent to such cargo tanks.

(ii) Within or on the boundaries of fuel tanks.

(iii) On pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(b) On dry cargo, miscellaneous and passenger vessels.

(i) Within or on the boundaries of cargo tanks which have been used to carry combustible or flammable liquids and gases in bulk.

(ii) Within spaces adjacent to cargo tanks which have been used to carry flammable gases, or liquids with a flash point below 150°F, except where the distance between such cargo tanks and the work to be performed is not less than twenty five feet.

(iii) Within or on the boundaries of fuel tanks.

(iv) On pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(2) In dry cargo holds for which a marine chemist's certificate is not required by (1)(b)(ii) of this section, hot work may be performed only after a competent person has carefully examined the hold and found it to be free of flammable liquids, gases, and vapors. If flammable liquids, gases, or vapors are found, hot work shall not be performed within the space until the flammable liquids, gases, or vapors have been removed and a test indicates that the space is safe for fire.

(3) Before hot work is performed in engine room and boiler room spaces of any vessel for which a marine chemist's certificate is not required by the provision of (1) or in fuel tank and engine compartments of boats, the bilges shall be inspected and tested by a competent person to ensure that they are free of flammable liquids, gases, and vapors. If flammable liquids, gases, or vapors are found, hot work shall not be performed within the space until the flammable liquids, gases, or vapors have been removed and a test indicates that the space is safe for fire.

(4) Hot work in the open. Before hot work is performed from open decks or in tanks or compartments from which the overhead has been completely removed, on the boundaries of cargo spaces or other spaces containing or having last contained combustible or flammable liquids or gases in bulk, the following steps shall be taken:

(a) Tests shall be made by a competent person to determine the concentration of flammable vapors in these spaces. The permissible level of concentration of flammable vapors shall not exceed ten percent of the lower explosive limit in all parts of the spaces.

(b) When the tests indicate that a space contains a concentration of flammable vapors above the permissible

concentration, the space shall be inerted with a nonflammable gas or with water, or sufficient ventilation shall be provided to reduce the concentration below the permissible level.

(c) When the bottom of a space contains flammable residues, it shall be flooded with water to cover all parts of the space to a depth of at least one foot unless the space is inerted.) (1) Hot work requiring testing by a marine chemist or Coast Guard authorized person.

(a) The employer shall ensure that hot work is not performed in or on any of the following confined and enclosed spaces and other dangerous atmospheres, boundaries of spaces or pipelines until the work area has been tested and certified by a marine chemist or a U.S. Coast Guard authorized person as "safe for hot work":

(i) Within, on, or immediately adjacent to spaces that contain or have contained combustible or flammable liquids or gases.

(ii) Within, on, or immediately adjacent to fuel tanks that contain or have last contained fuel; and

(iii) On pipelines, heating coils, pump fittings or other accessories connected to spaces that contain or have last contained fuel.

(iv) Exception: Within spaces adjacent to spaces in which the flammable gases or liquids have a flash point below 150 deg. F (65.6 deg. C) and the distance between such spaces and the work is greater than 25 feet (7.5 m).

Note to (1)(a): The criteria for "safe for hot work" is located in the definition section, WAC 296-304-020(2).

(b) The certificate issued by the marine chemist or Coast Guard authorized person shall be posted in the immediate vicinity of the affected operations while they are in progress and kept on file for a period of at least three months from the date of the completion of the operation for which the certificate was generated.

(2) Hot work requiring testing by a competent person.

(a) Hot work is not permitted in or on the following spaces or adjacent spaces or other dangerous atmospheres until they have been tested by a competent person and determined to contain no concentrations of flammable vapors equal to or greater than 10 percent of the lower explosive limit:

(i) Dry cargo holds;

(ii) The bilges;

(iii) The engine room and boiler spaces for which a marine chemist or a Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; and

(iv) Vessels and vessel sections for which a marine chemist or Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; and

(v) Land-side confined and enclosed spaces or other dangerous atmospheres not covered by subsection (1)(a) of this section.

(b) If the concentration of flammable vapors or gases is equal to or greater than 10 percent of the lower explosive limit in the space or an adjacent space where the hot work is to be done, then the space shall be labeled "not safe for hot work" and ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapors or gases is below 10 percent by volume of

the lower explosive limit. The warning label may be removed when the concentration of flammable vapors and gases are below 10 percent of the lower explosive limit.

Note to WAC 296-304-02007: See WAC 296-304-02013—Appendix A, for additional information relevant to performing hot work safely.

AMENDATORY SECTION (Amending Order 76-7, filed 3/1/76)

WAC 296-304-02009 ((Maintaining gas free)) Maintenance of safe conditions. ((The following rules shall apply in maintaining gas free conditions:

(1) Pipe lines which may convey hazardous substances into the spaces certified "Safe for men—Safe for fire" shall be disconnected or blanked off, or other positive means shall be used to prevent discharge of hazardous substances from entering the space. Manholes and other closures which were secured when tests were made shall remain secured. If such manholes or other closures are opened or any manipulation of valves takes place which tends to alter existing conditions, work in the affected spaces or areas shall be stopped and not resumed until such time as the area has been retested and again certified "Safe for men—Safe for fire" in accordance with the requirements of WAC 296-304-02007(1).

(2) Before hot work is commenced on the weather deck over spaces which, under these regulations, are not required to be gas freed or inerted, all valves, closures and vents, except those which are vented up masts, connecting with nongas free tanks or compartments below, shall be closed. Valves, closures and vents shall not be opened until hot work is completed unless the hot work is stopped and the work location posted as unsafe for fire. The latter notice shall not be removed nor hot work resumed until the area is again made safe.

(3) The employer shall inform masters and chief engineers of vessels of the provisions of this section and shall confirm that they are aware of their responsibilities for seeing that their crews understand and obey all warning signs, tags, and the limitations stated on the marine chemist's certificates.

(4) When conditions in a tank are such that there is a possibility of hazardous vapor being released from residues or other sources after a marine chemist's certificate has been issued, a competent person shall make tests to assure that the gas free condition is maintained irrespective of whether hot work is being performed in the tank. When the competent person finds that atmospheric conditions have altered, work shall be stopped and a new marine chemist's certificate in accordance with the requirements of WAC 296-304-02007(1) shall be obtained before work is resumed.

(5) Before hot work is begun on any metal covered with preservative coatings the requirements of WAC 296-304-04005 shall be met:)) (1) Preventing hazardous materials from entering. Pipelines that could carry hazardous materials into spaces that have been certified "safe for workers" or "safe for hot work" shall be disconnected, blanked off, or otherwise blocked by a positive method to prevent hazardous materials from being discharged into the space.

(2) Alteration of existing conditions. When a change that could alter conditions within a tested confined or

enclosed space or other dangerous atmosphere occurs, work in the affected space or area shall be stopped. Work may not be resumed until the affected space or area is visually inspected and retested and found to comply with WAC 296-304-02003, 296-304-02005, and 296-304-02007, as applicable.

Note to (2): Examples of changes that would warrant the stoppage of work include: The opening of manholes or other closures or the adjusting of a valve regulating the flow of hazardous materials.

(3) Tests to maintain the conditions of a marine chemist's or Coast Guard authorized person's certificates. A competent person shall visually inspect and test each space certified as "safe for workers" or "safe for hot work," as often as necessary to ensure that atmospheric conditions within that space is maintained within the conditions established by the certificate after the certificate has been issued.

(4) Change in the conditions of a marine chemist's or Coast Guard authorized person's certificate. If a competent person finds that the atmospheric conditions within a certified space fail to meet the applicable requirements of WAC 296-304-02003, 296-304-02005, and 296-304-02007, work in the certified space shall be stopped and may not be resumed until the space has been retested by a marine chemist or Coast Guard authorized person and a new certificate issued in accordance with WAC 296-304-02007(1).

(5) Tests to maintain a competent person's findings. After a competent person has conducted a visual inspection and tests required in WAC 296-304-02003, 296-304-02005, and 296-304-02007 and determined a space to be safe for an employee to enter, he or she shall continue to test spaces as often as necessary to ensure that the required atmospheric conditions within the tested space are maintained.

(6) Changes in conditions determined by competent person's findings. After the competent person has determined initially that a space is safe for an employee to enter and he or she finds subsequently that the conditions within the tested space fail to meet the requirements of WAC 296-304-02003, 296-304-02005, and 296-304-02007, as applicable, work shall be stopped until the conditions in the tested space are corrected to comply with WAC 296-304-02003, 296-304-02005, and 296-304-02007, as applicable.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-02011 Warning signs and labels. ((†) Except as provided in WAC 296-304-02011(3), all tanks, compartments, or spaces which have been certified "Safe for men—Not safe for fire," or "Not safe for men—Not safe for fire" shall be plainly and conspicuously marked with paint or signs indicating that no hot work shall be performed on such tanks, compartments, or spaces or in the vicinity thereof.

(2) Except as provided in WAC 296-304-02011(3), all tanks, compartments or spaces which have been inerted with gas or certified "Not safe for men—Safe for fire" shall be plainly and conspicuously marked with paint or signs indicating that the tank, compartment or space contains a gas which will not support life or is hazardous to employees.

PERMANENT

~~(3) The warning marks or signs required by WAC 296-304-02011(1), need not be posted on individual tanks, compartments or spaces if the entire vessel has been certified "Safe for men Not safe for fire," "Not safe for men Not safe for fire," or if the entire vessel has been inerted or certified "Not safe for men Safe for fire," and if a sign to this effect is conspicuously posted at the gangway and at all other means of access to the vessel.)~~ (1) Employee comprehension of signs and labels. The employer shall ensure that each sign or label posted to comply with the requirements of this section is presented in a manner that can be perceived and understood by all employees.

(2) Posting of large work areas. A warning sign or label required by subsection (1) of this section need not be posted at an individual tank, compartment or work space within a work area if the entire work area has been tested and certified: "Not safe for workers," "not safe for hot work," and if the sign or label to this effect is posted conspicuously at each means of access to the work area.

NEW SECTION

WAC 296-304-02013 Appendix A—Compliance assistance guidelines for confined and enclosed spaces and other dangerous atmospheres. This appendix is a non-mandatory set of guidelines provided to assist employers in complying with the requirements of WAC 296-304-020 through 296-304-02011. This appendix neither creates additional obligations nor detracts from obligations otherwise contained in this chapter. It is intended to provide explanatory information and educational material to employers and employees to foster understanding of, and compliance with, this chapter.

WAC 296-304-020 through 296-304-02011. These standards are minimum safety standards for entering and working safely in vessel tanks and compartments.

WAC 296-304-020(2) Definition of "Hot work." There are several instances in which circumstances do not necessitate that grinding, drilling, abrasive blasting be regarded as hot work. Some examples are:

(1) Abrasive blasting of the hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel.

(2) Prior to hot work on any hollow structure, the void space should be tested and appropriate precautions taken.

WAC 296-304-020(2) Definition of "Lower explosive limit." The terms lower flammable limit (LFL) and lower explosive limit (LEL) are used interchangeably in fire science literature.

WAC 296-304-020(2) Definition of "Upper explosive limit." The terms upper flammable limit (UFL) and upper explosive limit (UEL) are used interchangeably in fire science literature.

WAC 296-304-02003(1) After a tank has been properly washed and ventilated, the tank should contain 20.8 percent oxygen by volume. This is the same amount found in our normal atmosphere at sea level. However, it is possible that the oxygen content will be lower. When this is the case, the reasons for this deficiency should be determined and corrective action taken.

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than

20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry.

WAC 296-304-02003(2) Flammable atmospheres. Atmospheres with a concentration of flammable vapors at or above 10 percent of the lower explosive limit (LEL) are considered hazardous when located in confined spaces. However, atmospheres with flammable vapors below 10 percent of the LEL are not necessarily safe.

Such atmospheres are too lean to burn. Nevertheless, when a space contains or produces measurable flammable vapors below the 10 percent LEL, it might indicate that flammable vapors are being released or introduced into the space and could present a hazard in time. Therefore, the cause of the vapors should be investigated and, if possible, eliminated prior to entry.

Some situations that have produced measurable concentrations of flammable vapors that could exceed 10 percent of the LEL in time are:

(1) Pipelines that should have been blanked or disconnected have opened, allowing product into the space.

(2) The vessel may have shifted, allowing product not previously cleaned and removed during washing to move into other areas of the vessel.

(3) Residues may be producing the atmosphere by releasing flammable vapor.

WAC 296-304-02003(2) Flammable atmospheres that are toxic. An atmosphere with a measurable concentration of a flammable substance below 10 percent of the LEL may be above the WISHA permissible exposure limit for that substance. In that case, refer to WAC 296-304-02003 (3)(b), (c), and (d).

WAC 296-304-02005 (2)(d), 296-304-02009(3), and 296-304-02009(5). The frequency with which a tank is monitored to determine if atmospheric conditions are being maintained is a function of several factors that are discussed below:

(1) Temperature. Higher temperatures will cause a combustible or flammable liquid to vaporize at a faster rate than lower temperatures. This is important since hotter days may cause tank residues to produce more vapors and that may result in the vapors exceeding 10 percent of the LEL or an overexposure to toxic contaminants.

(2) Work in the tank. Any activity in the tank could change the atmospheric conditions in that tank. Oxygen from a leaking oxyfuel hose or torch could result in an oxygen-enriched atmosphere that would more easily propagate a flame. Some welding operations use inert gas, and leaks can result in an oxygen-deficient atmosphere. Manual tank cleaning with high pressure spray devices can stir up residues and result in exposures to toxic contaminants. Simple cleaning or mucking out, where employees walk through and shovel residues and sludge, can create a change in atmospheric conditions.

(3) Period of time elapsed. If a period of time has elapsed since a marine chemist or Coast Guard authorized person has certified a tank as safe, the atmospheric condition should be rechecked by the competent person prior to entry and starting work.

(4) Unattended tanks or spaces. When a tank or space has been tested and declared safe, then subsequently left unattended for a period of time, it should be retested prior to

entry and starting work. For example, when barges are left unattended at night, unidentified products from another barge are sometimes dumped into their empty tanks. Since this would result in a changed atmosphere, the tanks should be retested prior to entry and starting work.

(5) Work break. When workers take a break or leave at the end of the shift, equipment sometimes is inadvertently left in the tanks. At lunch or work breaks and at the end of the shift are the times when it is most likely someone will leave a burning or cutting torch in the tank, perhaps turned on and leaking oxygen or an inert gas. Since the former can produce an oxygen-enriched atmosphere, and the latter an oxygen-deficient atmosphere, tanks should be checked for equipment left behind, and atmosphere, monitored if necessary prior to re-entering and resuming work. In an oxygen-enriched atmosphere, the flammable range is severely broadened. This means that an oxygen-enriched atmosphere can promote very rapid burning.

(6) Ballasting or trimming. Changing the position of the ballast, or trimming or in any way moving the vessel so as to expose cargo that had been previously trapped, can produce a change in the atmosphere of the tank. The atmosphere should be retested after any such move and prior to entry or work.

WAC 296-304-02007 (1) and (2) Hot work. This is a reminder that other sections of the WISHA shipyard safety and health standards in chapter 296-304 WAC should be reviewed prior to starting any hot work. Most notably, WAC 296-304-040 through 296-304-04013, welding, cutting and heating, places additional restrictions on hot work: The requirements of WAC 296-304-04001 and 296-304-04005 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of WAC 296-304-04007 must be met before welding, cutting, or heating is begun on any structural voids.

WAC 296-304-02003 (1)(b). During hot work, more than 20.8 percent oxygen by volume can be unsafe since it extends the normal flammable range. The standard permits the oxygen level to reach 22.0 percent by volume in order to account for instrument error. However, the cause of excess oxygen should be investigated and the source removed.

WAC 296-304-02011(2). If the entire vessel has been found to be in the same condition, then employers shall be considered to be in compliance with this requirement when signs using appropriate warning language in accordance with WAC 296-304-02011(1) are posted at the gangway and at all other means of access to the vessel.

NEW SECTION

WAC 296-304-02015 Appendix B—Confined and enclosed spaces and other dangerous atmospheres in shipyard employment. This appendix provides a complete reprint of U.S. Coast Guard regulations as of October 1, 1993 referenced in WAC 296-304-020 for purposes of determining who is a Coast Guard authorized person.

(1) Title 46 CFR 35.01-1 (a) through (c) covering hot work on tank vessels reads as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a

guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks that have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or

(ii) Within or on the boundaries of fuel tanks; or

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions, the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemists are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicates that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified, throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) Title 46 CFR 71.60(c)(1) covering hot work on passenger vessels reads as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or

(ii) Within or on the boundaries of fuel tanks; or

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection

Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(3) Title 46 CFR 91.50-1(c)(1) covering hot work on cargo and miscellaneous vessels as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or,

(ii) Within or on the boundaries of fuel tanks; or,

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that

may be present from protective coatings or residues from cargoes.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-304-03001 Toxic cleaning solvents. (1)

When toxic solvents are used, the employer shall employ one or more of the following measures to safeguard the health of employees exposed to these solvents.

(a) The cleaning operation shall be completely enclosed to prevent the escape of vapor into the working space.

(b) Either natural ventilation or mechanical exhaust ventilation shall be used to remove the vapor at the source and to dilute the concentration of vapors in the working space to a concentration which is safe for the entire work period.

(c) Employees shall be protected against toxic vapors by suitable respiratory protective equipment in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E and, where necessary, against exposure of skin and eyes to contact with toxic solvents and their vapors by suitable clothing and equipment.

(2) The principles in the threshold limit values to which attention is directed in WAC 296-304-02005 and applicable sections in chapter 296-62 WAC will be used by the department of labor and industries in enforcement proceedings in defining a safe concentration of air contaminants.

(3) When flammable solvents are used, precautions shall be taken in accordance with the requirements of WAC 296-304-03009.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-304-03005 Mechanical paint removers.

(1) Power tools.

(a) Employees engaged in the removal of paints, preservatives, rusts or other coatings by means of power tools shall be protected against eye injury by goggles or face shields in accordance with the requirements of WAC 296-304-09001(1).

(b) All portable rotating tools used for the removal of paints, preservatives, rusts or other coatings shall be adequately guarded to protect both the operator and nearby workers from flying missiles.

(c) Portable electric tools shall be grounded in accordance with the requirements of WAC 296-304-08003 (1) and (2).

(d) In a confined space, mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum shall be used, or employees shall be protected by respiratory protective equipment in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(2) Flame removal.

(a) Hardened preservative coatings shall not be removed by flame in enclosed spaces unless the employees exposed to fumes are protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E. Employees performing such an operation in the open air, and those exposed to the resulting fumes, shall be protected by a fume filter type respirator in accor-

dance with requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(b) Flame or heat shall not be used to remove soft and greasy preservative coatings.

(3) Abrasive blasting.

(a) Equipment. Hoses and fittings used for abrasive blasting shall meet the following requirements:

(i) Hoses. Hose of a type to prevent shocks from static electricity shall be used.

(ii) Hose couplings. Hose lengths shall be joined by metal couplings secured to the outside of the hose to avoid erosion and weakening of the couplings.

(iii) Nozzles. Nozzles shall be attached to the hose by fittings that will prevent the nozzle from unintentionally becoming disengaged. Nozzle attachments shall be of metal and shall fit onto the hose externally.

(iv) Dead man control. A dead man control device shall be provided at the nozzle end of the blasting hose either to provide direct cutoff or to signal the pot tender by means of a visual and audible signal to cut off the flow, in the event the blaster loses control of the hose. The pot tender shall be available at all times to respond immediately to the signal.

(b) Replacement. Hoses and all fittings used for abrasive blasting shall be inspected frequently to insure timely replacement before an unsafe amount of wear has occurred.

(c) Personal protective equipment.

(i) Abrasive blasters working in enclosed spaces shall be protected by hoods and air fed respirators or by air helmets of a positive pressure type in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(ii) Abrasive blasters working in the open shall be protected as indicated in (1) except that when synthetic abrasives containing less than one percent free silica are used filter type respirators approved by the Bureau of Mines for exposure to lead dusts may be used in accordance with chapter 296-62 WAC ((296-304-09003)), Part E.

(iii) Employees, other than blasters, including machine tenders and abrasive recovery men, working in areas where unsafe concentrations of abrasive materials and dusts are present shall be protected by eye and respiratory protective equipment in accordance with the requirements of WAC 296-304-09001 (1) and (2) and ((296-304-09003)) chapter 296-62, Part E, respectively.

(iv) The blaster shall be protected against injury from exposure to the blast by appropriate protective clothing, including gloves.

(v) Since surges from drops in pressure in the hose line can be of sufficient proportions to throw the blaster off the staging, the blaster shall be protected by a safety belt and life line tied off to the ship or other structure when blasting is being done from elevations where adequate protection against falling cannot be provided by railings.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-304-03007 Painting. (1) Paints mixed with toxic vehicles or solvents.

(a) When paints mixed with toxic vehicles or solvents are sprayed, the following conditions shall apply:

(i) In confined spaces, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(ii) In tanks or compartments, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E. Where mechanical ventilation is provided, employees shall be protected by respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(iii) In large and well ventilated areas, employees exposed to such spraying shall be protected by respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(b) Where brush application of paints with toxic solvents is done in confined spaces, or other areas where lack of ventilation creates a hazard, employees shall be protected by filter respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(c) When flammable paints or vehicles are used, precautions shall be taken in accordance with the requirements of WAC 296-304-03009.

(d) The metallic parts of air moving devices, including fans, blowers, and jet-type air movers, and all duct work shall be electrically bonded to the vessel's structure.

(2) Paints and tank coatings dissolved in highly volatile, toxic and flammable solvents. Several organic coatings, adhesives and resins are dissolved in highly toxic, flammable and explosive solvents with flash points below 80°F. Work involving such materials shall be done only when all of the following special precautions have been taken:

(a) Sufficient exhaust ventilation shall be provided to keep the concentration of solvent vapors below ten percent of the lower explosive limit. Frequent tests shall be made by a competent person to ascertain the concentration.

(b) If the ventilation fails or if the concentration of solvent vapors rises above ten percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration down to ten percent of the lower explosive limit shall be provided.

(c) Ventilation shall be continued after the completion of painting until the space or compartment is gas free. The final determination as to whether the space or compartment is gas free shall be made after the ventilating equipment has been shut off for a least ten minutes.

(d) Exhaust ducts shall discharge clear of working areas and away from sources of possible ignition. Periodic tests shall be made to ensure that the exhausted vapors are not accumulating in other areas within or around the vessel or dry dock.

(e) All motors and control equipment shall be of the explosion-proof type. Fans shall have nonferrous blades. Portable air ducts shall also be of nonferrous materials. All motors and associated control equipment shall be properly maintained and grounded.

(f) Only nonsparking paint buckets, spray guns and tools shall be used. Metal parts of paint brushes and rollers shall

be insulated. Staging shall be erected in a manner which ensures that it is nonsparking.

(g) Only explosion proof lights, approved by the Underwriters' Laboratories for use in Class I, Group D atmospheres, or approved as permissible by the U.S. Bureau of Mines or the U.S. Coast Guard, shall be used.

(h) A competent person shall inspect all power and lighting cables to ensure that the insulation is in excellent condition, free of all cracks and worn spots, that there are no connections within fifty feet of the operation, that lines are not overloaded, and that they are suspended with sufficient slack to prevent undue stress or chafing.

(i) The face, eyes, head, hands and all other exposed parts of the bodies of employees handling such highly volatile paints shall be protected. All footwear shall be nonsparking, such as rubbers, rubber boots or rubber soled shoes without nails. Coveralls or other outer clothing shall be of cotton. Rubber, rather than plastic gloves shall be used because of the danger of static sparks.

(j) No matches, lighted cigarettes, cigars, or pipes, and no cigarette lighters or ferrous articles shall be taken into the area where work is being done.

(k) All solvent drums taken into the compartment shall be placed on nonferrous surfaces and shall be grounded to the vessel. Metallic contact shall be maintained between containers and drums when materials are being transferred from one to another.

(l) Spray guns, paint pots, and metallic parts of connecting tubing shall be electrically bonded, and the bonded assembly shall be grounded to the vessel.

(m) All employees continuously in a compartment in which such painting is being performed, shall be protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E and by suitable protective clothing. Employees entering such compartments for a limited time shall be protected by filter cartridge type respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(n) All employees doing exterior paint spraying with such paints shall be protected by suitable filter cartridge type respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E and by suitable protective clothing.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-304-04001 Ventilation and protection in welding, cutting and heating. (1) Mechanical ventilation requirements.

(a) For the purposes of this section, mechanical ventilation shall meet the following requirements:

(i) Mechanical ventilation shall consist of either general mechanical ventilation systems or local exhaust systems.

(ii) General mechanical ventilation shall be of sufficient capacity and so arranged as to produce the number of air changes necessary to maintain welding fumes and smoke within safe limits.

(iii) Local exhaust ventilation shall consist of freely movable hoods intended to be placed by the welder or burner as close as practicable to the work. This system shall be of sufficient capacity and so arranged as to remove fumes

and smoke at the source and keep the concentration of them in the breathing zone within safe limits.

(iv) Contaminated air exhausted from a working space shall be discharged into the open air or otherwise clear of the source of intake air.

(v) All air replacing that withdrawn shall be clean and respirable.

(vi) Oxygen shall not be used for ventilation purposes, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area.

(2) Welding, cutting and heating in confined spaces.

(a) Except as provided in WAC 296-304-04001 (2)(c) and (3)(b), either general mechanical or local exhaust ventilation meeting the requirements of (1) of this section shall be provided whenever welding, cutting or heating is performed in a confined space.

(b) The means of access shall be provided to a confined space and ventilation ducts to this space shall be arranged in accordance with WAC 296-304-05011 (2)(a) and (b).

(c) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E, and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency.

(3) Welding, cutting or heating of metals of toxic significance.

(a) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection shall be performed with either general mechanical or local exhaust ventilation meeting the requirements of (1) of this section.

(i) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials.

(ii) Lead base metals.

(iii) Cadmium-bearing filler materials.

(iv) Chromium-bearing metals or metals coated with chromium-bearing materials.

(b) Welding, cutting, or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection shall be performed with local exhaust ventilation in accordance with the requirements of (1) of this section or employees shall be protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

(ii) Cadmium-bearing or cadmium coated base metals.

(iii) Metals coated with mercury-bearing metals.

(iv) Beryllium-containing base or filler metals. Because of its high toxicity, work involving beryllium shall be done with both local exhaust ventilation and air line respirators.

(c) Employees performing such operations in the open air shall be protected by filter type respirators in accordance with the requirements of WAC 296-304-09003, except that employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(d) Other employees exposed to the same atmosphere as the welders or burners shall be protected in the same manner as the welder or burner.

(4) Inert-gas metal-arc welding.

(a) Since the inert-gas metal-arc welding process involves the production of ultraviolet radiation of intensities of 5 to 30 times that produced during shielded metal-arc welding, the decomposition of chlorinated solvents by ultraviolet rays, and the liberation of toxic fumes and gases, employees shall not be permitted to engage in, or be exposed to the process until the following special precautions have been taken:

(i) The use of chlorinated solvents shall be kept at least two hundred feet from the exposed arc, and surfaces prepared with chlorinated solvents shall be thoroughly dry before welding is permitted on such surfaces.

(ii) Helpers and other employees in the area not protected from the arc by screening as provided in WAC 206-304-0401.1(5) shall be protected by filter lenses meeting the requirements of WAC 296-304-09001 (1) and (3). When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of WAC 296-304-09001 (1) and (3) shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.

(iii) Welders and other employees who are exposed to radiation shall be suitably protected so that the skin is covered completely to prevent burns and other damage by ultraviolet rays. Welding helmets and hand shields shall be free of leaks and openings, and free of highly reflective surfaces.

(iv) When inert-gas metal-arc welding is being performed on stainless steel, the requirements of (3)(b) of this section shall be met to protect against dangerous concentrations of nitrogen dioxide.

(5) General welding, cutting and heating.

(a) Welding, cutting and heating not involving conditions or materials described in (2), (3) or (4) of this section may normally be done without mechanical ventilation or respiratory protective equipment, but where, because of unusual physical or atmospheric conditions, an unsafe accumulation of contaminants exists, suitable mechanical ventilation or respiratory protective equipment shall be provided.

(b) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of WAC 296-304-09001 (1) and (3).

(6) Residues and cargos of metallic ores.

(a) Residues and cargos of metallic ores of toxic significance shall be removed from the area or protected from the heat before welding, cutting or heating is begun.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-304-04005 Welding, cutting and heating in way of preservative coatings. (1) Before welding, cutting or heating is commenced on any surface covered by a preservative coating whose flammability is not known, a test shall be made by a competent person to determine its

flammability. Preservative coatings shall be considered to be highly flammable when scrapings burn with extreme rapidity.

(2) Precautions shall be taken to prevent ignition of highly flammable hardened preservative coatings. When coatings are determined to be highly flammable they shall be stripped from the area to be heated to prevent ignition. A 1 1/2-inch or larger fire hose with fog nozzle, which has been uncoiled and placed under pressure, shall be immediately available for instant use in the immediate vicinity, consistent with avoiding freezing of the hose.

(3) Protection against toxic preservative coatings.

(a) In enclosed spaces all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(b) In the open air employees shall be protected by a filter type respirator in accordance with the requirements of chapter 296-62 WAC ((296-304-09003)), Part E.

(4) Before welding, cutting or heating is commenced in enclosed spaces on metals covered by soft and greasy preservatives, the following precautions shall be taken:

(a) A competent person shall test the atmosphere in the space to ensure that it does not contain explosive vapors, since there is a possibility that some soft and greasy preservatives may have flash points below temperatures which may be expected to occur naturally. If such vapors are determined to be present, no hot work shall be commenced until such precautions have been taken as will ensure that the welding, cutting or heating can be performed in safety.

(b) The preservative coatings shall be removed for a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not be appreciably raised. Artificial cooling of the metal surrounding the heated area may be used to limit the size of the area required to be cleaned. The prohibition contained in WAC 296-304-03005 (2)(b) shall apply.

(5) Immediately after welding, cutting or heating is commenced in enclosed spaces on metal covered by soft and greasy preservatives, and at frequent intervals thereafter, a competent person shall make tests to ensure that no flammable vapors are being produced by the coatings. If such vapors are determined to be present, the operation shall be stopped immediately and shall not be resumed until such additional precautions have been taken as are necessary to ensure that the operation can be resumed safely.

AMENDATORY SECTION (Amending Order 88-11, filed 7/6/88)

WAC 296-304-06013 Health and sanitation. (1) No chemical product, such as a solvent or preservative; no structural material, such as cadmium or zinc coated steel, or plastic material; and no process material, such as welding filler metal; which is a hazardous material within the meaning of WAC 296-304-01001((19)) (21), shall be used until the employer has ascertained the potential fire, toxic, or reactivity hazards which are likely to be encountered in the handling, application, or utilization of such a material.

(2) In order to ascertain the hazards, as required by subsection (1) of this section, the employer shall obtain the

following items of information which are applicable to a specific product or material to be used:

(a) The name, address, and telephone number of the source of the information specified in this section preferably those of the manufacturer of the product or material.

(b) The trade name and synonyms for a mixture of chemicals, a basic structural material, or for a process material; and the chemical name and synonyms, chemical family, and formula for a single chemical.

(c) Chemical names of hazardous ingredients, including, but not limited to, those in mixtures, such as those in: (i) Paints, preservatives, and solvents; (ii) alloys, metallic coatings, filler metals and their coatings or core fluxes; and (iii) other liquids, solids, or gases (e.g., abrasive materials).

(d) An indication of the percentage, by weight or volume, which each ingredient of a mixture bears to the whole mixture, and of the threshold limit value of each ingredient, in appropriate units.

(e) Physical data about a single chemical or a mixture of chemicals, including boiling point, in degrees Fahrenheit; vapor pressure, in millimeters of mercury; vapor density of gas or vapor (air=1); solubility in water, in percent by weight; specific gravity of material (water=1); percentage volatile, by volume, at 70°F.; evaporation rate for liquids (either butyl acetate or ether may be taken as 1); and appearance and odor.

(f) Fire and explosion hazard data about a single chemical or a mixture of chemicals, including flashpoint, in degrees Fahrenheit; flammable limits, in percent by volume in air; suitable extinguishing media or agents; special fire fighting procedures; and unusual fire and explosion hazard information.

(g) Health hazard data, including threshold limit value, in appropriate units, for a single hazardous chemical or for the individual hazardous ingredients of a mixture as appropriate, effects of overexposure; and emergency and first aid procedures.

(h) Reactivity data, including stability, incompatibility, hazardous decomposition products, and hazardous polymerization.

(i) Procedures to be followed and precautions to be taken in cleaning up and disposing of materials leaked or spilled.

(j) Special protection information, including use of personal protective equipment, such as respirators, eye protection, and protective clothing, and of ventilation, such as local exhaust, general, special, or other types.

(k) Special precautionary information about handling and storing.

(l) Any other general precautionary information.

(3) The pertinent information required by subsection (2) of this section shall be recorded either on United States Department of Labor Form LSB 00S-4, Material Safety Data Sheet, or on an essentially similar form which has been approved by the department of labor and industries. Copies of Form LSB 00S-4 may be obtained at any of the following regional offices of the occupational safety and health administration:

(a) Pacific region. (Arizona, California, Hawaii, and Nevada.)

10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102.

(b) Region X, OSHA, (Alaska, Washington, Idaho, and Oregon), Federal Office Building, 909 First Avenue, Seattle, Washington 98174.

A completed MSDS form shall be preserved and available for inspection for each hazardous chemical on the worksite.

(4) The employer shall instruct employees who will be exposed to the hazardous materials as to the nature of the hazards and the means of avoiding them.

(5) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under subsection (1) of this section and those hazards for which specific precautions are required in WAC 296-304-020 through 296-304-04013.

(6) The employer shall provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. The employer shall encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing of hands and face prior to eating or smoking.

(7) The employer shall not permit eating or smoking in areas undergoing surface preparation or preservation or where shiprepairing, shipbuilding, or shipbreaking operations produce atmospheric contamination.

(8) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage and shall ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(9) Requirements of ~~((WAC 296-62-054 et seq.))~~ chapter 296-62 WAC, Part C, hazard communication, will apply to shiprepairing, shipbuilding, and shipbreaking when potential hazards of chemicals and communicating information concerning hazards and appropriate protective equipment is applicable to an operation.

AMENDATORY SECTION (Amending Order 76-7, filed 3/1/76)

WAC 296-304-08009 Powder actuated fastening tools. Powder actuated fastening tool operators shall comply with; and tools shall be designed, constructed, maintained and used in accordance with the requirements specified in ~~((WAC 296-24-66201 through 296-24-66225))~~ chapter 296-24 WAC, Part H-1, general safety and health standards.

**WSR 95-04-007
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 18, 1995, 4:35 p.m., effective March 1, 1995]

Date of Adoption: January 18, 1995.

Purpose: Chapter 296-56 WAC, Safety standards for longshore, stevedore and related waterfront operations, federal-initiated amendments to chapter 296-56 WAC are made to correct and define references required by the federal initiated change to chapter 296-62 WAC, Part M, Permit-

required confined spaces. State-initiated amendments replace references to the Division of Industrial Safety and Health, or similar wording, with the Department of Labor and Industries or the Division of Consultation and Compliance, correct WAC references; and correct references to specific gender.

Chapter 296-59 WAC, Safety standards for ski area facilities and operations, federal-initiated amendment to chapter 296-59 WAC is made to correct a reference required by the federal-initiated change to chapter 296-62 WAC, Part M, Permit-required confined spaces.

Chapter 296-62 WAC, General occupational health standards, federal-initiated amendments and new sections to chapter 296-62 WAC are made to be at-least-as-effective-as the federal final rule relating to confined space, published in Federal Register Volume 58, Number 9, dated January 14, 1993; corrective amendments published in Federal Register Volume 58, Number 123, dated June 29, 1993; and corrective amendments published in Federal Register Volume 59, Number 96, dated May 19, 1994. Federal-initiated amendments to chapter 296-62 WAC, Part M, Permit-required confined spaces, are made to add requirements for a written permit-required confined space entry program to address monitoring, testing, and communication at workplaces which contain entry permit confined spaces. Significant new federal identical requirements amend twenty percent LEL/LFL to ten percent LEL/LFL as the action limit for flammable/explosive atmospheric gas; require a specifically designated entry supervisor and/or leadperson; and require a formal written permit for each entry into classified confined spaces. The following amendments are proposed to be at-least-as-effective-as the federal final rule: Amendments to WAC 296-62-14500(1), Scope, emphasize "minimum" requirements; amendments to WAC 296-62-14500(2), Application, are clarified and expanded to include all employers under the jurisdiction of the Washington Industrial Safety and Health Act, chapter 49.17 RCW. The note at WAC 296-62-14505(6) is amended to clarify the importance of assessing if it is appropriate or possible to have multiple permit spaces monitored by a single attendant. Federal-initiated amendments to chapter 296-62 WAC are made to correct, define, and clarify references required by the federal-initiated change to chapter 296-62 WAC, Part M, Permit-required confined spaces; and to delete numbering as requested by the code reviser.

Chapter 296-115 WAC, Safety requirements for charter boats, federal-initiated amendments to chapter 296-115 WAC are made to correct and define references required by the federal-initiated change to chapter 296-62 WAC, Part M, Permit-required confined spaces. State-initiated amendments are to correct references to specific gender; and to delete numbering as requested by the code reviser.

Chapter 296-155 WAC, Safety standards for construction work, federal-initiated amendments to chapter 296-155 WAC are made to correct and define references required by the federal-initiated change to chapter 296-62 WAC, Part M, Permit-required confined spaces. State-initiated amendments are to replace references to the Division of Industrial Safety and Health with the Department of Labor and Industries or the Division of Consultation and Compliance; correct WAC references; and to correct references to specific gender. Other wording changes are made for clarification.

Citation of Existing Rules Affected by this Order: Amending chapter 296-56 WAC, Safety standards for longshore, stevedore and related waterfront operations, WAC 296-56-60001 Scope and applicability, 296-56-60003 Variance and procedure, 296-56-60005 Definitions, 296-56-60009 Accident prevention program, 296-56-60062 First-aid kit, 296-56-60073 Miscellaneous auxiliary gear, 296-56-60083 Cranes and derricks, 296-56-60093 Certification of marine terminal material handling devices, 296-56-60095 Advisory crane certification panel, 296-56-60097 Unit proof load test and inspection, 296-56-60098 Examination and inspection of cranes and derricks and 296-56-60235 Welding, cutting and heating (hot work); chapter 296-59 WAC, Safety standards for ski area facilities and operations, WAC 296-59-060 Vessel or confined area requirements; chapter 296-62 WAC, General occupational health standards, WAC 296-62-07105 Definitions, 296-62-07711 Regulated areas, 296-62-11001 Definitions, 296-62-145 Permit-required confined spaces, 296-62-14501 Definitions, 296-62-14503 General requirements, 296-62-14505 Permit-required confined space program (permit space program), 296-62-14507 Permit system, 296-62-14509 Entry permit, 296-62-14511 Training, 296-62-14513 Duties of authorized entrants, 296-62-14515 Duties of attendants, 296-62-14517 Duties of entry supervisors, 296-62-14519 Rescue and emergency services, 296-62-14521 Appendix A—Permit-required confined space decision flow chart, 296-62-14523 Appendix B—Procedures for atmospheric testing, 296-62-14525 Appendix C—Examples of permit required confined space programs, 296-62-14527 Appendix D—Sample permits, 296-62-14529 Appendix E—Sewer system entry, 296-62-3010 Safety and health program and 296-62-3040 Training; chapter 296-115 WAC, Safety requirements for charter boats, WAC 296-115-015 Definitions applicable to all sections of this chapter; and chapter 296-155 WAC, Safety standards for construction work, WAC 296-155-012 Definitions applicable to all sections of this chapter, 296-155-100 Management's responsibility, 296-155-20301 Definitions, 296-155-24510 Fall restraint, fall arrest systems, 296-155-407 Protective clothing and 296-155-730 Tunnels and shafts.

Statutory Authority for Adoption: Chapter 49.17 RCW. Pursuant to notice filed as WSR 94-17-164 on August 24, 1994.

Changes Other than Editing from Proposed to Adopted Version: As a result of written and oral comments received, the adoption of the following proposed sections will be at a later date: Chapter 296-52 WAC, Possession, handling and use of explosives, WAC 296-52-401 Scope and application, 296-52-409 Variance and procedure, 296-52-413 Equipment approval by nonstate agency or organization, 296-52-417 Definitions, 296-52-419 Basic legal obligations, 296-52-421 Licenses—Information verification, 296-52-423 Revoking or suspending licenses, 296-52-425 Dealer's license, 296-52-429 License for manufacturing, 296-52-433 Purchaser's license, 296-52-437 User's (blaster's) license, 296-52-441 Storage magazine license requirements, 296-52-449 Storage magazine license fees, 296-52-453 Construction of magazines, 296-52-461 Storage of explosives, 296-52-465 Storage of ammonium nitrate, 296-52-469 Storage of blasting agents and supplies, 296-52-477 Quantity and distance table for separation between magazines, 296-52-481 Recommended separation distances of ammonium nitrate and blasting agents

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from explosives or blasting agents, 296-52-487 Low explosives, 296-52-489 Transportation, 296-52-493 Use of explosives and blasting agents, 296-52-497 Blasting agents, 296-52-501 Water gel (slurry) explosives and blasting agents and 296-52-509 Small arms ammunition, primers, propellants, and black powder.

The following proposed amendments are adopted with the following changes: Chapter 296-56 WAC, Safety standards for longshore, stevedore and related waterfront operations, WAC 296-56-60001 Scope and applicability, the words "Permit-required confined spaces and" are added after the word "confined" in WAC 296-56-60001(l) for clarification. The corrected sentence reads, "Permit-required confined spaces and confined space—Chapter 296-62 WAC, Part M"; WAC 296-56-60073 Miscellaneous auxiliary gear, Illustrations 1 through 9 are amended to be larger for clarity; and WAC 296-56-60083 Cranes and derricks, the words "signalman" or "signalmen" are amended to "signal person" or "signal persons" to correct references to specific gender in WAC 296-56-60083 (6)(e), (7)(l), (m), (n), (7)(n)(i) and (10)(e).

Chapter 296-59 WAC, Safety standards for ski area facilities and operations, WAC 296-59-060 Vessel or confined area requirements, the words "for permit-required confined spaces" are added after the word "standards" for clarification. The corrected sentence reads, "The requirements of WAC 296-62-145 through 296-62-14529, general occupational health standards for permit-required confined spaces, shall be applicable within the scope of chapter 296-59 WAC."

Chapter 296-62 WAC, General occupational health standards, WAC 296-62-14500(2) Application, the words "or areas" are added after the word "spaces" in the second sentence. A new sentence is added after the second sentence and the word "a" is added after the word "is" in the last sentence. The corrected section, WAC 296-62-14500 reads: (2) Application. Part M (Permit-required confined spaces) applies to all employers under the jurisdiction of the Washington Industrial Safety and Health Act, chapter 49.17 RCW. Part M may be augmented by more protective requirements for confined spaces or areas in vertical standards. Certain industry specific vertical standards are more protective than chapter 296-62 WAC, Part M. Where there is a conflict between an industry specific vertical standard and chapter 296-62 WAC, Part M, the vertical standard shall apply; WAC 296-62-14501 Definitions, under the definition "Hazardous Atmosphere (4)" an amendment is made to replace the reference, "Subpart G, Occupational Health and Environmental Control, or in Subpart Z, Toxic and Hazardous Substances, of this part" with "chapter 296-62 WAC, General occupational health standards." The corrected sentence reads "Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in chapter 296-62 WAC, General occupational health standards, and which could result in employee exposure in excess of its dose or permissible exposure limit;"; and WAC 296-62-14525 Appendix C—Examples of permit-required confined space programs, the words "she" and "her" are added to WAC 296-62-14525 (3)(b)(ii) and (3)(e) to correct references to specific gender.

Effective Date of Rule: March 1, 1995.

AMENDATORY SECTION (Amending Order 93-01, filed 3/13/93, effective 4/27/93)

WAC 296-56-60001 Scope and applicability. (1) The rules included in this chapter apply throughout the state of Washington, to any and all waterfront operations under the jurisdiction of the department of labor and industries, division of (~~industrial safety and health~~) consultation and compliance.

(2) These minimum requirements are promulgated in order to augment the general safety and health standards, and any other safety and health standards promulgated by the department of labor and industries which are applicable to all places of employment under the jurisdiction of the department of labor and industries. The rules of this chapter, and the rules of chapters 296-24 and 296-62 WAC are applicable to all longshore, stevedore and related waterfront operations: *Provided*, That such rules shall not be applicable to those operations under the exclusive safety jurisdiction of the federal government.

(3) The provisions of this chapter shall prevail in the event of a conflict with, or duplication of, provisions contained in chapters 296-24 and 296-62 WAC. Specific standards which are applicable include, but are not limited to:

(a) Electrical—Chapter 296-24 WAC Part L.

(b) Toxic and hazardous substances are regulated by chapter 296-62 WAC. Where references to this chapter are given they are for informational purposes only. Where specific requirements of this chapter conflict with the provisions of chapter 296-62 WAC this chapter prevails. Chapter 296-62 WAC does not apply when a substance or cargo is contained within a manufacturer's original, sealed, intact means of packaging or containment complying with the department of transportation or International Maritime Organization requirements.

(c) Hearing conservation—Chapter 296-62 WAC Part K.

(d) Standards for commercial diving operations—Chapter 296-37 WAC.

(e) Safety requirements for scaffolding—Chapter 296-24 WAC Part J-1.

(f) Safe practices of abrasive blasting operations—Chapter 296-24 WAC Part H-2.

(g) Access to employee exposure and medical records—Chapter 296-62 WAC Part B.

(h) Respiratory protection—Chapter 296-62 WAC Part E.

(i) Safety standards for grain handling facilities—Chapter 296-99 WAC.

(j) Hazard communication purpose—Chapter 296-62 WAC Part C.

(k) Asbestos—Chapters 296-62 Part I-1 and 296-65 WAC.

(l) Permit - required confined spaces and confined space—Chapter 296-62 WAC Part M.

(m) Servicing multi-piece and single-piece rim wheels—Chapter 296-24 WAC Part D.

(4) The provisions of this chapter do not apply to the following:

(a) Fully automated bulk coal handling facilities contiguous to electrical power generating plants.

(b) Facilities subject to the regulations of the office of pipeline safety regulation of the materials transportation bureau, department of transportation, to the extent such regulations apply.

(5) WAC 296-62-074 shall apply to the exposure of every employee to cadmium in every employment and place of employment covered by chapter 296-56 WAC in lieu of any different standard on exposures to cadmium that would otherwise be applicable by virtue of those sections.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60003 Variance and procedure. ~~((Realizing that))~~ Conditions may exist under which certain state standards will not have practical application. In these cases, the director of the department of labor and industries has made provisions for the issuance of variances. The director or his/her authorized representative may, pursuant to this section, RCW 49.17.080 and 49.17.090, and WAC 296-350-200 through 296-350-270, upon receipt of application and after investigation by the department, permit a variation from the requirements of this chapter. Any variance is limited to the particular case and application. It shall remain posted during the time which it is in effect. Variance application forms may be obtained from the department.

AMENDATORY SECTION (Amending Order 92-06, filed 10/30/92, effective 12/8/92)

WAC 296-56-60005 Definitions. (1) "Apron" means that open portion of a marine terminal immediately adjacent to a vessel berth and used in the direct transfer of cargo between the terminal and vessel.

(2) "Assistant director for the division of ~~((industrial safety and health))~~ consultation and compliance" means the assistant director of ~~((industrial safety and health))~~ consultation and compliance, department of labor and industries or his/her authorized representative.

(3) "Authorized," in reference to an employee's assignment, means selected by the employer for that purpose.

(4) "Cargo door" (transit shed door) means a door designed to permit transfer of cargo to and from a marine terminal structure.

(5) "Cargo packaging" means any method of containment for shipment, including cases, cartons, crates and sacks, but excluding large units such as intermodal containers, vans or similar devices.

(6) "Confined space" means ~~((any space having a limited means of egress which is subject to the accumulation of toxic or flammable contaminants or an oxygen deficient atmosphere. Confined spaces include, but are not limited to, intermodal tank containers, ballwater tanks, bins, storage tanks, boilers, ventilation or exhaust ducts, tunnels, and portable tanks))~~ a space that:

(a) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(b) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults,

and pits are spaces that may have limited means of entry); and

(c) Is not designed for continuous employee occupancy.

(7) "Conveyor" means a device designed exclusively for transporting bulk materials, packages or objects in a predetermined path and having fixed or selective points of loading or discharge.

(8) "Danger zone" means any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock. Examples of danger zones are nip and shear points, shear lines, drive mechanisms, and areas beneath counterweights.

(9) "Designated person" means a person who possesses specialized abilities in a specific area and is assigned by the employer to perform a specific task in that area.

(10) "Dock" means a wharf or pier forming all or part of a waterfront facility, including marginal or quayside berthing facilities; not to be confused with "loading dock" as at a transit shed or container freight station, or with the body of water between piers or wharves.

(11) "Dock facilities" includes all piers, wharves, sheds, aprons, dolphins, cranes, or other gear or equipment owned or controlled by the dock or facility owner, where cargo or materials are loaded, moved or handled to or from a vessel.

(12) "Dockboard" (bridge plate or car plate) means a device utilized to span the gap between railroad cars, or between railroad cars or highway vehicles and the loading dock or platform. A car plate may be fixed, adjustable, portable, powered, or unpowered.

(13) "Enclosed space" means an indoor space, other than a confined space, that may contain or accumulate a hazardous atmosphere due to inadequate natural ventilation. Examples of enclosed spaces are trailers, railcars, and storage rooms.

(14) "Examination," as applied to material handling devices required to be certified by this chapter, means a comprehensive survey consisting of the criteria outlined in WAC 296-56-60093 through 296-56-60097. The examination is supplemented by a unit proof test in the case of annual survey.

(15) "Flammable atmosphere" means an atmosphere containing more than ten percent of the lower flammable limit (LEL) of a flammable or combustible vapor or dust mixed with air. Such atmospheres are usually toxic as well as flammable.

(16) "Front-end attachments."

(a) As applied to power-operated industrial trucks, means the various devices, such as roll clamps, rotating and sideshifting carriages, magnets, rams, crane arms or booms, load stabilizers, scoops, buckets, and dumping bins, attached to the load end for handling lifts as single or multiple units.

(b) As applied to cranes, means various attachments applied to the basic machine for the performance of functions such as lifting, clamshell or magnet services.

(17) "Fumigant" is a substance or mixture of substances, used to kill pests or prevent infestation, which is a gas or is rapidly or progressively transformed to the gaseous state

even though some nongaseous or particulate matter may remain and be dispersed in the treatment space.

(18) "Hazardous cargo, material, substance or atmosphere" means:

(a) Any substance listed in chapter 296-62 WAC;

(b) Any material in the hazardous materials table and hazardous materials communications regulations of the Department of Transportation, 49 CFR Part 172;

(c) Any article not properly described by a name in the hazardous materials table and hazardous materials communications regulations of the Department of Transportation, 49 CFR Part 172, but which is properly classified under the definition of those categories of dangerous articles given in 49 CFR Part 173;

(d) Atmospheres having concentrations of airborne chemicals in excess of permissible exposure limits as defined in chapter 296-62 WAC; or

(e) Any atmosphere with an oxygen content of less than nineteen and one-half percent by volume.

(19) "House falls" means spans and supporting members, winches, blocks, and standing and running rigging forming part of a marine terminal and used with a vessel's cargo gear to load or unload by means of married falls.

(20) "Inspection," as applied to material handling devices required to be certified by this chapter, includes a complete visual examination of all visible parts of the device.

(21) "Intermodal container" means a reusable cargo container of rigid construction and rectangular configuration intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes without intermediate cargo handling. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system, demountable or with attached wheels. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

(22) "Loose gear" means removable or replaceable components of equipment or devices which may be used with or as a part of assembled material handling units for purposes such as making connections, changing line direction and multiplying mechanical advantage. Examples include shackles and snatch blocks.

(23) "Marina" means a small harbor or boat basin providing dockage, supplies, and services for small craft.

(24) "Marine terminal" means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or contiguous areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel. It includes structures which are devoted to receiving, handling, holding, consolidation, loading or delivery of waterborne shipments and passengers, and areas devoted to the maintenance of the terminal or equipment. The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal nor storage facilities directly associated with those production or manufacturing areas.

(25) "Permit-required confined space (permit space)" means a confined space that has one or more of the following characteristics:

(a) Contains or has a potential to contain a hazardous atmosphere;

(b) Contains a material that has the potential for engulfing an entrant;

(c) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(d) Contains any other recognized serious safety or health hazard.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60009 Accident prevention program.

(1) An accident prevention program, which provides equitable management-employee participation, shall be established in all establishments, industrial plants, or operations.

(2) It shall be the responsibility of the employer to initiate and maintain the accident prevention program necessary to comply with this section. The division of ~~((industrial safety and health))~~ consultation and compliance may be contacted for assistance in initiating and maintaining an effective accident prevention program.

(3) All accident prevention programs shall be tailored to the needs of the particular operation.

(4) Employer and employee representatives, as elected, delegated or appointed, shall attend and actively take part in frequent and regular safety committee meetings.

(5) Accident prevention programs shall provide for employer-employee safety meetings and frequent and regular safety inspections of job sites, materials, equipment, and operating procedures.

(6) A record of safety activities, such as inspections and meetings, shall be maintained by the employer for a period covering the previous twelve months and shall be made available, upon request, to noncompliance personnel of the department of labor and industries.

(7) Employees shall individually comply with all safety rules and cooperate with management in carrying out the accident prevention program.

(8) To make effective the preceding statement and promote on-the-job accident prevention, committees shall be established in each port. These committees shall consist of an equal number of port or stevedore company and long-shoremen representatives at the job level with the industry or company safety supervisor serving as secretary and coordinator. Some functions of the committee are to maintain the interest of the workers in accident prevention by providing for their actual participation in the program, to direct their attention to the real causes of accidents, and to provide a means for making practical use of their intimate knowledge of working conditions and practices.

(9) It is intended that this program will produce mutually practical and effective recommendations regarding correction of accident-producing circumstances and conditions.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60062 First-aid kit. (1) All employers who employ men and women covered by the Washington Industrial Safety and Health Act, chapter 49.17 RCW, shall furnish first-aid kits as required by the (~~division of industrial safety and health~~) department of labor and industries, (RCW 51.36.030).

(2) First-aid supplies shall be readily accessible when required.

(3) In the absence of readily accessible first-aid supplies such as first-aid kits, first-aid stations, first-aid rooms or their equivalent, all crew trucks, power shovels, cranes, locomotives, loaders, dozers, logging trucks, speeders, freight trucks, and similar equipment shall be equipped with not less than a ten package first-aid kit.

(4) All crew vehicles used for transporting workmen shall be equipped with not less than a ten package first-aid kit. When more than five employees are being transported on any one trip, the kit shall be increased in size to a 16, 24, or 36-package kit depending upon the number of personnel normally being transported.

(5) At least one first-aid kit shall be available on construction jobs, line crews, and other transient or short duration jobs. The size and quantity of first-aid kits required to be located at any site shall be determined by the number of personnel normally dependent upon each kit as outlined in the following table:

NUMBER OF PERSONNEL NORMALLY ASSIGNED TO WORKSITE	MINIMUM FIRST-AID SUPPLIES REQUIRED AT WORKSITE
1 - 50 PERSONS	FIRST-AID KIT
1 - 5	10 package kit
6 - 15	16 package kit
16 - 30	24 package kit
31 - 50	36 package kit
51 - 200 PERSONS	FIRST-AID STATION
51 - 75	One 36 and one 10 package kit
76 - 100	One 36 and one 16 package kit
101 - 150	One 36 and one 24 package kit
151 - 200	Two 36 package kits
OVER 200 PERSONS	FIRST-AID ROOM Refer to WAC 296-56-60067

(6) Employers shall establish a procedure to assure that first-aid kits and required contents are maintained in a serviceable condition.

(7) First-aid kits shall contain at least the following items:

10 Package Kit

- 1 Pkg. Adhesive bandages, 1" (16 per pkg.)
- 1 Pkg. Bandage compress, 4" (1 per pkg.)

- 1 Pkg. Scissors* and tweezers (1 each per pkg.)
- 1 Pkg. Triangular bandage, 40" (1 per pkg.)
- 1 Pkg. Antiseptic soap or pads (3 per pkg.)
- 5 Pkgs. of consulting physician's choice**

16 Package Kit

- 1 Pkg. Absorbent gauze, 24" x 72" (1 per pkg.)
- 1 Pkg. Adhesive bandages, 1" (16 per pkg.)
- 2 Pkgs. Bandage compresses, 4" (1 per pkg.)
- 1 Pkg. Eye dressing (1 per pkg.)
- 1 Pkg. Scissors* and tweezers (1 each per pkg.)
- 2 Pkgs. Triangular bandages, 40" (1 per pkg.)
- 1 Pkg. Antiseptic soap or pads (3 per pkg.)
- 7 Pkgs. of consulting physician's choice**

24 Package Kit

- 2 Pkgs. Absorbent gauze, 24" x 72" (1 per pkg.)
- 2 Pkgs. Adhesive bandages, 1" (16 per pkg.)
- 2 Pkgs. Bandage compresses, 4" (1 per pkg.)
- 1 Pkg. Eye dressing (1 per pkg.)
- 1 Pkg. Scissors* and tweezers (1 each per pkg.)
- 6 Pkgs. Triangular bandages (1 per pkg.)
- 1 Pkg. Antiseptic soap or pads (3 per pkg.)
- 9 Pkgs. of consulting physician's choice**

36 Package Kit

- 4 Pkgs. Absorbent gauze, 24" x 72" (1 per pkg.)
- 2 Pkgs. Adhesive bandages, 1" (16 per pkg.)
- 5 Pkgs. Bandage compresses, 4" (1 per pkg.)
- 2 Pkgs. Eye dressing (1 per pkg.)
- 1 Pkg. Scissors* and tweezers (1 each per pkg.)
- 8 Pkgs. Triangular bandages, 40" (1 per pkg.)
- 1 Pkg. Antiseptic soap or pads (3 per pkg.)
- 13 Pkgs. of consulting physician's choice**

* Scissors shall be capable of cutting two layers of fifteen ounce cotton cloth or its equivalent.

** First-aid kits shall be maintained at the ten, sixteen, twenty-four or thirty-six package level. In the event the consulting physician chooses not to recommend items, the department of labor and industries shall be contacted for recommended items to complete the kit.

(8) Where the eyes or body of any person may be exposed to injurious chemicals or materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

(9) When practical, a poster shall be fastened and maintained either on or in the cover of each first-aid kit and at or near all phones plainly stating the phone numbers of available doctors, hospitals, and ambulance services within the district of the worksite.

AMENDATORY SECTION (Amending Order 92-06, filed 10/30/92, effective 12/8/92)

WAC 296-56-60073 Miscellaneous auxiliary gear.

(1) Routine inspection.

(a) At the completion of each use, loose gear such as slings, chains, bridles, blocks, and hooks shall be so placed as to avoid damage to the gear. Loose gear shall be inspected and any defects corrected before re-use.

(b) All loose gear shall be inspected by the employer or his/her authorized representative before each use and, when necessary, at intervals during its use, to ensure that it is safe.

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Any gear which is found upon inspection to be unsafe shall not be used until it is made safe.

(c) Defective gear shall not be used. Distorted hooks, shackles, or similar gear shall be discarded.

(d) Chains or other gear which have been lengthened, altered, or repaired by welding shall be properly heat treated, and before again being put into use, shall be tested and reexamined in the manner set forth in WAC 296-56-60097 and 296-56-60098.

(2) The employer shall maintain a record of the dates and results of the tests with each unit of gear concerned clearly identified. The records shall be available for examination by division of ~~((industrial safety and health))~~ consultation and compliance personnel and the employee safety committee.

(3) Wire rope and wire rope slings.

(a) The employer shall ascertain and adhere to the manufacturer's recommended ratings for wire rope and wire rope slings and shall have such ratings available at the terminal. When the manufacturer is unable to supply such ratings, the employer shall use the tables for wire rope and wire rope slings found in American National Safety Standard for Slings, ANSI/ASME B30.9-1984. A design safety factor of at least five shall be maintained for the common sizes of running wire used as falls, in purchases or in such uses as light load slings. Wire rope with a safety factor of less than five may be used only:

(i) In specialized equipment, such as cranes designed to be used with lesser wire rope safety factors;

(ii) In accordance with design factors in standing rigging applications; or

(iii) For heavy lifts or other purposes for which a safety factor of five is impractical and for which the employer can demonstrate that equivalent safety is ensured.

(b) Wire rope or wire rope slings exhibiting any of the following conditions shall not be used:

(i) Ten randomly distributed broken wires in one rope lay or three or more broken wires in one strand in one rope lay;

(ii) Kinking, crushing, bird caging, or other damage resulting in distortion of the wire rope structure;

(iii) Evidence of heat damage;

(iv) Excessive wear, corrosion, deformation or other defect in the wire or attachments, including cracks in attachments;

(v) Any indication of strand or wire slippage in end attachments; or

(vi) More than one broken wire in the close vicinity of a socket or swaged fitting.

(c) Four by twenty-nine (4 x 29) wire rope shall not be used in any running rigging.

(d) Protruding ends of strands in splices on slings and bridles shall be covered or blunted. Coverings shall be removable so that splices can be examined. Means used to cover or blunt ends shall not damage the wire.

(e) Where wire rope clips are used to form eyes, the employer shall adhere to the manufacturer's recommendations, which shall be available at the terminal. If "U" bolt clips are used and the manufacturer's recommendations are not available, Table C-1 shall be used to determine the number and spacing of clips. "U" bolts shall be applied with the "U" section in contact with the dead end of the rope.

Table C-1 - Number and Spacing of U-Bolt Wire Rope Clips

Improved plow steel rope diameter inches/(cm)	Minimum number of clips		Minimum spacing inches/(cm)
	Drop forged	Other material	
1/2 or less (1.3)	3	4	3 (7.6)
5/8 (1.6)	3	4	3 3/4 (9.5)
3/4 (1.9)	4	5	4 1/2 (11.4)
7/8 (2.2)	4	5	5 1/4 (13.3)
1 (2.5)	5	7	6 (15.2)
1 1/8 (2.7)	6	8	6 3/4 (17.1)
1 1/4 (3.2)	6	8	7 1/2 (19.1)
1 3/8 (3.5)	7	8	8 1/4 (21.0)
1 1/2 (3.8)	7	9	9 (22.9)

Table C-1 - Number and Spacing of U-Bolt Wire Rope Clips

Improved plow steel rope diameter inches/(cm)	Minimum number of clips		Minimum spacing inches/(cm)
	Drop forged	Other material	
1/2 or less (1.3)	3	4	3 (7.6)
5/8 (1.6)	3	4	3 3/4 (9.5)
3/4 (1.9)	4	5	4 1/2 (11.4)
7/8 (2.2)	4	5	5 1/4 (13.3)
1 (2.5)	5	7	6 (15.2)
1 1/8 (2.7)	6	8	6 3/4 (17.1)
1 1/4 (3.2)	6	8	7 1/2 (19.1)
1 3/8 (3.5)	7	8	8 1/4 (21.0)
1 1/2 (3.8)	7	9	9 (22.9)

(f) Wire rope shall not be secured by knots.

(g) Eyes in wire rope bridles, slings, bull wires, or in single parts used for hoisting shall not be formed by wire rope clips or knots.

(h) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections which are demonstrated to be equally safe may be used.

(i) Except for eye splices in the ends of wires and for endless rope slings, each wire rope used in hoisting or lowering, or in bulling cargo, shall consist of one continuous piece without knot or splice.

(4) Natural fiber rope.

(a) The employer shall ascertain the manufacturer's ratings for the specific natural fiber rope used and have such ratings available at the terminal. The manufacturer's ratings shall be adhered to and a minimum design safety factor of five maintained.

(b) Eye splices shall consist of at least three full tucks. Short splices shall consist of at least six full tucks, three on each side of the center line.

(5) Synthetic rope.

(a) The employer shall adhere to the manufacturer's ratings and use recommendations for the specific synthetic fiber rope used and shall have such ratings available at the terminal.

(b) Unless otherwise recommended by the manufacturer, when synthetic fiber ropes are substituted for manila ropes of less than three inches (7.62 cm) circumference, the substitute shall be of equal size. Where substituted for manila rope of three inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \sqrt{.6(C_s^2) + .4(C_m^2)}$$

Where C = the required circumference of the synthetic rope in inches, C_s = the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size manila rope that would be required by subsection (4) of this section, and C_m = the circumference of manila rope in inches which would be required by subsection (4) of this section. In making such substitution, it shall be

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ascertained that the inherent characteristics of the synthetic fiber are suitable for hoisting.

(6) Removal of natural and synthetic rope from service. Natural or synthetic rope having any of the following defects shall be removed from service:

- (a) Abnormal wear;
- (b) Powdered fiber between strands;
- (c) Sufficient cut or broken fibers to affect the capacity of the rope;
- (d) Variations in the size or roundness of strands;
- (e) Discolorations other than stains not associated with rope damage;
- (f) Rotting; or
- (g) Distortion or other damage to attached hardware.

(7) Thimbles. Properly fitting thimbles shall be used where any rope is secured permanently to a ring, shackle or attachment, where practical.

(8) Synthetic web slings.
 (a) Slings and nets or other combinations of more than one piece of synthetic webbing assembled and used as a single unit (synthetic web slings) shall not be used to hoist loads in excess of the sling's rated capacity.

(b) Synthetic web slings shall be removed from service if they exhibit any of the following defects:

- (i) Acid or caustic burns;
- (ii) Melting or charring of any part of the sling surface;
- (iii) Snags, punctures, tears or cuts;
- (iv) Broken or worn stitches; or
- (v) Distortion or damage to fittings.

(c) Defective synthetic web slings removed from service shall not be returned to service unless repaired by a sling manufacturer or similar entity. Each repaired sling shall be proof tested by the repairer to twice the slings' rated capacity prior to its return to service. The employer shall retain a certificate of the proof test and make it available for examination.

(d) Synthetic web slings provided by the employer shall only be used in accordance with the manufacturer's recommendations, which shall be made available upon request.

(e) Fittings shall have a breaking strength at least equal to that of the sling to which they are attached and shall be free of sharp edges.

(9) Chains and chain slings used for hoisting.

(a) The employer shall adhere to the manufacturer's recommended ratings for safe working loads for the sizes of the wrought iron and alloy steel chains and chain slings used and shall have such ratings available. When the manufacturer is unable to provide such ratings, the employer shall use the tables for chains and chain slings found in American National Safety Standard for Slings, ANSI B30.9-1971.

(b) Proof coil steel chain, also known as common or hardware chain, and other chain not recommended by the manufacturer for slinging or hoisting shall not be used for slinging or hoisting.

(c)(i) Sling chains, including end fastenings, shall be inspected for visible defects before each day's use and as often as necessary during use to ensure integrity of the sling.

(ii) Thorough inspections of chains in use shall be made quarterly to detect wear, defective welds, deformation, increase in length or stretch. The month of inspection shall be indicated on each chain by color of paint on a link or by other effective means.

(iii) Chains shall be removed from service when maximum allowable wear, as indicated in Table C-2, is reached at any point of link.

(iv) Chain slings shall be removed from service when stretch has increased the length of a measured section by more than five percent; when a link is bent, twisted or otherwise damaged; or when a link has a raised scarf or defective weld.

(v) Only designated persons shall inspect chains used for slinging and hoisting.

Table C-2 -- Maximum Allowable Wear at Any Point of Link

Chain size		Maximum allowable wear	
Inches		Inches	(cm)
1/4 (9/32)	(0.6)	3/64	(0.1)
3/8	(1.0)	5/64	(0.2)
1/2	(1.3)	7/64	(0.3)
5/8	(1.6)	9/64	(0.4)
3/4	(1.9)	5/32	(0.4)
7/8	(2.2)	11/64	(0.4)
1	(2.5)	3/16	(0.5)
1 1/8	(2.9)	7/32	(0.6)
1 1/4	(3.2)	1/4	(0.6)
1 3/8	(3.5)	9/32	(0.7)
1 1/2	(3.8)	5/16	(0.8)
1 3/4	(4.4)	1 1/32	(0.9)

Table C-2 -- Maximum Allowable Wear at Any Point of Link

Chain size		Maximum allowable wear	
Inches		Inches	(cm)
1/4 (9/32)	(0.6)	3/64	(0.1)
3/8	(1.0)	5/64	(0.2)
1/2	(1.3)	7/64	(0.3)
5/8	(1.6)	9/64	(0.4)
3/4	(1.9)	5/32	(0.4)
7/8	(2.2)	11/64	(0.4)
1	(2.5)	3/16	(0.5)
1 1/8	(2.9)	7/32	(0.6)
1 1/4	(3.2)	1/4	(0.6)
1 3/8	(3.5)	9/32	(0.7)
1 1/2	(3.8)	5/16	(0.8)
1 3/4	(4.4)	1 1/32	(0.9)

(d) Chains shall only be repaired under qualified supervision. Links or portions of chain defective under any of the criteria of WAC 296-56-60073 (9)(c) shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof test load recommended by the manufacturer for the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under WAC 296-56-60093. Test certificates shall be available at the terminal.

(e) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding six months. Heat treatment certificates shall be available at the terminal. Alloy chains shall not be annealed.

(f) Kinked or knotted chains shall not be used for lifting. Chains shall not be shortened by bolting, wiring or knotting. Makeshift links or fasteners such as wire, bolts or rods shall not be used.

(g) Hooks, rings, links and attachments affixed to sling chains shall have rated capacities at least equal to that of the chains to which they are attached.

(h) Chain slings shall bear identification of size, grade and rated capacity.

(10) Shackles.

(a) If available, the manufacturer's recommended safe working loads for shackles shall not be exceeded. In the absence of manufacturer's recommendations, Table C-3 shall apply.

(b) Screw pin shackles used aloft in house fall or other gear, except in cargo hook assemblies, shall have their pins moused or otherwise effectively secured.

Table C-3 -- Safe Working Loads for Shackles

Material size		Pin diameter		Safe working load in 2,000 lb tons
Inches	(cm)	Inches	(cm)	
1/2	(1.3)	5/8	(1.6)	1.4
5/8	(1.6)	3/4	(1.9)	2.2
3/4	(1.9)	7/8	(2.2)	3.2
7/8	(2.2)	1	(2.5)	4.3
1	(2.5)	1 1/8	(2.9)	5.6
1 1/8	(2.9)	1 1/4	(3.2)	6.7
1 1/4	(3.2)	1 3/8	(3.5)	8.2
1 3/8	(3.5)	1 1/2	(3.8)	10.0
1 1/2	(3.8)	1 3/4	(4.4)	11.9
1 3/4	(4.4)	2	(5.0)	16.2
2	(5.0)	2 1/4	(5.7)	21.2

Table C-3 -- Safe Working Loads for Shackles

Material size		Pin diameter		Safe working load in 2,000 lb tons
Inches	(cm)	Inches	(cm)	
1/2	(1.3)	5/8	(1.6)	1.4
5/8	(1.6)	3/4	(1.9)	2.2
3/4	(1.9)	7/8	(2.2)	3.2
7/8	(2.2)	1	(2.5)	4.3
1	(2.5)	1 1/8	(2.9)	5.6
1 1/8	(2.9)	1 1/4	(3.2)	6.7
1 1/4	(3.2)	1 3/8	(3.5)	8.2
1 3/8	(3.5)	1 1/2	(3.8)	10.0
1 1/2	(3.8)	1 3/4	(4.4)	11.9
1 3/4	(4.4)	2	(5.0)	16.2
2	(5.0)	2 1/4	(5.7)	21.2

(c) Tables G-2 through G-5 shall be used to determine the safe working loads of various sizes and classifications of improved plow steel wire rope slings with various types of terminals. For sizes, classifications and grades not included in these tables the safe working load recommended by the manufacturer for specific, identifiable products shall be followed, however, a safety factor of not less than five shall be maintained.

TABLE G-1
MAINTA ROPE
On points or lines of 2000 pounds

Circumferences	Diameter in inches	Single Leg			
		60 Degree	45 Degree	30 Degree	15 Degree
3/4	1/4	120	204	170	120
1	5/16	200	344	232	200
1 1/8	3/8	270	467	320	270
1 1/4	7/16	350	605	413	350
1 3/8	15/32	450	775	533	450
1 1/2	1/2	550	915	798	550
1 3/4	9/16	690	1190	973	690
2	5/8	850	1520	1240	850
2 1/4	3/4	1050	1870	1550	1050
2 1/2	7/8	1250	2250	1800	1250
2 3/4	1	1540	2660	2170	1540
3	1 1/8	1800	3120	2540	1800
		Tons	Tons	Tons	Tons
3 1/4	1-1/16	1.0	1.7	1.4	1.0
3 1/2	1-1/8	1.3	2.1	1.7	1.3
3 3/4	1-1/4	1.5	2.3	1.9	1.5
4	1-1/2	1.8	2.6	2.1	1.8
4 1/2	1-1/2	1.8	3.1	2.5	1.8
5	1-5/8	2.5	3.9	3.1	2.5
5 1/2	1-3/4	2.6	4.3	3.7	2.6
6	2	3.1	5.4	4.4	3.1
6 1/2	2-1/8	3.6	6.3	5.1	3.6

In making such a substitution it should be ascertained that the inherent characteristics of the synthetic fiber are suitable for the intended service of the rope.

TABLE G-3 RATED CAPACITIES FOR IMPROVED PLOW STEEL, INDEPENDENT WIRE ROPE CORE, WIRE ROPE AND WIRE SLINGS (IN TONS OF 2,000 POUNDS)

Rope Diameter Inches	Single Leg					
	Vertical			Choker		
	A	B	C	A	B	C
6 x 19 Classification						
1/4"	.59	.56	.53	.44	.43	.40
3/8"	1.7	1.2	1.1	.98	.93	.86
1/2"	2.3	2.2	2.0	1.7	1.6	1.5
5/8"	3.6	3.4	3.0	2.7	2.5	2.3
3/4"	5.1	4.9	4.2	3.8	3.6	3.1
7/8"	6.9	6.6	5.6	5.2	4.9	4.1
1"	9.0	8.5	7.2	6.7	6.4	5.4
1-1/8"	11	10	9.0	8.5	7.8	6.8
6 x 37 Classification						
1-1/4"	13	12	10	9.9	9.2	7.9
1-3/8"	16	15	13	12	11	9.6
1-1/2"	19	17	15	14	13	11
1-3/4"	26	24	20	19	18	15
2"	33	30	26	25	23	20
2-1/4"	41	38	33	31	29	25

(A) -- Socket or Swaged Terminal attachment.
(B) -- Mechanical Sleeve attachment.
(C) -- Hand Tucked Splice attachment.

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TABLE G-3 RATED CAPACITIES FOR IMPROVED PLOW STEEL, INDEPENDENT WIRE ROPE CORE, WIRE ROPE SLINGS (IN TONS OF 2,000 POUNDS)

Rope dia. inches	Two-leg bridle or basket hitch												
	Vertical			60 degree			45 degree			30 degree			
	A	B	C	A	B	C	A	B	C	A	B	C	
6 x 19 Classification													
1/4"	1.2	1.1	1.0	1.0	.97	.92	.87	.83	.79	.75	.69	.66	.63
3/8"	2.6	2.5	2.3	2.3	2.1	2.0	1.8	1.8	1.6	1.5	1.2	1.2	1.1
1/2"	4.6	4.4	3.9	4.0	3.8	3.4	3.2	3.1	2.8	2.5	2.2	2.0	1.9
5/8"	7.2	6.8	6.0	6.3	5.9	5.3	5.1	4.8	4.2	3.6	3.4	3.0	2.8
3/4"	10	9.7	8.4	8.9	8.4	7.3	7.2	6.9	5.9	5.1	4.9	4.2	4.0
7/8"	14	13	11	12	11	9.6	9.8	9.3	7.8	6.9	6.6	5.5	5.2
1"	18	17	14	15	14	12	13	12	10	9.0	8.5	7.2	6.8
1-1/8"	23	21	18	19	18	16	16	15	13	11	10	9.0	8.0
6 x 37 Classification													
1-1/4"	26	24	21	23	21	18	19	17	15	13	12	10	9.0
1-3/8"	32	29	25	28	25	22	22	21	18	16	15	13	11
1-1/2"	38	35	30	33	30	26	27	25	21	19	17	15	13
1-3/4"	51	47	41	44	41	35	36	33	29	26	24	20	18
2"	64	61	53	57	53	46	47	43	37	33	30	26	23
2-1/4"	83	76	66	72	66	57	58	54	47	41	38	33	29

(A) -- Socket or Swaged Terminal Attachment.
(B) -- Mechanical Sleeve Attachment.
(C) -- Hand Tucked Splice Attachment.

TABLE G-4 ALLOY STEEL CHAIN (In Tons of 2,000 Pounds)

Nominal size chain stock Inch.	Single leg	60 degree	45 degree	30 degree
1/4	1.62	2.82	2.27	1.61
3/8	3.30	5.96	4.65	3.30
1/2	5.62	9.75	7.90	5.62
5/8	8.23	14.25	11.65	8.23
3/4	11.5	19.9	16.2	11.5
7/8	16.3	29.9	24.3	16.3
1	19.3	33.5	27.3	19.3
1-1/8	22.2	38.5	31.5	22.2
1-1/4	28.7	49.7	40.5	28.7
1-3/4	33.5	58.0	47.0	33.5
1-1/2	39.7	68.5	56.0	39.7
1-5/8	42.5	73.5	59.5	42.5
1-3/4	47.0	81.5	62.0	47.0

TABLE G-1 MANILA ROPE (In pounds or tons of 2,000 pounds)

Circumferences	Diameter in inches	Single Leg	60 Degrees	45 Degrees	30 Degrees
			Lbs.	Lbs.	Lbs.
3/4	1/4	120	204	170	120
1	5/16	200	346	282	200
1 1/8	3/8	270	467	380	270
1 1/4	7/16	350	605	493	350
1 3/8	15/32	450	775	635	450
1 1/2	1/2	530	915	798	530
1 3/4	9/16	690	1190	973	690
2	5/8	880	1520	1240	880
2 1/4	3/4	1080	1870	1520	1080
2 1/2	13/16	1300	2250	1830	1300
2 3/4	7/8	1540	2660	2170	1540
3	1	1800	3120	2540	1800
		Tons	Tons	Tons	Tons
3 1/4	1 1/16	1.0	1.7	1.4	1.0
3 1/2	1 1/8	1.2	2.1	1.7	1.2
3 3/4	1 1/4	1.35	2.3	1.9	1.35
4	1 5/16	1.5	2.6	2.1	1.5
4 1/2	1 1/2	1.8	3.1	2.5	1.8
5	1 5/8	2.25	3.9	3.2	2.25
5 1/2	1 3/4	2.6	4.5	3.7	2.6
6	2	3.1	5.4	4.4	3.1
6 1/2	2 1/8	3.6	6.2	5.1	3.6

TABLE G-4 RATED CAPACITIES FOR IMPROVED PLOW STEEL, FIBER CORE, WIRE ROPE AND WIRE ROPE SLINGS (In Tons of 2,000 pounds)

Rope dia. inches	Single leg					
	Vertical			Choker		
	A	B	C	A	B	C
6 x 19 Classification						
1/4"	.55	.51	.49	.41	.38	.37
3/8"	1.2	1.1	1.1	.91	.85	.80
1/2"	2.1	2.0	1.8	1.6	1.5	1.4
5/8"	3.3	3.1	2.8	2.5	2.3	2.1
3/4"	4.8	4.4	3.9	3.6	3.3	2.9
7/8"	6.4	5.9	5.1	4.8	4.5	3.9
1"	8.4	7.7	6.7	6.3	5.8	5.0
1-1/8"	10	9.5	8.4	7.9	7.1	6.3
6 x 37 Classification						
1-1/4"	13	11	9.8	9.2	8.3	7.4
1-3/8"	15	13	12	11	10	8.9
1-1/2"	17	16	14	13	12	10
1-3/4"	24	21	19	18	16	14
2"	31	28	25	23	21	18

(A) -- Socket or Swaged Terminal attachment.
(B) -- Mechanical Sleeve attachment.
(C) -- Hand Tucked Splice attachment.

TABLE G-2 RATED CAPACITIES FOR IMPROVED PLOW STEEL, INDEPENDENT WIRE ROPE CORE, WIRE ROPE AND WIRE SLINGS (IN TONS OF 2,000 POUNDS)

Rope Diameter inches	Single Leg					
	Vertical			Choker		
	A	B	C	A	B	C
6 x 19 Classification						
1/4"	.59	.56	.53	.44	.42	.40
3/8"	1.3	1.2	1.1	.98	.93	.86
1/2"	2.3	2.2	2.0	1.7	1.6	1.5
5/8"	3.6	3.4	3.0	2.7	2.5	2.2
3/4"	5.1	4.9	4.7	3.8	3.6	3.1
7/8"	6.9	6.6	5.5	5.2	4.9	4.1
1"	9.0	8.5	7.2	6.7	6.4	5.4
1-1/8"	11	10	9.0	8.5	7.8	6.8
6 x 37 Classification						
1-1/4"	13	12	10	9.9	9.2	7.9
1-3/8"	16	15	13	12	11	9.6
1-1/2"	19	17	15	14	13	11
1-3/4"	26	24	20	19	18	15
2"	33	30	26	25	23	20
2-1/4"	41	38	33	31	29	25

(A) -- Socket or Swaged Terminal attachment.
(B) -- Mechanical Sleeve attachment.
(C) -- Hand Tucked Splice attachment.

TABLE G-5 RATED CAPACITIES FOR IMPROVED PLOW STEEL, FIBER CORE, WIRE ROPE SLINGS (In Tons of 2,000 Pounds)

Rope dia. inches	Two-leg bridle or basket hitch											
	Vertical			60 Degree			45 Degree			30 Degree		
	A	B	C	A	B	C	A	B	C	A	B	C
6 x 19 Classification												
1/4"	1.1	1.0	.99	.95	.91	.85	.81	.77	.70	.65	.61	.59
3/8"	2.4	2.2	2.1	2.1	1.9	1.7	1.7	1.6	1.3	1.2	1.1	1.1
1/2"	4.3	3.9	3.7	3.7	3.4	3.0	3.0	2.8	2.3	2.0	1.9	1.8
5/8"	6.7	6.2	5.6	5.8	5.3	4.8	4.7	4.4	3.6	3.1	2.9	2.8
3/4"	9.3	8.8	7.8	8.2	7.6	6.8	6.7	6.2	5.2	4.6	4.4	3.9
7/8"	13	12	10	11	10	8.9	8.8	8.4	7.3	6.4	6.0	5.2
1"	17	16	13	14	13	11	12	11	9.4	8.4	7.7	6.7
1-1/8"	21	19	17	18	16	14	15	13	12	10	9.3	8.4
6 x 37 Classification												
1-1/4"	25	23	20	21	19	17	17	16	14	12	11	9.3
1-3/8"	30	27	24	26	23	20	21	19	17	15	13	11
1-1/2"	35	32	28	30	27	24	25	22	20	17	16	14
1-3/4"	44	41	36	38	34	30	31	28	24	21	19	16
2"	53	49	43	46	42	37	38	35	31	27	25	21

(A) -- Socket or Swaged Terminal attachment.
(B) -- Mechanical Sleeve attachment.
(C) -- Hand Tucked Splice attachment.

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TABLE G-3 RATED CAPACITIES FOR IMPROVED PLOW STEEL, INDEPENDENT WIRE ROPE CORE, WIRE ROPE SLINGS (IN TONS OF 2,000 POUNDS)

Rope dia. inches	Two-leg bridle or basket hitch											
	Vertical			60 degree			45 degree			30 degree		
	A	B	C	A	B	C	A	B	C	A	B	C
6 x 19 Classification												
1/4"	1.2	1.1	1.0	1.0	.97	.92	.83	.79	.75	.59	.56	.53
3/8"	2.6	2.5	2.3	2.3	2.1	2.0	1.8	1.8	1.6	1.3	1.2	1.1
1/2"	4.6	4.4	3.9	4.0	3.8	3.4	3.2	3.1	2.8	2.3	2.2	2.0
5/8"	7.2	6.8	6.0	6.2	5.9	5.2	5.1	4.8	4.2	3.6	3.4	3.0
3/4"	10	9.7	8.4	8.9	8.4	7.3	7.2	6.9	5.9	5.1	4.9	4.2
7/8"	14	13	11	12	11	9.6	9.8	9.3	7.8	6.9	6.6	5.5
1"	18	17	14	15	15	12	13	12	10	9.0	8.5	7.2
1-1/8"	23	21	18	19	18	16	16	15	13	11	10	9.0
6 x 37 Classification												
1-1/4"	26	24	21	23	21	18	19	17	15	13	12	10
1-3/8"	32	29	25	28	25	22	22	21	18	16	15	13
1-1/2"	38	35	30	33	30	26	27	25	21	19	17	15
1-3/4"	51	47	41	44	41	35	36	33	29	26	24	20
2"	66	61	53	57	53	46	47	43	37	33	30	26
2-1/4"	83	76	66	72	66	57	58	54	47	41	38	33

(A) -- Socket or Swaged Terminal Attachment.
 (B) -- Mechanical Sleeve Attachment.
 (C) -- Hand Tucked Splice Attachment.

TABLE G-5 RATED CAPACITIES FOR IMPROVED PLOW STEEL, FIBER CORE, WIRE ROPE SLINGS (In Tons of 2,000 Pounds)

Rope dia. Inches	Two-leg bridle or basket hitch											
	Vertical			60 Degree			45 Degree			30 degree		
	A	B	C	A	B	C	A	B	C	A	B	C
6 x 19 Classification												
1/4	1.1	1.0	.99	.95	.88	.85	.77	.72	.70	.55	.51	.49
3/8	2.4	2.2	2.1	2.1	1.9	1.8	1.7	1.6	1.5	1.2	1.1	1.1
1/2	4.3	3.9	3.7	3.7	3.4	3.2	3.0	2.8	2.6	2.1	2.0	1.8
5/8	6.7	6.2	5.6	5.8	5.3	4.8	4.7	4.4	4.0	3.3	3.1	2.8
3/4	9.5	8.8	7.8	8.2	7.6	6.8	6.7	6.2	5.5	4.8	4.4	3.9
7/8	13	12	10	11	10	8.9	9.1	8.4	7.3	6.4	5.9	5.1
1	17	15	13	14	13	11	12	11	9.4	8.4	7.7	6.7
1-1/2	21	19	17	18	16	14	15	13	12	10	9.5	8.4
6 x 37 Classification												
1-1/4	25	22	20	21	19	17	17	16	14	12	11	9.8
1-3/8	30	27	24	26	23	20	21	19	17	15	13	12
1-1/2	35	32	28	30	27	24	25	22	20	17	16	14
1-3/4	48	43	38	41	37	33	34	30	27	24	21	19
2	62	55	49	53	48	43	43	39	35	31	28	25





(A) -- Socket or Swaged Terminal attachment.
 (B) -- Mechanical Sleeve attachment.
 (C) -- Hand Tucked Splice attachment.

TABLE G-4 RATED CAPACITIES FOR IMPROVED PLOW STEEL, FIBER CORE, WIRE ROPE AND WIRE ROPE SLINGS (In Tons of 2,000 pounds)

Rope dia. Inches	Single leg					
	Vertical			Choker		
	A	B	C	A	B	C
6 x 19 Classification						
1/4	.55	.51	.49	.41	.38	.37
3/8	1.2	1.1	1.1	.91	.85	.80
1/2	2.1	2.0	1.8	1.6	1.5	1.4
5/8	3.3	3.1	2.8	2.5	2.3	2.1
3/4	4.8	4.4	3.9	3.6	3.3	2.9
7/8	6.4	5.9	5.1	4.8	4.5	3.9
1	8.4	7.7	6.7	6.3	5.8	5.0
1-1/8	10	9.5	8.4	7.9	7.1	6.3
6 x 37 Classification						
1-1/4	12	11	9.8	9.2	8.3	7.4
1-3/8	15	13	12	11	10	8.9
1-1/2	17	16	14	13	12	10
1-3/4	24	21	19	18	16	14
2	31	28	25	23	21	18

(A) -- Socket or Swaged Terminal attachment.
 (B) -- Mechanical Sleeve attachment.
 (C) -- Hand Tucked Splice attachment.

TABLE G-6 ALLOY STEEL CHAIN (In Tons of 2,000 Pounds)

Nominal size chain stock Inch.	Single leg	60 degree	45 degree	30 degree
				
1/4	1.62	2.82	2.27	1.62
3/8	3.30	5.70	4.65	3.30
1/2	5.62	9.75	7.90	5.62
5/8	8.25	14.25	11.65	8.25
3/4	11.5	19.9	16.2	11.5
7/8	14.3	24.9	20.3	14.3
1	19.3	33.5	27.3	19.8
1-1/8	22.2	38.5	31.5	22.2
1-1/4	28.7	49.7	40.5	28.7
1-3/8	33.5	58.0	47.0	33.5
1-1/2	39.7	68.5	56.0	39.7
1-5/8	42.5	73.5	59.5	42.5
1-3/4	47.0	81.5	62.0	47.0

(11) Hooks other than hand hooks.

(a) The manufacturer's recommendations shall be followed in determining the safe working loads of the various sizes and types of specific and identifiable hooks. All hooks for which no applicable manufacturer's recommendations are available shall be tested to twice the intended safe working load before they are initially put into use. The employer shall maintain a record of the dates and results of such tests.

(b) Loads shall be applied to the throat of the hook since loading the point may overstress, bend, or spring the hook.

(c) Hooks shall be inspected once a month to see that they have not been bent by overloading. Bent or sprung hooks shall not be used.

(d) Crane hooks. Magnetic particle or other suitable crack detecting inspection shall be performed at least once each year. When testing by x-ray, the pertinent provisions of the Nuclear Regulatory Commission's standards for protection against radiation, relating to protection against occupational radiation exposure, shall apply.

(e) Any activity which involves the use of radioactive materials or x-rays, whether or not under license from the

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Nuclear Regulatory Commission, shall be performed by competent persons specially trained in the proper and safe operation of such equipment. In the case of materials used under commission license, only persons actually licensed, or competent persons under direction and supervision of the licensee, shall perform such work.

(f) Teeth of case hooks shall not be split, cracked, or deformed.

(g) Jaws of patent clamp type plate hooks shall be kept in safe condition so that they will grip plates securely.

(12) Pallets.

(a) Pallets shall be made and maintained to safely support and carry loads being handled. Fastenings of reusable pallets used for hoisting shall be bolts and nuts, drive screws (helically threaded nails), annular threaded nails or fastenings of equivalent holding strength.

(b) Damaged pallets shall be stored in designated areas and identified.

(c) Reusable wing or lip-type pallets shall be hoisted by bar bridles or other suitable gear and shall have an overhanging wing or lip of at least three inches (76.2 mm). They shall not be hoisted by wire slings alone.

(d) Loaded pallets that do not meet the requirements of this paragraph shall be hoisted only after being placed on pallets meeting such requirements or shall be handled by other means providing equivalent protection.

(e) Bridles for handling flush end or box-type pallets shall be designed to prevent disengagement from the pallet under load.

(f) Pallets shall be stacked or placed to prevent falling, collapsing or otherwise causing a hazard under standard operating conditions.

(g) Disposable pallets intended only for one use shall not be re-used for hoisting.

AMENDATORY SECTION (Amending Order 92-06, filed 10/30/92, effective 12/8/92)

WAC 296-56-60083 Cranes and derricks. (1) Scope.

(a) This section applies to every kind of crane and derrick and to any other type of equipment performing the functions of a crane or derrick except as noted in (b) of this subsection.

(b) This section does not apply to small industrial truck-type cranes, container handling toploaders and sideloaders, chain hoists, and mobile straddle-type cranes incapable of straddling two or more intermodal containers (sixteen feet (4.88 m) in width).

(2) Ratings.

(a) Except for bridge cranes covered by subsection (7) of this section, cranes and derricks having ratings that vary with boom length, radius (outreach) or other variables shall have a durable rating chart visible to the operator, covering the complete range of the manufacturer's (or design) capacity ratings. The rating chart shall include all operating radii (outreach) for all permissible boom lengths and jib lengths as applicable, with and without outriggers, and alternate ratings for optional equipment affecting such ratings. Precautions or warnings specified by the owner or manufacturer shall be included.

(b) The manufacturer's (or design) rated loads for the conditions of use shall not be exceeded.

(c) Designated working loads shall not be increased beyond the manufacturer's ratings or original design limitations unless such increase receives the manufacturer's approval. When the manufacturer's services are not available or where the equipment is of foreign manufacture, engineering design analysis shall be performed or approved by a person accredited for certifying the equipment under WAC 296-56-60093. Cranes shall conform with the manufacturer's specifications or any current ANSI standards that apply. Engineering design analysis shall be performed by a registered professional engineer competent in the field of cranes and derricks. Any structural changes necessitated by the change in rating shall be carried out.

(3) Radius indicator. When the rated load varies with the boom radius, the crane or derrick shall be fitted with a boom angle or radius indicator visible to the operator.

(4) Prohibited usage.

(a) Equipment shall not be used in a manner that exerts sideloading stresses upon the crane or derrick boom.

(b) No crane or derrick having a visible or known defect that affects safe operation shall be used.

(5) Protective devices.

(a) When exposed moving parts such as gears, chains and chain sprockets present a hazard to employees during crane and derrick operations, those parts shall be securely guarded.

(b) Crane hooks shall be latched or otherwise secured to prevent accidental load disengagement.

(c) When hoisting personnel in an approved man basket, the hook shall have a positive safety latch to prevent rollouts.

(6) General.

(a) Operating controls.

(i) Crane and derrick operating controls shall be clearly marked, or a chart indicating their function shall be posted at the operator's position.

(ii) All crane controls shall operate in a uniform manner within a given port.

(iii) Overhead bridge and container gantry crane operating control levers shall be self-centering so that they will automatically move to the "off" position when the operator releases the control.

(b) Booms. Cranes with elevatable booms and without operable automatic limiting devices shall be provided with boom stops if boom elevation can exceed maximum design angles from the horizontal.

(c) Foot pedals. Foot pedals shall have a nonskid surface.

(d) Access. Ladders, stairways, stanchions, grab irons, foot steps or equivalent means shall be provided as necessary to ensure safe access to footwalks, cab platforms, the cab and any portion of the superstructure which employees must reach.

(i) Footwalks shall be of rigid construction, and shall be capable of supporting a load of one hundred pounds (4.79 kPa) per square foot.

(ii) If more than twenty feet (6.1 m) in height, vertical ladders shall comply with WAC 296-56-60209 (4), (5)(a), (5)(b)(iii) and (5)(b)(iv).

(iii) Stairways on cranes shall be equipped with rigid handrails meeting the requirements of WAC 296-56-60123 (5)(a).

(iv) If the top of a ladder or stairway or any position thereof is located where a moving part of a crane, such as a revolving house, could strike an employee ascending or descending the ladder or stairway, a prominent warning sign shall be posted at the foot of the ladder or stairway. A system of communication (such as a buzzer or bell) shall be established and maintained between the foot of the ladder or stairway and the operator's cab.

(e) Operator's station. The cab, controls, and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or ((~~signalman~~) signal person, when one is used. Cab glass, when used, shall be safety plate glass or equivalent and good visibility shall be maintained through the glass. Clothing, tools and equipment shall be stored so as not to interfere with access, operation, or the operator's view.

(f) Counterweights or ballast. Cranes shall be operated only with the specified type and amount of ballast or counterweights. Ballast or counterweight shall be located and secured only as provided in the manufacturer's or design specifications, which shall be available.

(g) Outriggers. Outriggers shall be used according to the manufacturer's specifications or design data, which shall be available. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

(h) Exhaust gases. Engine exhaust gases shall be discharged away from the normal position of crane operating personnel.

(i) Electrical equipment shall be so located or enclosed that live parts will not be exposed to accidental contact. Designated persons may work on energized equipment only if necessary during inspection, maintenance, or repair.

(j) Fire extinguisher.

(i) At least one portable fire extinguisher of at least 5-BC rating or equivalent shall be accessible in the cab of the crane or derrick.

(ii) No portable fire extinguisher using carbon tetrachloride or chlorobromomethane extinguishing agents shall be used.

(k) Rope on drums. At least three full turns of rope shall remain on ungrooved drums, and two turns on grooved drums, under all operating conditions. Wire rope shall be secured to drums by clamps, U-bolts, shackles, or equivalent means. Fiber rope fastenings are prohibited.

(l) Assembly or disassembly of boom sections. Mobile crane booms being assembled or disassembled on the ground with or without the support of the boom harness shall be blocked to prevent dropping of the boom or boom sections.

(m) Brakes.

(i) Each independent hoisting unit of a crane shall be equipped with at least one holding brake, applied directly to the motor shaft or gear train.

(ii) Each independent hoisting unit of a crane, except worm geared hoists, the angle of whose worm is such as to prevent the load from accelerating in the lowering direction, shall, in addition to a holding brake, be equipped with a controlled braking means to control lowering speeds.

(iii) Holding brakes for hoist units shall have not less than the following percentage of the rated load hoisting torque at the point where the brake is applied:

(A) One hundred twenty-five percent when used with a controlled braking means.

(B) One hundred percent when used with a mechanically-controlled braking means.

(C) One hundred percent when two holding brakes are provided.

(iv) All power control braking means shall be capable of maintaining safe lowering speeds of rated loads.

(n) Each crane or derrick shall be equipped with sufficient lights to maintain five foot candles in the working area around the load hook. All crane ladders and machinery houses shall be illuminated at a minimum of two candle power.

(o) Light fixtures connected to the boom, gantry legs, or machinery house shall be provided with safety devices which will prevent the light fixture from falling in case of bracket failure.

(p) Electronic devices may be installed to prevent collision subject to approval of the accredited certification agency.

(q) On all rail gantry cranes, truck guards shall extend on the ends of the trucks, close to the top of the rail to prevent worker's feet from being caught between the rail and wheel. This subsection does not apply if rail sweeps are present.

(r) All hydraulic cylinders used to control crane booms or to provide crane stability (outriggers) shall be equipped with a pilot operated check valve or a device which will prevent the boom or outrigger from retracting in case of failure of a component of the hydraulic system.

(s) Gantry cranes shall be provided with automatic rail clamps or other devices to prevent the crane from moving when not being used or when power is off.

(7) Rail-mounted cranes (excluding locomotive types).

(a) For the purposes of this section, rail-mounted cranes include bridge cranes and portal cranes.

(b) Rated load marking. The rated loads of bridge cranes shall be plainly marked on each side of the crane and in the cab. If there is more than one hoisting unit, each hoist shall have its rated load marked on it or on its load block. Marking shall be legible from the ground level.

(c) Wind-indicating devices.

(i) Each rail-mounted bridge and portal crane located outside of an enclosed structure shall be fitted with an operable wind-indicating device.

(ii) The wind indicating device shall provide a visible or audible warning to alert the operator of high wind conditions. That warning shall be transmitted whenever the following circumstances are present:

(A) When wind velocity reaches the warning speed, not exceeding the crane manufacturer's recommendations; and

(B) When wind velocity reaches the shutdown speed, not exceeding the crane manufacturer's recommendations, at which work is to be stopped and the crane secured.

(iii) Instructions. The employer shall post operating instructions for high wind conditions in the operator's cab of each crane. Operators shall be directed to comply with these instructions. The instructions shall include procedures for

responding to high wind alerts and for any coordination necessary with other cranes.

(d) Securing of cranes in high winds.

(i) When the wind reaches the crane's warning speed:

(A) Gantry travel shall be stopped; and

(B) The crane shall be readied for shutdown.

(ii) When the wind reaches the crane's shutdown speed:

(A) Any portion of the crane spanning or partially spanning a vessel shall be moved clear of the vessel if safe to do so; and

(B) The crane shall be secured against travel, using all available means of securing.

(e) The employer shall monitor local weather conditions by subscribing to a weather service or using equally effective means.

(f) Stops and bumpers.

(i) The ends of all tracks shall be equipped with stops or bumpers. If a stop engages the tread of the wheel, it shall be of a height not less than the radius of the wheel.

(ii) When more than one crane operates on the same runway or more than one trolley on the same bridge, each crane or trolley shall be equipped with bumpers or equivalent devices at adjacent ends subject to impact.

(g) Employee exposure to crane movement. When employees may be in the vicinity of the tracks, crane trucks shall be equipped with personnel-deflecting guards.

(h) Pedestrian clearance. If the track area is used for employee passage or for work, a minimum clearance of three feet (0.9 m) shall be provided between trucks or the structures of rail-mounted cranes and any other structure or obstruction. When the required clearance is not available on at least one side of the crane's trucks, the area shall not be used and shall be marked and identified.

(i) Warning devices. Rail-mounted cranes shall be equipped with an effective audible and visible travel warning device which shall be used to warn employees who may be in the path of the moving crane.

(j) Communications.

(i) Means of communication shall be provided between the operator's cab and the base of the gantry of all rail-mounted cranes. This requirement may be met by telephone, radio, sound-signaling system or other effective methods, but not solely by hand-signaling.

(ii) All rail-mounted cranes thirty ton and above capacity shall be equipped with a voice hailing device (PA system) from the operator to the ground, audible within one hundred feet.

(k) Cranes and crane operations—Scope and application. The sections of this chapter, WAC 296-56-60083 through 296-56-60099, apply to cranes and crane operations.

(l) ~~((Signalmen))~~ Signal persons. A ~~((signalman))~~ signal person shall be required when a crane operator's visibility is obstructed. When a ~~((signalman))~~ signal person is required to transmit hand signals, ~~((he))~~ they shall be in such a position that the operator can plainly see the signals.

(m) Signals. All operators and ~~((signalmen))~~ signal persons shall use standard signals as illustrated for longshore crane operations. (See Appendices C and D, at the end of this chapter.)

(n) ~~((Signalman))~~ Signal person for power units. Where power units, such as cranes and winches are utilized and signaling is required, the operator shall be instructed as to

who is authorized to give signals. The operator shall take signals only from such authorized person. In case of emergency, any worker shall be authorized to give a stop signal.

(i) No draft shall be hoisted unless the winch or crane operator can clearly see the draft itself or see the signals of any ~~((signalman))~~ signal person associated with the operation.

(ii) Loads requiring continuous manual guidance while in motion shall be provided with tag lines.

(o) Landing loads. Persons assisting in landing a load shall face the load and use caution to prevent themselves from getting in a position where they may be caught between the load and a fixed object.

(8) Stabilizing of locomotive cranes. Loads may be hoisted by locomotive cranes only if outriggers are in place, unless means are taken to prevent the load being carried by the truck springs of the crane.

(9) Operations.

(a) Use of cranes together. When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the load and movements to be made.

(b) Guarding of swing radius. Accessible areas within the swing radius of the body of a revolving crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure or between parts of the crane.

(c) Securing mobile crane components in transit. The crane's superstructure and boom shall be secured against rotation and carried in line with the direction of travel except when negotiating turns with an operator in the cab or when the boom is supported on a dolly. The empty hook or other attachment shall be secured.

(d) Unattended cranes. The following steps shall be taken before leaving a crane unattended between work periods:

(i) Suspended loads, such as those hoisted by lifting magnets or clamshell buckets, shall be landed unless the storage position or maximum hoisting of the suspended device will provide equivalent safety;

(ii) Clutches shall be disengaged;

(iii) The power supply shall be shut off;

(iv) The crane shall be secured against accidental travel; and

(v) The boom shall be lowered or secured against movement.

(e) Operating near electric power lines.

(i) Clearance. Unless electrical distribution and transmission lines are deenergized and visibly grounded at point of work, or unless insulating barriers not a part of or an attachment to the crane have been erected to prevent physical contact with lines, cranes may be operated near power lines only in accordance with following:

(A) For lines rated 50 kV or below, minimum clearance between the lines and any part of the crane or load shall be ten feet (3 m);

(B) For lines rated over 50 kV, minimum clearance between the lines and any part of the crane or load shall be either 10 feet (3 m) plus 0.4 inch (10 mm) for each 1 kV over 50 kV, or twice the length of the line insulator, but never less than ten feet; and

(C) In transit with no load and boom lowered, the clearance shall be a minimum of four feet (1.2 m).

(ii) Boom guards. Cage-type boom guards, insulating links or proximity warning devices may be used on cranes, but they shall not be used in place of the clearances required by subsection (9)(e)(i) of this section.

(iii) Determination of energized lines. Any overhead line shall be presumed to be energized until the owner of the line indicates that it is not energized.

(10) Protection for employees being hoisted.

(a) No employee shall be hoisted by the load hoisting apparatus of a crane or derrick except:

(i) On intermodal container spreaders, equipped in accordance with this subsection; or

(ii) In a boatswain's chair or other device rigged to prevent it from accidental disengagement from the hook or supporting member; or

(iii) On a platform meeting the following requirements:

(A) Enclosed by a railing or other means providing protection equivalent to that described in WAC 296-56-60123(3). If equipped with open railings, the platform shall be fitted with toe boards;

(B) Having a safety factor of four based on ultimate strength;

(C) Bearing a plate or permanent marking indicating maximum load rating, which shall not be exceeded, and the weight of the platform itself;

(D) Equipped with a device to prevent access doors, when used, from opening accidentally;

(E) Equipped with overhead protection for employees on the platform if they are exposed to falling objects or overhead hazards;

(F) Secured to the load line by means other than wedge and socket attachments, unless the free (bitter) end of the line is secured back to itself by a clamp placed as close above the wedge as possible.

(b) Except in an emergency, the hoisting mechanism of all overhead and container gantry cranes used to hoist personnel shall operate in power up and power down, with automatic brake application when not hoisting or lowering.

(c) Variable radius booms of a crane or derrick used to hoist personnel shall be so constructed or secured as to prevent accidental boom movement.

(d) Platforms or devices used to hoist employees shall be inspected for defects before each day's use and shall be removed from service if defective.

(e) Employees being hoisted shall remain in continuous sight of and communication with the operator or ~~((signalman))~~ signal person.

(f) Operators shall remain at the controls when employees are hoisted.

(g) Cranes shall not travel while employees are hoisted, except in emergency or in normal tier to tier transfer of employees during container operations.

(h) When intermodal container spreaders are used to transfer employees to or from the tops of containers, the spreaders shall be equipped with a personnel platform equipped with fixed railings, provided that the railings have one or more openings for access. The openings shall be fitted with a means of closure, such as chains with hooks. Existing railings shall be at least thirty-six inches (0.91 m) in height. New railings installed after October 3, 1983 shall

be forty-two inches (1.07 m), plus or minus three inches (7.6 cm), in height. The provisions of (a)(iii)(C), (D), and (F) of this subsection also apply to personnel platforms when container spreaders are used.

(i) Positive safety latch-type hooks or moused hooks shall be used.

(11) Routine inspection.

(a) Designated persons shall visually inspect each crane and derrick on each day of use for defects in functional operating components and shall report any defect found to the employer. The employer shall inform the operator of the findings.

(b) A designated person shall thoroughly inspect all functional components and accessible structural features of each crane or device at monthly intervals.

(c) Any defects found during such inspections which may create a safety hazard shall be corrected before further use. Repairs shall be performed only by designated persons.

(d) A record of monthly inspections shall be maintained for six months in or on the crane or derrick or at the terminal.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60093 Certification of marine terminal material handling devices. (1) The employer shall not use any material handling device listed in WAC 296-56-60098(8) until he/she has ascertained that the device has been certified, as evidenced by current and valid documents attesting to compliance with the requirements of WAC 296-56-60097 and 296-56-60098.

(2) Certification surveys are to be completed for the conditions of use found at the time such surveys are performed. Equipment owners or users may change the configurations of the equipment according to the manufacturer's specifications without affecting the established certification status for the equipment.

(3) These rules apply to employment within a marine terminal including the loading, unloading, movement, or other handling of cargo, ship's stores, or gear within the terminal or into or out of any land carrier, holding or consolidation area, or any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment.

(4) Inspection and test certificates shall be issued only for that equipment which meets or exceeds the requirements specified in these rules. All inspection and test certificates shall be issued through the office of the assistant director of the division of ~~((industrial safety and health))~~ consultation and compliance, department of labor and industries, and shall be valid for a period not to exceed one year from the date of issuance.

(5) Equipment requiring certification shall be inspected by representatives of the division of ~~((industrial safety and health))~~ consultation and compliance; or individuals who have received a "certificate of competency" from the ~~((supervisor of industrial safety and health))~~ assistant director, division of consultation and compliance indicating that they are qualified and capable of performing such work.

(6) When deficiencies are found they shall be noted on forms provided for such purpose by the division of ~~((industrial safety and health))~~ consultation and compliance. Copies shall be delivered to the owner of the equipment and the division of ~~((industrial safety and health))~~ consultation and compliance at the ~~((Olympia))~~ headquarter's office by the person conducting such tests or inspections.

(7) A certificate of unit test or examination of equipment shall not be issued for any equipment found not to be in compliance with the provisions of this chapter.

(8) Persons desiring a "certificate of competency" shall demonstrate and document their capabilities and qualifications to the assistant director of the division of ~~((industrial safety and health))~~ consultation and compliance, who will issue certificates to those persons who have demonstrated competency. The assistant director reserves the right to revoke such certificates at any time for cause. A "certificate of competency" shall be issued for a period of not more than three years. Applications for renewal may be made not more than sixty days prior to the expiration date shown on the certificate.

(9) The assistant director of ~~((industrial safety and health))~~ the division of consultation and compliance or his/her representative, reserves the right to inspect such equipment or to witness or attend any test or inspection in order to ascertain the adequacy of any certification activity performed.

(10) Unless otherwise exempted, all cranes or derricks required to be certificated by these regulations shall have a current test certificate posted in the operator's cab or station. No person shall operate such crane or derrick unless a current valid certificate is posted.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60095 Advisory crane certification panel. (1) Any person desiring a certificate of competency for crane inspection or certification shall make application to the assistant director ~~((for industrial safety and health))~~ of the division of consultation and compliance for the certificate of competency. The application shall include documentation of all qualifications, including all past experience, education, training and any other factors deemed to be relevant to the application.

(2) The advisory crane certification panel shall assist the assistant director ~~((for industrial safety and health))~~ of the division of consultation and compliance in his/her duties under this chapter. The panel shall consist of six members. Two members shall represent labor, two members shall represent management, and one member shall be a crane expert. The sixth member shall be ~~((chairman))~~ chair of the panel. He/she shall be the assistant director of ~~((industrial safety and health))~~ consultation and compliance or his/her designee. The panel shall be responsible for advising the assistant director as to the issuance of any certificate of competency. The panel shall review all applications for certificates of competency. Minutes of meetings shall be kept.

(3) In addition, the panel shall, upon request by the assistant director, render advice concerning any matter which is relevant to crane safety. The panel shall meet twice

yearly or more often as deemed necessary by the chairman of the panel. Any panel member who is not an employee of the state of Washington shall serve voluntarily.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60097 Unit proof load test and inspection. Cranes and derricks shall be proof load tested, rated and certified in tons (2,000 lbs. = 1 ton). Cranes and derricks shall be inspected and unit proof load tested prior to being put into use, after any significant modification or repairs of structural parts, or when deemed necessary by the assistant director of ~~((industrial safety and health))~~ consultation and compliance or his/her designee. However, each crane or derrick shall be unit proof load tested at least once during each twelve-month period. Unit proof load tests shall be carried out by the use of weights as a dead load. When use of weights for unit proof load tests is not possible or reasonable a dynamometer or other recording test equipment may be used. Such equipment shall be tested for accuracy with certified calibrating equipment within twelve months prior to being used and a copy of the certified calibration test shall be made available to authorized representatives of the division of ~~((industrial safety and health))~~ consultation and compliance upon request.

The weight of the objects used for a dead load weight test shall be certified and a record of the weight shall be made available upon request. Any replacements or repairs deemed necessary by the person conducting a test shall be carried out before application of the required proof load unit test.

(1) The proof load tests for derricks shall be conducted as follows:

Safe Working Load	Proof Load
to 20 tons	25% in excess
20-50 tons	5 tons in excess
over 50 tons	10% in excess of manufacturer's recommended lifting capacity.

Proof load shall be applied at the designed maximum and minimum boom angles or radii, or if this is impractical, as close to these as practical. The angles or radii of test shall be stated in the certificate of test. Proof loads shall be swung as far as possible in all directions. The weight of auxiliary handling devices such as spreader bars, robots, clams, magnets, or other gear shall be considered a part of the load. Brakes shall be tested by holding the proof load suspended without other mechanical assistance. After satisfactory completion of a unit proof load test the derrick and all component parts thereof shall be carefully examined and nondestructive tests may be conducted to assure that the equipment is safe for use and has not been damaged in the unit proof load testing process.

(2) Unit proof load tests for cranes shall be carried out with the boom in the least stable direction relative to the mounting, based on the manufacturer's specifications.

Unit proof load tests for cranes shall be based on the manufacturer's load ratings for the conditions of use and shall, except in the case of bridge type cranes utilizing a

trolley, consist of application of a proof load of ten percent in excess of the load ratings at maximum and minimum radius, and at such intermediate radii as the certifying authority may deem necessary in the circumstances. (The manufacturer's load ratings are usually based upon percentage of tipping loads under some conditions and upon limitations of structural competence at others, as well as on other criteria such as type of crane mounting, whether or not outriggers are used, etc. Some cranes utilizing a trolley may have only one load rating assigned and applicable at any outreach. It is important that the manufacturer's ratings be used.) Trolley equipped cranes shall be subject to a proof load of twenty-five percent in excess of the manufacturer's load rating. In cases of foreign manufacture, the manufacturer's specifications shall be subject to approval by the certifying authority. The weight of all auxiliary handling devices such as magnets, hooks, slings, and clamshell buckets shall be considered part of the load.

(3) In the event neither manufacturer's data nor design data on safe working loads (including any applicable limitations) are obtainable, the safe working load ratings assigned shall be based on the owner's information and warranty that those so assigned are correct. Unit test certificates shall state the basis for any safe working load assignment.

(4) If the operation in which equipment is engaged never utilizes more than a fraction of the safe working load rating, the owner of the equipment may, at his/her option, have the crane or derrick certified for and operated at a lesser maximum safe working load in keeping with the use and based on radius and other pertinent factors, however, the equipment concerned shall be physically capable of operation at the original load rating and the load reduction shall not be for the purpose of avoiding correction of any deficiency.

(5) Safe working load ratings shall not be increased beyond the manufacturer's ratings or original design limitations without prior approval by the accredited certification agency. Such prior approval shall be based on the manufacturer's approval of such increase or documented engineering design analysis or both. All necessary structural changes shall be completed prior to approval by the accredited certification agency.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60098 Examination and inspection of cranes and derricks. (1) An examination shall be carried out in conjunction with each annual unit proof load test. The accredited person, or ((his)) their authorized representative, shall make a determination as to correction of deficiencies found. The examination shall include the following: (Refer to WAC 296-56-60093(8) for definition of accredited person.)

(a) All functional operating mechanisms shall be examined for improper function, maladjustment, and excessive component wear, with particular attention to sheaves, pins, and drums. The examinations shall include operation with partial load, in which all functions and movements, including maximum possible rotation in both directions, are checked.

(b) All safety devices shall be examined for malfunction.

(c) Lines, tanks, valves, drains, pumps, and other parts of air or hydraulic systems shall be examined for deterioration or leakage.

(d) Rope reeving shall comply with the manufacturer's recommendations.

(e) Deformed, cracked, or excessively corroded members in crane structure and boom shall be repaired or replaced as necessary.

(f) Loose bolts, rivets, or other connections shall be corrected.

(g) Worn, cracked, or distorted parts affecting safe operation shall be corrected.

(h) All brakes, used to control the load, boom or travel of the crane, shall be tested. Air, hydraulic, or electrically operated brakes shall be of such design as to set and stop the load if the source of power fails.

(i) Brake and clutch system parts, linings, pawls, and ratchets shall be examined for excessive wear and free operation.

(j) Load, boom angle, or other indicators shall be checked over their full range. Defects in such indicators shall be immediately corrected.

(k) Where used, clamshell buckets or other similar equipment, such as magnets, shall be carefully examined in all respects, with particular attention to closing line wires and sheaves. The accredited person may supplement such examination by requesting any operational tests deemed appropriate.

(l) Careful examination of the junction areas of removable boom sections, particularly for proper seating, cracks, deformities, or other defects in securing bolts and in the vicinity of such bolts, shall be made.

(m) All platforms, steps and footwalks located on cranes where workers are exposed to the hazard of slipping shall be of a nonslip material. Wire rope used for railings on cranes shall be kept taut at all times.

Note: In critical areas such as footwalks along booms, a grating material should be used.

(n) No counterweights in excess weight of the manufacturer's specifications shall be fitted or used.

(o) Such other examination or supplemental functional tests shall be made as may be deemed necessary by the accredited person under the circumstances.

(2) Wire rope.

(a) All wire rope shall be inspected at least once a month, dependent upon conditions to which the wire ropes are subjected, and at intervals not exceeding a twelve-month period. Records of inspection of wire rope shall be kept and shall be available to the department of labor and industries representative. Records shall be kept for one year. Refer to the general safety and health standards, WAC 296-24-24013.

(b) Wire rope shall not be used if in any length of eight diameters, the total number of visible broken wires exceeds ten percent of the total number of wires, or if the rope shows other signs of excessive wear, corrosion, or defect. Particular attention shall be given to the condition of those sections of wire rope adjacent to any terminal connections, those sections exposed to abnormal wear, and those sections not normally exposed for examination.

(c) Documentation available for inspection shall include wire rope test certificates relating to any replacements made since the last unit test or annual examination as required.

(d) Wire rope and replacement wire rope shall be of the same size, same or better grade, and same construction as originally furnished by the equipment manufacturer or contemplated in the design, unless otherwise recommended by the equipment or wire rope manufacturer due to actual working conditions. In the absence of specific requirements, wire rope shall be of a size and construction suitable for the purpose, and shall have the capacity to handle four times the heaviest expected load, verified by wire rope test certificate.

(e) Wire rope in use on equipment previously constructed and prior to initial certification of said equipment shall not be required to be tested but shall be subject to thorough examination at the time of initial certification of the equipment.

(3)(a) Accessory components. Container spreader bar twist locks shall be carefully examined periodically and at the time of annual examination and inspection. Cracked or deformed hooks shall be discarded immediately and not re-used.

(b) Crane hooks and container spreader bar twist lock. Magnetic particle or other suitable crack detecting inspection shall be performed at least once each year. When testing by x-ray, the pertinent provisions of the Nuclear Regulatory Commission's standards for protection against radiation, relating to protection against occupational radiation exposure, shall apply.

(4) In the event that heat treatment of any loose gear is recommended by the manufacturer, the latest heat treatment certificate attesting to compliance with the manufacturer's specifications shall be part of the available documentation. Heat treatment shall be carried out in accordance with the specifications of the manufacturer by persons competent to perform such work.

(5) Replacement parts shall be of equal or better quality than the original equipment and suitable for the purpose. Repairs or modifications shall be such as to render the equipment equal to or better than the original construction or design.

(6) In cases of foreign manufactured cranes, there shall be an owner's warranty that the design is adequate for the intended use. The warranty shall be based on a thorough examination of the design specifications by a registered professional engineer familiar with the equipment.

(7) The certifications required by this section shall be performed in accordance with WAC 296-56-60093 by persons accredited by the assistant director of (~~industrial safety and health~~) consultation and compliance.

(8) The marine terminal material handling devices listed below shall be certified in the following manner:

(a) Each crane and derrick shall be tested and examined as a unit annually. A copy of the certificate of tests and examinations shall be posted in the crane operator's cab.

(b) Bulk cargo spouts and suckers, together with any portable extensions and rigging or outriggers supporting them vertically, shall be examined annually. Certificates attesting to the required examination shall be made readily available for inspection.

(c) Vertical pocket or bucket conveyors such as banana, sugar, and grain marine legs (other than those within a grain

elevator structure) used within a marine terminal facility shall be examined annually. The annual examination shall include all supporting structures, rigging, mechanical components and observation of all steps of operations. Certificates attesting to the required examinations shall be readily available for inspection.

(d)(i) House fall cargo-handling gear shall be proof load tested as a unit upon initial certification and every fourth year thereafter. An examination shall be carried out in conjunction with each unit proof load test and annually thereafter. The unit test shall consist of a proof load of twenty-five percent in excess of the rated safe working load. Examinations shall include all supporting structures and components. Certificates attesting to the required tests and examinations shall be readily available for inspection.

(ii) House fall span beams or other house fall block supports shall be marked with the safe working load, which shall not be exceeded.

(e) Special gear.

(i) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes or chains, shall be tested as a unit in accordance with the following table before initially being put into use.

Safe Working Load	Proof Load
Up to 20 short tons	25 percent in excess
Over 20 to 50 short tons	5 short tons in excess
Over 50 short tons	10 percent in excess

(ii) Every spreader not a part of ship's gear and used for hoisting intermodal containers shall be tested to a proof load equal to twenty-five percent in excess of its rated capacity. Additionally, any spreader which suffers damage necessitating structural repair shall be retested after repair and before being returned to service.

(iii) Certificates attesting to the required tests shall be available for inspection.

(f) Wire rope and loose gear used for material handling shall be tested and certified before being placed into use in accordance with the provisions of WAC 296-56-60097. Certificates attesting to the required tests, inspections and examinations shall be available.

(9) Disassembly and reassembly of equipment does not require recertification of the equipment provided that the equipment is reassembled and used in a manner consistent with its certification.

(10) Equipment certified in Washington and transferred to a site in another state does not require recertification in this state upon its return, until the next inspection or examination becomes due as if it had not been moved. Equipment certified in accordance with similar provisions of another jurisdiction and moved to a site in this state does not require certification upon initial transfer to this state.

(11) Certification procedures shall not be construed as a substitute for, or cause for elimination of, normal operational inspection and maintenance routine throughout the year.

(12)(a) Every unit of equipment requiring annual certification shall have had such annual certification within

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the previous twelve months. Equipment requiring annual certification shall have had such annual certification within the previous twelve months, except that no annual certification is required within twelve months after any required certification. Annual examinations for certification may be accomplished up to one month early without effect on subsequent due dates.

(b) When certified equipment is out of service for six months or more beyond the due date of a certification inspection, an examination equivalent to an initial certification, including unit proof load test, shall be performed before the equipment re-enters service.

(13) Loose gear shall bear a legible mark indicating that it has been tested (see WAC 296-56-60097). Single sheave blocks shall be marked with safe working loads and proof test loads. Marks relating to testing shall be identifiable on the related certificates, which shall be available.

(14) The certification requirements of this section do not apply to the following equipment:

- (a) Industrial trucks and small industrial crane trucks; and
- (b) Any straddle truck not capable of straddling two or more intermodal containers sixteen feet (4.88 m) in width.

AMENDATORY SECTION (Amending Order 92-06, filed 10/30/92, effective 12/8/92)

WAC 296-56-60235 Welding, cutting and heating (hot work). (1) Definition. "Hot work" means riveting, welding, flame cutting or other fire or spark-producing operation.

(2) Hot work in confined spaces. Hot work shall not be performed in a confined space until ~~((a designated person has tested the atmosphere and determined that it is not hazardous))~~ All requirements of chapter 296-62 WAC, Part M, are met.

(3) Fire protection.

(a) To the extent possible, hot work shall be performed in designated locations that are free of fire hazards.

(b) When hot work must be performed in a location that is not free of fire hazards, all necessary precautions shall be taken to confine heat, sparks, and slag so that they cannot contact flammable or combustible material.

(c) Fire extinguishing equipment suitable for the location shall be immediately available and shall be maintained in readiness for use at all times.

(d) When the hot work operation is such that normal fire prevention precautions are not sufficient, additional personnel shall be assigned to guard against fire during hot work and for a sufficient time after completion of the work to ensure that no fire hazard remains. The employer shall instruct all employees involved in hot work operations as to potential fire hazards and the use of fire fighting equipment.

(e) Drums and containers which contain or have contained flammable or combustible liquids shall be kept closed. Empty containers shall be removed from the hot work area.

(f) When openings or cracks in flooring cannot be closed, precautions shall be taken to ensure that no employees or flammable or combustible materials are exposed to sparks dropping through the floor. Similar precautions shall

be taken regarding cracks or holes in walls, open doorways and open or broken windows.

(g) Hot work shall not be performed:

(i) In flammable or potentially flammable atmospheres;

(ii) On or in equipment or tanks that have contained flammable gas or liquid or combustible liquid or dust-producing material, until a designated person has tested the atmosphere inside the equipment or tanks and determined that it is not hazardous; or

(iii) Near any area in which exposed readily ignitable materials such as bulk sulphur, baled paper or cotton are stored. Bulk sulphur is excluded from this prohibition if suitable precautions are followed, the person in charge is knowledgeable and the person performing the work has been instructed in preventing and extinguishing sulphur fires.

(h)(i) Drums, containers or hollow structures that have contained flammable or combustible substances shall either be filled with water or cleaned, and shall then be ventilated. A designated person shall test the atmosphere and determine that it is not hazardous before hot work is performed on or in such structures.

(ii) Before heat is applied to a drum, container or hollow structure, an opening to release built-up pressure during heat application shall be provided.

(4) Gas welding and cutting.

(a) Compressed gas cylinders:

(i) Shall have valve protection caps in place except when in use, hooked up or secured for movement. Oil shall not be used to lubricate caps;

(ii) Shall be hoisted only while secured, as on a cradle or pallet, and shall not be hoisted by magnet, choker sling or cylinder caps;

(iii) Shall be moved only by tilting or rolling on their bottom edges;

(iv) Shall be secured when moved by vehicle;

(v) Shall be secured while in use;

(vi) Shall have valves closed when cylinders are empty, being moved or stored;

(vii) Shall be secured upright except when hoisted or carried;

(viii) Shall not be freed when frozen by prying the valves or caps with bars or by hitting the valve with a tool;

(ix) Shall not be thawed by boiling water;

(x) Shall not be exposed to sparks, hot slag, or flame;

(xi) Shall not be permitted to become part of electrical circuits or have electrodes struck against them to strike arcs;

(xii) Shall not be used as rollers or supports;

(xiii) Shall not have contents used for purposes not authorized by the supplier;

(xiv) Shall not be used if damaged or defective;

(xv) Shall not have gases mixed within, except by gas suppliers;

(xvi) Shall be stored so that oxygen cylinders are separated from fuel gas cylinders and combustible materials by either a minimum distance of twenty feet (6 m) or a barrier having a fire-resistance rating of thirty minutes; and

(xvii) Shall not have objects that might either damage the safety device or obstruct the valve placed on top of the cylinder when in use.

(b) Use of fuel gas. Fuel gas shall be used only as follows:

(i) Before regulators are connected to cylinder valves, the valves shall be opened slightly (cracked) and closed immediately to clear away dust or dirt. Valves shall not be cracked if gas could reach possible sources of ignition;

(ii) Cylinder valves shall be opened slowly to prevent regulator damage and shall not be opened more than one and one-half turns. Any special wrench required for emergency closing shall be positioned on the valve stem during cylinder use. For manifolded or coupled cylinders, at least one wrench shall be immediately available. Nothing shall be placed on top of a cylinder or associated parts when the cylinder is in use;

(iii) Pressure-reducing regulators shall be attached to cylinder valves when cylinders are supplying torches or devices equipped with shut-off valves;

(iv) Cylinder valves shall be closed and gas released from the regulator or manifold before regulators are removed;

(v) Leaking fuel gas cylinder valves shall be closed and the gland nut tightened. If the leak continues, the cylinder shall be tagged, removed from service, and moved to a location where the leak will not be hazardous. If a regulator attached to a valve stops a leak, the cylinder need not be removed from the workplace but shall be tagged and may not be used again before it is repaired; and

(vi) If a plug or safety device leaks, the cylinder shall be tagged, removed from service, and moved to a location where the leak will not be hazardous.

(c) Hose.

(i) Fuel gas and oxygen hoses shall be easily distinguishable from each other by color or sense of touch. Oxygen and fuel hoses shall not be interchangeable. Hoses having more than one gas passage shall not be used.

(ii) When oxygen and fuel gas hoses are taped together, not more than four of each twelve inches (10.2 cm of each 30.5 cm) shall be taped.

(iii) Hose shall be inspected before use. Hose subjected to flashback or showing evidence of severe wear or damage shall be tested to twice the normal working pressure but not less than two hundred p.s.i. (1378.96 kPa) before re-use. Defective hose shall not be used.

(iv) Hose couplings shall not unlock or disconnect without rotary motion.

(v) Hose connections shall be clamped or securely fastened to withstand twice the normal working pressure but not less than three hundred p.s.i. (2068.44 kPa) without leaking.

(vi) Gas hose storage boxes shall be ventilated.

(d) Torches.

(i) Torch tip openings shall only be cleaned with devices designed for that purpose.

(ii) Torches shall be inspected before each use for leaking shut-off valves, hose couplings and tip connections. Torches shall be inspected before each use for leaking shut-off valves, hose couplings and tip connections. Torches with such defects shall not be used.

(iii) Torches shall not be lighted from matches, cigarette lighters, other flames or hot work.

(e) Pressure regulators. Pressure regulators, including associated gauges, shall be maintained in safe working order.

(f) Operational precaution. Gas welding equipment shall be maintained free of oil and grease.

(5) Arc welding and cutting.

(a) Manual electrode holders.

(i) The employer shall ensure that only manual electrode holders intended for arc welding and cutting and capable of handling the maximum current required for such welding or cutting shall be used.

(ii) Current-carrying parts passing through those portions of the holder gripped by the user and through the outer surfaces of the jaws of the holder shall be insulated against the maximum voltage to ground.

(b) Welding cables and connectors.

(i) Arc welding and cutting cables shall be insulated, flexible and capable of handling the maximum current required by the operation, taking into account the duty cycles.

(ii) Only cable free from repair or splice for ten feet (3 m) from the electrode holder shall be used unless insulated connectors or splices with insulating quality equal to that of the cable are provided.

(iii) When a cable other than the lead mentioned in (b)(ii) of this subsection wears and exposes bare conductors, the portion exposed shall not be used until it is protected by insulation equivalent in performance capacity to the original.

(iv) Insulated connectors of equivalent capacity shall be used for connecting or splicing cable. Cable lugs, where used as connectors, shall provide electrical contact. Exposed metal parts shall be insulated.

(c) Ground returns and machine grounding.

(i) Ground return cables shall have current-carrying capacity equal to or exceeding the total maximum output capacities of the welding or cutting units served.

(ii) Structures or pipelines, other than those containing gases or flammable liquids or conduits containing electrical circuits, may be used in the ground return circuit if their current-carrying capacity equals or exceeds the total maximum output capacities of the welding or cutting units served.

(iii) Structures or pipelines forming a temporary ground return circuit shall have electrical contact at all joints. Arcs, sparks or heat at any point in the circuit shall cause rejection as a ground circuit.

(iv) Structures or pipelines acting continuously as ground return circuits shall have joints bonded and maintained to ensure that no electrolysis or fire hazard exists.

(v) Arc welding and cutting machine frames shall be grounded, either through a third wire in the cable containing the circuit conductor or through a separate wire at the source of the current. Grounding circuits shall have resistance low enough to permit sufficient current to flow to cause the fuse or circuit breaker to interrupt the current.

(vi) Ground connections shall be mechanically and electrically adequate to carry the current.

(d) When electrode holders are left unattended, electrodes shall be removed and holders placed to prevent employee injury.

(e) Hot electrode holders shall not be dipped in water.

(f) The employer shall ensure that when arc welders or cutters leave or stop work or when machines are moved, the power supply switch is kept in the off position.

(g) Arc welding or cutting equipment having a functional defect shall not be used.

(h)(i) Arc welding and cutting operations shall be separated from other operations by shields, screens, or

curtains to protect employees in the vicinity from the direct rays and sparks of the arc.

(ii) Employees in areas not protected from the arc by screening shall be protected by appropriate filter lenses in accordance with subsection (8) of this section. When welders are exposed to their own arc or to each other's arc, they shall wear filter lenses complying with the requirements of subsection (8) of this section.

(i) The control apparatus of arc welding machines shall be enclosed, except for operating wheels, levers, and handles.

(j) Input power terminals, top change devices and live metal parts connected to input circuits shall be enclosed and accessible only by means of insulated tools.

(k) When arc welding is performed in wet or high-humidity conditions, employees shall use additional protection, such as rubber pads or boots, against electric shock.

(6) Ventilation and employee protection in welding, cutting and heating.

(a) Mechanical ventilation requirements. The employer shall ensure that general mechanical ventilation or local exhaust systems shall meet the following requirements:

(i) General mechanical ventilation shall maintain vapors, fumes and smoke below a hazardous level;

(ii) Local exhaust ventilation shall consist of movable hoods positioned close to the work and shall be of such capacity and arrangement as to keep breathing zone concentrations below hazardous levels;

(iii) Exhausts from working spaces shall be discharged into the open air, clear of intake air sources;

(iv) Replacement air shall be clean and respirable; and

(v) Oxygen shall not be used for ventilation, cooling or cleaning clothing or work areas.

(b) Hot work in confined spaces. Except as specified in (c)(ii) and (iii) of this subsection, when hot work is performed in a confined space the employer shall, in addition to the requirements of ((WAC 296-62-145 through 296-62-14529)) chapter 296-62 WAC, Part M, ensure that:

(i) General mechanical or local exhaust ventilations shall be provided; or

(ii) Employees in the space shall wear supplied air respirators in accordance with WAC 296-62-071 et seq. and a standby observer on the outside shall maintain communication with employees inside the space and shall be equipped and prepared to provide emergency aid.

(c) Welding, cutting or heating of toxic metals.

(i) In confined or enclosed spaces, hot work involving the following metals shall only be performed with general mechanical or local exhaust ventilation that ensures that employees are not exposed to hazardous levels of fumes:

(A) Lead base metals;

(B) Cadmium-bearing filler materials; and

(C) Chromium-bearing metals or metals coated with chromium-bearing materials.

(ii) In confined or enclosed spaces, hot work involving the following metals shall only be performed with local exhaust ventilation meeting the requirements of this subsection or by employees wearing supplied air respirators in accordance with chapter 296-62 WAC;

(A) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials;

(B) Metals containing lead other than as an impurity, or coated with lead-bearing materials;

(C) Cadmium-bearing or cadmium-coated base metals; and

(D) Metals coated with mercury-bearing materials.

(iii) Employees performing hot work in confined or enclosed spaces involving beryllium-containing base or filler metals shall be protected by local exhaust ventilation and wear supplied air respirators or self-contained breathing apparatus, in accordance with the requirements of chapter 296-62 WAC.

(iv) The employer shall ensure that employees performing hot work in the open air that involves any of the metals listed in (c)(i) and (ii) of this subsection shall be protected by respirators in accordance with the requirements of chapter 296-62 WAC and those working on beryllium-containing base or filler metals shall be protected by supplied air respirators, in accordance with the requirements of chapter 296-62 WAC.

(v) Any employee exposed to the same atmosphere as the welder or burner shall be protected by the same type of respiratory and other protective equipment as that worn by the welder or burner.

(d) Inert-gas metal-arc welding. Employees shall not engage in and shall not be exposed to the inert-gas metal-arc welding process unless the following precautions are taken:

(i) Chlorinated solvents shall not be used within two hundred feet (61 m) of the exposed arc. Surfaces prepared with chlorinated solvents shall be thoroughly dry before welding is performed on them.

(ii) Employees in areas not protected from the arc by screening shall be protected by appropriate filter lenses in accordance with the requirements of subsection (8) of this section. When welders are exposed to their own arc or to each other's arc, filter lenses complying with the requirements of subsection (8) of this section shall be worn to protect against flashes and radiant energy.

(iii) Employees exposed to radiation shall have their skin covered completely to prevent ultraviolet burns and damage. Helmets and hand shields shall not have leaks, openings or highly reflective surfaces.

(iv) Inert-gas metal-arc welding on stainless steel shall not be performed unless exposed employees are protected either by local exhaust ventilation or by wearing supplied air respirators.

(7) Welding, cutting and heating on preservative coatings.

(a) Before hot work is commenced on surfaces covered by a preservative coating of unknown flammability, a test shall be made by a designated person to determine the coating's flammability. Preservative coatings shall be considered highly flammable when scrapings burn with extreme rapidity.

(b) Appropriate precaution shall be taken to prevent ignition of highly flammable hardened preservative coatings. Highly flammable coatings shall be stripped from the area to be heated. An uncoiled fire hose with fog nozzle, under pressure, shall be immediately available in the hot work area.

(c) Surfaces covered with preservative coatings shall be stripped for at least four inches (10.2 cm) from the area of heat application or employees shall be protected by supplied

air respirators in accordance with the requirements of chapter 296-62 WAC.

(8) Protection against radiant energy.

(a) Employees shall be protected from radiant energy eye hazards by spectacles, cup goggles, helmets, hand shields or face shields with filter lenses complying with the requirements of this subsection.

(b) Filter lenses shall have an appropriate shade number, as indicated in Table G-1, for the work performed. Variations of one or two shade numbers are permissible to suit individual preferences.

(c) If filter lenses are used in goggles worn under the helmet, the shade numbers of both lenses equals the value shown in Table G-1 for the operation.

Table G-1.—Filter Lenses for Protection Against Radiant Energy

Operation	Shade No.
Soldering	2
Torch Brazing	3 or 4
Light cutting, up to 1 inch	3 or 4
Medium cutting, 1-6 inches	4 or 5
Heavy cutting, over 6 inches	5 or 6
Light gas welding, up to 1/8 inch	4 or 5
Medium gas welding, 1/8-1/2 inch	5 or 6
Heavy gas welding, over 1/2 inch	6 or 8
Shielded Metal-Arc Welding 1/16 to 5/32-inch electrodes	10
Inert gas Metal-Arc Welding (non-ferrous) 1/16 to 5/32-inch electrodes	11
Shielded Metal-Arc Welding: 3/16 to 1/4-inch electrodes	12
5/16 and 3/8-inch electrodes	14

AMENDATORY SECTION (Amending Order 88-11, filed 7/6/88)

WAC 296-59-060 Vessel or confined area requirements. The requirements of WAC 296-62-145 through 296-62-14529, general occupational health standards for permit-required confined spaces, shall be applicable within the scope of chapter 296-59 WAC.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-62-07105 Definitions. ((+)) Abrasive-blasting respirator. See "respirator." A respirator designed to protect the wearer against inhalation of abrasive material and against impact and abrasion from rebounding abrasive material.

((2)) Accepted. Reviewed and listed as satisfactory for a specified use by the director or his or her designee.

((3)) Aerodynamic diameter. The diameter of a unit density sphere having the same settling velocity as the particle in question of whatever shape and density.

((4)) Aerosol. A system consisting of particles, solid or liquid, suspended in air.

((5)) Air-line respirator. See "respirator."

((6)) Air-purifying respirator. See "respirator."

((7)) Air-regulating valve. An adjustable valve used to regulate, but which cannot completely shut off the airflow to the facepiece, helmet, hood, or suit of an air-line respirator.

((8)) Air-supply device. A hand- or motor-operated blower for the hose mask, or a compressor or other source of respirable air for the air-line respirator.

((9)) Approved. Tested and listed as satisfactory by the Bureau of Mines (BM) of the U.S. Department of Interior, or jointly by the Mining Enforcement and Safety Administration (MESA) of the U.S. Department of Interior and the National Institute for Occupational Safety and Health (NIOSH) of the U.S. Department of Health and Human Services, or jointly by the Mine Safety and Health Administration (MSHA) of the U.S. Department of Labor and NIOSH under the provisions of Title 30, Code of Federal Regulations, Part 11.

((10)) Bioassay. A determination of the concentration of a substance in a human body by an analysis of urine, feces, blood, bone, or tissue.

((11)) Breathing tube. A tube through which air or oxygen flows to the facepiece, mouthpiece, helmet, hood, or suit.

((12)) Canister (air-purifying). A container with a filter, sorbent, or catalyst, or any combination thereof, which removes specific contaminants from the air drawn through it.

((13)) Canister (oxygen-generating). A container filled with a chemical which generates oxygen by chemical reaction.

((14)) Carcinogen. A substance known to produce cancer in some individuals following a latent period (for example: Asbestos, Chromates, radioactive particulates).

((15)) Cartridge (air-purifying). A small canister.

((16)) Catalyst. In respirator use, a substance which converts a toxic gas (or vapor) into a less-toxic gas (or vapor).

((17)) Ceiling concentration. The concentration of an airborne substance that shall not be exceeded.

((18)) Chemical-cartridge respirator. See respirator.

~~((19)) Confined space. Chapter 296-62 WAC Part M.~~

((20)) Contaminant. A harmful, irritating, or nuisance material that is foreign to the normal atmosphere.

((21)) Corrective lens. A lens ground to the wearer's individual corrective prescription to permit normal visual acuity.

((22)) Demand. A type of self-contained breathing apparatus or type of air-line respirator which functions due to the negative pressure created by inhalation (i.e., air flow into the facepiece on "demand").

((23)) Detachable coupling. A device which permits the respirator wearer, without using hand tools, to detach the air-supply line from that part of the respirator worn on the person.

((24)) Dust. See WAC 296-62-07001(1).

((25)) Emergency respirator use. Wearing a respirator when a hazardous atmosphere suddenly occurs that requires immediate use of a respirator either for escape from the hazardous atmosphere or for entry into the hazardous atmosphere.

((26)) Exhalation valve. A device that allows exhaled air to leave a respirator and prevents outside air from entering through the valve.

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((27)) Eyepiece. A gas-tight, transparent window(s) in a full facepiece, helmet, hood, or suit, through which the wearer may see.

((28)) Facepiece. That portion of a respirator that covers the wearer's nose and mouth in quarter-mask (above the chin) or half-mask (under the chin) facepiece or that covers the nose, mouth, and eyes in a full facepiece. It is designed to make a gas-tight or particle-tight fit with the face and includes the headbands, exhalation valve(s), and connections for an air-purifying device or respirable gas source, or both.

((29)) Face shield. A device worn in front of the eyes and a portion of, or all of, the face, whose predominant function is protection of the eyes and the face.

((30)) Fibrosis-producing dust. Dust which, when inhaled, deposited, and retained in the lungs, may produce findings of fibrotic growth that may cause pulmonary disease.

((31)) Filter. A media component used in respirators to remove solid or liquid particles from the inspired air.

((32)) Filter respirator. See respirator.

((33)) Fog. A mist of sufficient concentration to perceptibly obscure vision.

((34)) Full facepiece. See facepiece.

((35)) Fume. See WAC 296-62-07001(2).

((36)) Gas. An aeriform fluid which is in the gaseous state at ordinary temperature and pressure.

((37)) Gas mask. See respirator.

((38)) Goggle. A device, with contour-shaped eyecups with glass or plastic lenses, worn over eyes and held in place by a headband or other suitable means for the protection of the eyes and eye sockets.

((39)) Half-mask facepiece. See facepiece.

((40)) Hazardous atmosphere. Any atmosphere, either immediately or not immediately dangerous to life or health, which is oxygen deficient or which contains a toxic or disease-producing contaminant.

((41)) Head harness. That part of a facepiece assembly which secures the facepiece to the wearer.

((42)) Helmet. That portion of a respirator which shields the eyes, face, neck, and other parts of the head.

((43)) High-efficiency filter. A filter which removes from air 99.97% or more of monodisperse dioctyl phthalate (DOP) particles having a mean particle diameter of 0.3 micrometer.

((44)) Hood. That portion of a respirator which completely covers the head, neck, and portions of the shoulders.

((45)) Hose mask. See respirator.

((46)) Immediately dangerous to life or health (IDLH). Any atmosphere that poses an immediate hazard to life or produces immediate irreversible debilitating effects on health.

((47)) Inhalation valve. A device that allows respirable air to enter a respirator and prevents exhaled air from leaving the respirator through the valve.

((48)) Irrespirable. Unfit for breathing.

((49)) Maximum use limit of filter, cartridge, or canister. The maximum concentration of a contaminant for which an air-purifying filter, cartridge, or canister is approved for use.

((50)) Mist. See WAC 296-62-07001(4).

((51)) Mouthpiece. That portion of a respirator which is held in the wearer's mouth and is connected to an air-purifying device or respirable gas source, or both. It is designed to make a gas-tight or particle-tight fit with the mouth.

((52)) MPCa. Maximum permissible airborne concentration. These concentrations are set by the National Committee on Radiation Protection. They are recommended maximum average concentrations of radionuclides to which a worker may be exposed, assuming that he/she works 8 hours a day, 5 days a week, and 50 weeks a year.

((53)) Negative pressure respirator. A respirator in which the air pressure inside the respiratory-inlet covering is positive during exhalation in relation to the air pressure of the outside atmosphere and negative during inhalation in relation to the air pressure of the outside atmosphere.

((54)) Nonroutine respirator use. Wearing a respirator when carrying out a special task that occurs infrequently.

((55)) Nose clamp. A device used with a respirator equipped with a mouthpiece that closes the nostrils of the wearer (sometimes called a nose clip).

((56)) Not immediately dangerous to life or health. Any hazardous atmosphere which may produce physical discomfort immediately, chronic poisoning after repeated exposure, or acute adverse physiological symptoms after prolonged exposure.

((57)) Odor threshold limit. The lowest concentration of a contaminant in air that can be detected by the olfactory sense.

((58)) Oxygen deficiency - immediately dangerous to life or health. An atmosphere which causes an oxygen partial pressure of 95 millimeters of mercury column or less or has less than 12.5% by volume in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

((59)) Oxygen deficiency - not immediately dangerous to life or health. An atmosphere having an oxygen concentration below the minimum legal requirement of 19.5% by volume or has a partial pressure of oxygen of 148 millimeters of mercury for respirable air at sea-level conditions, but above that which is immediately dangerous to life or health.

((60)) Particulate matter. A suspension of fine solid or liquid particles in air, such as: Dust, fog, fume, mist, smoke, or spray. Particulate matter suspended in air is commonly known as an aerosol.

((61)) Permissible exposure limit (PEL). The legally established time-weighted average (TWA) concentration or ceiling concentration of a contaminant that shall not be exceeded.

((62)) Permit-required confined space. See chapter 296-62 WAC, Part M.

Pneumoconiosis-producing dust. Dust which, when inhaled, deposited, and retained in the lungs, may produce signs, symptoms, and findings of pulmonary disease.

((63)) Positive-pressure respirator. A respirator in which the air pressure inside the respiratory-inlet covering is positive in relation to the air pressure of the outside atmosphere during exhalation and inhalation.

((64)) Powered air-purifying respirator. See respirator.

((65)) Pressure demand. Similar to a demand type respirator but so designed to maintain positive pressure in the facepiece at all times.

~~((66))~~ Protection factor. The ratio of the ambient concentration of an airborne substance to the concentration of the substance inside the respirator at the breathing zone of the wearer. The protection factor is a measure of the degree of protection provided by a respirator to the wearer. As used herein, a protection factor is synonymous with the fit factor assigned to a respirator facepiece by the use of qualitative and quantitative fitting tests.

~~((67))~~ Rescue respirator use. Wearing a respirator for entry into a hazardous atmosphere to rescue a person(s) in the hazardous atmosphere.

~~((68))~~ Resistance. Opposition to the flow of air, as through a canister, cartridge, particulate filter, orifice, valve, or hose.

~~((69))~~ Respirable. Suitable for breathing.

~~((70))~~ Respirator. A device designed to protect the wearer from the inhalation of harmful atmospheres.

~~((71))~~ Respiratory-inlet covering. That portion of a respirator which connects the wearer's respiratory tract to an air-purifying device or respirable gas source, or both. It may be a facepiece, helmet, hood, suit, or mouthpiece/nose clamp.

~~((72))~~ Routine respirator use. Wearing a respirator as a normal procedure when carrying out a regular and frequently repeated task.

~~((73))~~ Sanitization. The removal of dirt and the inhibiting of the action of agents that cause infection or disease.

~~((74))~~ Self-contained breathing apparatus. See respirator.

~~((75))~~ Service life. The period of time that a respirator provides adequate protection to the wearer - for example, the period of time that an air-purifying device is effective for removing a harmful substance from inspired air.

~~((76))~~ Smoke. A system which includes the products of combustion, pyrolysis, or chemical reaction of substances in the form of visible and invisible solid and liquid particles and gaseous products in air. Smoke is usually of sufficient concentration to perceptibly obscure vision.

~~((77))~~ Sorbent. A material which is contained in cartridge or canister and which removes toxic gases and vapors from the inhaled air.

~~((78))~~ Spray. A liquid, mechanically produced particle with sizes generally in the visible or macroscopic range.

~~((79))~~ Supplied-air respirator. See respirator.

~~((80))~~ Supplied-air suit. A suit that is impermeable to most particulate and gaseous contaminants and that is provided with an adequate supply of respirable air.

~~((81))~~ Time-weighted average (TWA). The average concentration of a contaminant in air during a specific time period.

~~((82))~~ Valve (air or oxygen). A device which controls the pressure, direction, or rate of flow of air or oxygen.

~~((83))~~ Vapor. The gaseous state of a substance that is solid or liquid at ordinary temperature and pressure.

~~((84))~~ Welding helmet. A device designed to provide protection for the eyes and face against intense radiant energy and molten metal splatter encountered in the welding and cutting of metals.

~~((85))~~ Window indicator. A device on a cartridge or canister that visually denotes the service life of the cartridge or canister.

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-62-07711 Regulated areas. (1) General. The employer shall establish a regulated area in work areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the permissible exposure limits prescribed in WAC 296-62-07705.

(2) Demarcation. The regulated area shall be demarcated in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to airborne concentrations of asbestos in excess of the permissible exposure limits.

(3) Access. Access to regulated areas shall be limited to authorized persons or to persons authorized by the Washington Industrial Safety and Health Act or regulations issued pursuant thereto.

(4) Provision of respirators. Each person entering a regulated area shall be supplied with and required to use a respirator, selected in accordance with WAC 296-62-07715.

(5) Protective clothing. All persons entering a regulated area shall be supplied with and required to wear protective clothing, selected in accordance with WAC 296-62-07717.

(6) Prohibited activities. The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated areas.

(7) Permit-required confined space. The employer shall determine if a permit-required confined space hazard exists and shall take any necessary precautions in accordance with chapter 296-62 WAC Part M.

AMENDATORY SECTION (Amending Order 80-20, filed 11/13/80)

WAC 296-62-11001 Definition. Ventilation shall mean the provision, circulation or exhausting of air into or from an area or space.

(1) "Local exhaust ventilation" shall mean the mechanical removal of contaminated air from the point where the contaminant is being generated or liberated.

(2) "Dilution ventilation" means inducing and mixing uncontaminated air with contaminated air in such quantities that the resultant mixture in the breathing zone will not exceed the permissible exposure limit (PEL) specified for any contaminant.

(3) "Exhaust ventilation" means the general movement of air out of the area or permit-required confined space by mechanical or natural means.

(4) "Tempered makeup air" means air which has been conditioned by changing its heat content to obtain a specific desired temperature.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-145 Permit-required confined spaces.

NEW SECTION

WAC 296-62-14500 Scope and application. (1) Scope. This part contains minimum requirements for practices and procedures to protect employees in all indus-

tries from the hazards of entry and/or work in permit-required confined spaces.

(2) Application. Part M (Permit-required confined spaces) applies to all employers under the jurisdiction of the Washington Industrial Safety and Health Act, chapter 49.17 RCW. Part M may be augmented by more protective requirements for confined spaces or areas in vertical standards. Certain industry specific vertical standards are more protective than chapter 296-62 WAC, Part M. Where there is a conflict between an industry specific vertical standard and chapter 296-62 WAC, Part M, the vertical standard shall apply.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-14501 Definitions. ((1) "Confined space" means any space having a limited means of egress which is subject to the accumulation of toxic or flammable contaminants or an oxygen deficient atmosphere. Confined spaces include but are not limited to storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines and open top spaces more than 4 feet in depth, such as pits, tubes, vaults and vessels.

(2) Toxic atmospheres are atmospheres having concentrations of airborne chemicals in excess of permissible exposure limits as defined in WAC 296-62-075 through 296-62-07517.

(3) Chemical contact agents are defined in WAC 296-62-07003.

(4) Oxygen deficient atmospheres are deemed to exist if the atmosphere at sea level has less than 19.5% oxygen by volume or has a partial pressure of 148 millimeters of mercury or less. This may deviate when working at higher altitudes and should be determined for an individual location. Factors such as acclimatization, physical condition of persons involved, etc., must be considered for such circumstances and conditions.

(5) Flammable atmospheres are atmospheres in excess of 20% of the lower explosive limit. These are usually toxic as well as flammable.)) **Acceptable entry conditions** means the conditions that must exist in a permit space to allow entry and to ensure that employees involved with a permit-required confined space entry can safely enter into and work within the space.

Attendant means an individual stationed outside one or more permit spaces who monitors the authorized entrants and who performs all attendant's duties assigned in the employer's permit space program.

Authorized entrant means an employee who is authorized by the employer to enter a permit space.

Blanking or blinding means the absolute closure of a pipe, line, or duct by the fastening of a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore and that is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

Confined space means a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (For example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and

(3) Is not designed for continuous employee occupancy. **Double block and bleed** means the closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves.

Emergency means any occurrence (including any failure of hazard control or monitoring equipment) or event internal or external to the permit space that could endanger entrants.

Engulfment means the surrounding and effective capture of a person by a liquid or finely divided (flowable) solid substance that can be aspirated to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

Entry means the action by which a person passes through an opening into a permit-required confined space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

Entry permit (permit) means the written or printed document that is provided by the employer to allow and control entry into a permit space and that contains the information specified in WAC 296-62-14509.

Entry supervisor means the person (such as the employer, crew leader, or crew chief) responsible for determining if acceptable entry conditions are present at a permit space where entry is planned, for authorizing entry and overseeing entry operations, and for terminating entry as required by this part.

Note: An entry supervisor also may serve as an attendant or as an authorized entrant, as long as that person is trained and equipped as required by this section for each role he or she fills. Also, the duties of entry supervisor may be passed from one individual to another during the course of an entry operation.

Hazardous atmosphere means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of ten percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of five feet (1.52 m) or less.

(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in Subpart G, Occupational Health and Environmental Control, or in Subpart Z, Toxic and Hazardous Substances, of this part and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note: An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision.

(5) Any other atmospheric condition that is immediately dangerous to life or health.

Note: For air contaminants for which WISHA has not determined a dose or permissible exposure limit, other sources of information, such as material safety data sheets that comply with the Hazard Communication Standard, chapter 296-62 WAC, Part C, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

Hot work permit means the employer's written authorization to perform operations (for example, riveting, welding, cutting, burning, and heating) capable of providing a source of ignition.

Immediately dangerous to life or health (IDLH) means any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space.

Note: Some materials - hydrogen fluoride gas and cadmium vapor, for example - may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12-72 hours after exposure. The victim "feels normal" from recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health.

Inerting means the displacement of the atmosphere in a permit space by a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible.

Note: This procedure produces an IDLH oxygen-deficient atmosphere.

Isolation means the process by which a permit space is removed from service and completely protected against the release of energy and material into the space by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

Line breaking means the intentional opening of a pipe, line, or duct that is or has been carrying flammable, corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.

Nonpermit confined space means a confined space that does not contain or, with respect to atmospheric hazards, have the potential to contain any hazard capable of causing death or serious physical harm.

Oxygen deficient atmosphere means an atmosphere containing less than 19.5 percent oxygen by volume.

Oxygen enriched atmosphere means an atmosphere containing more than 23.5 percent oxygen by volume.

Permit-required confined space (permit space) means a confined space that has one or more of the following characteristics:

(1) Contains or has a potential to contain a hazardous atmosphere;

(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(4) Contains any other recognized serious safety or health hazard.

Permit-required confined space program (permit space program) means the employer's overall program for controlling, and, where appropriate, for protecting employees from, permit space hazards and for regulating employee entry into permit spaces.

Permit system means the employer's written procedure for preparing and issuing permits for entry and for returning the permit space to service following termination of entry.

Prohibited condition means any condition in a permit space that is not allowed by the permit during the period when entry is authorized.

Rescue service means the personnel designated to rescue employees from permit spaces.

Retrieval system means the equipment (including a retrieval line, chest or full-body harness, wristlets, if appropriate, and a lifting device or anchor) used for nonentry rescue of persons from permit spaces.

Testing means the process by which the hazards that may confront entrants of a permit space are identified and evaluated. Testing includes specifying the tests that are to be performed in the permit space.

Note: Testing enables employers both to devise and implement adequate control measures for the protection of authorized entrants and to determine if acceptable entry conditions are present immediately prior to, and during, entry.

AMENDATORY SECTION (Amending Order 91-01, filed 5/20/91, effective 6/20/91)

WAC 296-62-14503 ((Personnel)) General requirements ((for entry into confined spaces)). ((Employees required to enter confined spaces shall be protected from the hazards which may result from the entry.

(1) Management shall be responsible for procedures, training, and planning for entry into confined spaces which present a problem due to toxicity, flammability, oxygen deficiency or excess, mechanical, electrical, corrosive or temperature hazard.

(2) Management shall develop, distribute and enforce a written procedure which shall include planning, general precautions, procedures, evaluation of hazards, ventilation requirements, personal protection, isolation and responsibilities.

(3) For each project or job, individuals who are competent in the evaluation of hazards, precautions, first aid and artificial respiration shall specifically be assigned. All personnel shall be trained in the use of personal protective equipment required for the job assignment.

(4) Management shall instruct all involved employees in the safe procedures to be followed.)) (1) The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.

Note: Proper application of the decision flow chart in WAC 296-62-14521, Appendix A, would facilitate compliance with this requirement.

(2) If the workplace contains permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.

Note: A sign reading "DANGER-PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER" or using other similar language would satisfy the requirement for a sign.

(3) If the employer decides that its employees will not enter permit spaces, the employer shall take effective measures to prevent its employees from entering the permit spaces and shall comply with subsections (1), (2), (6), and (8) of this section.

(4) If the employer decides that its employees will enter permit spaces, the employer shall develop and implement a written permit space program that complies with this part. The written program shall be available for inspection by employees and their authorized representatives.

(5) An employer may use the alternate procedures specified in (b) of this subsection for entering a permit space under the conditions set forth in (a) of this subsection.

(a) An employer whose employees enter a permit space need not comply with WAC 296-62-14505 through 296-62-14509 and WAC 296-62-14513 through 296-62-14519, provided that:

(i) The employer can demonstrate that the only hazard posed by the permit space is an actual or potential hazardous atmosphere;

(ii) The employer can demonstrate that continuous forced air ventilation alone is sufficient to maintain that permit space safe for entry;

(iii) The employer develops monitoring and inspection data that supports the demonstrations required by (a)(i) and (ii) of this subsection;

(iv) If an initial entry of the permit space is necessary to obtain the data required by (a)(iii) of this subsection, the entry is performed in compliance with WAC 296-62-14505 through 296-62-14519;

(v) The determinations and supporting data required by (a)(i), (ii), and (iii) of this subsection are documented by the employer and are made available to each employee who enters the permit space under the terms of WAC this subsection; and

(vi) Entry into the permit space under the terms of (a) of this subsection is performed in accordance with the requirements of (b) of this subsection.

Note: See subsection (7) of this section for reclassification of a permit space after all hazards within the space have been eliminated.

(b) The following requirements apply to entry into permit spaces that meet the conditions set forth in (a) of this subsection.

(i) Any conditions making it unsafe to remove an entrance cover shall be eliminated before the cover is removed.

(ii) When entrance covers are removed, the opening shall be promptly guarded by a railing, temporary cover, or other temporary barrier that will prevent an accidental fall through the opening and that will protect each employee working in the space from foreign objects entering the space.

(iii) Before an employee enters the space, the internal atmosphere shall be tested, with a calibrated direct-reading instrument, for the following conditions in the order given:

(A) Oxygen content,

(B) Flammable gases and vapors, and

(C) Potential toxic air contaminants.

(iv) There may be no hazardous atmosphere within the space whenever any employee is inside the space.

(v) Continuous forced air ventilation shall be used, as follows:

(A) An employee may not enter the space until the forced air ventilation has eliminated any hazardous atmosphere;

(B) The forced air ventilation shall be so directed as to ventilate the immediate areas where an employee is or will be present within the space and shall continue until all employees have left the space;

(C) The air supply for the forced air ventilation shall be from a clean source and may not increase the hazards in the space.

(vi) The atmosphere within the space shall be periodically tested as necessary to ensure that the continuous forced air ventilation is preventing the accumulation of a hazardous atmosphere.

(vii) If a hazardous atmosphere is detected during entry:

(A) Each employee shall leave the space immediately;

(B) The space shall be evaluated to determine how the hazardous atmosphere developed; and

(C) Measures shall be implemented to protect employees from the hazardous atmosphere before any subsequent entry takes place.

(viii) The employer shall verify that the space is safe for entry and that the preentry measures required by (b) of this subsection have been taken, through a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification shall be made before entry and shall be made available to each employee entering the space.

(6) When there are changes in the use or configuration of a nonpermit confined space that might increase the hazards to entrants, the employer shall reevaluate that space and, if necessary, reclassify it as a permit-required confined space.

(7) A space classified by the employer as a permit-required confined space may be reclassified as a nonpermit confined space under the following procedures:

(a) If the permit space poses no actual or potential atmospheric hazards and if all hazards within the space are eliminated without entry into the space, the permit space may be reclassified as a nonpermit confined space for as long as the nonatmospheric hazards remain eliminated.

(b) If it is necessary to enter the permit space to eliminate hazards, such entry shall be performed under WAC 296-62-14505 through 296-62-14519. If testing and inspection during that entry demonstrate that the hazards within the permit space have been eliminated, the permit space may be reclassified as a nonpermit confined space for as long as the hazards remain eliminated.

Note: Control of atmospheric hazards through forced air ventilation does not constitute elimination of the hazards. Subsection (5) of this section covers permit space entry where the employer can demonstrate that forced air ventilation alone will control all hazards in the space.

(c) The employer shall document the basis for determining that all hazards in a permit space have been eliminated, through a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification shall be made available to each employee entering the space.

(d) If hazards arise within a permit space that has been declassified to a nonpermit space under this subsection, each employee in the space shall exit the space. The employer

shall then reevaluate the space and determine whether it must be reclassified as a permit space, in accordance with other applicable provisions of this part.

(8) When an employer (host employer) arranges to have employees of another employer (contractor) perform work that involves permit space entry, the host employer shall:

(a) Inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with a permit space program meeting the requirements of this part;

(b) Apprise the contractor of the elements, including the hazards identified and the host employer's experience with the space, that make the space in question a permit space;

(c) Apprise the contractor of any precautions or procedures that the host employer has implemented for the protection of employees in or near permit spaces where contractor personnel will be working;

(d) Coordinate entry operations with the contractor, when both host employer personnel and contractor personnel will be working in or near permit spaces, as required by WAC 296-62-14505(11); and

(e) Debrief the contractor at the conclusion of the entry operations regarding the permit space program followed and regarding any hazards confronted or created in permit spaces during entry operations.

(9) In addition to complying with the permit space requirements that apply to all employers, each contractor who is retained to perform permit space entry operations shall:

(a) Obtain any available information regarding permit space hazards and entry operations from the host employer;

(b) Coordinate entry operations with the host employer, when both host employer personnel and contractor personnel will be working in or near permit spaces, as required by WAC 296-62-14505(11); and

(c) Inform the host employer of the permit space program that the contractor will follow and of any hazards confronted or created in permit spaces, either through a debriefing or during the entry operation.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-14505 ((General precautions:)) Permit-required confined space program (permit space program). (((1) Toxic or flammable atmospheres. Employees shall not be permitted to enter atmospheres in a confined space which has contained toxic, flammable or corrosive materials or which may have had such materials accidentally introduced or generated until such space has been evaluated and/or tested by a competent person who shall declare the space safe for entry.

(2) Exposure to temperature extremes and noise shall be controlled as defined in WAC 296-62-09011 and 296-62-09013.

(3) Exposure to ionizing radiation shall be controlled as defined in rules and regulations for radiation protection, chapter 402-12 WAC as administered by the state of Washington, department of social and health services, health services division.)) Under the permit space program required by WAC 296-62-14503(4), the employer shall:

(1) Implement the measures necessary to prevent unauthorized entry;

(2) Identify and evaluate the hazards of permit spaces before employees enter them;

(3) Develop and implement the means, procedures, and practices necessary for safe permit space entry operations, including, but not limited to, the following:

(a) Specifying acceptable entry conditions;

(b) Isolating the permit space;

(c) Purging, inerting, flushing, or ventilating the permit space as necessary to eliminate or control atmospheric hazards;

(d) Providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards; and

(e) Verifying that conditions in the permit space are acceptable for entry throughout the duration of an authorized entry.

(4) Provide the following equipment (specified in (a) through (i) of this subsection) at no cost to employees, maintain that equipment properly, and ensure that employees use that equipment properly:

(a) Testing and monitoring equipment needed to comply with subsection (5) of this section;

(b) Ventilating equipment needed to obtain acceptable entry conditions;

(c) Communications equipment necessary for compliance with WAC 296-62-14513(3) and 296-62-14515(5);

(d) Personal protective equipment insofar as feasible engineering and work practice controls do not adequately protect employees;

(e) Lighting equipment needed to enable employees to see well enough to work safely and to exit the space quickly in an emergency;

(f) Barriers and shields as required by subsection (3)(d) of this section;

(g) Equipment, such as ladders, needed for safe ingress and egress by authorized entrants;

(h) Rescue and emergency equipment needed to comply with subsection (9) of this section, except to the extent that the equipment is provided by rescue services; and

(i) Any other equipment necessary for safe entry into and rescue from permit spaces.

(5) Evaluate permit space conditions as follows when entry operations are conducted:

(a) Test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin, except that, if isolation of the space is infeasible because the space is large or is part of a continuous system (such as a sewer), preentry testing shall be performed to the extent feasible before entry is authorized and, if entry is authorized, entry conditions shall be continuously monitored in the areas where authorized entrants are working;

(b) Test or monitor the permit space as necessary to determine if acceptable entry conditions are being maintained during the course of entry operations; and

(c) When testing for atmospheric hazards, test first for oxygen, then for combustible gases and vapors, and then for toxic gases and vapors.

Note: Atmospheric testing conducted in accordance with WAC 296-62-14523, Appendix B, would be considered as satisfying the requirements of this paragraph. For permit space operations in sewers, atmospheric testing conducted in accordance with

Appendix B, as supplemented by WAC 296-62-14529, Appendix E, would be considered as satisfying the requirements of this subdivision.

(6) Provide at least one attendant outside the permit space into which entry is authorized for the duration of entry operations;

Note: Attendants may be assigned to monitor more than one permit space provided the duties described in WAC 296-62-14515 can be effectively performed for each permit space that is monitored. Likewise, attendants may be stationed at any location outside the permit space to be monitored as long as the duties described in WAC 296-62-14515 can be effectively performed for each permit space that is monitored. However, it is important to assess if it is appropriate or possible to have multiple permit spaces monitored by a single attendant or have attendants stationed at a location outside the monitored permit space. Due to the variability of permit space work environments, the appropriateness of how a permit space is monitored must be tailored to the requirements of the permit space and the work being performed.

(7) If multiple spaces are to be monitored by a single attendant, include in the permit program the means and procedures to enable the attendant to respond to an emergency affecting one or more of the permit spaces being monitored without distraction from the attendant's responsibilities under WAC 296-62-14515;

(8) Designate the persons who are to have active roles (as, for example, authorized entrants, attendants, entry supervisors, or persons who test or monitor the atmosphere in a permit space) in entry operations, identify the duties of each such employee, and provide each such employee with the training required by WAC 296-62-14511;

(9) Develop and implement procedures for summoning rescue and emergency services, for rescuing entrants from permit spaces, for providing necessary emergency services to rescued employees, and for preventing unauthorized personnel from attempting a rescue;

(10) Develop and implement a system for the preparation, issuance, use, and cancellation of entry permits as required by this part;

(11) Develop and implement procedures to coordinate entry operations when employees of more than one employer are working simultaneously as authorized entrants in a permit space, so that employees of one employer do not endanger the employees of any other employer;

(12) Develop and implement procedures (such as closing off a permit space and canceling the permit) necessary for concluding the entry after entry operations have been completed;

(13) Review entry operations when the employer has reason to believe that the measures taken under the permit space program may not protect employees and revise the program to correct deficiencies found to exist before subsequent entries are authorized; and

Note: Examples of circumstances requiring the review of the permit space program are: Any unauthorized entry of a permit space, the detection of a permit space hazard not covered by the permit, the detection of a condition prohibited by the permit, the occurrence of an injury or near-miss during entry, a change in the use or configuration of a permit space, and employee complaints about the effectiveness of the program.

(14) Review the permit space program, using the canceled permits retained under WAC 296-62-14507(6) within one year after each entry and revise the program as

necessary, to ensure that employees participating in entry operations are protected from permit space hazards.

Note: Employers may perform a single annual review covering all entries performed during a twelve-month period. If no entry is performed during a twelve-month period, no review is necessary.

WAC 296-62-14525, Appendix C, presents examples of permit space programs that are considered to comply with the requirements of WAC 296-62-14505.

AMENDATORY SECTION (Amending Order 81-20, filed 7/27/81)

WAC 296-62-14507 ((~~Toxic atmospheres.~~) ~~Permit system.~~ ((1) Atmospheres where contamination is below permissible exposure limits as defined in chapter 296-62 WAC may be entered without respiratory protection.

(2) Atmospheres where contamination is above the permissible exposure limits but below values immediately hazardous to life or health may be entered when respiratory protective equipment as defined in the applicable provisions of chapter 296-62 WAC is properly worn.

(3) Atmospheres immediately hazardous to life may be entered only in the event of emergency and then only when employees are protected by equipment approved for such exposures.

(4) Atmospheres where the toxicity is not known shall require full protection.

(5) Entry into spaces which contain or could contain corrosive chemicals or chemicals which are toxic through skin absorption shall require equipment to prevent skin and/or eye contact.) (1) Before entry is authorized, the employer shall document the completion of measures required by WAC 296-62-14505(3) by preparing an entry permit.

Note: WAC 296-62-14527, Appendix D, presents examples of permits whose elements are considered to comply with the requirements of this part.

(2) Before entry begins, the entry supervisor identified on the permit shall sign the entry permit to authorize entry.

(3) The completed permit shall be made available at the time of entry to all authorized entrants, by posting it at the entry portal or by any other equally effective means, so that the entrants can confirm that preentry preparations have been completed.

(4) The duration of the permit may not exceed the time required to complete the assigned task or job identified on the permit in accordance with WAC 296-62-14509(2).

(5) The entry supervisor shall terminate entry and cancel the entry permit when:

(a) The entry operations covered by the entry permit have been completed; or

(b) A condition that is not allowed under the entry permit arises in or near the permit space.

(6) The employer shall retain each canceled entry permit for at least one year to facilitate the review of the permit-required confined space program required by WAC 296-62-14505(14). Any problems encountered during an entry operation shall be noted on the pertinent permit so that appropriate revisions to the permit space program can be made.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)WAC 296-62-14509 (~~(Flammable atmospheres.)~~)

Entry permit. (~~(Atmospheres which contain or could contain flammable gases or vapors shall not be entered if the concentration of gases or vapors in any part of the area is more than 20% of the lower explosive limit except in the event of emergency and then only when employees are protected by equipment approved for such exposures.)~~) The entry permit that documents compliance with this part and authorizes entry to a permit space shall identify:

- (1) The permit space to be entered;
- (2) The purpose of the entry;
- (3) The date and the authorized duration of the entry permit;

(4) The authorized entrants within the permit space, by name or by such other means (for example, through the use of rosters or tracking systems) as will enable the attendant to determine quickly and accurately, for the duration of the permit, which authorized entrants are inside the permit space;

Note: This requirement may be met by inserting a reference on the entry permit as to the means used, such as a roster or tracking system, to keep track of the authorized entrants within the permit space.

(5) The personnel, by name, currently serving as attendants;

(6) The individual, by name, currently serving as entry supervisor, with a space for the signature or initials of the entry supervisor who originally authorized entry;

(7) The hazards of the permit space to be entered;

(8) The measures used to isolate the permit space and to eliminate or control permit space hazards before entry;

Note: Those measures can include the lockout or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit spaces.

(9) The acceptable entry conditions;

(10) The results of initial and periodic tests performed under WAC 296-62-14505(5), accompanied by the names or initials of the testers and by an indication of when the tests were performed;

(11) The rescue and emergency services that can be summoned and the means (such as the equipment to use and the numbers to call) for summoning those services;

(12) The communication procedures used by authorized entrants and attendants to maintain contact during the entry;

(13) Equipment, such as personal protective equipment, testing equipment, communications equipment, alarm systems, and rescue equipment, to be provided for compliance with this part;

(14) Any other information whose inclusion is necessary, given the circumstances of the particular confined space, in order to ensure employee safety; and

(15) Any additional permits, such as for hot work, that have been issued to authorize work in the permit space.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)WAC 296-62-14511 (~~(Oxygen deficiency or excess.)~~)

Training. (~~((1) All employees required to enter into confined spaces shall be instructed as to the nature of the hazards involved, the necessary precautions to be taken and in the use of protective and emergency equipment required. The employer shall comply with any specific regulations that apply to work in dangerous or potentially dangerous areas.~~)

~~(2) Atmospheres having an oxygen content less than 19.5% oxygen at sea level (this may deviate at higher elevations) shall not be entered without approved respiratory protective equipment which will provide an adequate supply of breathing air.~~

~~(3) In the event that the air may be diluted by an unknown gas, the atmosphere shall be considered highly toxic and/or flammable.)~~ (1) The employer shall provide training so that all employees whose work is regulated by this section acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this part.

(2) Training shall be provided to each affected employee:

(a) Before the employee is first assigned duties under this section;

(b) Before there is a change in assigned duties;

(c) Whenever there is a change in permit space operations that presents a hazard about which an employee has not previously been trained;

(d) Whenever the employer has reason to believe either that there are deviations from the permit space entry procedures required by WAC 296-62-14505(3) or that there are inadequacies in the employee's knowledge or use of these procedures.

(3) The training shall establish employee proficiency in the duties required by this part and shall introduce new or revised procedures, as necessary, for compliance with this part.

(4) The employer shall certify that the training required by subsections (1) through (3) of this section has been accomplished. The certification shall contain each employee's name, the signatures or initials of the trainers, and the dates of training. The certification shall be available for inspection by employees and their authorized representatives.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)WAC 296-62-14513 (~~(Mechanical hazards.)~~) Duties of authorized entrants. (~~((1) Confined areas containing parts which may move or which contain agitators, fans or other power driven moving parts of potential hazard to employees shall not be entered until it is assured that such parts cannot move to injure the employee.~~)

~~(a) Open and lock circuit breakers or switches, or remove fuses or disconnect wiring and tag the location.~~

~~(b) Disconnect and tag belt or mechanical linkage.~~

~~(c) Physically block part against movement and tag switches, clutches or other means of control.~~

~~(d) Tagging of controls without other means of control shall be considered satisfactory only if the control is barri-~~

~~headed and/or is under constant observation during occupancy of the space.))~~ The employer shall ensure that all authorized entrants:

(1) Know the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(2) Properly use equipment as required by WAC 296-62-14505(4);

(3) Communicate with the attendant as necessary to enable the attendant to monitor entrant status and to enable the attendant to alert entrants of the need to evacuate the space as required by WAC 296-62-14515(6).

(4) Alert the attendant whenever:

(a) The entrant recognizes any warning sign or symptom of exposure to a dangerous situation, or

(b) The entrant detects a prohibited condition; and

(5) Exit from the permit space as quickly as possible whenever:

(a) An order to evacuate is given by the attendant or the entry supervisor,

(b) The entrant recognizes any warning sign or symptom of exposure to a dangerous situation,

(c) The entrant detects a prohibited condition, or

(d) An evacuation alarm is activated.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-14515 ((~~Electrical hazards.~~) **Duties of attendants.** ((~~1~~) ~~Electrical circuits in the confined area which may present a hazard shall be disconnected, locked out and tagged in accordance with WAC 296-62-14513(1)(a). All temporary lights shall be protected against damage and cords shall be heavy duty and kept clear of working spaces and walkways. Only low voltage, battery operated, or ground fault protected equipment shall be used on water-sides of boilers or when electrically conductive liquids are involved.~~

(2) ~~Electric supply circuits, lighting, portable tools, and other equipment used where potentially hazardous concentrations of flammable vapors, gases or dusts are present or may develop shall conform to chapter 296-24 WAC Part L.~~

(3) ~~Portable electric tools shall be grounded or isolation transformers, ground fault interrupters or double insulated tools shall be required.~~) The employer shall ensure that each attendant:

(1) Knows the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(2) Is aware of possible behavioral effects of hazard exposure in authorized entrants;

(3) Continuously maintains an accurate count of authorized entrants in the permit space and ensures that the means used to identify authorized entrants under WAC 296-62-14509(4) accurately identifies who is in the permit space;

(4) Remains outside the permit space during entry operations until relieved by another attendant;

Note: When the employer's permit entry program allows attendant entry for rescue, attendants may enter a permit space to attempt a rescue if they have been trained and equipped for rescue operations as required by WAC 296-62-14519(1) and if they have been relieved as required by subsection (4) of this section.

(5) Communicates with authorized entrants as necessary to monitor entrant status and to alert entrants of the need to evacuate the space under subsection (6) of this section;

(6) Monitors activities inside and outside the space to determine if it is safe for entrants to remain in the space and orders the authorized entrants to evacuate the permit space immediately under any of the following conditions:

(a) If the attendant detects a prohibited condition;

(b) If the attendant detects the behavioral effects of hazard exposure in an authorized entrant;

(c) If the attendant detects a situation outside the space that could endanger the authorized entrants; or

(d) If the attendant cannot effectively and safely perform all the duties required under this section;

(7) Summon rescue and other emergency services as soon as the attendant determines that authorized entrants may need assistance to escape from permit space hazards;

(8) Takes the following actions when unauthorized persons approach or enter a permit space while entry is underway:

(a) Warn the unauthorized persons that they must stay away from the permit space;

(b) Advise the unauthorized persons that they must exit immediately if they have entered the permit space; and

(c) Inform the authorized entrants and the entry supervisor if unauthorized persons have entered the permit space;

(9) Performs nonentry rescues as specified by the employer's rescue procedure; and

(10) Performs no duties that might interfere with the attendant's primary duty to monitor and protect the authorized entrants.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-14517 ((~~Procedures for entry into toxic or flammable atmospheres.~~) **Duties of entry supervisors.** ((Every reasonable effort shall be made to reduce the hazard to safe levels prior to permitting entry into the enclosed space.

(1) Preliminary preparations:

(a) Determine type and extent of contamination including gases, liquids, sludge, residue or absorbed and/or absorbed material:

(b) Survey area to determine the effect of escape of gases or vapors in surrounding areas:

(c) Post or barricade area to prevent unauthorized entry.

(d) Ensure control of all sources of ignition when a potential fire hazard exists:

(e) Collect and inspect the condition of all equipment needed including pumps, ventilating equipment, personal protective equipment, atmospheric testing equipment and mechanical equipment. Ensure that all equipment is in good condition and is compatible with the work involved.

(f) Ensure that all required personnel are available and familiar with the hazards.)) The employer shall ensure that each entry supervisor:

(1) Knows the hazards that may be faced during entry, including information on the mode, signs or symptoms, and consequences of the exposure;

(2) Verifies, by checking that the appropriate entries have been made on the permit, that all tests specified by the

permit have been conducted and that all procedures and equipment specified by the permit are in place before endorsing the permit and allowing entry to begin;

(3) Terminates the entry and cancels the permit as required by WAC 296-62-14507(5);

(4) Verifies that rescue services are available and that the means for summoning them are operable;

(5) Removes unauthorized individuals who enter or who attempt to enter the permit space during entry operations; and

(6) Determines, whenever responsibility for a permit space entry operation is transferred and at intervals dictated by the hazards and operations performed within the space, that entry operations remain consistent with terms of the entry permit and that acceptable entry conditions are maintained.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-14519 ((~~Removal of flammable or toxic material.~~)) **Rescue and emergency services.** ((~~(1) Remove all possible liquid product, sludge or residue if present by draining, pumping or washing as applicable. Dispose of solid, liquid or gaseous materials in a manner which will not cause air or water pollution, a fire hazard or endanger workers or equipment.~~

(2) Vent any pressure as required.

(3) Isolate tank or confined space from all potential sources of hazardous materials by one of the following:

(a) Remove a valve, spool piece, or expansion joint and cap open ends. Tag line.

(b) Insert a blank in the line and tag it.) (1) The following requirements apply to employers who have employees enter permit spaces to perform rescue services.

(a) The employer shall ensure that each member of the rescue service is provided with, and is trained to use properly, the personal protective equipment and rescue equipment necessary for making rescues from permit spaces.

(b) Each member of the rescue service shall be trained to perform the assigned rescue duties. Each member of the rescue service shall also receive the training required of authorized entrants under WAC 296-62-14511.

(c) Each member of the rescue service shall practice making permit space rescues at least once every twelve months, by means of simulated rescue operations in which they remove dummies, mannequins, or actual persons from the actual permit spaces or from representative permit spaces. Representative permit spaces shall, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed.

(d) Each member of the rescue service shall be trained in basic first-aid and in cardiopulmonary resuscitation (CPR). At least one member of the rescue service holding current certification in first aid and in CPR shall be available.

(2) When an employer (host employer) arranges to have persons other than the host employer's employees perform permit space rescue, the host employer shall:

(a) Inform the rescue service of the hazards they may confront when called on to perform rescue at the host employer's facility, and

(b) Provide the rescue service with access to all permit spaces from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations.

(3) To facilitate nonentry rescue, retrieval systems or methods shall be used whenever an authorized entrant enters a permit space, unless the retrieval equipment would increase the overall risk of entry or would not contribute to the rescue of the entrant. Retrieval systems shall meet the following requirements.

(a) Each authorized entrant shall use a chest or full-body harness, with a retrieval line attached at the center of the entrant's back near shoulder level, or above the entrant's head. Wristlets may be used in lieu of the chest or full-body harness if the employer can demonstrate that the use of a chest or full-body harness is infeasible or creates a greater hazard and that the use of wristlets is the safest and most effective alternative.

(b) The other end of the retrieval line shall be attached to a mechanical device or fixed point outside the permit space in such a manner that rescue can begin as soon as the rescuer becomes aware that rescue is necessary. A mechanical device shall be available to retrieve personnel from vertical type permit spaces more than five feet (1.52 m) deep.

(4) If an injured entrant is exposed to a substance for which a material safety data sheet (MSDS) or other similar written information is required to be kept at the worksite, that MSDS or written information shall be made available to the medical facility treating the exposed entrant.

NEW SECTION

WAC 296-62-14520 Appendices to WAC 296-62-145—Permit-required confined spaces.

Note: Appendices A through E serve to provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of this part.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-14521 ((~~Vapor freeing.~~)) **Appendix A—Permit-required confined space decision flow chart.** ((~~(1) Vapor Freeing is usually done by ventilation. The effectiveness of ventilation is dependent upon the number of air changes and the efficiency of mixing of the air with the gas in the tank. Ventilation by supply air provides more efficient mixing than exhaust air but cannot be used if it creates a hazard near the discharge point. Exhaust air ducts must be placed at locations remote from air inlets and may require moving to various locations.~~

(2) Prior to entry, a minimum of five air changes is recommended where oxygen deficiency may exist and ten air changes is recommended where a toxic and/or flammable material is involved.

(3) Concentrations of vapors or gases in the flammable or above the flammable range may require replacement by an inerting gas such as nitrogen or carbon dioxide to prevent explosions:

(a) When inert gases are used, they must subsequently be replaced by air prior to entry except when the inerting provides safer working conditions:

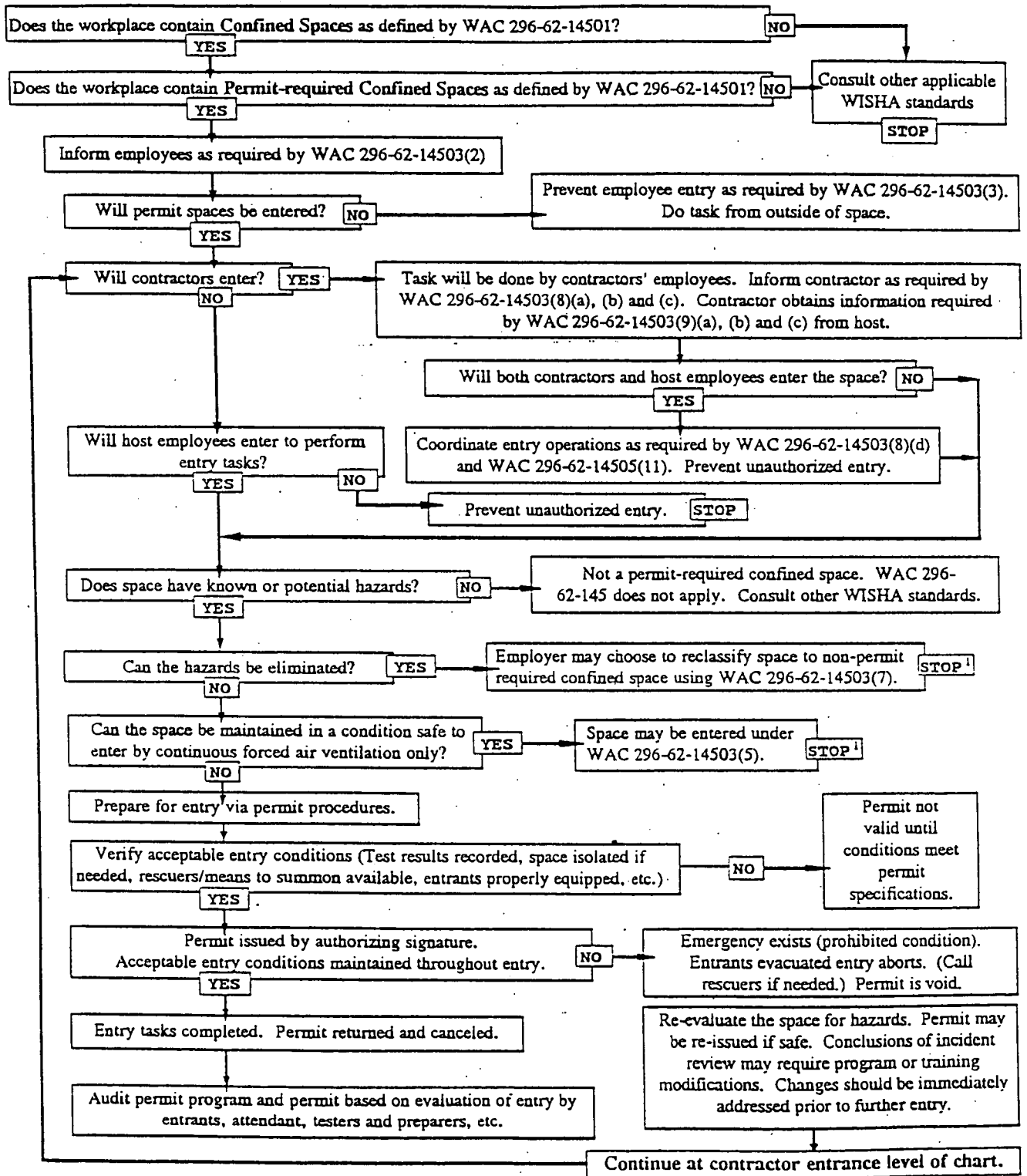
(4) All fans and other equipment used for removing flammable gases or vapors shall conform to NFPA require

ments and shall not create an ignition hazard.
(5) Oxygen shall never be used for ventilation.)

WAC 296-62-14521

Appendix A

Permit-required Confined Space Decision Flow Chart



¹ Spaces may have to be evacuated and re-evaluated if hazards arise during entry

PERMANENT

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-14523 ((Evaluation of potentially hazardous atmospheres.)) Appendix B—Procedures for atmospheric testing. ((Evaluation of the atmospheres shall be made by competent personnel.

(1) Atmospheric tests shall be made using accepted procedures and/or instruments to determine the kind and extent of any hazards present. However, atmospheric tests should be supplemented by other types of evaluation.

(2) Evaluation shall consider such factors as degree of toxicity, flammability, oxygen deficiency, noise, temperature, vapor pressures, sorption on surface, sludges, residue and ventilation rates.

(3) Evaluation shall be made immediately prior to entry and during occupation at intervals dependent on the possibility of changing conditions.

(4) Testing or other evaluation shall be made in all locations where employees may be exposed.

(5) If there is any doubt as to the validity of evaluation, the hazard shall be assumed to be high, and personal protective equipment or measures used accordingly.)) Atmospheric testing is required for two distinct purposes: Evaluation of the hazards of the permit space and verification that acceptable entry conditions for entry into that space exist.

(1) Evaluation testing. The atmosphere of a confined space should be analyzed using equipment of sufficient sensitivity and specificity to identify and evaluate any hazardous atmospheres that may exist or arise, so that appropriate permit entry procedures can be developed and acceptable entry conditions stipulated for that space. Evaluation and interpretation of these data, and development of the entry procedure, should be done by, or reviewed by, a technically qualified professional (e.g., WISHA consultation service, or certified industrial hygienist, registered safety engineer, certified safety professional, certified marine chemist, etc.) based on evaluation of all serious hazards.

(2) Verification testing. The atmosphere of a permit space which may contain a hazardous atmosphere should be tested for residues of all contaminants identified by evaluation testing using permit specified equipment to determine that residual concentrations at the time of testing and entry are within the range of acceptable entry conditions. Results of testing (i.e., actual concentration, etc.) should be recorded on the permit in the space provided adjacent to the stipulated acceptable entry condition.

(3) Duration of testing. Measurement of values for each atmospheric parameter should be made for at least the minimum response time of the test instrument specified by the manufacturer.

(4) Testing stratified atmospheres. When monitoring for entries involving a descent into atmospheres that may be stratified, the atmospheric envelope should be tested a distance of approximately four feet (1.22 m) in the direction of travel and to each side. If a sampling probe is used, the entrant's rate of progress should be slowed to accommodate the sampling speed and detector response.

(5) Order of testing. A test for oxygen is performed first because most combustible gas meters are oxygen dependent and will not provide reliable readings in an

oxygen deficient atmosphere. Combustible gases are tested for next because the threat of fire or explosion is both more immediate and more life threatening, in most cases, than exposure to toxic gases and vapors. If tests for toxic gases and vapors are necessary, they are performed last.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-14525 ((Entry into confined space.)) Appendix C—Examples of permit-required confined space programs. ((After initial cleaning, vapor freeing, and evaluation of the atmosphere, the confined space may be entered to complete cleaning, repair or other work.

(1) Respiratory protective equipment shall be used when indicated.

(2) An observer capable of maintaining communication at all times shall be located outside the confined space. He/she shall have respiratory protection available when indicated.

(3) If the possibility of a highly toxic or flammable atmosphere, or oxygen deficiency exists or can develop, workers shall wear safety harness with lifeline attached and a means of rescue shall be provided.

(4) Fire extinguishing equipment shall be immediately available when indicated.

(5) Ventilation shall be maintained at all times when employees are in confined spaces except when the atmosphere has been purposely inerted to provide safer working conditions. All work shall stop and the area shall be evacuated if ventilation fails.

(6) All tools and equipment shall be available as required.

(7) Emergency lighting shall be available as required.

(8) The area shall be evacuated if any indication of ill effects such as dizziness, irritation or excessive odors are noted.)) Example 1. Workplace. Sewer entry.

(1) Potential hazards. The employees could be exposed to the following:

(a) Engulfment.

(b) Presence of toxic gases. Equal to or more than 10 ppm hydrogen sulfide measured as an eight-hour time-weighted average. If the presence of other toxic contaminants is suspected, specific monitoring programs will be developed.

(c) Presence of explosive/flammable gases. Equal to or greater than ten percent of the lower flammable limit (LFL).

(d) Oxygen deficiency. A concentration of oxygen in the atmosphere equal to or less than 19.5% by volume.

(2) Entry without permit/attendant:

(a) Certification. Confined spaces may be entered without the need for a written permit or attendant provided that the space can be maintained in a safe condition for entry by mechanical ventilation alone, as provided in WAC 296-62-14503(5). All spaces shall be considered permit-required confined spaces until the preentry procedures demonstrate otherwise. Any employee required or permitted to precheck or enter an enclosed/confined space shall have successfully completed, as a minimum, the training as required by the following sections of these procedures.

A written copy of operating and rescue procedures as required by these procedures shall be at the work site for the

duration of the job. The confined space preentry check list must be completed by the LEAD WORKER before entry into a confined space. This list verifies completion of items listed below. This check list shall be kept at the job site for duration of the job. If circumstances dictate an interruption in the work, the permit space must be reevaluated and a new check list must be completed.

(b) Control of atmospheric and engulfment hazards.

(i) Pumps and lines. All pumps and lines which may reasonably cause contaminants to flow into the space shall be disconnected, blinded and locked out, or effectively isolated by other means to prevent development of dangerous air contamination or engulfment. Not all laterals to sewers or storm drains require blocking. However, where experience or knowledge of industrial use indicates there is a reasonable potential for contamination of air or engulfment into an occupied sewer, then all affected laterals shall be blocked. If blocking and/or isolation requires entry into the space the provisions for entry into a permit-required confined space must be implemented.

(ii) Surveillance. The surrounding area shall be surveyed to avoid hazards such as drifting vapors from the tanks, piping, or sewers.

(iii) Testing. The atmosphere within the space will be tested to determine whether dangerous air contamination and/or oxygen deficiency exists. Detector tubes, alarm only gas monitors and explosion meters are examples of monitoring equipment that may be used to test permit space atmospheres. Testing shall be performed by the LEAD WORKER who has successfully completed the gas detector training for the monitor to be used. The minimum parameters to be monitored are oxygen deficiency, LFL, and hydrogen sulfide concentration. A written record of the preentry test results shall be made and kept at the work site for the duration of the job. The supervisor will certify in writing, based upon the results of the preentry testing, that all hazards have been eliminated. Affected employees shall be able to review the testing results. The most hazardous conditions shall govern when work is being performed in two adjoining, connecting spaces.

(c) Entry procedures. If there are no nonatmospheric hazards present and if the preentry tests show there is no dangerous air contamination and/or oxygen deficiency within the space and there is no reason to believe that any is likely to develop, entry into and work within may proceed.

Continuous testing of the atmosphere in the immediate vicinity of the workers within the space shall be accomplished. The workers will immediately leave the permit space when any of the gas monitor alarm set points are reached as defined. Workers will not return to the area until a SUPERVISOR who has completed the gas detector training has used a direct reading gas detector to evaluate the situation and has determined that it is safe to enter.

(d) Rescue. Arrangements for rescue services are not required where there is no attendant. See the rescue portion of subsection (3), below, for instructions regarding rescue planning where an entry permit is required.

(3) Entry permit required.

(a) Permits. Confined space entry permit. All spaces shall be considered permit-required confined spaces until the preentry procedures demonstrate otherwise. Any employee required or permitted to precheck or enter a permit-required

confined space shall have successfully completed, as a minimum, the training as required by the following sections of these procedures.

A written copy of operating and rescue procedures as required by these procedures shall be at the work site for the duration of the job. The confined space entry permit must be completed before approval can be given to enter a permit-required confined space. This permit verifies completion of items listed below. This permit shall be kept at the job site for the duration of the job. If circumstances cause an interruption in the work or a change in the alarm conditions for which entry was approved, a new confined space entry permit must be completed.

(b) Control of atmospheric and engulfment hazards.

(i) Surveillance. The surrounding area shall be surveyed to avoid hazards such as drifting vapors from tanks, piping or sewers.

(ii) Testing. The confined space atmosphere shall be tested to determine whether dangerous air contamination and/or oxygen deficiency exists. A direct reading gas monitor shall be used. Testing shall be performed by the SUPERVISOR who has successfully completed the gas detector training for the monitor he/she will use.

The minimum parameters to be monitored are oxygen deficiency, LFL and hydrogen sulfide concentration. A written record of the preentry test results shall be made and kept at the work site for the duration of the job. Affected employees shall be able to review the testing results. The most hazardous conditions shall govern when work is being performed in two adjoining, connected spaces.

(iii) Space ventilation. Mechanical ventilation systems, where applicable, shall be set at one hundred percent outside air. Where possible, open additional manholes to increase air circulation. Use portable blowers to augment natural circulation if needed. After a suitable ventilating period, repeat the testing. Entry may not begin until testing has demonstrated that the hazardous atmosphere has been eliminated.

(c) Entry procedures. The following procedure shall be observed under any of the following conditions:

(i) Testing demonstrates the existence of dangerous or deficient conditions and additional ventilation cannot reduce concentrations to safe levels;

(ii) The atmosphere tests as safe but unsafe conditions can reasonably be expected to develop;

(iii) It is not feasible to provide for ready exit from spaces equipped with automatic fire suppression systems and it is not practical or safe to deactivate such systems; or

(iv) An emergency exists and it is not feasible to wait for preentry procedures to take effect.

(d) All personnel must be trained. A self-contained breathing apparatus shall be worn by any person entering the space. At least one worker shall stand by the outside of the space ready to give assistance in case of emergency. The standby worker shall have a self-contained breathing apparatus available for immediate use. There shall be at least one additional worker within sight or call of the standby worker. Continuous powered communications shall be maintained between the worker within the confined space and standby personnel.

(e) If at any time there is any questionable action or nonmovement by the worker inside, a verbal check will be

made. If there is no response, the worker will be moved immediately.

Exception: If the worker is disabled due to falling or impact, he/she shall not be removed from the confined space unless there is immediate danger to his/her life. Local fire department rescue personnel shall be notified immediately. The standby worker may only enter the confined space in case of an emergency (wearing the self-contained breathing apparatus) and only after being relieved by another worker. Safety belt or harness with attached lifeline shall be used by all workers entering the space with the free end of the line secured outside the entry opening. The standby worker shall attempt to remove a disabled worker via his/her lifeline before entering the space.

(f) When practical, these spaces shall be entered through side openings - those within three and one-half feet (1.07 m) of the bottom. When entry must be through a top opening, the safety belt shall be of the harness type that suspends a person upright and a hoisting device or similar apparatus shall be available for lifting workers out of the space.

(g) In any situation where their use may endanger the worker, use of a hoisting device or safety belt and attached lifeline may be discontinued.

(h) When dangerous air contamination is attributable to flammable and/or explosive substances, lighting and electrical equipment shall be Class 1, Division 1 rated per National Electrical Code and no ignition sources shall be introduced into the area.

(i) Continuous gas monitoring shall be performed during all confined space operations. If alarm conditions change adversely, entry personnel shall exit the confined space and a new confined space permit issued.

(j) Rescue. Call the fire department services for rescue. Where immediate hazards to injured personnel are present, workers at the site shall implement emergency procedures to fit the situation.

Example 2. Workplace. Meat and poultry rendering plants.

Cookers and dryers are either batch or continuous in their operation. Multiple batch cookers are operated in parallel. When one unit of a multiple set is shut down for repairs, means are available to isolate that unit from the others which remain in operation.

Cookers and dryers are horizontal, cylindrical vessels equipped with a center, rotating shaft and agitator paddles or discs. If the inner shell is jacketed, it is usually heated with steam at pressures up to 150 psig (1034.25 kPa). The rotating shaft assembly of the continuous cooker or dryer is also steam heated.

(1) Potential hazards. The recognized hazards associated with cookers and dryers are the risk that employees could be:

(a) Struck or caught by rotating agitator;
(b) Engulfed in raw material or hot, recycled fat;
(c) Burned by steam from leaks into the cooker/dryer steam jacket or the condenser duct system if steam valves are not properly closed and locked out;

(d) Burned by contact with hot metal surfaces, such as the agitator shaft assembly, or inner shell of the cooker/dryer;

(e) Heat stress caused by warm atmosphere inside cooker/dryer;

(f) Slipping and falling on grease in the cooker/dryer;

(g) Electrically shocked by faulty equipment taken into the cooker/dryer;

(h) Burned or overcome by fire or products of combustion; or

(i) Overcome by fumes generated by welding or cutting done on grease covered surfaces.

(2) Permits. The supervisor in this case is always present at the cooker/dryer or other permit entry confined space when entry is made. The supervisor must follow the preentry isolation procedures described in the entry permit in preparing for entry, and ensure that the protective clothing, ventilating equipment and any other equipment required by the permit are at the entry site.

(3) Control of hazards. Mechanical. Lock out main power switch to agitator motor at main power panel. Affix tag to the lock to inform others that a permit entry confined space entry is in progress.

(4) Engulfment. Close all valves in the raw material blow line. Secure each valve in its closed position using chain and lock. Attach a tag to the valve and chain warning that a permit entry confined space entry is in progress. The same procedure shall be used for securing the fat recycle valve.

(5) Burns and heat stress. Close steam supply valves to jacket and secure with chains and tags. Insert solid blank at flange in cooker vent line to condenser manifold duct system. Vent cooker/dryer by opening access door at discharge end and top center door to allow natural ventilation throughout the entry. If faster cooling is needed, use a portable ventilation fan to increase ventilation. Cooling water may be circulated through the jacket to reduce both outer and inner surface temperatures of cooker/dryers faster. Check air and inner surface temperatures in cooker/dryer to assure they are within acceptable limits before entering, or use proper protective clothing.

(6) Fire and fume hazards. Careful site preparation, such as cleaning the area within four inches (10.16 cm) of all welding or torch cutting operations, and proper ventilation are the preferred controls. All welding and cutting operations shall be done in accordance with the requirements of chapter 296-24 WAC, Part I, Welding, cutting, and brazing. Proper ventilation may be achieved by local exhaust ventilation, or the use of portable ventilation fans, or a combination of the two practices.

(7) Electrical shock. Electrical equipment used in cooker/dryers shall be in serviceable condition.

(8) Slips and falls. Remove residual grease before entering cooker/dryer.

(9) Attendant. The supervisor shall be the attendant for employees entering cooker/dryers.

(10) Permit. The permit shall specify how isolation shall be done and any other preparations needed before making entry. This is especially important in parallel arrangements of cooker/dryers so that the entire operation need not be shut down to allow safe entry into one unit.

(11) Rescue. When necessary, the attendant shall call the employer's trained rescue team or the local fire services as previously arranged.

Example 3. Workplace. Workplaces where tank cars, trucks, and trailers, dry-bulk tanks and trailers, railroad tank cars, and similar portable tanks are fabricated or serviced.

(1) During fabrication. These tanks and dry-bulk carriers are entered repeatedly throughout the fabrication process. These products are not configured identically, but the manufacturing processes by which they are made are very similar.

(a) Sources of hazards. In addition to the mechanical hazards arising from the risks that an entrant would be injured due to contact with components of the tank or the tools being used, there is also the risk that a worker could be injured by breathing fumes from welding materials or mists or vapors from materials used to coat the tank interior. In addition, many of these vapors and mists are flammable, so the failure to properly ventilate a tank could lead to a fire or explosion.

(b) Control of hazards.

(i) Welding. Local exhaust ventilation shall be used to remove welding fumes once the tank or carrier is completed to the point that workers may enter and exit only through a manhole. (Follow the requirements of chapter 296-24 WAC, Part I, Welding, cutting and brazing, at all times.) Welding gas tanks may never be brought into a tank or carrier that is a permit entry confined space.

(ii) Application of interior coatings/linings. Atmospheric hazards shall be controlled by forced air ventilation sufficient to keep the atmospheric concentration of flammable materials below ten percent of the lower flammable limit (LFL) (or lower explosive limit (LEL), whichever term is used locally). The appropriate respirators are provided and shall be used in addition to providing forced ventilation if the forced ventilation does not maintain acceptable respiratory conditions.

(c) Permits. Because of the repetitive nature of the entries in these operations, an "area entry permit" will be issued for a one-month period to cover those production areas where tanks are fabricated to the point that entry and exit are made using manholes.

(d) Authorization. Only the area supervisor may authorize an employee to enter a tank within the permit area. The area supervisor must determine that conditions in the tank trailer, dry-bulk trailer or truck, etc., meet permit requirements before authorizing entry.

(e) Attendant. The area supervisor shall designate an employee to maintain communication by employer specified means with employees working in tanks to ensure their safety. The attendant may not enter any permit entry confined space to rescue an entrant or for any other reason, unless authorized by the rescue procedure and, and even then, only after calling the rescue team and being relieved by an attendant by another worker.

(f) Communications and observation. Communications between attendant and entrant(s) shall be maintained throughout entry. Methods of communication that may be specified by the permit include voice, voice-powered radio, tapping or rapping codes on tank walls, signaling tugs on a rope, and the attendant's observation that work activities such as chipping, grinding, welding, spraying, etc., which require deliberate operator control continue normally. These activities often generate so much noise that the necessary hearing protection makes communication by voice difficult.

(g) Rescue procedures. Acceptable rescue procedures include entry by a team of employee-rescuers, use of public emergency services, and procedures for breaching the tank.

The area permit specifies which procedures are available, but the area supervisor makes the final decision based on circumstances. (Certain injuries may make it necessary to breach the tank to remove a person rather than risk additional injury by removal through an existing manhole. However, the supervisor must ensure that no breaching procedure used for rescue would violate terms of the entry permit. For instance, if the tank must be breached by cutting with a torch, the tank surfaces to be cut must be free of volatile or combustible coatings within four inches (10.16 cm) of the cutting line and the atmosphere within the tank must be below the LFL.)

(h) Retrieval line and harnesses. The retrieval lines and harnesses generally required under this standard are usually impractical for use in tanks because the internal configuration of the tanks and their interior baffles and other structures would prevent rescuers from hauling out injured entrants. However, unless the rescue procedure calls for breaching the tank for rescue, the rescue team shall be trained in the use of retrieval lines and harnesses for removing injured employees through manholes.

(2) Repair or service of "used" tanks and bulk trailers.

(a) Sources of hazards. In addition to facing the potential hazards encountered in fabrication or manufacturing, tanks or trailers which have been in service may contain residues of dangerous materials, whether left over from the transportation of hazardous cargoes or generated by chemical or bacterial action on residues of nonhazardous cargoes.

(b) Control of atmospheric hazards. A "used" tank shall be brought into areas where tank entry is authorized only after the tank has been emptied, cleansed (without employee entry) of any residues, and purged of any potential atmospheric hazards.

(c) Welding. In addition to tank cleaning for control of atmospheric hazards, coating and surface materials shall be removed four inches (10.16 cm) or more from any surface area where welding or other torch work will be done and care taken that the atmosphere within the tank remains well below the LFL. (Follow the requirements of chapter 296-24 WAC, Part I, Welding, cutting and brazing, at all times.)

(d) Permits. An entry permit valid for up to one year shall be issued prior to authorization of entry into used tank trailers, dry-bulk trailers or trucks. In addition to the preentry cleaning requirement, this permit shall require the employee safeguards specified for new tank fabrication or construction permit areas.

(e) Authorization. Only the area supervisor may authorize an employee to enter a tank trailer, dry-bulk trailer or truck within the permit area. The area supervisor must determine that the entry permit requirements have been met before authorizing entry.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-14527 ((Hot work-)) Appendix D— Sample permits. ((1) Any hot work involving sources of ignition and including welding and burning shall require positive assurance that fire hazards and flammable atmospheres have been controlled. Combustible material shall be protected.

~~(2) Usually the atmosphere should be tested by a combustible gas indicator and/or other device as indicated. Tests should be made frequently enough to assure that safe conditions prevail.~~

~~(3) Hot work permits are required prior to entry.~~

~~(4) Where hot work involves the generation of toxic gases, vapors, or fumes, local exhaust and/or respiratory protection shall be required.~~

~~(5) Compressed gas cylinders should not generally be allowed in confined spaces. Compressed gas lines shall be protected from rupture or damage.~~

~~(6) Compressed gas cylinders or electric generators should be attended at all times. Sources of compressed gases or arc welding power shall be turned off immediately when an emergency arises or when work is interrupted or completed.)~~

Permanent

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WAC 296-62-14527, Appendix D, Sample A

Confined Space Entry Permit

Date & Time Issued: _____
Job site/Space I.D.: _____
Equipment to be worked on: _____

Date & Time Expires: _____
Job Supervisor: _____
Work to be performed: _____

Stand-by personnel _____

1. Atmospheric Checks: Time _____
Oxygen _____ %
Explosive _____ % I.F.L.
Toxic _____ PPM

2. Tester's signature _____
3. Source isolation (No Entry): N/A YES NO
Pumps or lines blinded, () () ()
disconnected, or blocked () () ()

4. Ventilation Modification: N/A YES NO
Mechanical () () ()
Natural Ventilation only () () ()

5. Atmospheric check after isolation and Ventilation:
Oxygen _____ % > 19.5%
Explosive _____ % L.F.L. < 10 %
Toxic _____ PPM < 10 PPM H₂S
Time _____
Testers signature _____

6. Communication procedures: _____

7. Rescue procedures: _____

8. Entry, standby, and back up persons: Yes No
Successfully completed required () ()
training? () ()
Is it current? () ()

9. Equipment: N/A Yes No
Direct reading gas monitor - () () ()
tested
Safety harnesses and lifelines () () ()
for entry and standby persons
Hoisting equipment () () ()
Powered communications () () ()
SCBA's for entry and standby () () ()
persons
Protective Clothing () () ()
All electric equipment listed () () ()
Class I, Division I, Group D
and Non-sparking tools

10. Periodic atmospheric tests:
Oxygen _____ % Time _____ Oxygen _____ % Time _____
Oxygen _____ % Time _____ Oxygen _____ % Time _____
Explosive _____ % Time _____ Explosive _____ % Time _____
Explosive _____ % Time _____ Explosive _____ % Time _____
Toxic _____ % Time _____ Toxic _____ % Time _____
Toxic _____ % Time _____ Toxic _____ % Time _____

We have reviewed the work authorized by this permit and the information contained here-in. Written instructions and safety procedures have been received and are understood. Entry cannot be approved if any squares are marked in the "No" column. This permit is not valid unless all appropriate items are completed.

Permit Prepared By: (Supervisor) _____
Approved By: (Unit Supervisor) _____
Reviewed By: (Cs Operations Personnel) _____ (printed name) _____ (signature)

This permit to be kept at job site. Return job site copy to Safety Office following job completion.

WAC 296-62-14527, Appendix D, Sample B ENTRY PERMIT
 PERMIT VALID FOR 8 HOURS ONLY. ALL PERMIT COPIES REMAIN AT SITE UNTIL JOB COMPLETED.

DATE: - - SITE LOCATION/DESCRIPTION _____
 PURPOSE OF ENTRY _____
 SUPERVISOR(S) in charge of crews. Type of Crew Phone # _____

COMMUNICATION PROCEDURES _____
 RESCUE PROCEDURES (PHONE NUMBERS AT BOTTOM) _____

BOLD DENOTES MINIMUM REQUIREMENTS TO BE COMPLETED AND REVIEWED PRIOR TO ENTRY

REQUIREMENTS COMPLETED	DATE	TIME	REQUIREMENTS COMPLETED	DATE	TIME
LockOut/De-energize/Try-out	_____	_____	Full Body Harness w/"D" ring	_____	_____
Line(s) Broken-Capped-Blank	_____	_____	Emergency Escape Retrieval Eq	_____	_____
Purge-Flush and Vent	_____	_____	Lifelines	_____	_____
Ventilation	_____	_____	Fire Extinguishers	_____	_____
Secure Area (Post and Flag)	_____	_____	Lighting (Explosive Proof)	_____	_____
Breathing Apparatus	_____	_____	Protective Clothing	_____	_____
Resuscitator - Inhalator	_____	_____	Respirator(s) (Air Purifying)	_____	_____
Standby Safety Personnel	_____	_____	Burning and Welding Permit	_____	_____

Note: Items that do not apply enter N/A in the blank.

**** RECORD CONTINUOUS MONITORING RESULTS EVERY 2 HOURS ****

CONTINUOUS MONITORING**	PERMISSIBLE	DATE	TIME	DATE	TIME
TEST(S) TO BE TAKEN	Entry Level	_____	_____	_____	_____
PERCENT OF OXYGEN	19.5% to 23.5%	_____	_____	_____	_____
LOWER FLAMMABLE LIMIT	Under 10%	_____	_____	_____	_____
CARBON MONOXIDE	+35 PPM	_____	_____	_____	_____
Aromatic Hydrocarbon	+ 1 PPM * 5 PPM	_____	_____	_____	_____
Hydrogen Cyanide	(Skin) * 4 PPM	_____	_____	_____	_____
Hydrogen Sulfide	+10 PPM * 15 PPM	_____	_____	_____	_____
Sulfur Dioxide	+ 2 PPM * 5 PPM	_____	_____	_____	_____
Ammonia	* 35 PPM	_____	_____	_____	_____

* Short-term exposure limit: Employee can work in the area up to 15 minutes.
 + 8 hr. Time Weighted Avg.: Employee can work in area 8 hrs (longer with appropriate respiratory protection).

REMARKS: _____
 GAS TESTER NAME & CHECK # INSTRUMENT(S) USED MODEL &/OR TYPE SERIAL &/OR UNIT #

SAFETY STANDBY PERSON IS REQUIRED FOR ALL CONFINED SPACE WORK
 SAFETY STANDBY PERSON(S) CHECK # CONFINED SPACE ENTRANT(S) CHECK # CONFINED SPACE ENTRANT(S) CHECK #

SUPERVISOR AUTHORIZATION - ALL CONDITIONS SATISFIED DEPARTMENT/PHONE # _____
 ABULANCE # _____ FIRE # _____ Safety # _____ Gas Coordinator # _____

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Permanent

Washington State Register, Issue 95-04

WSR 95-04-007

PERMANENT

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

~~WAC 296-62-14529 (Use of toxic and/or flammable materials in confined spaces.) Appendix E—Sewer system entry. ((Work in confined spaces frequently requires the use of toxic or flammable materials. These include but are not confined to coatings, linings, paints, cements, and solvents.~~

~~(1) Quantities of toxic or flammable materials brought into or used in confined spaces shall be limited to the smallest amount consistent with efficient use.~~

~~(2) Containers shall be designed to minimize evaporation and spillage. Safety cans or small squeeze bottles are preferable when applicable.~~

~~(3) Continuous ventilation shall be provided in sufficient quantity and design to control fire and health hazards.~~

~~(4) Atmospheres shall be tested and/or evaluated to provide positive assurance that hazards do not exist. In no instance shall flammable vapor concentrations exceed 20% of the lower explosive limit. Evaluation shall be repeated at intervals to ensure no hazardous build-up of concentrations.~~

~~(5) Spraying of toxic or flammable substances such as paint is not recommended.~~

~~(6) Respiratory protective equipment shall be used as defined in WAC 296-62-14507.~~

~~(7) Sources of ignition shall be eliminated when flammable liquids are used.~~

~~(8) Materials, equipment and training shall be provided to clean up spills.~~

~~(9) All applicable instructions or recommendations from the manufacturer shall be enforced.) Sewer entry differs in three vital respects from other permit entries:~~

~~• There rarely exists any way to completely isolate the space (a section of a continuous system) to be entered;~~

~~• Because isolation is not complete, the atmosphere may suddenly and unpredictably become lethally hazardous (toxic, flammable or explosive) from causes beyond the control of the entrant or employer; and~~

~~• Experienced sewer workers are especially knowledgeable in entry and work in their permit spaces because of their frequent entries. Unlike other employments where permit space entry is a rare and exceptional event, sewer workers' usual work environment is a permit space.~~

~~(1) Adherence to procedure. The employer should designate as entrants only employees who are thoroughly trained in the employer's sewer entry procedures and who demonstrate that they follow these entry procedures exactly as prescribed when performing sewer entries.~~

~~(2) Atmospheric monitoring. Entrants should be trained in the use of, and be equipped with, atmospheric monitoring equipment which sounds an audible alarm, in addition to its visual readout, whenever one of the following conditions is encountered: Oxygen concentration less than 19.5 percent; flammable gas or vapor at ten percent or more of the lower flammable limit (LFL); or hydrogen sulfide or carbon monoxide at or above 10 ppm or 35 ppm, respectively, measured as an eight-hour time-weighted average.~~

~~Atmospheric monitoring equipment needs to be calibrated according to the manufacturer's instructions. The oxygen sensor/broad range sensor is best suited for initial use in situations where the actual or potential contaminants have~~

not been identified, because broad range sensors, unlike substance-specific sensors, enable employers to obtain an overall reading of the hydrocarbons (flammables) present in the space.

However, such sensors only indicate that a hazardous threshold of a class of chemicals has been exceeded. They do not measure the levels of contamination of specific substances. Therefore, substance-specific devices, which measure the actual levels of specific substances, are best suited for use where actual and potential contaminants have been identified.

The measurements obtained with substance-specific devices are of vital importance to the employer when decisions are made concerning the measures necessary to protect entrants (such as ventilation or personal protective equipment) and the setting and attainment of appropriate entry conditions. However, the sewer environment may suddenly and unpredictably change, and the substance-specific devices may not detect the potentially lethal atmospheric hazards which may enter the sewer environment.

(a) Although WISHA considers the information and guidance provided above to be appropriate and useful in most sewer entry situations, the department emphasizes that each employer must consider the unique circumstances, including the predictability of the atmosphere, of the sewer permit spaces in the employer's workplace in preparing for entry. Only the employer can decide, based upon his or her knowledge of, and experience with permit spaces in sewer systems, what the best type of testing instrument may be for any specific entry operation.

(b) The selected testing instrument should be carried and used by the entrant in sewer line work to monitor the atmosphere in the entrant's environment, and in advance of the entrant's direction of movement, to warn the entrant of any deterioration in atmospheric condition. Where several entrants are working together in the same immediate location, one instrument, used by the lead entrant, is acceptable.

(3) Surge flow and flooding. Sewer crews should develop and maintain liaison, to the extent possible, with the local weather bureau and fire and emergency services in their area so that sewer work may be delayed or interrupted and entrants withdrawn whenever sewer lines might be suddenly flooded by rain or fire suppression activities, or whenever flammable or other hazardous materials are released into sewers during emergencies by industrial or transportation accidents.

(4) Special equipment. Entry into large bore sewers may require the use of special equipment. Such equipment might include such items as atmosphere monitoring devices with automatic audible alarms, escape self-contained breathing apparatus (ESCSA) with at least ten minute air supply (or other NIOSH approved self-rescuer), and waterproof flashlights, and may also include boats and rafts, radios and rope stand-offs for pulling around bends and corners as needed.

AMENDATORY SECTION (Amending Order 89-10, filed 10/10/89, effective 11/24/89)**WAC 296-62-3010 Safety and health program.**

Note: Safety and health programs developed and implemented to meet other federal, state, or local regulations are considered accept-

able in meeting this requirement if they cover or are modified to cover the topics required in this section. An additional or separate safety and health program is not required by this section.

(1) General.

(a) Employers shall develop and implement a written safety and health program for their employees involved in hazardous waste operations. The program shall be designed to identify, evaluate, and control safety and health hazards and provide for emergency response for hazardous waste operations.

(b) The written safety and health program shall incorporate the following:

- (i) An organizational structure;
- (ii) A comprehensive workplan;
- (iii) A site-specific safety and health plan which need not repeat the employer's standard operating procedures required in (b)(vi) of this subsection;
- (iv) The safety and health training program;
- (v) The medical surveillance program;
- (vi) The employer's standard operating procedures for safety and health; and
- (vii) Any necessary interface between general program and site specific activities.

(c) Site excavation. Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with subpart N of chapter 296-155 WAC.

(d) Contractors and subcontractors. An employer who retains contractor or subcontractor services for work in hazardous waste operations shall inform those contractors, subcontractors, or their representatives of the site emergency response procedures and any potential fire, explosion, health, safety, or other hazards of the hazardous waste operation that have been identified by the employer, including those identified in the employer's information program.

(e) Program availability. The written safety and health program shall be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to WISHA personnel, and to personnel of other federal, state, or local agencies with regulatory authority over the site.

(2) Organizational structure part of the site program.

(a) The organizational structure part of the program shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include at a minimum, the following elements:

- (i) A general supervisor who has the responsibility and authority to direct all hazardous waste operations.
- (ii) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.
- (iii) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.
- (iv) The lines of authority, responsibility, and communication.

(b) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

(3) Comprehensive workplan part of the site program. The comprehensive workplan shall address the tasks and objectives of site operations and the logistics and resources required to reach those tasks and objectives.

(a) The comprehensive workplan shall address anticipated clean-up activities as well as normal operating procedures which need not repeat the employers procedures available elsewhere.

(b) The comprehensive workplan shall define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.

(c) The comprehensive workplan shall establish personnel requirements for implementing the plan.

(d) The comprehensive workplan shall provide for the implementation of the training required in WAC 296-62-3040.

(e) The comprehensive workplan shall provide for the implementation of the required informational programs required in WAC 296-62-3080.

(f) The comprehensive workplan shall provide for the implementation of the medical surveillance program described in WAC 296-62-3050.

(4) Site-specific safety and health plan part of the program.

(a) General. The site safety and health plan, which must be kept on site, shall address the safety and health hazards of each phase of site operation; and include the requirements and procedures for employee protection.

(b) Elements. The site safety and health plan, as a minimum, shall address the following:

(i) Names of key personnel and alternates responsible for site safety and health, including a site safety and health supervisor.

(ii) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(iii) Employee training assignments to assure compliance with WAC 296-62-3040.

(iv) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in WAC 296-62-3060(5).

(v) Medical surveillance requirements in accordance with the program in WAC 296-62-3050.

(vi) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used, including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(vii) Site control measures in accordance with the site control program required in WAC 296-62-3030.

(viii) Decontamination procedures in accordance with WAC 296-62-3100.

(ix) An emergency response plan meeting the requirements of WAC 296-62-3110 for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(x) Confined space and permit-required confined space entry procedures as addressed in chapter 296-62 WAC, Part M.

(xi) A spill containment program meeting the requirements of WAC 296-62-3090.

(c) Preentry briefing. The site specific safety and health plan shall provide for preentry briefings to be held prior to initiating any site activity, and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed. The information and data obtained from site characterization and analysis work required in WAC 296-62-3020 shall be used to prepare and update the site safety and health plan.

(d) Effectiveness of site safety and health plan. Inspections shall be conducted by the site safety and health supervisor or, in the absence of that individual, another individual who is knowledgeable in occupational safety and health acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-3040 Training. (1) General.

(a) All employees working on site (such as but not limited to equipment operators, general laborers, and others) exposed to hazardous substances, health hazards, or safety hazards, and their supervisors and management responsible for the site, shall receive training meeting the requirements of this subsection before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards, and they shall review training as specified in this subsection.

(b) Employees shall not be permitted to participate in or supervise field activities until they have been trained to a level required by their job function and responsibility.

(2) Elements to be covered. The training shall thoroughly cover the following:

(a) Names of personnel and alternates responsible for site safety and health;

(b) Safety, health, and other hazards present on the site;

(c) Use of personal protective equipment;

(d) Work practices by which the employee can minimize risks from hazards;

(e) Safe use of engineering controls and equipment on the site;

(f) Medical surveillance requirements including recognition of symptoms and signs which might indicate overexposure to hazards; and

(g) The contents of items (vii) through (x) of the site safety and health plan set forth in WAC 296-62-3010 (4)(b).

(3) Initial training. General site workers (such as equipment operators, general laborers, and supervisory personnel) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards shall receive the following required training:

(a) General site workers required to wear Level A or Level B personal protective equipment because of the types of hazards to which they are exposed or have the potential for being exposed are required to have 80 hours of training and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(b) General site workers required to wear Level C or D personal protective equipment, equipment operators or

transport vehicle operators, are required to have 40 hours of training and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(c) General site workers on site only occasionally for specific limited tasks, and supervisors not working in the two inner zones are required to have 24 hours of training. For example, certain Environmental Protection Agency, and department of ecology employees, labor and industries inspectors and other short-term monitoring and surveying personnel would be required to only have 24 hours of training if they are on-site only occasionally for a specific limited task and are unlikely to be exposed over permissible exposure levels and published exposure limits. A minimum of one day actual field experience under direct supervision is also required.

(d) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and the characterization indicates that there are no health hazards or the possibility of an emergency developing, shall receive a minimum of 24 hours of instruction off the site and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(e) Workers with 24 hours of training who are covered by (c) and (d) of this subsection, and who become general site workers or who are required to wear respirators, shall have the additional 16 hours and two days of training necessary to total the training specified in (b) of this subsection.

(4) Management and supervisor training. On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations shall receive the same initial training as listed in subsection (3) of this section, and three days of supervised field experience and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring procedure and techniques.

(5) Law enforcement at illicit drug labs.

Exception: WISHA did not intend application of the 80 hour training requirement to law enforcement personnel required to enter illicit drug labs, secure the premise, and obtain necessary evidence for law enforcement purposes. Attendance at a specific 40 hours course, such as that presented by the criminal justice training commission, is acceptable.

Note: If cleanup activities are conducted by law enforcement personnel, then appropriate hazardous waste cleanup training would be required.

(6) Training course content.

(a) 40 and 80 hour hazardous waste cleanup courses. As a minimum, the training course content for the 40 hour and 80 hour training program shall include the following topics:

(i) Overview of the applicable sections of Part P of chapter 296-62 WAC and the elements of an employer's effective occupational safety and health program.

(ii) Effect of chemical exposure to hazardous substances (i.e., toxicity, carcinogens, irritants, sensitizers, etc.).

- (iii) Effects of biological and radiological exposures.
- (iv) Fire and explosion hazards (i.e., flammable and combustible liquids, reactive materials).
- (v) General safety hazards, including electrical hazards, powered equipment hazards, walking-working surface hazards and those hazards associated with hot and cold temperature extremes.
- (vi) Permit-required confined space, tank, and vault hazards and entry procedures.
- (vii) Names of personnel and alternates, where appropriate, responsible for site safety and health at the site.
- (viii) Specific safety, health, and other hazards that are to be addressed at a site and in the site safety and health plan.
- (ix) Use of personal protective equipment and the implementation of the personal protective equipment program.
- (x) Work practices that will minimize employee risk from site hazards.
- (xi) Safe use of engineering controls and equipment and any new relevant technology or procedure.
- (xii) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.
- (xiii) The contents of an effective site safety and health plan.
- (xiv) Use of monitoring equipment with "hands-on" experience and the implementation of the employee and site monitoring program.
- (xv) Implementation and use of the information program.
- (xvi) Drum and container handling procedures and the elements of a spill containment program.
- (xvii) Selection and use of material handling equipment.
- (xviii) Methods for assessment of risk and handling of radioactive wastes.
- (xix) Methods for handling shock-sensitive wastes.
- (xx) Laboratory waste pack handling procedures.
- (xxi) Container sampling procedures and safeguards.
- (xxii) Safe preparation procedures for shipping and transport of containers.
- (xxiii) Decontamination program and procedures.
- (xxiv) Emergency response plan and procedures including first aid.
- (xxv) Safe site illumination levels.
- (xxvi) Site sanitation procedures and equipment for employee needs.
- (xxvii) Review of the applicable appendices to Part P of chapter 296-62 WAC.
- (xxviii) Overview and explanation of WISHA's hazard communication standard Part C of chapter 296-62 WAC.
- (xxix) Sources of reference, additional information and efficient use of relevant manuals and hazard coding systems.
- (xxx) Principles of toxicology and biological monitoring.
- (xxxi) Rights and responsibilities of employees and employers under WISHA and CERCLA.
- (xxxii) "Hands-on" field exercises and demonstrations.
- (b) 24-hour hazardous waste cleanup course. As a minimum, the 24-hour training course required in WAC 296-62-3040 (3)(c) and (d) for employees engaged in occasional visits to uncontrolled hazardous waste sites shall include the

following topics where they are applicable to the job function to be performed:

- (i) Overview of applicable sections of Part P of chapter 296-62 WAC and the elements of the employer's effective occupational safety and health program.
- (ii) Employee rights and responsibilities under WISHA and CERCLA.
- (iii) Overview of relevant chemical exposures to hazardous substances (i.e., toxics, carcinogens, irritants, sensitizers, etc.).
- (iv) Overview of the principles of toxicology and biological monitoring.
- (v) Use of monitoring equipment with hands-on practice and an overview of a site monitoring program.
- (vi) Overview of site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical hazards, powered equipment hazards, walking-working surface hazards.
- (vii) The contents of an effective site safety and health plan.
- (viii) Use of personal protective equipment and the implementation of the personal protective equipment program.
- (ix) Work practices that will minimize employee risk from site hazards.
- (x) Site simulations with "hands-on" exercises and practice.
- (xi) Emergency response planning and response including first aid.
- (xii) Content of the medical surveillance program and requirements, including the recognition of signs and symptoms of overexposure to hazardous substances.
- (xiii) Decontamination programs and procedures.
- (xiv) Safe use of engineering controls and equipment.
- (xv) Sources of references and efficient use of relevant manuals and knowledge of hazard coding systems.
- (c) 16-hour supplemental training for hazardous waste sites. As a minimum, employees who have received 24 hours of training for hazardous waste site operations shall receive training in the following topics before they are allowed to work as general site workers or if they are required to wear respirators:
 - (i) Relevant chemical exposures to hazardous substances beyond that previously covered.
 - (ii) Site hazards including fire and explosion, confined spaces, oxygen deficiency, electrical, powered equipment, and walking-working surfaces beyond that previously covered.
 - (iii) Names of personnel and alternates responsible for site safety and health at the site, where appropriate.
 - (iv) Use of monitoring equipment and the implementation of the employee and the site monitoring program beyond that previously covered.
 - (v) Implementation and use of the informational program.
 - (vi) Drum and container handling procedures and the elements of a spill containment program.
 - (vii) Selection and use of material handling equipment.
 - (viii) Methods for assessment of risk and handling of radioactive wastes.
 - (ix) Methods for handling shock-sensitive wastes.
 - (x) Laboratory waste pack handling procedures.

- (xi) Container sampling procedures and safeguards.
- (xii) Safe preparation procedures for shipping and transport of containers.
- (xiii) Decontamination program and procedures.
- (xiv) Safety site illumination levels.
- (xv) Site sanitation procedures and equipment.
- (xvi) Review of the applicable appendices to Part P of chapter 296-62 WAC.

(xvii) Overview and explanation of WISHA's Hazard communication standard Part C of chapter 296-62 WAC.

(xviii) Sources of reference and additional information.

(d) Additional 8 hours of training for supervisors and managers. Supervisors and managers shall receive an additional eight hours of training in the following subjects:

(i) Management of hazardous wastes and their disposal.

(ii) Federal, state, and local agencies to be contacted in the event of a release of hazardous substances.

(iii) Management of emergency procedures in the event of a release of hazardous substances.

(7) Qualifications for trainers. Trainers shall be qualified to instruct employees about the subject matter that is being presented in training. Such trainers shall have satisfactorily completed a training program for teaching the subjects they are expected to teach, or they shall have the academic credentials and instructional experience necessary for teaching the subjects. Instructors shall demonstrate competent instructional skills and knowledge of the applicable subject matter.

(8) Training certification. Employees and supervisors that have received and successfully completed the training and field experience specified in subsections (1) through (4) of this section shall be certified by their instructor or the head instructor and trained supervisor as having successfully completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified or who does not meet the requirements of subsection (11) of this section shall be prohibited from engaging in hazardous waste operations.

(9) Emergency response. Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to expected emergencies.

(10) Refresher training. Employees specified in subsection (1) of this section, and managers specified in subsection (4) of this section, shall receive eight hours of refresher training annually on the items specified in subsections (2) and/or (4) of this section, any critique of incidents that have occurred in the past year that can serve as training examples of related work, and other relevant topics.

(11) Equivalent training. Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in subsections (1) through (4) of this section shall not be required to provide the initial training requirements of those sections to such employees and shall provide a copy of the certification or documentation to the employee upon request. However, certified employees or employees with equivalent training new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or

the training that existing employees might have already received from actual hazardous waste site work experience. The 80 hours of instruction required can be fulfilled as follows:

(a) Instruction can include a combination of presently available 40 hour training sessions and other related classes or training including additional supervised on-the-job training as long as material covered includes elements required in the training section WAC 296-62-3040(2) of the regulations. A single 80 hour training session is also acceptable.

(b) Previously attended courses including eight-hour refresher courses apply toward the 80 hour requirement and need not be repeated.

(c) Documentation of previous experience and training by qualified trainers is required of employers and must be available to inspectors for review.

(d) When calculating hours of training, WISHA assumes a "normal" work day to be eight hours with sufficient time for lunch and other breaks.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-115-015 Definitions applicable to all sections of this chapter.

Note: Meaning of words. Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

~~((+))~~ "Approved" - approved by the director; however, if a provision of this chapter states that approval by an agency or organization other than the department such as nationally recognized testing laboratories or the United States Coast Guard is required, then approval by the specified authority shall be accepted.

~~((2))~~ "Authorized person" - a person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the workplace.

~~((3))~~ "Bare boat" charter means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel.

~~((4))~~ "Carrying passengers or cargo" means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

"CFR" - Code of Federal Regulations.

~~((5))~~ "Charter boat" means a vessel or barge operating on inland navigable waters of the state of Washington which is not inspected or licensed by the United States Coast Guard and over which the United States Coast Guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

~~((6))~~ "Commercial" - any activity from which the operator, or the person chartering, renting, or leasing a vessel derives a profit, and/or which qualifies as a legitimate business expense under the Internal Revenue Statutes.

~~((7))~~ "Competent person" - one who is capable of identifying existing and predictable hazards in the surround-

ings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt action to eliminate them.

~~((8))~~ "Confined ~~(or enclosed)~~ space" - ~~((any space having a limited means of egress that is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, tunnels, pipelines and open top spaces more than four feet in depth, such as pits, tubs, vaults, and vessels))~~ means a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and

(3) Is not designed for continuous employee occupancy.

~~((9))~~ "Defect" - any characteristic or condition that tends to weaken or reduce the strength of the tool, object, or structure of which it is a part.

~~((10))~~ "Department" - the department of labor and industries.

~~((11))~~ "Director" - the director of the department of labor and industries, or his/her designated representative.

~~((12))~~ "Employer" - any person, firm, corporation, partnership, business trust, legal representative, or other business entity that operates a passenger vessel for hire in this state and employs one or more employees or contracts with one or more persons, the essence of which is the personal labor of such persons. Any person, partnership, or business entity that has no employees, and is covered by the Industrial Insurance Act shall be considered both an employer and an employee.

~~((13))~~ "Enclosed space" - means any space, other than a confined space, which is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

"Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

~~((14))~~ "Hazard" - a condition, potential or inherent, that is likely to cause injury, death, or occupational disease.

~~((15))~~ "Hazardous substance" - a substance that, because it is explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death or injury, including all substances listed on the USCG hazardous materials list.

~~((16))~~ "Inspection" - the examination of vessels by the director or an authorized representative of the director.

~~((17))~~ "Marine and dock section" - the chief and staff of the marine and dock section, department of labor and industries.

~~((18))~~ "Passenger" - any person or persons, carried on board a vessel in consideration of the payment of a fee or other consideration.

~~((19))~~ "Port" - left hand side of a vessel as one faces the bow.

~~((20))~~ "Starboard" - right hand side of a vessel as one faces the bow.

~~((21))~~ "Power driven vessel" - any vessel propelled by machinery.

~~((22))~~ "Qualified" - one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve problems relating to the subject matter, the work, or the project.

~~((23))~~ "Safety factor" - the ratio of the ultimate breaking strength of a member or piece of material or equipment to the actual working stress or safe load when in use.

~~((24))~~ "Safety and health standard" - a standard that requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

~~((25))~~ "Shall" - the provision of the standard is mandatory.

~~((26))~~ "Should" - recommended.

~~((27))~~ "Substantial" - constructed of such strength, of such material, and of such workmanship, that the object referred to will withstand all normal wear, shock, and usage.

~~((28))~~ "Standard safeguard" - a device intended to remove a hazard incidental to the machine, appliance, tool, or equipment to which the device is attached.

Standard safeguards shall be constructed of either metal, wood, other suitable material, or a combination of these. The final determination of the sufficiency of any safeguard rests with the director.

~~((29))~~ "Suitable" - that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

~~((30))~~ "Under way" - a vessel is not at anchor, or made fast to the shore, or aground.

~~((31))~~ "USCG" - United States Coast Guard.

"United States Coast Guard Navigation" - rules International/Inland, Commandants Instruction M16672.29 as now adopted, or hereafter legally amended by the United States Coast Guard.

~~((32))~~ "Vessel" means every description of motorized watercraft, other than a bare boat charter boat, seaplane, or sailboat, used or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

~~((33))~~ "Working day" - a calendar day, except Saturdays, Sundays, and legal holidays as set forth in RCW 1.16.050, as now or hereafter amended. The time within which an act is to be done under the provisions of this chapter shall be computed by excluding the first working day and including the last working day.

~~((34))~~ ~~((Workman))~~ "Worker," "personnel," "man," "person," "employee," and other terms of like meaning, unless the context indicates otherwise - an employee of an employer who is employed in the business of his/her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his/her personal labor for an employer whether by manual labor or otherwise.

~~((35) Abbreviations used in this chapter:~~

~~(a) "CFR" Code of Federal Regulations.~~

~~(b) "USCG" United States Coast Guard.)~~

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-155-100 Management's responsibility. (1) It shall be the responsibility of management to establish, supervise, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment.

(b) An accident prevention program as required by these standards.

(c) Training programs to improve the skill and competency of all employees in the field of occupational safety and health.

(2) Employees required to handle or use poisons, caustics, and other harmful substances shall be instructed regarding the safe handling and use, and be made aware of the potential hazards, personal hygiene, and personal protective measures required.

(3) In job site areas where harmful plants or animals are present, employees who may be exposed shall be instructed regarding the potential hazards, and how to avoid injury, and the first aid procedures to be used in the event of injury.

(4) Employees required to handle or use flammable liquids, gases, or toxic materials shall be instructed in the safe handling and use of these materials and made aware of the specific requirements contained in Parts B, D, and other applicable parts of this standard.

(5) Permit-required confined spaces. The requirements of chapters 296-24, 296-62 and 296-155 WAC apply.

(6) The employer shall ensure that work assignments place no employee in a position or location not within ordinary calling distance of another employee able to render assistance in case of emergency.

Note: This subsection does not apply to operators of motor vehicles, watchpersons or other jobs which, by their nature, are single employee assignments. However, a definite procedure for checking the welfare of all employees during working hours should be instituted and all employees so advised.

(7) Each employer shall post and keep posted a notice or notices (Job Safety and Health Protection - Form F416-081-000) to be furnished by the department of labor and industries, informing employees of the protections and obligations provided for in the act and that for assistance and information, including copies of the act, and of specific safety and health standards employees should contact the employer or the nearest office of the department of labor and industries. Such notice or notices shall be posted by the employer at each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to assure that such notices are not altered, defaced, or covered by other material.

AMENDATORY SECTION (Amending Order 86-14, filed 1/21/86)

WAC 296-155-012 Definitions applicable to all sections of this chapter.

Note: Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section. Certain parts of this chapter contain definitions as they apply to that particular part.

~~((1))~~ "Approved" means approved by the director of the department of labor and industries or his/her authorized representative: *Provided, however,* That should a provision of this chapter state that approval by an agency or organization other than the department of labor and industries is required, such as Underwriters' Laboratories or the bureau of mines, the provisions of WAC 296-155-006 shall apply.

~~((2))~~ "Assistant director" means the individual in charge of the division of ~~((industrial safety and health))~~ consultation and compliance, department of labor and industries, or an authorized representative.

~~((3))~~ "Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the workplace.

~~((4))~~ "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective action to eliminate them.

~~((5))~~ "Confined ~~((or enclosed))~~ space" means ~~((any space having a limited means of egress, which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines, and open top spaces more than 4 feet in depth such as pits, tubs, vaults, and vessels))~~ a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and

(3) Is not designed for continuous employee occupancy.

~~((6))~~ "Construction work" shall mean and include all or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling, of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

~~((7))~~ "Defect" means any characteristic or condition which tends to weaken or reduce the strength of the tool, object, or structure of which it is a part.

~~((8))~~ "Department" means the department of labor and industries.

~~((9))~~ "Designated person" means "authorized person" as defined in ~~(subsection (3) of)~~ this section.

~~((10))~~ "Director" means the director of the department of labor and industries, or his/her designated representative.

~~((11))~~ "Division" means the division of ~~(industrial safety and health)~~ consultation and compliance of the department.

~~((12))~~ "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: *Provided*, that any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

~~((13))~~ "Equipment" means all machinery, devices, tools, facilities, safeguards, and protective construction used in connection with construction operations.

~~((14))~~ "Ground fault circuit interrupter" means a fast acting circuit breaker that is sensitive to very low levels of current leakage to ground. The device is designed to limit the electric shock to a current and time duration below that which can cause serious injury.

~~((15))~~ "Hazard" means that condition, potential or inherent, which is likely to cause injury, death, or occupational disease.

~~((16))~~ "Hazardous substance" means a substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death or injury.

~~((17))~~ "Maintenance" means the work of keeping a building, machine, roadway, etc., in a state of good repair.

~~((18))~~ "Part" means a major division, of this chapter, relating to a specific topic or topics and containing various sections, subsections, etc.

"Permit-required confined space (permit space)" means a confined space that has one or more of the following characteristics:

(1) Contains or has a potential to contain a hazardous atmosphere;

(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(4) Contains any other recognized serious safety or health hazard.

~~((19))~~ "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated ~~(his)~~ their ability to solve or resolve problems relating to the subject matter, the work, or the project.

~~((20))~~ "Repair" means to restore a building, machine, roadway, etc., to an original state after damage or decay.

~~((21))~~ "Safety factor" means the ratio of the ultimate breaking strength of a member or piece of material or

equipment to the actual working stress or safe load when in use.

~~((22))~~ "Safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

~~((23))~~ "Shall" means that the provision(s) of the standard are mandatory.

~~((24))~~ "Substantial" means constructed of such strength, of such material, and of such workmanship, that the object referred to will withstand all normal wear, shock and usage.

~~((25))~~ "Standard safeguard" means a device designed and constructed with the object of removing the hazard of accident incidental to the machine, appliance, tool, building, or equipment to which it is attached.

Standard safeguards shall be constructed of either metal or wood or other suitable material or a combination of these. The final determination of the sufficiency of any safeguard rests with the director of the department of labor and industries through the division of ~~(industrial safety and health)~~ consultation and compliance.

~~((26))~~ "Suitable" means that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

~~((27))~~ "Working day" means a calendar day, except Saturdays, Sundays, and legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be computed by excluding the first working day and including the last working day.

~~((28))~~ "Worker," "personnel," "man," "person," "employee," and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, mean an employee of an employer who is employed in the business of ~~(his)~~ their employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is ~~(his)~~ their personal labor for an employer whether by manual labor or otherwise.

~~((29))~~ "Work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

~~((30))~~ Abbreviations used in this chapter:

~~((a))~~ "ANSI" means American National Standards Institute.

~~((b))~~ "API" means American Petroleum Institute.

~~((c))~~ "ASA" means American Standards Association.

~~((d))~~ "ASAE" means American Society of Agricultural Engineers.

~~((e))~~ "ASHRE" means American Society of Heating and Refrigeration Engineers.

~~((f))~~ "ASME" means American Society of Mechanical Engineers.

((g)) "ASTM" means American Society of Testing and Materials.

((h)) "AWS" means American Welding Society.

((i)) "BTU" means British thermal unit.

((j)) "BTUH" means British thermal unit per hour.

((k)) "CFM" means cubic feet per minute.

((l)) "CFR" means Code of Federal Register.

((m)) "CGA" means Compressed Gas Association.

((n)) "CIE" means Commission Internationale de l'Eclairage.

((o)) "DOT" means department of transportation.

((p)) "FRP" means fiberglass reinforced plastic.

((q)) "GPM" means gallons per minute.

((r)) "ICC" means Interstate Commerce Commission.

((s)) "ID" means inside diameter.

((t)) "LPG" means liquefied petroleum gas.

~~((31)) Additional abbreviations used in this chapter:~~

~~((a)) "MCA" means Manufacturing Chemist Association.~~

~~((b)) "MSHA" means United States Department of Labor, Mine Safety and Health Administration.~~

~~((c)) "NBFU" means National Board of Fire Underwriters.~~

~~((d)) "NEMA" means National Electrical Manufacturing Association.~~

~~((e)) "NFPA" means National Fire Protection Association.~~

~~((f)) "NTP" means normal temperature and pressure.~~

~~((g)) "OD" means outside diameter.~~

~~((h)) "PSI" means pounds per square inch.~~

~~((i)) "PSIA" means pounds per square inch absolute.~~

~~((j)) "PSIG" means pounds per square inch gauge.~~

~~((k)) "RMA" means Rubber Manufacturers Association.~~

~~((l)) "SAE" means Society of Automotive Engineers.~~

~~((m)) "TFI" means The Fertilizer Institute.~~

~~((n)) "TSC" means Trailer Standard Code.~~

~~((o)) "UL" means Underwriters' Laboratories, Inc.~~

~~((p)) "USASI" means United States of America Standards Institute.~~

~~((q)) "USC" means United States Code.~~

~~((r)) "USCG" means United States Coast Guard.~~

~~((s)) "WAC" means Washington Administrative Code.~~

~~((t)) "WISHA" means Washington Industrial Safety and Health Act of 1973.~~

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-155-20301 Definitions. ~~((+)) Confined space ((- Any space having a limited means of egress which is subject to the accumulation of toxic or flammable contaminants or an oxygen deficient atmosphere. Confined spaces include but are not limited to storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines and open top spaces more than 4 feet in depth, such as pits, tubes, vaults and vessels. (See WAC 296-62-14501(1).))~~

~~(2) Toxic atmospheres — Atmospheres having concentrations of airborne chemicals in excess of permissible exposure limits as defined in chapter 296-62 WAC.~~

~~(3) Chemical contact agents — Defined in WAC 296-62-07003.~~

(4)) means a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and

(3) Is not designed for continuous employee occupancy.
"Corrosives" means substances which in contact with living tissue cause destruction of the tissue by chemical action.

"Hazardous atmosphere" means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of ten percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of five feet (1.52m) or less.

(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in Subpart G, Occupational Health and Environmental Control, or in Subpart Z, Toxic and Hazardous Substances, of this part and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note: An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision.

(5) Any other atmospheric condition that is immediately dangerous to life or health.

Note: For air contaminants for which WISHA has not determined a dose or permissible exposure limit, other sources of information, such as material safety data sheets that comply with the Hazard Communication Standard, chapter 296-62 WAC, Part C, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

"Irritants" means substances which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

"Oxygen deficient atmospheres" ((-)) means atmospheres at sea level having less than 19.5% oxygen by volume or having a partial pressure of 148 millimeters of mercury or less. This may deviate when working at higher altitudes and should be determined for an individual location. Factors such as acclimatization, physical condition of persons involved, etc., must be considered for such circumstances and conditions. (See ((WAC 296-62-14501(4))) chapter 296-62 WAC, Part M, permit-required confined spaces.)

((5) Flammable atmospheres — Atmospheres in excess of 20% of the lower explosive limit. These are usually toxic as well as flammable. (See WAC 296-62-14501(5).))

"Toxicants" means substances which have the inherent capacity to produce personal injury or illness to persons by absorption through any body surface.

PERMANENT

AMENDATORY SECTION (Amending Order 93-04, filed 9/22/93, effective 11/1/93)

WAC 296-155-24510 Fall restraint, fall arrest systems. (1) When employees are exposed to a hazard of falling from a location 10 feet or more in height, the employer shall ensure that fall restraint or fall arrest systems are provided, installed, and implemented according to the following requirements.

(2) Fall restraint protection shall consist of:

(a) Standard guardrails as described in chapter 296-155 WAC Part K.

(b) Safety belts and/or harness attached to securely rigged restraint lines.

(i) Safety belts and/or harness shall conform to ANSI Standard:

Class I - body belt

Class II - chest harness

Class III - full body harness

Class IV - suspension/position belt

(ii) All safety belt and lanyard hardware assemblies shall be capable of withstanding a tensile loading of 4,000 pounds without cracking, breaking, or taking a permanent deformation.

(iii) Rope grab devices are prohibited for fall restraint applications unless they are part of a fall restraint system designed specifically for the purpose by the manufacturer, and used in strict accordance with the manufacturer's recommendations and instructions.

(iv) The employer shall ensure component compatibility.

(v) Components of fall restraint systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their function or strength have been adversely affected.

(vi) Anchorage points used for fall restraint shall be capable of supporting 4 times the intended load.

(vii) Restraint protection shall be rigged to allow the movement of employees only as far as the sides and edges of the walking/working surface.

(c) A warning line system as prescribed in ((the)) WAC 296-155-24515(3) and supplemented by the use of a safety monitor system as prescribed in WAC 296-155-24521 to protect workers engaged in duties between the forward edge of the warning line and the unprotected sides and edges, including the leading edge, of a low pitched roof or walking/working surface.

(d) Warning line and safety monitor systems as described in WAC 296-155-24515 (3) through (4)(f) and 296-155-24520 respectively are prohibited on surfaces exceeding a 4 in 12 pitch, and on any surface whose dimensions are less than 45 inches in all directions.

(3) Fall arrest protection shall consist of:

(a) Full body harness.

(i) An approved Class III full body harness shall be used.

(ii) Body harness systems or components subject to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a competent person to be undamaged and suitable for reuse.

(iii) All safety lines and lanyards shall be protected against being cut or abraded.

(iv) Body harness systems shall be rigged to minimize free fall distance with a maximum free fall distance allowed of 6 feet, and such that the employee will not contact any lower level.

(v) Hardware shall be drop forged, pressed or formed steel, or made of materials equivalent in strength.

(vi) Hardware shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached body harness or lanyard.

(vii) When vertical lifelines (droplines) are used, not more than one employee shall be attached to any one lifeline.

(viii) Full body harness systems shall be secured to anchorages capable of supporting 5,000 pounds per employee except: When self-retracting lifelines or other deceleration devices are used which limit free fall to two feet, anchorages shall be capable of withstanding 3,000 pounds.

(ix) Vertical lifelines (droplines) shall have a minimum tensile strength of 5,000 pounds (22.2kN), except that self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum tensile strength of 3,000 pounds (13.3 kN).

(x) Horizontal lifelines shall have a tensile strength capable of supporting a fall impact load of at least 5,000 pounds (22.2 kN) per employee using the lifeline, applied anywhere along the lifeline.

(xi) Lanyards shall have a minimum tensile strength of 5,000 pounds (22.2 kN).

(xii) All components of body harness systems whose strength is not otherwise specified in subsection (3) of this section shall be capable of supporting a minimum fall impact load of 5,000 pounds (22.2 kN) applied at the lanyard point of connection.

(xiii) Snap-hooks shall not be connected to loops made in webbing-type lanyards.

(xiv) Snap-hooks shall not be connected to each other.

(xv) Not more than one snap-hook shall be connected to any one D-ring unless they are the double locking type.

(xvi) Full body harness systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration, and defective components shall be removed from service if their function or strength have been adversely affected.

(b) Safety nets.

(i) All new nets shall meet accepted performance standards of 17,500 foot-pounds minimum impact resistance as determined and certified by the manufacturers, and shall bear a label of proof test.

(ii) Forged steel safety hooks or shackles shall be used to fasten the net to its supports.

(iii) Safety nets shall be installed as close as practicable under the walking/working surface on which employees are working, but in no case more than 10 feet below such level.

(iv) Safety nets shall extend outward at least 8 feet from the outermost projection of the work surface.

(v) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in subsection (3)(b)(vii) of this section.

(vi) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in subsection (3)(b)(vii) of this section.

(vii) Safety nets and safety net installations shall be drop-tested at the jobsite before used as a fall protection system. The drop-test shall consist of a 400 pound (180 kg) bag of sand 30+2 inches (76+5 cm) in diameter dropped into the net from the highest walking/working surface on which employees are to be protected. Exception: When the employer can demonstrate that a drop-test is not feasible or practicable, the net and net installation shall be certified by a qualified person to be in compliance with the provisions of this section.

(viii) Safety nets shall be inspected weekly for mildew, wear, damage, and other deterioration, and defective components shall be removed from service.

(ix) Materials, scrap pieces, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(x) The maximum size of each safety net mesh opening shall not exceed 36 square inches (230 cm²) nor be longer than six inches (15 cm) on any side measured center-to-center of mesh ropes or webbing. All mesh crossing shall be secured to prevent enlargement of the mesh opening.

(xi) Each safety net (or section of it) shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(xii) Connections between the safety net panels shall be as strong as integral net components and shall be spaced not more than six inches (15 cm) apart.

(c) Catch platforms.

(i) A catch platform shall be installed within 10 vertical feet of the work area.

(ii) The catch platforms width shall equal the distance of the fall but shall be a minimum of 45 inches wide and shall be equipped with standard guardrails on all open sides.

(4) Droplines or lifelines used on rock-scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of 7/8-inch wire core manila rope. For all other lifeline applications, a minimum of 3/4-inch manila or equivalent, with a minimum breaking strength of 5,000 pounds, shall be used.

(5) Safety harnesses, lanyards, lifelines or droplines, independently attached or attended, shall be used while performing the following types of work when other equivalent type protection is not provided:

(a) Work performed in ~~((hoppers, bins, silos, tanks, or))~~ permit-required confined spaces and other confined spaces shall follow the procedures as described in chapter 296-62 WAC Part M.

(b) Work on hazardous slopes, or dismantling safety nets, working on poles or from boatswains chairs at elevations greater than six feet (1.83 m), swinging scaffolds or other unguarded locations.

(c) Work on skips and platforms used in shafts by crews when the skip or cage does not occlude the opening to within one foot (30.5 cm) of the sides of the shaft, unless cages are provided.

AMENDATORY SECTION (Amending Order 86-14, filed 1/21/86)

WAC 296-155-407 Protective clothing. (1) General requirements. Employees exposed to the hazards created by welding, cutting, or brazing operations shall be protected by personal protective equipment in accordance with the requirements of chapter 296-24 WAC ((296-24-0750+)), Part A-2 and Part I. Appropriate protective clothing required for any welding operation will vary with the size, nature and location of the work to be performed.

(2) Specified protective clothing. Protective means which may be employed are as follows:

(a) Except when engaged in light work, all welders should wear flameproof gauntlet gloves.

(b) Flameproof aprons made of leather, or other suitable material may also be desirable as protection against radiated heat and sparks.

(c) Woolen clothing preferable to cotton because it is not so readily ignited and helps protect the welder from changes in temperature. Cotton clothing, if used, should be chemically treated to reduce its combustibility. All outer clothing such as jumpers or overalls should be reasonably free from oil or grease.

(d) Sparks may lodge in rolled-up sleeves or pockets of clothing, or cuffs of overalls or trousers. It is therefore recommended that sleeves and collars be kept buttoned and pockets be eliminated from the front of overalls and aprons. Trousers or overalls should not be turned up on the outside.

Note: For heavy work, fire-resistant leggings, high boots, or other equivalent means should be used.

(e) In production work a sheet metal screen in front of the worker's legs can provide further protection against sparks and molten metal in cutting operations.

(f) Capes or shoulder covers made of leather or other suitable materials should be worn during overhead welding or cutting operations. Leather skull caps may be worn under helmets to prevent head burns.

(g) ~~((For overhead welding and cutting, or welding and cutting in extremely confined spaces, ear protection is sometimes desirable.~~

~~((h)))~~ Where there is exposure to sharp or heavy falling objects, or a hazard of bumping in confined spaces, hard hats or head protectors shall be used.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-155-730 Tunnels and shafts. (1) Scope and application.

(a) This section applies to the construction of underground tunnels, shafts, chambers, and passageways. This section also applies to cut-and-cover excavations which are both physically connected to ongoing underground construction operations within the scope of this section, and covered in such a manner as to create conditions characteristic of underground construction.

(b) This section does not apply to excavation and trenching operations covered by Part N of this chapter, such as foundation operations for above-ground structures that are not physically connected to underground construction operations, and surface excavation.

(c) The employer shall comply with the requirements of this part and chapter in addition to applicable requirements of chapter 296-36 WAC, Safety standards—Compressed air work.

(2) Access and egress.

(a) Each operation shall have a check-in/check-out system that will provide positive identification of every employee underground. An accurate record of identification and location of the employees shall be kept on the surface. This procedure is not required when the construction of underground facilities designed for human occupancy has been sufficiently completed so that the permanent environmental controls are effective, and when the remaining construction activity will not cause any environmental hazard, or structural failure within the facilities.

(b) The employer shall provide and maintain safe means of access and egress to all work stations.

(c) The employer shall provide access and egress in such a manner that employees are protected from being struck by excavators, haulage machines, trains, and other mobile equipment.

(d) The employer shall control access to all openings to prevent unauthorized entry underground. Unused chutes, manways, or other openings shall be tightly covered, bulkheaded, or fenced off, and shall be posted with warning signs indicating "keep out" or similar language. Completed or unused sections of the underground facility shall be barricaded.

(3) Safety instruction. All employees shall be instructed in the recognition and avoidance of hazards associated with underground construction activities including, where appropriate, the following subjects:

- (a) Air monitoring;
- (b) Ventilation;
- (c) Confined space entry procedures;
- (d) Permit-required confined space entry procedures;
- (e) Illumination;
- ~~((e))~~ (f) Communications;
- ~~((f))~~ (g) Flood control;
- ~~((g))~~ (h) Mechanical equipment;
- ~~((h))~~ (i) Personal protective equipment;
- ~~((i))~~ (j) Explosives;
- ~~((j))~~ (k) Fire prevention and protection; and
- ~~((k))~~ (l) Emergency procedures, including evacuation plans and check-in/check-out systems.

(4) Notification.

(a) Oncoming shifts shall be informed of any hazardous occurrences or conditions that have affected, or might affect employee safety, including liberation of gas, equipment failures, earth or rock slides, cave-ins, floodings, fire(s), or explosions.

(b) Information specified in (a) of this subsection shall be recorded in a shift journal which shall be current prior to the end of each shift, and shall be located aboveground.

(c) Oncoming supervisory personnel shall read the notification prior to going underground, and shall signify their understanding of the contents by affixing their respective initials to the log.

(d) The hazard notification log shall be retained on the site until the completion of the project.

(e) The employer shall establish and maintain direct communications for coordination of activities with other

employers whose operations at the jobsite affect or may affect the safety of employees underground.

(5) Communications.

(a) When natural unassisted voice communication is ineffective, a power-assisted means of voice communication shall be used to provide communication between the work face, the bottom of the shaft, and the surface.

(b) Two effective means of communication, at least one of which shall be voice communication, shall be provided in all shafts which are being developed or used either for personnel access or for hoisting. Additional requirements for hoist operator communication are contained in subsection (22)(c)(xv) of this section.

(c) Powered communication systems shall operate on an independent power supply, and shall be installed so that the use of or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(d) Communication systems shall be tested upon initial entry of each shift to the underground, and as often as necessary at later times, to ensure that they are in working order.

(e) Any employee working alone underground in a hazardous location, who is both out of the range of natural unassisted voice communication and not under observation by other persons, shall be provided with an effective means of obtaining assistance in an emergency.

(6) Emergency provisions. Hoisting capability. When a shaft is used as a means of egress, the employer shall make advance arrangements for power-assisted hoisting capability to be readily available in an emergency, unless the regular hoisting means can continue to function in the event of an electrical power failure at the jobsite. Such hoisting means shall be designed so that the load hoist drum is powered in both directions of rotation and so that the brake is automatically applied upon power release or failure.

(7) Self-rescuers. The employer shall provide self-rescuers having current approval from the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration to be immediately available to all employees at work stations in underground areas where employees might be trapped by smoke or gas. The selection, issuance, use, and care of respirators shall be in accordance with the requirements of chapter 296-62 WAC ((296-62-071 through 296-62-07121)), Part E.

(8) Designated person. At least one designated person shall be on duty aboveground whenever any employee is working underground. This designated person shall be responsible for securing immediate aid and keeping an accurate record of the number, identification, and location of employees who are underground in case of emergency. The designated person must not be so busy with other responsibilities that the personnel counting and identification function is encumbered.

(9) Emergency lighting. Each employee underground shall have an acceptable portable hand lamp or cap lamp in his or her work area for emergency use, unless natural light or an emergency lighting system provides adequate illumination for escape.

(10) Rescue teams.

(a) On jobsites where 25 or more employees work underground at one time, the employer shall provide (or

make arrangements in advance with locally available rescue services to provide) at least two 5-person rescue teams, one on the jobsite or within one-half hour travel time from the entry point, and the other within 2 hours travel time.

(b) On jobsites where less than 25 employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least one 5-person rescue team to be either on the jobsite or within one-half hour travel time from the entry point.

(c) Rescue team members shall be qualified in rescue procedures, the use and limitations of breathing apparatus, and the use of fire fighting equipment. Qualifications shall be reviewed not less than annually.

(d) On jobsites where flammable or noxious gases are encountered or anticipated in hazardous quantities, rescue team members shall practice donning and using pressure demand mode, self-contained breathing apparatuses monthly.

(e) The employer shall ensure that rescue teams are familiar with conditions at the jobsite.

(11) Hazardous classifications.

(a) Potentially gassy operations. Underground construction operations shall be classified as potentially gassy if either:

(i) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm) +/-0.25 inch (6.35 mm) from the roof, face, floor, or walls in any underground work area for more than a 24-hour period; or

(ii) The history of the geographical area or geological formation indicates that 10 percent or more of the lower explosive limit for methane or other flammable gases is likely to be encountered in such underground operations.

(b) Gassy operations. Underground construction operations shall be classified as gassy if:

(i) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm) +/-0.25 inch (6.35 mm) from the roof, face, floor, or walls in any underground work area for three consecutive days; or

(ii) There has been an ignition of methane or of other flammable gases emanating from the strata that indicates the presence of such gases; or

(iii) The underground construction operation is both connected to an underground work area which is currently classified as gassy and is also subject to a continuous course of air containing the flammable gas concentration.

(c) Declassification to potentially gassy operations. Underground construction gassy operations may be declassified to potentially gassy when air monitoring results remain under 10 percent of the lower explosive limit for methane or other flammable gases for three consecutive days.

(12) Gassy operations—Additional requirements. Only acceptable equipment, maintained in suitable condition, shall be used in gassy operations.

(a) Mobile diesel-powered equipment used in gassy operations shall be either approved in accordance with the requirements of 30 CFR Part 36 (formerly Schedule 31) by MSHA, or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that part.

(b) Each entrance to a gassy operation shall be prominently posted with signs notifying all entrants of the gassy classification.

(c) Smoking shall be prohibited in all gassy operations and the employer shall be responsible for collecting all personal sources of ignition, such as matches and lighters, from all persons entering a gassy operation.

(d) A fire watch as described in chapter 296-155 WAC ((296-155-410(5))), Part H, shall be maintained when hot work is performed.

(e) Once an operation has met the criteria in subsection (11)(a)(i) of this section, warranting classification as gassy, all operations in the affected area, except the following, shall be discontinued until the operation either is in compliance with all of the gassy operation requirements or has been declassified in accordance with (c) of this subsection:

(i) Operations related to the control of the gas concentration;

(ii) Installation of new equipment, or conversion of existing equipment, to comply with this subsection; and

(iii) Installation of above-ground controls for reversing the air flow.

(13) Air quality and monitoring.

(a) General. Air quality limits and control requirements specified in chapter 296-62 WAC, Part H, shall apply except as modified by this subsection.

(b) The employer shall assign a competent person who shall perform all air monitoring required by this section.

(c) Where this section requires monitoring of airborne contaminants "as often as necessary," the competent person shall make a reasonable determination as to which substances to monitor and how frequently to monitor, considering at least the following factors:

(i) Location of jobsite: Proximity to fuel tanks, sewers, gas lines, old landfills, coal deposits, and swamps;

(ii) Geology: Geological studies of the jobsite, particularly involving the soil type and its permeability;

(iii) History: Presence of air contaminants in nearby jobsites, changes in levels of substances monitored on the prior shift; and

(iv) Work practices and jobsite conditions: The use of diesel engines, use of explosives, use of fuel gas, volume and flow of ventilation, visible atmospheric conditions, decompression of the atmosphere, welding, cutting and hot work, and employees' physical reactions to working underground.

(d) The employer shall provide testing and monitoring instruments which are capable of achieving compliance with the provisions of this subsection, and:

(i) Shall maintain the testing and monitoring instruments in good condition;

(ii) Shall calibrate the instruments on a frequency not to exceed 6 months.

(e) Exposure to airborne contaminants shall not exceed the levels established by chapter 296-62 WAC, Part H.

(f) Respirators shall not be substituted for environmental control measures. However, where environmental controls have not yet been developed, or when necessary by the nature of the work involved (for example, welding, sand blasting, lead burning), an employee may work for short periods of time in concentrations of airborne contaminants which exceed the limit of permissible exposure referred to in

(d) of this subsection, if the employee wears a respiratory protective device approved by MSHA-NIOSH as protection against the particular hazards involved, and the selection and use of respirators complies with the provisions of chapter 296-62 WAC ((296-62-071 through 296-62-07121)), Part E.

(g) Employees shall be withdrawn from areas in which there is a concentration of an airborne contaminant which exceeds the permissible exposure limit listed for that contaminant, except as modified in (t)(i) and (ii) of this subsection.

(h) The atmosphere in all underground work areas shall be tested as often as necessary to assure that the atmosphere at normal atmospheric pressure contains at least 19.5 percent oxygen and no more than 22 percent oxygen.

(i) Tests for oxygen content shall be made before tests for air contaminants.

(j) Field-type oxygen analyzers, or other suitable devices, shall be used to test for oxygen deficiency.

(k) The atmosphere in all underground work areas shall be tested quantitatively for carbon monoxide, nitrogen dioxide, hydrogen sulfide, and other toxic gases, dust, vapors, mists, and fumes as often as necessary to ensure that the permissible exposure limits prescribed in chapter 296-62 WAC, Part H, are not exceeded.

(l) The atmosphere in all underground work areas shall be tested quantitatively for methane and other flammable gases as often as necessary to determine:

(i) Whether action is to be taken under (q), (r), and (s) of this subsection; and

(ii) Whether an operation is to be classified potentially gassy or gassy under subsection (11) of this section.

(m) If diesel-engine or gasoline-engine driven ventilating fans or compressors are used, an initial test shall be made of the inlet air of the fan or compressor, with the engines operating, to ensure that the air supply is not contaminated by engine exhaust.

(n) Testing shall be performed as often as necessary to ensure that the ventilation requirements of subsection (15) of this section are met.

(o) When rapid excavation machines are used, a continuous flammable gas monitor shall be operated at the face with the sensor(s) placed as high and close to the front of the machine's cutter head as practicable.

(p) Whenever air monitoring indicates the presence of 5 ppm or more of hydrogen sulfide, a test shall be conducted in the affected underground work area(s), at least at the beginning and midpoint of each shift, until the concentration of hydrogen sulfide has been less than 5 ppm for 3 consecutive days.

(i) Whenever hydrogen sulfide is detected in an amount exceeding 10 ppm, a continuous sampling and indicating hydrogen sulfide monitor shall be used to monitor the affected work area.

(ii) Employees shall be informed when a concentration of 10 ppm hydrogen sulfide is exceeded.

(iii) The continuous sampling and indicating hydrogen sulfide monitor shall be designed, installed, and maintained to provide a visual and aural alarm when the hydrogen sulfide concentration reaches 15 ppm to signal that additional measures, such as respirator use, increased ventilation, or evacuation, might be necessary to maintain hydrogen sulfide exposure below the permissible exposure limit.

(q) When the competent person determines, on the basis of air monitoring results or other information, that air contaminants may be present in sufficient quantity to be dangerous to life, the employer shall:

(i) Prominently post a notice at all entrances to the underground jobsite to inform all entrants of the hazardous condition; and

(ii) Immediately increase sampling frequency levels to insure workers are not exposed to identified contaminants in excess of the permissible exposure limit(s); and

(iii) Ensure that all necessary precautions are taken to comply with pertinent requirements of this section, and chapter 296-62 WAC.

(r) Whenever five percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return, steps shall be taken to increase ventilation air volume or otherwise control the gas concentration, unless the employer is operating in accordance with the potentially gassy or gassy operation requirements. Such additional ventilation controls may be discontinued when gas concentrations are reduced below five percent of the lower explosive limit, but shall be reinstated whenever the five percent level is exceeded.

(s) Whenever 10 percent or more of the lower explosive limit for methane or other flammable gases is detected in the vicinity of welding, cutting, or other hot work, such work shall be suspended until the concentration of such flammable gas is reduced to less than 10 percent of the lower explosive limit.

(t) Whenever 20 percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return:

(i) All employees, except those necessary to eliminate the hazard, shall be immediately withdrawn to a safe location above ground; and

(ii) Employees who remain underground to correct or eliminate the hazard described in (t) above shall be equipped with approved, pressure demand mode, self-contained breathing apparatus, and shall have received adequate training in the proper use of that equipment.

(iii) Electrical power, except for acceptable pumping and ventilation equipment, shall be cut off to the area endangered by the flammable gas until the concentration of such gas is reduced to less than 20 percent of the lower explosive limit.

(14) Additional monitoring for potentially gassy and gassy operations. Operations which meet the criteria for potentially gassy and gassy operations set forth in subsection (13) of this section shall be subject to the additional monitoring requirements of this subsection.

(a) A test for oxygen content shall be conducted in the affected underground work areas and work areas immediately adjacent to such areas at least at the beginning and midpoint of each shift.

(b) When using rapid excavation machines, continuous automatic flammable gas monitoring equipment shall be used to monitor the air at the heading, on the rib, and in the return air duct. The continuous monitor shall signal the heading, and shut down electric power in the affected underground work area, except for acceptable pumping and ventilation equipment, when 20 percent or more of the lower explosive limit for methane or other flammable gases is encountered.

(i) A manual flammable gas monitor shall be used as needed, but at least at the beginning and midpoint of each shift, to ensure that the limits prescribed in subsections (11) and (13) of this section are not exceeded. In addition, a manual electrical shut down control shall be provided near the heading.

(ii) Local gas tests shall be made prior to and continuously during any welding, cutting, or other hot work.

(iii) In underground operations driven by drill-and-blast methods, the air in the affected area shall be tested for flammable gas prior to re-entry after blasting, and continuously when employees are working underground.

(c) Recordkeeping. A record of all air quality tests shall be maintained above ground at the worksite and be made available to the director or his/her representatives upon request. The record shall include the location, date, time, substance and amount monitored. Records of exposures to toxic substances shall be retained in accordance with Part B, chapter 296-62 WAC. All other air quality test records shall be retained until completion of the project.

(15) Ventilation.

(a)(i) Fresh air shall be supplied to all underground work areas in sufficient quantities to prevent dangerous or harmful accumulation of dust, fumes, mists, vapors, or gases.

(ii) Mechanical ventilation shall be provided in all underground work areas except when the employer can demonstrate that natural ventilation provides the necessary air quality through sufficient air volume and air flow.

(b) A minimum of 200 cubic feet (5.7 m³) of fresh air per minute shall be supplied for each employee underground.

(c) The linear velocity of air flow in the tunnel bore, in shafts, and in all other underground work areas shall be at least 30 feet (9.15 m) per minute where blasting or rock drilling is conducted, or where other conditions likely to produce dust, fumes, mists, vapors, or gases in harmful or explosive quantities are present.

(d) The direction of mechanical air flow shall be reversible.

(e) Air that has passed through underground oil or fuel-storage areas shall not be used to ventilate working areas.

(f) Following blasting, ventilation systems shall exhaust smoke and fumes to the outside atmosphere before work is resumed in affected areas.

(g) Ventilation doors shall be designed and installed so that they remain closed when in use, regardless of the direction of the air flow.

(h) When ventilation has been reduced to the extent that hazardous levels of methane or flammable gas may have accumulated, a competent person shall test all affected areas after ventilation has been restored and shall determine whether the atmosphere is within flammable limits before any power, other than for acceptable equipment, is restored or work is resumed.

(i) Whenever the ventilation system has been shut down with all employees out of the underground area, only competent persons authorized to test for air contaminants shall be allowed underground until the ventilation has been restored and all affected areas have been tested for air contaminants and declared safe.

(j) When drilling rock or concrete, appropriate dust control measures shall be taken to maintain dust levels within limits set in chapter ((296-62)) 296-155 WAC, Part

B-1. Such measures may include, but are not limited to, wet drilling, the use of vacuum collectors, and water mix spray systems.

(k)(i) Internal combustion engines, except diesel-powered engines on mobile equipment, are prohibited underground.

(ii) Mobile diesel-powered equipment used underground in atmospheres other than gassy operations shall be either approved by MSHA in accordance with the provisions of 30 CFR Part 32 (formerly Schedule 24), or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that Part. (Each brake horsepower of a diesel engine requires at least 100 cubic feet (28.32 m³) of air per minute for suitable operation in addition to the air requirements for personnel. Some engines may require a greater amount of air to ensure that the allowable levels of carbon monoxide, nitric oxide, and nitrogen dioxide are not exceeded.)

(iii) Application shall be made to the mining/explosives section, department of labor and industries, for permission to use specified diesel equipment in a specified underground area and shall include the following:

(A) The type of construction and complete identification data and specifications including analysis of the undiluted exhaust gases of the diesel equipment.

(B) The location where the diesel equipment is to be used.

(C) Before the diesel equipment is taken underground, written permission shall be obtained from the department of labor and industries or its duly authorized representative. A satisfactory test on surface, to show that the exhaust gases do not exceed the maximum percentage of carbon monoxide permitted, shall be required.

(D) Diesel equipment shall only be used underground where the ventilation is controlled by mechanical means and shall not be operated if the ventilating current is less than 100 CFM per horsepower based on the maximum brake horsepower of the engines.

(E) Air measurements shall be made at least once daily in the diesel engine working area and the measurements entered in the Underground Diesel Engine Record Book. Permissible maximum amounts of noxious gases are as follows:

At engine exhaust ports	Carbon Monoxide	.10%	1,000 ppm ³
Next to equipment	Carbon Monoxide	.0035%	35 ppm
General atmosphere	Carbon Monoxide	.0035%	35 ppm
General atmosphere	Nitrogen Dioxide	.0001%	1 ppm
General atmosphere	Aldehydes	.0002%	2 ppm

³ Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 mm Hg. pressure.

(l) Potentially gassy or gassy operations shall have ventilation systems installed which shall:

(i) Be constructed of fire-resistant materials; and
(ii) Have acceptable electrical systems, including fan motors.

(m) Gassy operations shall be provided with controls located aboveground for reversing the air flow of ventilation systems.

(n) In potentially gassy or gassy operations, wherever mine-type ventilation systems using an offset main fan

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installed on the surface are used, they shall be equipped with explosion-doors or a weak-wall having an area at least equivalent to the cross-sectional area of the airway.

(16) Illumination.

(a) Sufficient lighting shall be provided, in accordance with the requirements of chapter 296-155 WAC ((296-155-165)), Part B-1, to permit safe operations at the face as well as in the general tunnel or shaft area and at the employees' workplace.

(b) Only acceptable portable lighting shall be used within 50 feet (15.24 m) of any underground heading during explosive handling.

(17) Fire prevention and control. Fire prevention and protection requirements applicable to underground construction operations are found in Part D of this chapter except as modified by the following additional standards.

(a) Open flames and fires are prohibited in all underground construction operations except as permitted for welding, cutting, and other hot work operations.

(i) Smoking may be allowed only in areas free of fire and explosion hazards.

(ii) Readily visible signs prohibiting smoking and open flames shall be posted in areas having fire or explosion hazards.

(iii) The carrying of matches, lighters, or other flame-producing smoking materials shall be prohibited in all underground operations where fire or explosion hazards exist.

(b) The employer may store underground no more than a 24-hour supply of diesel fuel for the underground equipment used at the worksite.

(c) The piping of diesel fuel from the surface to an underground location is permitted only if:

(i) Diesel fuel is contained at the surface in a tank whose maximum capacity is no more than the amount of fuel required to supply for a 24-hour period the equipment serviced by the underground fueling station; and

(ii) The surface tank is connected to the underground fueling station by an acceptable pipe or hose system that is controlled at the surface by a valve, and at the shaft bottom by a hose nozzle; and

(iii) The pipe is empty at all times except when transferring diesel fuel from the surface tank to a piece of equipment in use underground; and

(iv) Hoisting operations in the shaft are suspended during refueling operations if the supply piping in the shaft is not protected from damage.

(d)(i) Gasoline shall not be carried, stored, or used underground.

(ii) Acetylene, liquefied petroleum gas, and methylacetylene propadiene stabilized gas may be used underground only for welding, cutting and other hot work, and only in accordance with Part H of this chapter and subsections (13), (15), (17), and (18) of this section.

(e) Oil, grease, and diesel fuel stored underground shall be kept in tightly sealed containers in fire-resistant areas at least 300 feet (91.44 m) from underground explosive magazines, and at least 100 feet (30.48 m) from shaft stations and steeply inclined passageways. Storage areas shall be positioned or diked so that the contents of ruptured or overturned containers will not flow from the storage area.

(f) Flammable or combustible materials shall not be stored above ground within 100 feet (30.48 m) of any access opening to any underground operation. Where this is not feasible because of space limitations at the jobsite, such materials may be located within the 100-foot limit, provided that:

(i) They are located as far as practicable from the opening; and

(ii) Either a fire-resistant barrier of not less than one-hour rating is placed between the stored material and the opening, or additional precautions are taken which will protect the materials from ignition sources.

(g) Fire-resistant hydraulic fluids shall be used in hydraulically-actuated underground machinery and equipment unless such equipment is protected by a fire suppression system or by multipurpose fire extinguisher(s) rated at a sufficient capacity for the type and size of hydraulic equipment involved, but rated at least 4A:4OB:C.

(h)(i) Electrical installations in underground areas where oil, grease, or diesel fuel are stored shall be used only for lighting fixtures.

(ii) Lighting fixtures in storage areas, or within 25 feet (7.62 m) of underground areas where oil, grease, or diesel fuel are stored, shall be approved for Class I, Division 2 locations, in accordance with Part I of this chapter.

(i) Leaks and spills of flammable or combustible fluids shall be cleaned up immediately.

(j) A fire extinguisher of at least 4A:4OB:C rating or other equivalent extinguishing means shall be provided at the head pulley and at the tail pulley of underground belt conveyors, and at 300-foot intervals along the belt.

(k) Any structure located underground or within 100 feet (30.48 m) of an opening to the underground shall be constructed of material having a fire-resistance rating of at least one hour.

(18) Welding, cutting, and other hot work. In addition to the requirements of Part H of this chapter, the following requirements shall apply to underground welding, cutting, and other hot work.

(a) No more than the amount of fuel gas and oxygen cylinders necessary to perform welding, cutting, or other hot work during the next 24-hour period shall be permitted underground.

(b) Noncombustible barriers shall be installed below welding, cutting, or other hot work being done in or over a shaft or raise.

(19) Ground support.

(a) In tunnels (other than hard rock) timber sets, steel rings, steel frames, concrete liners, or other engineered tunnel support systems shall be used. Every tunnel support system shall be designed by a licensed professional engineer. Design specifications shall be available at the worksite.

(b) Portal areas. Portal openings and access areas shall be guarded by shoring, fencing, head walls, shotcreting, or other equivalent protection to ensure safe access of employees and equipment. Adjacent areas shall be scaled or otherwise secured to prevent loose soil, rock, or fractured materials from endangering the portal and access area.

(c) Subsidence areas. The employer shall ensure ground stability in hazardous subsidence areas by shoring, by filling in, or by erecting barricades and posting warning signs to prevent entry.

(d) Underground areas.

(i)(A) A competent person shall inspect the roof, face, and walls of the work area at the start of each shift and as often as necessary to determine ground stability.

(B) Competent persons conducting such inspections shall be protected from loose ground by location, ground support, or equivalent means.

(ii) Ground conditions along haulageways and travelways shall be inspected as frequently as necessary to ensure safe passage.

(iii) Loose ground that might be hazardous to employees shall be taken down, scaled, or supported.

(iv) Torque wrenches shall be used wherever bolts that depend on torsionally applied force are used for ground support.

(v) A competent person shall determine whether rock bolts meet the necessary torque, and shall determine the testing frequency in light of the bolt system, ground conditions, and the distance from vibration sources.

(vi) Suitable protection shall be provided for employees exposed to the hazard of loose ground while installing ground support systems.

(vii) Support sets shall be installed so that the bottoms have sufficient anchorage to prevent ground pressures from dislodging the support base of the sets. Lateral bracing (collar bracing, tie rods, or spreaders) shall be provided between immediately adjacent sets to ensure added stability.

(viii) Damaged or dislodged ground supports that create a hazardous condition shall be promptly repaired or replaced. When replacing supports, the new supports shall be installed before the damaged supports are removed.

(ix) A shield or other type of support shall be used to maintain a safe travelway for employees working in dead-end areas ahead of any support replacement operation.

(e) Shafts.

(i) Shafts and wells over 4 feet (1.219 m) in depth that employees must enter shall be supported by a steel casing, concrete pipe, timber, solid rock, or other suitable material.

(ii)(A) The full depth of the shaft shall be supported by casing or bracing except where the shaft penetrates into solid rock having characteristics that will not change as a result of exposure. Where the shaft passes through earth into solid rock, or through solid rock into earth, and where there is potential for shear, the casing or bracing shall extend at least 5 feet (1.53 m) into the solid rock. When the shaft terminates in solid rock, the casing or bracing shall extend to the end of the shaft or 5 feet (1.53 m) into the solid rock, whichever is less.

(B) The casing or bracing shall extend 42 inches (1.07 m) plus or minus 3 inches (8 cm) above ground level, except that the minimum casing height may be reduced to 12 inches (0.3 m), provided that a standard railing is installed; that the ground adjacent to the top of the shaft is sloped away from the shaft collar to prevent entry of liquids; and that effective barriers are used to prevent mobile equipment operating near the shaft from jumping over the 12-inch (0.3 m) barrier.

(iii) After blasting operations in shafts, a competent person shall determine if the walls, ladders, timbers, blocking, or wedges have loosened. If so, necessary repairs shall be made before employees other than those assigned to make the repairs are allowed in or below the affected areas.

(f) Blasting. This subsection applies in addition to the requirements for blasting and explosives operations, including handling of misfires, which are found in chapter 296-52 WAC.

(i) Blasting wires shall be kept clear of electrical lines, pipes, rails, and other conductive material, excluding earth, to prevent explosives initiation or employee exposure to electric current.

(ii) Following blasting, an employee shall not enter a work area until the air quality meets the requirements of subsection (13) of this section.

(g) Drilling.

(i) A competent person shall inspect all drilling and associated equipment prior to each use. Equipment defects affecting safety shall be corrected before the equipment is used.

(ii) The drilling area shall be inspected for hazards before the drilling operation is started.

(iii) Employees shall not be allowed on a drill mast while the drill bit is in operation or the drill machine is being moved.

(iv) When a drill machine is being moved from one drilling area to another, drill steel, tools, and other equipment shall be secured and the mast shall be placed in a safe position.

(v) Receptacles or racks shall be provided for storing drill steel located on jumbos.

(vi) Employees working below jumbo decks shall be warned whenever drilling is about to begin.

(vii) Drills on columns shall be anchored firmly before starting drilling, and shall be retightened as necessary thereafter.

(viii) The employer shall provide mechanical means on the top deck of a jumbo for lifting unwieldy or heavy material.

(ix) When jumbo decks are over 10 feet (3.05 m) in height, the employer shall install stairs wide enough for two persons.

(x) Jumbo decks more than 10 feet (3.05 m) in height shall be equipped with guardrails on all open sides, excluding access openings of platforms, unless an adjacent surface provides equivalent fall protection.

(xi) Only employees assisting the operator shall be allowed to ride on jumbos, unless the jumbo meets the requirements of subsection (20)(e) of this section.

(xii) Jumbos shall be chocked to prevent movement while employees are working on them.

(xiii) Walking and working surfaces of jumbos shall be maintained to prevent the hazards of slipping, tripping, and falling.

(xiv) Jumbo decks and stair treads shall be designed to be slip-resistant and secured to prevent accidental displacement.

(xv) Scaling bars shall be available at scaling operations and shall be maintained in good condition at all times. Blunted or severely worn bars shall not be used.

(xvi) Before commencing the drill cycle, the face and lifters shall be examined for misfires (residual explosives) and, if found, they shall be removed before drilling commences at the face. Blasting holes shall not be drilled through blasted rock (muck) or water.

(xvii) Employees in a shaft shall be protected either by location or by suitable barrier(s) if powered mechanical loading equipment is used to remove muck containing unfired explosives.

(xviii) A caution sign reading "buried line," or similar wording shall be posted where air lines are buried or otherwise hidden by water or debris.

(20) Haulage.

(a) A competent person shall inspect haulage equipment before each shift.

(i) Equipment defects affecting safety and health shall be corrected before the equipment is used.

(ii) Powered mobile haulage equipment shall be provided with adequate brakes.

(iii) Power mobile haulage equipment, including trains, shall have audible warning devices to warn employees to stay clear. The operator shall sound the warning device before moving the equipment and whenever necessary during travel.

(iv) The operator shall assure that lights which are visible to employees at both ends of any mobile equipment, including a train, are turned on whenever the equipment is operating.

(v) In those cabs where glazing is used, the glass shall be safety glass, or its equivalent, and shall be maintained and cleaned so that vision is not obstructed.

(b) Antirollback devices or brakes shall be installed on inclined conveyor drive units to prevent conveyors from inadvertently running in reverse. Employees shall not be permitted to ride a power-driven chain, belt, or bucket conveyor unless the conveyor is specifically designed for the transportation of persons.

(c) Endless belt-type manlifts are prohibited in underground construction.

(d) General requirements also applicable to underground construction for use of conveyors in construction are found in chapter 296-155 WAC ((296-155-545)), Part L.

(e) No employee shall ride haulage equipment unless it is equipped with seating for each passenger and protects passengers from being struck, crushed, or caught between other equipment or surfaces. Members of train crews may ride on a locomotive if it is equipped with handholds and nonslip steps or footboards. Requirements applicable to underground construction for motor vehicle transportation of employees are found in chapter 296-155 WAC ((296-155-610)), Part M.

(f) Conveyor lockout.

(i) Conveyors shall be de-energized and locked out with a padlock, and tagged out with a "Do Not Operate" tag at any time repair, maintenance, or clean-up work is being performed on the conveyor.

(ii) Tags or push button stops are not acceptable.

(iii) Persons shall not be allowed to walk on conveyors except for emergency purposes and then only after the conveyor has been deenergized and locked out in accordance with (f) above, and persons can do so safely.

(g) Powered mobile haulage equipment, including trains, shall not be left unattended unless the master switch or motor is turned off; operating controls are in neutral or park position; and the brakes are set, or equivalent precautions are taken to prevent rolling.

(h) Whenever rails serve as a return for a trolley circuit, both rails shall be bonded at every joint and crossbonded every 200 feet (60.96 m).

(i) When dumping cars by hand, the car dumps shall have tiedown chains, bumper blocks, or other locking or holding devices to prevent the cars from overturning.

(j) Rocker-bottom or bottom-dump cars shall be equipped with positive locking devices to prevent unintended dumping.

(k) Equipment to be hauled shall be loaded and secured to prevent sliding or dislodgement.

(l)(i) Mobile equipment, including rail-mounted equipment, shall be stopped for manual connecting or service work, and;

(ii) Employees shall not reach between moving cars during coupling operations.

(iii) Couplings shall not be aligned, shifted, or cleaned on moving cars or locomotives.

(iv) Safety chains or other connections shall be used in addition to couplers to connect person cars or powder cars whenever the locomotive is uphill of the cars.

(v) When the grade exceeds one percent and there is a potential for runaway cars, safety chains or other connections shall be used in addition to couplers to connect haulage cars or, as an alternative, the locomotive must be downhill of the train.

(vi) Such safety chains or other connections shall be capable of maintaining connection between cars in the event of either coupler disconnect, failure or breakage.

(m) Parked rail equipment shall be chocked, blocked, or have brakes set to prevent inadvertent movement.

(n) Berms, bumper blocks, safety hooks, or equivalent means shall be provided to prevent overtravel and overturning of haulage equipment at dumping locations.

(o) Bumper blocks or equivalent stopping devices shall be provided at all track dead ends.

(p)(i) Only small handtools, lunch pails, or similar small items may be transported with employees in person cars, or on top of a locomotive.

(ii) When small hand tools or other small items are carried on top of a locomotive, the top shall be designed or modified to retain them while traveling.

(q)(i) Where switching facilities are available, occupied personnel cars shall be pulled, not pushed. If personnel cars must be pushed and visibility of the track ahead is hampered, then a qualified person shall be stationed in the lead car to give signals to the locomotive operator.

(ii) Crew trips shall consist of personnel loads only.

(21) Electrical safety. This subsection applies in addition to the general requirements for electrical safety which are found in Part I of this chapter.

(a) Electric power lines shall be insulated or located away from water lines, telephone lines, air lines, or other conductive materials so that a damaged circuit will not energize the other systems.

(b) Lighting circuits shall be located so that movement of personnel or equipment will not damage the circuits or disrupt service.

(c) Oil-filled transformers shall not be used underground unless they are located in a fire-resistant enclosure suitably vented to the outside and surrounded by a dike to retain the contents of the transformers in the event of rupture.

(22) Hoisting unique to underground construction except as modified by this section, the following provisions of chapter 296-155 WAC, Part L apply: Requirements for cranes are found in WAC 296-155-525. WAC 296-155-48533 contains rules applicable to crane hoisting of personnel, except, that the limitations imposed by WAC 296-155-48533(2) do not apply to the routine access of employees to the underground via a shaft. Requirements for personnel hoists, material hoists, and elevators are found in WAC 296-155-530 and in this subsection.

(a) General requirements for cranes and hoists.

(i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging, or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This subsection does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalperson at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalperson who is in constant voice communication with the operator.

(iv)(A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Only closed shackles shall be used for cage and skip rigging.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(b) Additional requirements for cranes. Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(c) Additional requirements for hoists.

(i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Hoist machines with cast metal parts shall not be used.

(v) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(vi) Employees shall not ride on top of any cage, skip, or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vii) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(viii) Line speed shall not exceed the design limitations of the systems.

(ix) Hoists shall be equipped with landing level indicators at the operator's station. Marking of the hoist rope does not satisfy this requirement.

(x) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(xi) A fire extinguisher that is rated at least 2A:10B:C (multipurpose, dry chemical) shall be mounted in each hoist house.

(xii) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xiii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiv) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker-microphones so located that the operator can communicate with individual landing stations during hoist use.

(xvi) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvii) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail-guided to within a rail length from the sinking operation.

(xviii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xix) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to chapter 296-155 WAC ((296-155-530-(3)(i), (ii), and (iii))), Part L, for design factors for wire rope used in

personnel hoists. The design factors shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xx) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xxi) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxii) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: At the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxiii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xiv) Unsafe conditions shall be corrected before using the equipment.

(d) Additional requirements for personnel hoists.

(i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this subsection.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16 -inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches, or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in complete shafts.

WSR 95-04-033
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3826—Filed January 24, 1995, 11:41 a.m., effective February 1, 1995]

Date of Adoption: January 24, 1995.

Purpose: Promotes more appropriate emergency room usage by primary care case management clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-87-072 Payment—Hospital outpatient services and 388-538-100 Managed care emergency services.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 95-01-063 on December 14, 1994.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These changes do save money and are a benefit to the public because these rule amendments fulfill the requisites of the Economic Policy Act and affect only emergency rooms serving primary care case management clients.

Effective Date of Rule: February 1, 1995.

January 24, 1995

Dewey Brock, Chief

Office of Vendor Services

AMENDATORY SECTION (Amending Order 3621, filed 8/11/93, effective 9/11/93)

WAC 388-538-100 Managed care emergency services. (1) The department shall exempt emergencies and emergency transportation services ((shall be exempted)) from routine medical care authorization procedures of a plan or under primary care case management (PCCM).

(2) A client shall not be responsible for determining if an emergency exists or for the cost of such determination. For nonemergency conditions, hospital reimbursement for PCCM under WAC 388-87-072(4) shall be limited to a medical evaluation fee as established by the department.

(3) In a medical emergency, the client shall not be financially responsible for covered managed care services provided.

(4) When an emergency does not exist, and the client's plan primary care provider (PCP) does not authorize services, the client shall be financially responsible for further

services received only when the client is informed and agrees, in writing, to the responsibility before receiving the services as described under WAC 388-87-010.

AMENDATORY SECTION (Amending Order 3268, filed 10/23/91, effective 11/23/91)

WAC 388-87-072 Payment—Hospital outpatient services. (1) For eligible (~~recipients~~) clients, the department shall reimburse for medically necessary hospital outpatient services when the services are medically necessary as defined under WAC 388-80-005, and the hospital provider meets the requirements under WAC 388-87-070(1).

(2) For hospital outpatient services provided (~~prior to July 1~~) on or before June 30, 1985, except for nonallowable revenue codes, the department shall determine reimbursement (~~shall be determined~~) by applying the hospital commission approved operating expenses ratio and total rate setting revenue.

(3) For hospital outpatient services, except for services in subsection (4) of this section and nonallowable revenue codes, provided from July 1, 1985, to June 30, 1991, the department shall determine reimbursement payment (~~shall be determined~~) by applying the hospital commission operating expenses ratio and total rate setting revenue.

(4) For hospital outpatient services provided on or after July 1, 1991, reimbursement shall be the hospital ratio of cost to charge (RCC), determined from the hospital specific HCFA 2552 Medicare Cost Report, then reduced for the average charge level inflation over the Data Research Incorporated HCFA Market Basket inflation index, except as provided for primary care case management under WAC 388-538-100(2).

(5) For hospital outpatient laboratory, x-ray, and allowable therapy (physical, speech, and hearing) services, payment shall be the lesser of billed charges or the fee listed in the Medical Assistance Administration Schedule of Maximum Allowances.

WSR 95-04-035

PERMANENT RULES

DEPARTMENT OF HEALTH

(Division of Community and Family Health)

[Filed January 24, 1995, 1:24 p.m., effective January 24, 1995]

Date of Adoption: December 14, 1994.

Purpose: To update existing tuberculosis prevention, treatment, and control WAC. Primary impact of rule change is the establishment of due process standards for health officers to exercise their authority to involuntarily test, treat, or detain persons with suspected or confirmed tuberculosis.

Citation of Existing Rules Affected by this Order: Chapter 246-170 WAC, repealing WAC 246-170-001, 246-170-010, 246-170-020, 246-170-030, 246-170-040, 246-170-050, 246-170-060, 246-170-070, 246-170-080, and 246-170-090.

Statutory Authority for Adoption: ESB 6158, chapter 70.28 RCW.

Pursuant to notice filed as WSR 94-22-007 on October 20, 1994.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The authority to adopt, ESB 6158, mandates rule adoption no later than December 31, 1994, due to last minute changes at the hearing the effective date will be January 24, 1995.

Effective Date of Rule: January 24, 1995.

January 18, 1995

Sylvia I. Beck

Executive Director

Board of Health

Chapter 246-170 WAC

~~TUBERCULOSIS—(CONTROL, PREVENTION, AND TREATMENT)~~ PREVENTION, TREATMENT, AND CONTROL

NEW SECTION

WAC 246-170-002 Findings and purpose. (1) The board of health finds that:

(a) Pulmonary tuberculosis is a life-threatening airborne disease that can be casually transmitted without significant interaction with an infectious person. Tuberculosis has reemerged as an epidemic disease nationally, and though Washington state is not in an epidemic yet, the increasing number of cases in Washington state each year clearly demonstrate that absent timely and effective public health intervention in individual cases, the residents of the state of Washington are at risk of being infected by tuberculosis.

(b) In order to limit the spread of tuberculosis, it is essential that individuals who have the disease are diagnosed and treated before they infect others. Diagnosis requires a variety of methodologies including skin tests, x-rays, and laboratory analysis of sputum samples.

(c) A person with infectious tuberculosis who does not voluntarily submit to appropriate testing, treatment, or infection control methods poses an unreasonable risk of spreading the disease to those who come into the infectious person's proximity.

(d) Although the recommended course of treatment for tuberculosis varies somewhat from one individual to another, at a minimum, effective treatment requires a long-term regimen of multiple drug therapy. Some drugs are effective with some individuals but not others. The development of the appropriate course of treatment for any one individual may require trying different combinations of drugs and repeated drug susceptibility testing. The course of treatment may require as long as several years to complete.

(e) A person who begins a course of treatment for tuberculosis and fails to follow the recommended course through to completion is highly likely to relapse at some point into infectious tuberculosis. The person will most likely then be infected with what is known as multiple drug resistant tuberculosis, which is more virulent, more difficult to treat, and more likely to result in fatality. A person who is infectious with multiple drug resistant tuberculosis poses a significant risk of transmitting multiple drug resistant tuberculosis to other persons, unless appropriate treatment and infection control methods are followed.

(f) Multiple drug resistant tuberculosis is a significant element in the epidemic that is being encountered nationwide, and effective public health interventions are necessary

to prevent that epidemic from developing in or spreading to Washington state.

(2) The following rules are adopted for the purpose of establishing standards necessary to protect the public health by:

(a) Assuring the diagnosis, treatment, and prevention of tuberculosis; and

(b) Assuring that the highest priority is given to providing appropriate individualized preventive and curative treatment in the least restrictive setting.

NEW SECTION

WAC 246-170-011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Case management" means a comprehensive, ongoing identification of needs, including the need for any medical, social, educational, or other support services; the development and implementation of a detailed plan of services and related activities; use of community linkages; and advocacy for the client performed in a prescribed, accountable manner.

"Confirmed" or "confirmed case" means an individual who has a positive bacteriologic culture for *Mycobacterium tuberculosis* complex or a suspected case that shows response to an appropriate course of treatment.

"Department" means the department of health.

"Detention" or "detain" means the act of restricting an individual's movement by confining the person.

"Directly observed therapy (DOT)" and "directly observed preventive therapy (DOPT)" mean providing oral medications to patients and observing ingestion of medications by patients.

"Infected" means an individual who has tubercle bacilli as identified by a positive tuberculin skin test, but is not capable of transmitting the organism to another person.

"Infectious" means the stage of disease in which an individual transmits viable tuberculosis organisms into the air.

"Inpatient" means health care furnished to an individual who has been admitted to a hospital.

"Outpatient" means health care furnished to an individual who is not an inpatient.

"Personal protective equipment" means respirators and other equipment as required by the department of labor and industries.

"Prevention" means the interventions that interrupt the spread of tuberculosis, either within an individual, within the population, or both.

"Preventive therapy" means either treatment to prevent infection in an uninfected person or treatment to prevent disease in an infected person.

"Primary health care provider" means the person who assumes the day-to-day medical care of a tuberculosis patient.

"Suspected case" means an individual with signs or symptoms suggestive of tuberculosis disease prior to confirmation.

"Treatment" means a course of long-term multiple drug or other appropriate therapy prescribed for an individual with suspected or confirmed disease in accordance with accepted

medical practice and current applicable national and state guidelines, and may include preventive therapy.

"Tuberculin skin test" means the introduction of purified protein derivative (PPD) by the Mantoux method.

"Tuberculosis community health worker" means an unlicensed person trained to perform tuberculin skin testing, directly observed therapy, and directly observed preventive therapy and working pursuant to chapter 70.28 RCW as part of a program established by a state or local health officer to control tuberculosis.

NEW SECTION

WAC 246-170-021 Responsibility of local health officers. Each county, city-county and district health officer is responsible for the control of tuberculosis within a jurisdiction. Each health officer shall act as or shall designate a physician to act as tuberculosis control officer. This individual shall coordinate all aspects of the prevention, treatment, and control program.

NEW SECTION

WAC 246-170-031 Local health department responsibilities. (1) Each local health department shall assure the provision of a comprehensive program for the prevention, treatment, and control of tuberculosis. Services shall include:

(a) Prevention and screening, with emphasis on screening of high risk populations;

(b) Diagnosis and monitoring, including laboratory and radiology;

(c) Individualized treatment planning consistent with American Thoracic Society/Centers for Disease Control and Prevention statements based on the least restrictive measures necessary to assure appropriate treatment; and

(d) Case management.

(2) In the absence of third party reimbursement, the local health department shall assure the provision of inpatient or outpatient care, including DOT/DOPT and case management.

(3) Each local health department shall maintain a register of all diagnosed or suspected cases of tuberculosis. In addition, each local health department shall also maintain a register of individuals to whom that health department is providing preventive therapy. Quarterly status reports on suspected and diagnosed cases shall be furnished to the department of health tuberculosis control program.

(4) A physician knowledgeable in the diagnosis and treatment of tuberculosis approved by the department shall be available to provide review of diagnoses, plans of management and, if appropriate, discharge from inpatient facilities.

(5) Sufficient nursing, clerical, and other appropriate personnel shall be provided to furnish supervision of preventive and outpatient treatment, surveillance, suspect evaluation, epidemiologic investigation, and contact workup.

NEW SECTION**WAC 246-170-041 Inpatient services requirements.**

(1) Inpatient services to infectious or suspected cases shall be provided in hospitals or hospital units of correctional facilities. These facilities shall meet infection control program requirements pursuant to WAC 246-318-035, and shall provide:

(a) A single-patient room consistent with the guidelines set forth in the 1994 *CDC Guidelines For Preventing the Transmission of Tuberculosis in Health Care Facilities*, or as hereafter amended. Copies of these guidelines are available from the Washington state department of health, TB control program;

(b) Medical, nursing, laboratory, radiology, pharmacy, patient education, and social services;

(c) Discharge conferences involving at least the current primary provider, a local health department representative, and transferring and receiving facility representatives.

(2) Suspected and infectious cases may be housed and treated in other settings not meeting the requirements of this section only as approved by the local health officer.

NEW SECTION

WAC 246-170-051 Procedures for involuntary testing, treatment, and detention. (1) A local health officer shall make reasonable efforts to obtain voluntary compliance with requests for examination, testing, and treatment prior to initiating the procedures for involuntary detention.

(2) If the local health officer has reason to believe that:

(a) A person is a suspected case, and that the person has failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing;

(b) A person with confirmed tuberculosis is failing to comply with an individual treatment plan approved by the local health officer;

(c) A person who is either a suspected or confirmed case and is failing to comply with infection control directives issued by the local health officer; or

(d) A person is a suspected or confirmed case of tuberculosis based upon generally accepted standards of medical and public health science. A local health officer shall investigate and evaluate the factual basis supporting his or her "reason to believe"; then the health officer may detain the person, cause the person to be detained by written order, or petition the superior court *ex parte* for an order to take the person into emergency detention for testing or treatment, or both. The period of detention shall not exceed seventy-two hours, excluding weekends and holidays.

(3) At the time of detention the person detained shall be given the following written notice:

NOTICE: You have the right to a superior court hearing within seventy-two hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

You have a right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have a right to appeal any decision made by the court.

You may be given appropriate TB medications only on your informed consent, or pursuant to a court order.

(4) If a person is involuntarily detained under this section, within one judicial day of initial detention, the local health officer shall file with the superior court in the county of detention a petition for detention. A petition filed under this section shall specify:

(a) The basis for the local health officer's belief that the respondent is either a suspected or confirmed case; including the name, address and phone numbers of whom the health officer expects to testify in support of the petition for detention and identification of any and all medical tests and records relied upon by the local health officer;

(b) The specific actions taken by the local health officer to obtain voluntary compliance by the respondent with recommended examination and testing or treatment, as the case may be;

(c) The nature and duration of further detention or other court-ordered action that the local health officer believes is necessary in order to assure that the respondent is appropriately tested or treated;

(d) The basis for believing that further detention or other court-ordered action is necessary to protect the public health; and

(e) Other information the local health officer believes is pertinent to the proper resolution of the petition.

(5) Service on respondent. The health officer shall serve a copy of the petition on the individual named therein at the time of the detention. If the person informs the health officer that he or she is represented by legal counsel, service on such counsel shall be made by delivering a copy of the petition to the attorney's office no later than the time of filing the petition with the superior court.

NEW SECTION

WAC 246-170-055 Due process proceedings. (1) A hearing on the petition for detention filed under WAC 246-170-051 shall be conducted in superior court within seventy-two hours after initial detention, excluding weekends and holidays. The local health officer shall have the burden of proving the allegations set forth in the petition by a preponderance of the evidence. The person named in the petition shall have the right to cross-examine witnesses, present evidence, and be represented by an attorney at any hearing held on the petition. If the person is indigent and requests appointment of legal counsel, legal counsel shall be appointed at public expense at least twenty-four hours prior to the superior court hearing.

(2) At the conclusion of the hearing, the court shall consider the evidence, the action taken by the health officer to secure voluntary compliance by the patient, and the purpose and intent of the public health laws, including this chapter, and may take one of the following actions:

(a) If the court finds that the respondent is a suspected case, the court may enter an order requiring that the person be subjected to further examination, testing, and treatment as

specified in the court's order. If the court finds that further detention of the respondent is necessary in order to assure that the examination, testing, and treatment occurs, or to protect the public health the court may order that the respondent be detained for an additional period not to exceed forty-five days. The results of testing conducted under this chapter shall be provided to the court and the person detained or his or her legal counsel as soon as they are available to the local health officer. The court may then conduct an additional hearing to determine whether the person is a confirmed case and, if so, whether further measures are necessary to protect the public health pursuant to (b) or (c) of this subsection.

(b) If the court finds that the person is a confirmed case, that further measures less restrictive than detention of the respondent are necessary to assure that appropriate treatment is implemented and that imposition of less restrictive measures will be sufficient to protect the public health, the court may enter an order setting forth such measures and ordering the respondent to comply with the measures.

(c) If the court finds that the person is a confirmed case, that further detention of the respondent is necessary to protect the public health, and that imposition of less restrictive measures will not be sufficient to protect the public health, the court may order that the respondent be detained and treated for an additional period not to exceed forty-five days.

(d) If the court finds that there is insufficient evidence to support the petition for detention, then the court shall immediately release the person detained.

(3) A person detained under this chapter may be released prior to the expiration of the court-ordered detention if the health officer or the court finds that less restrictive measures are sufficient to protect the public health. The court may impose such conditions on the release of the person as the court finds are necessary to protect the public health. A person detained under this chapter may also petition the court for release based upon new evidence or a change in circumstances.

(4) The court may extend a period of court-ordered detention for additional periods not to exceed one hundred eighty days each following a hearing as described in WAC 246-170-051 and this section, if the court finds that the requirements of subsection (2)(a), (b), or (c) of this section have been met and if the court finds that further detention is necessary to assure that appropriate treatment is implemented, and that imposition of less restrictive measures are not sufficient to protect the public health. As an alternative to extending the period of detention, if the court finds after hearing that further measures less restrictive than detention are necessary to assure that appropriate treatment is continued, and that imposition of less restrictive measures will be sufficient to protect the public health, the court may enter an order setting forth the measures and ordering the respondent to comply.

(5) In the event that a person has been released from detention prior to completion of the prescribed course of treatment and fails to comply with the prescribed course of treatment, the health officer where that individual is found may detain that person, and any court having jurisdiction of the person may order the person detained for an additional period or periods, not to exceed one hundred eighty days

each, as the court finds necessary to protect the public health.

(6) If a person has been detained in a county other than the county in which the court that originally ordered the detention is located, venue of the proceedings may remain in the original county, or may be transferred to the county of detention. Change in venue may be sought either by the local health officer in the original county or in the county of detention, or by the person detained. Except as otherwise agreed between the original health officer and the health officer in the county of detention, the original health officer retains jurisdiction over the detained person, including financial responsibility for costs incurred in implementing and continuing the detention.

(7) Court orders entered under this chapter shall be entered only after a hearing at which the respondent is accorded the same rights as at the initial hearing on the petition for detention.

(8)(a) When a court order for detention is issued, the transporting law enforcement agency and the receiving facility shall be informed of the infectious TB status of the person for disease control and the protection of the health of the staff, other offenders and the public. Such information shall be made available prior to the transport.

(b) Whenever disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it except as authorized by state law."

(c) Transporting agencies and/or receiving facilities shall establish and implement policies and procedures that maintain confidentiality related to the detained person's medical information as defined in this subsection and state law.

NEW SECTION

WAC 246-170-061 Initiation of testing or treatment.

If a person has been detained under WAC 246-170-051 or 246-170-055, the health officer may begin testing or treatment, with informed consent, or pursuant to a court order as appropriate, pending the hearing required under WAC 246-170-055.

NEW SECTION

WAC 246-170-065 Persons already detained, confined, or committed.

(1) The provisions of WAC 246-170-051 through 246-170-061 do not apply to persons who have been lawfully detained, confined, or committed to the custody of a penal institution, a mental health facility, or another public or private institution. The person in charge of such facility or his or her designee shall report to the local health officer the names of persons in custody who are either a suspected or confirmed case. The report shall include information indicating the date upon which the person is to be released from the facility, if known, and if no specific release date has been determined, the earliest date upon which release is likely to occur. A person in custody may be ordered to undergo examination and testing or treatment, as appropriate, by the person in charge of the

facility or designee, subject to such constitutional or other requirements as may be applicable.

(2) The person in charge of a custodial facility shall notify the local health officer and the department of the release of a person who is at the time of release reasonably believed to be either a suspected or confirmed case. The notice shall be given to the local health officer where the facility is located and to the local health officer having jurisdiction over the place to which the person is being released, if known. The notice shall be given as early as is practical, but in no event later than the time of the actual release.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-170-001 Purpose.
- WAC 246-170-010 Definitions.
- WAC 246-170-020 Responsibility of local health officers.
- WAC 246-170-030 Local health department responsibilities.
- WAC 246-170-040 Inpatient services.
- WAC 246-170-050 Infection control.
- WAC 246-170-060 Clinical services.
- WAC 246-170-070 Home treatment.
- WAC 246-170-080 Case monitoring.
- WAC 246-170-090 Program review.

WSR 95-04-044
PERMANENT RULES
LIQUOR CONTROL BOARD
 [Filed January 25, 1995, 1:30 p.m.]

Date of Adoption: January 18, 1995.

Purpose: WAC 314-70-050, the amendatory language will provide the board the option to put seized or confiscated liquor products to useful purposes rather than being destroyed; WAC 314-18-080, sets forth the hours during which time liquor may be sold, served and consumed; and WAC 314-10-030, requires machines be located ten feet from entry/exit doors.

Citation of Existing Rules Affected by this Order: Amending WAC 314-70-050, 314-10-030, and 314-18-080.

Statutory Authority for Adoption: RCW 66.08.030.

Pursuant to notice filed as WSR 94-24-033, 94-24-034 and 94-24-035 on December 1, 1994.

Effective Date of Rule: Thirty-one days after filing.

January 20, 1995

Joe McGavick
 Chairman

AMENDATORY SECTION (Amending WSR 93-11-028, filed 5/10/93, effective 6/10/93)

WAC 314-70-050 Destruction of liquor by liquor enforcement officers. (1) Pursuant to RCW 66.08.030, liquor enforcement officers are authorized to seize, confiscate, ~~(and)~~ destroy or otherwise dispose of any liquor manufactured, sold, or offered for sale within the state that

does not conform in all respects to the standards prescribed by Title 66 RCW and board regulations.

(2) Destruction shall be carried out under competent supervision and a record of the type, brand, and amount of liquor shall be maintained on a form prescribed by the board. Records made pursuant to this regulation shall be maintained for a period not less than one year.

(3) Liquor may be destroyed only after:

(a) The board's charges of a violation of Title 66 RCW or board regulations have been sustained after an administrative proceeding pursuant to chapter 314-04 or 314-08 WAC in which the liquor to be destroyed has been the subject of, or evidence in, that administrative proceeding; or

(b) The board's charges of a violation of Title 66 RCW or board regulations have been admitted or are not contested by the person from whom the liquor was seized and the liquor seized was the subject of the charged violation; or

(c) Liquor was seized pursuant to lawful arrest and that liquor was held as evidence in a criminal proceeding where a final disposition has been reached; or

(d) When no administrative or judicial proceedings are held, all parties who claim a right, title, or interest in the seized liquor have been given notice and opportunity for a hearing to determine his or her right, title, or interest in the subject liquor. Claims of right, title, or interest in seized liquor must be made to the board, in writing, within thirty days of the date of seizure.

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

WAC 314-10-030 Tobacco mechanical dispensing machines—Licensees without a liquor license—Records.

(1) Tobacco licensees who do not hold a liquor license and use a mechanical dispensing machine (vending machine) must provide to the board a listing denoting the address and specific location of each tobacco vending machine.

(2) The tobacco licensee with a vending machine(s) must notify the board in writing of any new proposed location(s) for a tobacco vending machine ~~((+))~~ ten working days in advance of the move.

(3) Vending machines which dispense or store tobacco products may only be located in establishments where minors are prohibited, or in industrial worksites where minors are not employed in such locations. The vending machines used to dispense or store tobacco products must be located at least ~~((+))~~ ten feet from each entrance and/or exit. The board may waive upon written request the "ten feet" requirement when permanent fixtures or the design of the room make it impractical to place a machine ten feet from each entrance and/or exit.

(4) Vending machines with an exception waiver shall have an endorsement posted on the vending machine license to denote that the board has granted an exception to the ten-foot rule.

AMENDATORY SECTION (Amending Orders 110 and 112, Resolution Nos. 119 and 121, filed 8/4/82)

WAC 314-18-080 Hours of operation—Inspection of premises. (1) Banquet permits may be issued for any day and may authorize the service and consumption of liquor between the hours of 6:00 a.m. and 2:00 a.m. of the follow-

PERMANENT

ing day(~~except on New Year's Day, when the hour of closing may be extended to 3:00 a.m.~~).

(2) Any premises where a banquet permit has been granted shall be open to inspection by any peace officer or enforcement officer of the board to the same extent as provided for in WAC 314-12-120.

WSR 95-04-047
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3827—Filed January 25, 1995, 3:04 p.m.]

Date of Adoption: January 25, 1995.

Purpose: To ensure a person's income does not exceed the specified limits of the eligibility standards for the appropriate medical care program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-505-0590 Income.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 95-01-061 on December 14, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-505-0590(1) added a colon and an (a) between the words ... medical care program unless: (a) The program allows ... and added ... (b) The program otherwise specifically provides for exceeding those limits; or (c) In the case of medical assistant clients, eligibility for other programs has not yet been determined in accordance with WAC 388-522 ...

Effective Date of Rule: Thirty-one days after filing.
January 25, 1995
Dewey Brock, Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-505-0590 Income. (1) To be eligible for a medical care program, a person's countable income shall not exceed the specified limits of the eligibility standards for the appropriate medical care program unless:

(a) The program allows the spenddown of excess income;

(b) The program otherwise specifically provides for exceeding those limits; or

(c) In the case of medical assistance clients, eligibility for other programs has not yet been determined in accordance with WAC 388-522.

(2) For continuing cash assistance clients, the department shall find a person eligible for medical care programs without a separate eligibility determination.

~~((2))~~ (3) For a noncash assistance medical client, the department shall determine countable income according to AFDC or SSI methodology; except, the department shall:

(a) Consider the financial responsibility of relatives as described under WAC 388-506-0610 and 388-506-0620, and the financial responsibility of an alien sponsor under WAC 388-510-1030;

(b) Require a client to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which a client is entitled, unless the client can show good cause for not doing so. The client's annuities, pension, retirement, and disability benefits include, but are not limited to(~~(c)~~):

(i) Veteran's compensation and pensions(~~(c)~~);

(ii) OASDI benefits(~~(c)~~);

(iii) Railroad retirement benefits(~~(c)~~); and

(iv) Unemployment compensation(~~(c)~~);

(c) Allow child care expenses the client pays as an income deduction;

(d) Exempt earned income tax credit refunds and payments, received on or after January 1, 1991, during the month of receipt and the following month; and

(e) Consider trusts as described under WAC 388-505-0595.

~~((3))~~ (4) For an SSI-related client, the department shall determine countable income using SSI methodology except:

(a) Exclude lump sum payments as described under WAC 388-511-1160;

(b) Consider the principal and interest payment from a sales or real estate contract as described under WAC 388-511-1160 (2)(a) as unearned income;

(c) Consider the interest payment from a sales or real estate contract as described under WAC 388-511-1160 (2)(b) as unearned income.

~~((4))~~ (5) For a noncash AFDC assistance medical client, the department shall determine countable income according to AFDC methodology; except, the department shall:

(a) Budget income prospectively as defined under WAC 388-218-1900;

(b) Not use mandatory monthly income reporting;

(c) Consider the AFDC earned income exemption except as limited under WAC 388-507-0740.

WSR 95-04-048
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3829—Filed January 25, 1995, 3:06 p.m.]

Date of Adoption: January 25, 1995.

Purpose: Incorporates federal: (1) Policy reinterpretation—clarifies certain temporary disability insurance and temporary worker's compensation payments are counted as earned income and no longer considered unearned income; and (2) law that adds wages paid under the National and Community Service Trust Act of 1993 (Americorps) treated as earned income.

Citation of Existing Rules Affected by this Order: Amending WAC 388-218-1050 Definitions, 388-218-1400 Earned income types, 388-218-1500 Unearned income types, and 388-218-1520 Income from employment or training programs.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Public Law 103-82, 45 CFR 233.20 (a)(6)(iii) and (vi) and 233.20 (a)(11).

Pursuant to notice filed as WSR 95-01-027 on December 9, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-218-1400(6) added: Recurrent time loss benefits from the Department of Labor and Industries are examples of benefits meeting this criteria. WAC 388-218-1520 (1)(a) adds: Americorps/VISTA stipends and living allowances are paid to VISTA volunteers under the Domestic Volunteer Act of 1973. These payments are exempt as earned or unearned income.

Effective Date of Rule: Thirty-one days after filing.

January 25, 1995

Dewey Brock, Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3759, filed 7/27/94, effective 9/1/94)

WAC 388-218-1050 Definitions. (1) "Allocation" means the process of determining the amount of income possessed by someone outside the AFDC assistance unit considered available to meet the needs of legal dependents in the assistance unit, or the process of determining the amount of income possessed by the assistance unit considered available to meet the needs of legal dependents outside the assistance unit.

(2) "Available income" means any income which the client possesses and can currently use to supply all or part of his/her requirements.

(3) "Budget month" means the second calendar month preceding the payment month.

(4) "Deeming" means the process of determining the amount of an alien sponsor's income available to the alien.

(5) "Earned income" means income in cash or in-kind earned as wages, salary, commissions, or profit from activities in which the client is engaged as a self-employed person or as an employee. Earned income may be derived from self-employment (such as business enterprise or farming), or derived from wages or salary received as an employee. Earned income also includes earnings over a period of time for which settlement is made at one time, for example, sale of farm crops, livestock, or poultry. Income from rentals is earned income, provided the client has managerial responsibility for the rental property.

(6) The definition of "earned income" includes:

(a) Earnings under Title I of the Elementary and Secondary Education Act;

(b) All earnings received under the Economic Opportunity Act;

(c) Wages from on-the-job training and work experience; and

(d) Wages paid under the Job Training Partnership Act (JTPA) and the National and Community Service Trust Act of 1993 (Americorps).

(7) The definition of "earned income" excludes:

(a) Returns from capital investment with respect to which the client is not actively engaged, as in a business. For example, under most circumstances, dividends and interest are excluded from "earned income."

(b) Benefits accruing as compensation or reward for service, or as compensation for lack of employment, for example, pensions and benefits from labor organizations,

veterans' benefits, unemployment compensation, Social Security, etc.

(c) Income from incentive payments and training-related expenses derived from institutional or work experience training.

(d) Income received under the Job Training Partnership Act and Americorps for training allowances, payments for support services, etc.

(8) "Earned income in-kind" means the in-kind item is earned by work performed for another person by the client such as earning rent from a landlord, etc.

(9) "Entitlement" means any claim or interest, payable in cash or in-kind, a client may have in the following:

(a) Benefit;

(b) Compensation;

(c) Insurance;

(d) Pension (retirement, military, etc.);

(e) Bonus;

(f) Allotment; and

(g) Allowance, etc.

(10) "Gross income" means all income not specifically exempted by rule or regulation before applicable program disregards are applied.

(11) "Income" shall include, but is not limited to, all types of:

(a) Income from the lease or rental of real or personal property;

(b) Support from parent, stepparent, or other nonrelated adult;

(c) Interest or dividends from stocks and bonds as specified in WAC 388-218-1920 (3)(a);

(d) Wages, including garnished wages;

(e) Income from farming;

(f) Benefits and entitlements from private and public agencies, such as OASDI, veterans' agencies, and U.C.;

(g) Gifts and prizes in the form of cash or marketable securities; and

(h) Lump sum payments.

(12) "Initial investments" means real or personal property purchased directly with funds from an annuity fund or per capita payment up to the amount of the funds from the annuity fund or per capita payment.

(13) "Lump sum payment" means a nonrecurring unearned income. Lump sum payments may include, but are not limited to:

(a) Lottery, bingo, or gambling winnings;

(b) An inheritance;

(c) Personal injury award;

(d) Workers compensation awards; or

(e) Social Security back payments.

(14) "Minor parent" means a person who:

(a) Is seventeen years of age or younger; and

(b) Resides in the same household with an adult responsible for the minor parent's support.

(15) "Net income" means gross income less applicable disregards and deductions for which the client is eligible.

(16) "Newly acquired income" means any previously unreported or undiscovered income a client possesses or controls in whole or in part.

(17) "Payment month" means the calendar month for which payment is made.

(18) **"Process month"** means the calendar month between the budget month and the payment month.

(19) **"Self-produced"** means an item produced by a client, as opposed to an item purchased by a client, given to a client, or earned by a client in lieu of wages.

(20) **"Student"** means a client attending a school, college or university, or a course of vocational or technical training designed to fit the client for gainful employment. A full-time student must have a school schedule equal to a full-time curriculum. A part-time student must have a school schedule equal to at least one-half of a full-time curriculum. A student enrolled during the school term just completed and planning to return to school when school reopens shall retain status as a student during the summer vacation.

(21) **"Supplied"** means the in-kind item is furnished to the client without work or cost.

(22) **"Unearned income"** means income not directly resulting from a client's employment or self-employment.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-218-1400 Earned income types. The department shall consider the following income types as earned income and treat accordingly:

(1) Employment partnership program wages.

(2) Foster care retainer fees received to reserve beds for foster children when a public assistance client operates a foster home for children.

(3) Earned income in-kind items shall be evaluated in terms of their cash equivalent.

(4) Self-employment income from the management and operation of a rooming, boarding, or boarding and rooming home. See WAC 388-218-1320 Board, room rental, board and room income, to determine net income.

(5) Wages, salary, commissions, or profit from activities in which a client is engaged as a self-employed person or as an employee earned in cash or in-kind.

(6) State temporary disability insurance payments and temporary worker's compensation payments which are analogous to sick pay when such payments are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending return to the job. Recurrent time loss benefits from the department of labor and industries are examples of benefits meeting this criteria.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-218-1500 Unearned income types. (1) Unearned income shall include but is not limited to the following types:

(a) Child support when not a pass-through payment or ((OSE)) DCS assignment has not been completed;

(b) Gate money from adult corrections;

(c) Labor and industries benefits, except those worker's compensation payments which are treated as earned income in WAC 388-218-1400(6);

(d) Railroad retirement;

(e) Social Security disability and retirement;

(f) Unemployment compensation; and

(g) Veteran administration benefits.

(2) Unless specifically exempt or disregarded from consideration when determining need, unearned income shall be deducted in its entirety from the payment standard plus authorized additional requirements.

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-218-1520 Income from employment or training programs. (1) Payments issued under the Job Training Partnership Act (JTPA) and the National and Community Service Trust Act of 1993 (Americorps) shall be treated as follows:

(a) Wages paid under the Job Training Partnership Act (JTPA) and living allowances or stipends paid under the National and Community Service Trust Act of 1993 (Americorps) shall be considered earned income and treated accordingly. See WAC 388-218-1690 Allocation of the income of an ineligible child, for the treatment of the income of a child excluded from the grant. See WAC 388-218-1410 Earned income of a child, for the treatment of the income of a student.

Americorps/VISTA stipends and living allowances are paid to VISTA volunteers under the Domestic Volunteer Act of 1973. These payments are exempt as earned or unearned income.

(b) Needs based payments issued under the JTPA and Americorps shall be evaluated as follows:

(i) Payments which cover special needs not covered in the department need standard shall be disregarded as duplication of need does not exist.

(ii) Payments which duplicate items contained in the department need standard shall be treated in accordance with the policies contained in WAC 388-218-1540 Assistance from other agencies and organizations.

(2) Wages paid from on-the-job training or work experience are considered earned income and treated accordingly.

WSR 95-04-049
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3828—Filed January 25, 1995, 3:08 p.m.]

Date of Adoption: January 25, 1995.

Purpose: (1) Ensures a person's citizenship, Social Security Number, and residency are not required as a condition of eligibility for the LCP-MI program; (2) ensures, as a condition of eligibility for LCP-MI program, a person must have an emergency medical condition; and (3) deletes the requirement that the value transferred resources be added to spenddown liability as it contradicts WAC 388-507-0740.

Citation of Existing Rules Affected by this Order: Amending WAC 388-518-1805 LCP-MI eligibility.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 95-01-037 on December 12, 1994.

Effective Date of Rule: Thirty-one days after filing.

January 25, 1995
Dewey Brock, Chief
Office of Vendor Services

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-518-1805 LCP-MI eligibility. (1) The department shall ~~((determine))~~ not require as a condition of eligibility:

- (a) A person's citizenship((?));
 - (b) Social Security number((?)); and
 - (c) Residency ~~((are not requirements for eligibility))~~.
- (2) A person shall not be eligible for LCP-MI when the person:

- (a) Is eligible for medical care from another state; or
- (b) Enters Washington state specifically for the purpose of obtaining medical care.

(3) A person receiving LCP-MI shall meet the following eligibility criteria:

- (a) The person is not:
 - (i) Receiving continuing cash assistance; or
 - (ii) Eligible for any other medical program((?)).

~~(b) ((The client who transferred resources within two years before the date of application but after July 1, 1981, shall spenddown the uncompensated value of the resource as described in WAC 388-518-1840. See WAC 388-513-1370 for determining the uncompensated value of the transferred~~

Changes Other than Editing from Proposed to Adopted Version:

Minor Revisions to chapter 490-500 WAC, Vocational rehabilitation and services for individuals with disabilities.

Reference Number	Page Number	Change
WAC 490-500-070(5)	14	Typo - "accessing" changed to "assessing"
WAC 490-500-190(2)	16	Change the phrase, "if the client is an unemancipated minor," to "if the client resides in the parent's home," Adoption of this language more clearly states the intention that the resources of the family unit be considered when determining economic need, regardless of whether the client is an emancipated or unemancipated minor.
WAC 490-500-275	22	Title change to "Individualized, Written Rehabilitation Plan - Review"
WAC 490-500-275(1)	22	Added text to clarify consequences of failure to meet objective evaluation criteria. Text added to (1): "If the client fails to meet the objective criteria. Text added to (1): "If the client fails to meet the objective evaluation criteria mutually agreed upon and specified in the plan, the division may temporarily suspend services. The suspension shall remain in effect until the VRC and the client discuss and mutually agree to resolve the situation."
WAC 490-500-385(5)	27	Changed sentence to active voice
WAC 490-500-389(2)	27	Changed sentence to active voice
WAC 490-500-390 (2)(d)	28	Changed sentence to active voice
WAC 490-500-390(4)	28	Changed sentence to active voice
WAC 490-500-418(2)	28	Changed "includes" to "means"
WAC 490-500-418(4)	29	Changed sentence to active voice
WAC 490-500-420(3)	29	Changed sentence to active voice and changed "shall" to "may"
WAC 490-500-420(4)	29	Changed sentence to active voice
WAC 490-500-430(2)	30	Changed sentence to active voice
WAC 490-500-430(3)	30	Changed sentence to active voice
WAC 490-500-435(3)	31	Changed sentence to active voice and changed "shall" to "may"
WAC 490-500-435(4)	31	Changed sentence to active voice
WAC 490-500-437(3)	31	Changed sentence to active voice and changed "shall" to "may"
WAC 490-500-437(4)	31	Changed sentence to active voice
WAC 490-500-445(2)	31	Changed sentence to active voice

~~resource))~~ The person must have an emergency medical condition as defined in WAC 388-500-0005; and

(c) For a pregnant woman, the department shall increase the number in the household by the number of unborn before comparing the pregnant woman's income to the:

- (i) Income requirements of WAC 388-518-1850(1); and
- (ii) Resource requirements of WAC 388-518-1850(2).

WSR 95-04-050
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Vocational Rehabilitation)
[Order 3830—Filed January 25, 1995, 3:13 p.m.]

Date of Adoption: January 25, 1995.

Purpose: This chapter is amended as required under the 1993 changes to chapter 74.29 RCW and reflects the 1992 amendments to the Rehabilitation Act of 1973.

Citation of Existing Rules Affected by this Order: Amending chapter 490-500 WAC, Vocational rehabilitation and services for handicapped persons.

Statutory Authority for Adoption: RCW 74.29.025.

Pursuant to notice filed as WSR 94-23-092 on November 17, 1994.

PERMANENT

WAC 490-500-445(3)	31	Changed sentence to active voice
WAC 490-500-450(2)	32	Changed sentence to active voice and changed "shall" to "may"
WAC 490-500-470	33	Added "services" to title. Vocational rehabilitation services—Transition services
WAC 490-500-480(2)	34	Changed sentence to active voice and changed "shall" to "may"
WAC 490-500-480(3)	34	Changed sentence to active voice
WAC 490-500-500(2)	35	Changed "outcome" to "goal"
WAC 490-500-505 (2)(b)	35	Added "Accessibility" to the beginning of the phrase
WAC 490-500-510(4)	36	Changed "shall be" to "is." WAC 490-500-510 already had the word "shall" placed before the colon, making subsection (4) language redundant.
WAC 490-500-520	36	Corrected capitalization in title. "Rehabilitation" to "rehabilitation."
WAC 490-500-615	47	Added "and benefits" to title. Independent living program—Economic need and comparable services and benefits.
WAC 490-500-620 (3) & (4)	48 & 49	Reverse the order of items (3) and (4) for clarification.
WAC 490-500-625	49	Changed "plan" to "program" in title.

RESPONSE TO WRITTEN COMMENTS

CHAPTER 490-500 WAC, FILED NOVEMBER 17, 1994

COMMENTS RECEIVED

ACTION TAKEN

Doug Sevin, Program Manager, Adult/Emergency Services Section. Mr. Sevin identified a typographical error in WAC 490-500-070(5). The word "accessing" was changed to "assessing."

This correction has been incorporated in the final version.

Mr. Sevin noted that WAC 490-500-420 eliminates the authority to provide maintenance. He felt that this was a significant rule change and should be so identified.

A memo will be sent to the director of the Division of Income Assistance advising the division of this change.

Mr. Sevin also noted that WAC 490-500-455 changes follow-up services after placement in employment from required to discretionary. Again, he felt that this was a significant change and should be so identified.

The change in wording does not affect current practice. The revised wording from "shall" to "may" eliminates providing a service when the service is not needed by the client.

Sharon Staley, Rules Coordinator. Ms. Staley identified a number of areas in the WAC which were in the passive voice and recommended active voice.

These areas were revised and have been incorporated.

Don Kay, Regional Administrator. Mr. Kay identified the need to add text to WAC 490-500-275(1) to clarify the consequences of failure to meet objective evaluation criteria.

Suggested text has been incorporated.

Tom Bewley, Chief of Field Services. Mr. Bewley recommended a change to WAC 490-500-190(2), he suggested to more clearly state the intention that the resources of the family unit be considered when determining economic need, regardless of whether the client is an emancipated or unemancipated minor. He also noted that this is the position taken by financial aid officers when determining eligibility for Pell Grant applicants.

Suggested text has been incorporated.

Effective Date of Rule: Thirty-one days after filing.
January 25, 1995
Dewey Brock, Chief
Office of Vendor Services

**WSR 95-04-056
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 26, 1995, 12:50 p.m., effective March 1, 1995]

Date of Adoption: January 26, 1995.

Purpose: This rule is being amended to add chiropractors to those who are designated to perform independent medical examinations for the department of self-insurers.

Reviser's note: The material contained in this filing will appear in the 95-05 issue of the Register as it was received after the applicable closing date for the issue for agency-typed material exceeding the volume limitations of WAC 1-21-040.

PERMANENT

Citation of Existing Rules Affected by this Order:
Amending WAC 296-23-265 Independent medical examinations examiner.

Statutory Authority for Adoption: RCW 51.32.112.

Pursuant to notice filed as WSR 94-22-084 on November 2, 1994.

Effective Date of Rule: March 1, 1995.

January 26, 1995

Mark O. Brown

Director

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-23-265 Independent medical examinations examiner. (1) Independent medical examinations must be performed in accordance with WAC 296-20-200 by examiners approved by the department and licensed to perform medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, chiropractic, or dentistry except:

(a) Attending physicians licensed to perform medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or dentistry may perform an impairment rating examination for a worker under their care at the direction of the state fund or self-insurer.

(b) The independent medical examination may be performed by a board certified specialist licensed to perform medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or dentistry selected by the department or the self-insurer if the worker does not live in Washington, Oregon, or Idaho.

(c) The independent medical examination may be performed by a treating physician in a department approved chronic pain management program accredited by the commission on accreditation of rehabilitation facilities. The examiner must be licensed to perform medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or dentistry.

(2) All other examiners who wish to do independent medical examinations of workers under Title 51 RCW, whether purchased by the department or self-insurers, must:

(a) Submit a completed department application to the medical director at the department of labor and industries; and

(b) Receive the medical director's approval to be an "approved examiner."

(3) Approved examiners will be listed on the department's approved examiners list. Examiners may be suspended or removed from the approved examiners list by the medical director. Such examiners shall not receive worker referrals from the department or self-insurers.

(4) The factors the medical director may consider in approving or disapproving or suspending examiners include, but are not limited to, any one or a combination of the following:

(a) Board certification;

(b) Complaints from workers about the conduct of the examiner;

(c) Disciplinary proceedings or actions;

(d) Experience in direct patient care in the area of specialty;

(e) Ability to effectively convey and substantiate medical opinions and conclusions concerning workers;

(f) Quality and timeliness of reports; and

(g) Geographical need of the department and self-insurer.

(5) Examiners must be available and willing to testify at the department fee schedule rate on behalf of the department, worker, or employer.

(6) Complaints from workers about examiner conduct during an independent medical examination must be promptly forwarded from self-insurer and department staff to the office of the medical director.

(7) The standards for independent medical examiners, the application for approved examiner status and maximum fee schedule for performing examinations are published in a medical examiners' handbook available from the Office of the Medical Director, Department of Labor and Industries, Olympia, WA 98504.

(8) Fees for independent medical examinations are determined by the dollar value published in the medical examiners' handbook.

WSR 95-04-066

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 95-10—Filed January 30, 1995, 9:29 a.m., effective May 1, 1995]

Date of Adoption: January 28, 1995.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-12-020, 220-56-100, 220-56-105, 220-56-115, 220-56-116, 220-56-130, 220-56-180, 220-56-185, 220-56-205, 220-56-210, 220-56-225, 220-56-235, 220-56-240, 220-56-265, 220-56-282, 220-56-310, 220-56-312, 220-56-335, 220-56-340, 220-56-365, 220-56-370 and 220-56-390; and repealing WAC 220-56-125 and 220-56-127.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to notice filed as WSR 94-23-149 on November 23, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-56-100, definition of "natural bait" withdrawn, definition of "hook and line" amended to mean use of not more than one line with three hooks rather than with one lure; WAC 220-56-105, change in Sammamish River mouth withdrawn, White Salmon River mouth definition changed to markers downstream from Burlington Northern Railroad Bridge; WAC 220-56-116, barbless hook requirement for Columbia River, Drano Lake and White Salmon River withdrawn; WAC 220-56-205, listing of rivers with nonbuoyant lure restriction selected as option, Tokul Creek from mouth to posted cable markers December 1 through March 31 added to list; WAC 220-56-210, fly fishing only hook restriction changed to barbless single hook; WAC 220-56-225, night fishing restriction made concurrent with nonbuoyant lure restriction; WAC 220-56-235, proposal to ban gaffing sturgeon in all state waters withdrawn; WAC 220-56-282, natural bait requirement for sturgeon deleted; and WAC 220-56-330, proposal to ban ring nets during crab pot closure withdrawn.

Effective Date of Rule: May 1, 1995.

January 28, 1995
 Robert Turner
 Director

Sea urchin
 Green urchin
 Red urchin
 Purple urchin

Strongylocentrotus droebachiensis
Strongylocentrotus franciscanus
Strongylocentrotus purpuratus

AMENDATORY SECTION (Amending Order 91-22, filed 4/23/91, effective 5/24/91)

WAC 220-12-020 Shellfish—Classification. The following species are classified as shellfish under RCW 75.08.080 and are subject to the provisions of this title:

Abalone	
Red abalone	<i>Haliotis refescens</i>
Pinto abalone	<i>Haliotis kamtschatkana</i>
Mussel	
Blue mussel	<i>Mytilus edulis</i>
California mussel	<i>Mytilus californianus</i>
Scallops	
Pacific pink scallop	<i>Chlamys rubida</i>
Rock scallop	<i>Crassadoma gigantea</i>
Spiny scallop	<i>Chlamys hastata</i>
Weathervane scallop	<i>Patinopecten caurinus</i>
Clams	
Bent nose clam	<i>Macoma secta</i>
All other macoma clams	<i>Macoma spp.</i>
Butter clam	<i>Saxidomus giganteus</i>
Common cockle	<i>Clinocardium nuttalli</i>
Geoduck	<i>Panope abrupta</i>
Horse or Gaper clam	<i>Tresus nuttalli</i> , <i>Tresus capax</i>
Mud or soft shell clam	<i>Mya arenaria</i>
Manila clam	<i>Tapes philippinarum</i>
Piddock	<i>Zirfaea pilsbryi</i>
Razor clam	<i>Siliqua patula</i>
Rock or native little neck clam	<i>Protothaca staminea</i>
<u>All other native clams</u>	<u>(<i>Eulamellibranchia</i>)</u>
Oysters	
Eastern oyster	<i>Crassostrea virginica</i>
Olympia or native oyster	<i>Ostrea lurida</i>
Pacific oyster	<i>Crassostrea gigas</i>
Kumamoto oyster	<i>Crassostrea gigas (kumamoto)</i>
European oyster	<i>Ostrea edulis</i>
All other oysters	(<i>Ostreidae</i>)
Squid	
Pacific Coast squid	<i>Loligo opalescens</i>
Nail squid	<i>Onychoteuthis borealijaponica</i>
Flying squid	<i>Ommastrephes bartramai</i>
All other squid	Sepioidea or Teuthoiden
Octopus	
Octopus	<i>Octopus dofieni</i>
Barnacles	
Goose barnacle	<i>Pollicipes polymerus</i>
Shrimp	
Coonstripe shrimp	<i>Pandalus danae</i>
Coonstripe shrimp	<i>Pandalus hypsinotus</i>
Ghost or sand shrimp	<i>Callinassa spp.</i>
Humpy shrimp	<i>Pandalus goniurus</i>
Mud shrimp	<i>Upogebia pugettensis</i>
Ocean pink shrimp	<i>Pandalus jordani</i>
Pink shrimp	<i>Pandalus borealis</i>
Sidestripe shrimp	<i>Pandalopsis dispar</i>
Spot shrimp	<i>Pandalus platyceros</i>
Crab	
Dungeness or Pacific crab	<i>Cancer magister</i>
Red rock crab	<i>Cancer productus</i>
Tanner crab	<i>Chionoecetes tanneri</i>
Crawfish	
Crawfish	<i>Pacifastacus sp.</i>
Sea cucumber	
Sea cucumber	<i>Parastichopus californicus</i>
Sea cucumber	<i>Cucumaria miniata</i>

AMENDATORY SECTION (Amending WSR 94-14-069, filed 7/1/94, effective 8/1/94)

WAC 220-56-100 Definitions—Personal use. (1) (~~("Personal use possession" and)~~) "Daily ((bag)) limit((s))" (~~(are defined as)~~) means the maximum number((s)) or pounds of food fish ((~~or~~)), shellfish or seaweed of the required size of a given species or aggregate of species which (~~(may be taken)~~) a person may legally retain in a single day (~~(or held in possession at one time, unless otherwise provided)~~).

(2) "Possession limit" means the number of daily limits allowed to be retained in the field or in transit.

"In the field or in transit" means any place other than in the residence or residential equivalency of the harvester or in a residence where the harvester is an invited guest. A residential equivalency is any temporary domicile that has sleeping, cooking and toilet facilities, and includes hotels and motels, motorhomes, the living quarters of vessels so equipped, camp trailers, and enclosed areas within fishing and hunting camps where a reasonable expectation of privacy is demonstrated, but does not include cold storage lockers, charter boats, or public facilities.

(3) "Hook" means one single, double or treble hook. A "single hook" (~~(is defined as)~~) means a hook having a single point (~~(or barb)~~). A "double hook" ((~~s~~)) means a hook having two points (~~(or barbs)~~) on a common shank(~~(and)~~). A "treble hook" ((~~s~~)) means a hook having three points (~~(or barbs)~~) on a common shank. "Barbless hook" means a hook on which all barbs have been deleted when manufactured or filed off or pinched down.

~~((3)) A "lure" is defined as any object made of animal, vegetable or mineral materials which has attached thereto one or more hooks and is used as bait while angling for food fish.))~~

(4) "Lure" means a manufactured article constructed of feathers, hair, fiber, wood, metal, glass, cork, leather, rubber, or plastic which does not use scent and/or flavoring to attract fish.

"Nonbuoyant lure" means a lure complete with hooks, swivels or other attachments, which does not float in freshwater.

"Bait" means any substance which attracts fish by scent and/or flavors. Bait includes any device made of feathers, hair, fiber, wood, metal, glass, cork, leather, rubber, or plastic which uses scent and/or flavoring to attract fish.

(5) The term "processed" as it applies in this chapter is defined as food fish or shellfish which have been processed by heat for human consumption as kippered, smoked, or canned fish and is exclusive of iced, frozen, or salted fish.

((~~5~~)) (6) The term "fresh fish" is defined as salmon or other food fish which has not been processed by heat for human consumption and is inclusive of iced, frozen, or salted fish except that fresh fish as provided in WAC 220-56-180 shall not include frozen.

((~~6~~)) (7) "Hook and line" or "angling" shall be identical in meaning and, except as provided in WAC 220-56-115, shall be defined as the use of not more than one line

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with ~~((one lure))~~ three hooks in the act of fishing for personal use and not for sale or barter, to be attached to a pole held in hand while landing fish, or the use of a hand-operated line without rod or reel, to which may be attached not more than ~~((one lure))~~ three hooks. When fishing for bottomfish, "angling" and "jigging" shall be identical in meaning.

~~((7))~~ The term "snag or snagging" is defined as any method of taking or attempting to take food fish with one or more hooks in such a manner)) (8) "Snagging" means an effort to take fish with a hook and line in a manner that the fish does not take the hook or hooks voluntarily in its mouth.

~~((8))~~ The term "underwater spearfishing" is defined as any method of taking or attempting to take food fish by using any object or objects to impale or hook fish while the fisherman is swimming or floating in the water.)) "Gaffing" means an effort to take fish by impaling the fish with a hook attached directly to a pole or other device.

"Spearing" or "spear fishing" means an effort to take fish by impaling the fish on a shaft, arrow, or other device.

(9) The term "bow and arrow fishing" is defined as any method of taking, or attempting to take, food fish by the use of an arrow equipped with a barbed head and a line attached, and propelled by a bow, as in the sport of archery, while the ~~((fisherman))~~ fisher is above the surface of the water.

(10) ~~((The term "natural bait," unless otherwise provided, is defined as a lure consisting of an animal or part of an animal with one single hook.~~

~~((11))~~ The term "freshwater area" means, for purposes of this chapter:

(a) Within any freshwater river, lake, stream, or pond.

(b) On the bank or within 10 yards of any freshwater river, lake, stream, or pond.

(c) On or within any boat launch, ramp, or parking facility associated with any freshwater river, lake, stream, or pond.

~~((12))~~ (11) The term "Bonilla-Tatoosh Line" is defined as a line projected from the most westerly point on Cape Flattery to the lighthouse on Tatoosh Island to the buoy adjacent Duntz Rock then to Bonilla Point on Vancouver Island.

~~((13))~~ (12) The term "Buoy 10 Line" is defined as a true north-south line projected through Buoy 10 near the mouth of the Columbia River.

~~((14))~~ (13) The term "Buoy 10 Fishery" is defined as a fishery between the down stream side of the Megler-Astoria Bridge and the Buoy 10 Line.

~~((15))~~ (14) The term "Channel Marker 13 Line" is defined as a true north-south line through Grays Harbor Channel Marker 13.

AMENDATORY SECTION (Amending WSR 94-14-069, filed 7/1/94, effective 8/1/94)

WAC 220-56-105 River mouth definitions. When pertaining to food fish angling, unless otherwise defined, any reference to the mouths of rivers or streams shall be construed to include those waters of any river or stream including sloughs and tributaries upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost upland" shall be construed to mean those

lands not covered by water during an ordinary high tide. The following river mouths are hereby otherwise defined:

Abernathy Creek - Highway 4 Bridge.

Bear River - Highway 101 Bridge.

Bone River - Highway 101 Bridge.

Chehalis River - U.P. Railway Bridge in Aberdeen.

~~((Chinook River - The tide gates at the Highway 101 Bridge.))~~

Cowlitz River - A line projected across the river between two fishing boundary markers set on each bank of the river approximately one-half mile downstream from the lowermost railroad bridge crossing the Cowlitz River.

Dakota Creek - A line from the outermost headland of the south bank to a house at 1285 Runge Avenue, Blaine, Washington, approximately one-quarter mile downstream from the Blaine Road Bridge.

Drano Lake - Highway 14 Bridge.

Duwamish River - First Avenue South Bridge.

Elk River - Highway 105 Bridge.

Entiat River - Highway 97 Bridge.

~~((Germany Creek - Downstream side of the Highway 4 Bridge.))~~

Hoquiam River - Highway 101 Bridge.

Humtulsips River - Mouth of Jessie Slough.

Johns River - Highway 105 Bridge.

Kennedy Creek - An arc 500 yards east of the midpoint of the northbound Highway 101 Bridge.

Lake Washington Ship Canal - A line 400 feet (below)) west of the fish ladder at the Chittenden Locks.

Lewis River - A straight line running from a boundary marker on a piling at Austin Point southerly across the Lewis River to a boundary marker on the opposite shore.

Methow River - Highway 97 Bridge.

~~((Mill Creek - Downstream side of the Highway 4 Bridge.))~~

Naselle River - Highway 101 Bridge.

North Nemah River - ~~((Line from markers approximately one-half mile below the))~~ Highway 101 Bridge.

Niawiakum River - Highway 101 Bridge.

North River - Highway 105 Bridge.

Palix River - Highway 101 Bridge.

Puyallup River - 11th Street Bridge.

Samish River - The Samish Island Bridge (Bayview-Edison Road).

Sammamish River - 68th Avenue NE Bridge.

Skagit River - A line projected from the terminus of the jetty with McGlenn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.

Skamokawa Creek - Highway 4 Bridge.

Skookum Creek - A line 400 yards below the old railroad bridge.

- Snohomish River - Burlington Northern Railway Bridges crossing main river and sloughs.
- South Nemah River - Lynn Point 117 degrees true to the opposite shore.
- Tucannon River - State Highway 261 Bridge.
- Wallace River - The furthest downstream railroad bridge.
- Washougal River - A straight line from the Crown Zellerbach pumphouse southeasterly across the Washougal River to the east end of the Highway 14 Bridge near the upper end of Lady Island.
- Whatcom Creek - A line projected approximately 14 degrees true from the flashing light at the southwesterly end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.
- White Salmon River - ~~((Highway 14))~~ Markers downstream of the Burlington Northern Railroad Bridge.
- Little White Salmon River - At boundary markers on river bank downstream from the federal salmon hatchery.
- Willapa River - ~~((Highway 101 Bridge))~~ South Bend boat launch.
- Wind River - Boundary line markers at mouth.
- Yakima River - Highway 240 Bridge.

AMENDATORY SECTION (Amending Order 91-13, filed 4/2/91, effective 5/3/91)

WAC 220-56-115 Angling—Lawful and unlawful acts. (1) It is unlawful for any person to use more than one line with ~~((one lure at any one time))~~ three hooks while angling for food fish for personal use except:

(a) It is ~~((lawful))~~ unlawful to use more than two ~~((natural baits per line while angling in freshwater))~~ hooks while fishing for bottomfish or halibut.

(b) It is lawful to use ~~((two lures per line while angling in marine waters for food fish other than salmon or))~~ baitfish jigger gear as provided for in WAC 220-56-265 and squid jig gear as provided for in WAC 220-56-390.

(c) A second line using baitfish jigger gear is lawful while ~~((angling in the Strait of Juan de Fuca east of the mouth of the Sekiu River, Georgia Strait, the San Juan Islands, and Puget Sound.~~

~~((d) It is lawful to use two lines (two rods) to fish for salmon in Catch Record Card Areas 10, 11 and 13, and lawful to use a third line using baitfish jigger gear in these areas))~~ fishing in Catch Record Card Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

(2) It shall be unlawful for any person to take, fish for or possess food fish taken for personal use by any means other than angling with a line attached to a pole held in hand while landing the fish or with a hand-operated line without rod or reel except as follows:

(a) It is lawful to leave the pole in a pole holder while playing or landing the fish if the pole is capable of being readily removed from the pole holder.

(b) It is lawful to use an electric power-operated reel designed for sport fishing attached to a pole.

(c) It is lawful to fish for or possess salmon taken for personal use with hand lines (lines not attached to a handheld pole) except use of hand lines is unlawful in those

waters west of the mouth of the Sekiu River, the Pacific Ocean, Washington waters at the mouth of the Columbia River west of a line projected true north and south through Buoy 10, Grays Harbor, and Willapa Bay.

(3) It shall be unlawful for any person while angling for food fish to fail to keep his angling gear under his direct and immediate physical control.

AMENDATORY SECTION (Amending Order 92-19, filed 5/12/92, effective 6/12/92)

WAC 220-56-116 Salmon—Barbless hooks. ~~((1)) Barbless hooks are hooks on which the barb has been filed off, removed, pinched down, or deleted when manufactured.~~

~~((2))~~ It is unlawful to use barbed hooks while angling for salmon in all marine waters of Puget Sound, the Pacific Ocean, Grays Harbor, Willapa Bay, and waters at the mouth of the Columbia River westerly of a line drawn true north-south through Buoy 10 ~~((except that it is lawful to use barbed hooks when fishing from the North Jetty at the mouth of the Columbia River)).~~

AMENDATORY SECTION (Amending Order 80-12, filed 2/27/80, effective 4/1/80)

WAC 220-56-130 Edmonds underwater marine park. ~~((1))~~ It shall be unlawful to take, fish for or possess food fish and shellfish by any means from within the boundaries of the city of Edmonds underwater marine park located inside the following lines:

That portion of Edmonds tidelands fronting on Government Lot 2, Section 23, Township 27 North, Range 3 East, W.M., described as extending between the mean high tide and the Outer Harbor Line, and lying between the northeasterly line of Main Street and its westerly projection and a line parallel with and 250 feet northerly of (measured at right angles) the northeasterly line of Main Street.

~~((2) It shall be unlawful to take, fish for or possess food fish or shellfish taken by any means from within the boundaries of the underwater artificial reef surrounding the Edmonds public fishing pier as described in this subsection, except while fishing from the Edmonds public fishing pier.~~

~~Underwater artificial reef area: Those waters lying northerly and easterly of the north breakwater of the port of Edmonds marina inside of a line from a boundary marker on the north breakwater, northwesterly 275 feet to a marker buoy thence northeasterly 1350 feet to a marker buoy thence southeasterly to the northeastern end of the city of Edmonds public beach.))~~

AMENDATORY SECTION (Amending Order 93-20, filed 3/31/93, effective 5/1/93)

WAC 220-56-180 ((Bag)) Daily limit codes. (1) Code A: In waters having this code designation, the ~~((bag))~~ daily limit in any one day is six salmon not less than 12 inches in length, not more than two of these six salmon may be any combination of the following:

Chinook over 24 inches in length

Coho over 20 inches in length

Pink, chum or sockeye over 12 inches in length

Atlantic salmon (no minimum length).

(2) Code C: In waters having this code designation, the ~~((bag))~~ daily limit in any one day is six chinook and coho salmon in the aggregate not less than 12 inches in length or more than the following:

24 inches in length for chinook; 20 inches in length for coho.

(3) Code D: In waters having this code designation, the ~~((bag))~~ daily limit in any one day is six salmon including Atlantic salmon not less than 12 inches in length not more than two of which may be sockeye salmon; all chinook salmon greater than 24 inches in length and all coho salmon greater than 20 inches in length must be released.

(4) Code F: In waters having this code designation, the ~~((bag))~~ daily limit in any one day is two salmon including Atlantic salmon provided that:

(a) Chinook salmon must be not less than 24 inches in length, coho salmon must be not less than 16 inches, but there is no minimum size on other salmon.

(b) During the period April 16 through June 15 in waters of the Strait of Juan de Fuca between the mouth of the Sekiu River and a line from the most westerly point on Cape Flattery to the Tatoosh Island Light then to Bonilla Point on Vancouver Island, it is unlawful to take and retain chinook salmon greater than 30 inches in length.

(5) Code G: In waters having this code designation, the ~~((bag))~~ daily limit is four salmon including Atlantic salmon, not more than two of which may be chinook salmon and the minimum size for chinook salmon is 22 inches in length.

(6) Code H: In waters having this code designation, the ~~((bag))~~ daily limit in any one day is three salmon including Atlantic salmon provided that:

(a) Chinook salmon must be not less than 22 inches in length, but there is no minimum size for other salmon.

(b) During the period April 16 through June 15 in Catch Record Card Areas 5, 6, and 7, it is unlawful to retain or possess chinook salmon greater than 30 inches in length.

(c) In contiguous marine waters of Puget Sound east of the mouth of the Sekiu River, no more than two of the three salmon ~~((bag))~~ daily limit may be chinook, except the ~~((bag))~~ daily limit in Catch Record Card Area 12 is three salmon of any species.

(d) During the period July 1 through September 30 the ~~((bag))~~ daily limit is 2 salmon of any species in Catch Record Card Areas 5, 6, 7, 8-1, 8-2, and 9.

(7) Code I: In waters having this code designation, the ~~((bag))~~ daily and possession limits, size restrictions, and opening and closing dates are the same as those for gamefish as regulated under Title 77 RCW by the Washington fish and wildlife commission. A salmon angling catch record card is not required, but a gamefish license is required to take, fish for or possess gamefish.

(8) The possession limit in all waters regulated under ~~((Bag))~~ Daily Limits A, C, D, F, G, H, and special ~~((bag))~~ daily limits shall not exceed the equivalent of two ~~((bag))~~ daily limits of fresh salmon, and additional salmon may be possessed in frozen or processed form. ~~((The possession limit in waters regulated under Bag Limit I is the same as the possession limit for gamefish as regulated under Title 77 RCW by the Washington wildlife commission.))~~

(9) In all freshwater areas where the ~~((bag))~~ daily limit allows adult salmon to be taken, it is unlawful to continue to

fish for salmon after the adult portion of the ~~((bag))~~ daily limit has been retained.

AMENDATORY SECTION (Amending Order 91-13, filed 4/2/91, effective 5/3/91)

WAC 220-56-185 Marine area codes. The term "marine area code numbers" is defined as the catch area for the ~~((salmon))~~ catch record card. The following is a list of the catch areas:

(1) Area 1 (Ilwaco): West of the Megler-Astoria Bridge - north to Leadbetter Point. ~~((Effective January 1, 1989, Area 1 includes only))~~ Waters west of the Buoy 10 Line and north to Leadbetter Point.

(2)(a) Area 2 (Westport-Ocean Shores): From Leadbetter Point north to the Queets River. Area 2 excludes waters of Willapa Bay and Grays Harbor.

(b) Area 2-1: Willapa Bay east of a line from Leadbetter Point to Willapa Channel Marker 8 (Buoy 8) then to the westerly most landfall on Cape Shoalwater.

(c) Area 2-2: Grays Harbor east of a line from the outermost end of the north jetty to the outermost exposed end of the south jetty.

(3) Area 3 (La Push): From the Queets River north to Cape Alava.

(4) Area 4 (Neah Bay): From Cape Alava north and inside Juan de Fuca Strait to the Sekiu River.

(5) Area 5 (Sekiu and Pillar Point): From mouth of Sekiu River east to Low Point, mouth of the Lyre River.

(6) Area 6 (East Juan de Fuca Strait): From Low Point east to the Partridge Point-Point Wilson line north to the line from Trial Island (near Victoria, B.C.) - Navigation Buoy BW "R" - Smith Island - the most northeasterly of the Lawson Reef lighted buoys (RB1 QK Fl Bell) - Northwest Island - the Initiative 77 marker on Fidalgo Island.

(7) Area 7 (San Juan Islands): All marine waters north of the line described under Area 6 to the United States-Canadian boundary.

(8)(a) Area 8 (Deception Pass, Hope and Camano Islands): Line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island east through Deception Pass, including all waters east of Whidbey Island to the Possession Point - Shipwreck Line.

(b) Area 8-1 (Deception Pass and Hope Island): East of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, south of the Burlington Northern Railroad Bridge at the north end of Swinomish Slough, north of the Highway 532 Bridge between Camano Island and the mainland, and westerly of a line from the East Point Light on Whidbey Island to the Saratoga Pass Light #2 on Camano Island (Fl red 4 sec.).

(c) Area 8-2 (Port Susan and Port Gardner): East of a line from the East Point Light on Whidbey Island to the Saratoga Pass Light #2 on Camano Island (Fl red 4 sec.) and north of a line from the south tip of Possession Point 110 degrees true to a shipwreck on the opposite shore.

(9) Area 9 (Admiralty Inlet): All waters inside and south of the Partridge Point-Point Wilson Line and a line projected from the southerly tip of Possession Point 110 degrees true to a shipwreck on the opposite shore and northerly of the Hood Canal Bridge and the Apple Cove Point-Edwards Point Line.

(10) Area 10 (Seattle-Bremerton): From the Apple Cove Point-Edwards Point Line to a line projected true east-west through the northern tip of Vashon Island.

(11) Area 11 (Tacoma-Vashon Island): From the northern tip of Vashon Island to the Tacoma Narrows Bridge.

(12) Area 12 (Hood Canal): All contiguous waters south of the Hood Canal Bridge and adjacent waters north of the Hood Canal Bridge when fishing from the pontoon beneath the bridge.

(13) Area 13 (South Puget Sound): All contiguous waters south of the Tacoma Narrows Bridge.

AMENDATORY SECTION (Amending Order 92-19, filed 5/12/92, effective 6/12/92)

WAC 220-56-205 Hook (~~regulations—Freshwater salmon angling~~) rules—Nonbuoyant lures. It is unlawful to fish for or to possess salmon taken for personal use from freshwater unless the hooks used meet the requirements of this section:

(1) (~~Nonbuoyant lures are defined as lures that do not have enough buoyancy to float in freshwater. Nonbuoyant lures other than natural bait lures must have no more than one single hook and that hook must not exceed 3/4 inch from point to shank except nonbuoyant lures used in the Columbia River downstream from Bonneville Dam may have up to three hooks, which may be single, double, or treble hooks. Nonbuoyant natural bait lures may have up to two single hooks not exceeding 3/4 inch from point to shank except in the Columbia River downstream from Bonneville Dam, natural bait lures may have up to three hooks in total on the combination of all terminal gear.~~) Nonbuoyant lure restriction: In the following waters and during the periods shown, it is unlawful to use a nonbuoyant lure that has more than one single hook or has a hook measuring more than 3/4 inch point to shank:

<u>Area</u>	<u>Time period</u>
<u>Naselle River</u>	<u>September 1-November 30</u>
<u>Willapa River</u>	<u>September 1-November 30</u>
<u>Humtulsips River</u>	<u>September 1-November 30</u>
<u>Satsop River</u>	<u>September 1-November 30</u>
<u>North Nemah River</u>	<u>September 1-November 30</u>
<u>Carbon River</u>	<u>September 1-November 30</u>
<u>Dungeness and Gray Wolf Rivers</u>	<u>August 1-October 15</u>
<u>Kennedy Creek</u>	<u>October 1-December 31</u>
<u>South Fork Nooksack River</u>	<u>August 1-December 31</u>
<u>Big Quilcene River</u>	<u>August 1-December 31</u>
<u>Samish River</u>	<u>August 1-December 31</u>
<u>Stillaguamish River</u>	<u>August 1-December 31</u>
<u>Whatcom Creek</u>	<u>August 1-December 31</u>
<u>Cowlitz River</u>	
<u>From Mill Creek to Barrier Dam</u>	<u>April 1-October 31</u>
<u>Kalama River</u>	
<u>From 200 feet above Modrow Trap to mouth</u>	<u>September 1-October 31</u>
<u>North Lewis River</u>	
<u>From overhead powerlines below Ariel Dam to lower Cedar Creek Boat Ramp</u>	<u>April 1-October 31</u>
<u>Washougal River</u>	
<u>Downstream of Salmon Falls Bridge</u>	<u>September 1-October 31</u>
<u>Icicle River</u>	
<u>From Leavenworth Federal Fish Hatchery to mouth</u>	<u>May 8-June 30</u>
<u>Wenatchee River</u>	
<u>From mouth of Icicle River to Highway 2 Bridge</u>	<u>May 8-June 15</u>
<u>Skagit River (and tributaries)</u>	
<u>Upstream of Gilligan Creek</u>	<u>July 1-November 30</u>
<u>Tokol Creek</u>	
<u>From mouth to posted cable markers</u>	<u>December 1-March 31</u>

(2) (~~Buoyant lures are defined as lures that have enough buoyancy to float in freshwater and may have any number of hooks.~~)

(3) No leads, weights or sinkers may be attached below or less than 12 inches above a buoyant lure.

((4)) (3) All hooks must be attached within three inches of the bait or lure.

((5) On the lower Columbia River (downstream from Bonneville Dam), single hooks may not measure more than 1 inch from point to shank, and multiple point hooks may not measure more than 9/16 inch from point to shank:))

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AMENDATORY SECTION (Amending Order 80-12, filed 2/27/80, effective 4/1/80)

WAC 220-56-210 Fly fishing—(~~Salmon~~) Food fish.
~~(It is unlawful for any person to fish for or take salmon in or from waters restricted to fly fishing only by use of any metal, plastic, or wooden lure, plug, spinner, or spinner fly, or to use tackle where a weight of any kind is attached externally to either the line or the leader. Fixed spool reels and/or monofilament lines may not be used in fishing those waters restricted to fly fishing only. Under this regulation, monofilament line may be used for backing and leader, provided this backing is attached to not less than twenty-five feet of conventional fly line at the terminal end and the leader is not less than four feet nor more than fifteen feet in length, nor more than twelve pounds in breaking strength. Any type of angling whereby the fly is cast directly from the reel shall be prohibited.~~

~~Lawful fly sizes shall not exceed 1/2 inch when measured from the outside of the shank of the hook directly across the gap of the hook to the point.~~

~~Thread, feathers, hackle, and yarn are to be used as decorations on the hook, and a minimum of half the shank of the hook is to be covered by this decoration. Metallic colored tape, tinsel, mylar or beadeyes may be used as an integral design of the fly pattern, but not as an additional weight to the fly itself.)~~

(1) It is unlawful to fish in waters restricted to "fly fishing only" with the use of:

(a) A fixed spool reel.

(b) Fishing line other than conventional fly line, except that other line may be used for backing and leader if it is attached to not less than 25 feet of conventional fly line.

(c) Monofilament leader greater than fifteen feet in length or with a breaking strength of more than 12 pounds.

(d) Hooks that exceed 1/2 inch when measured from point to shank.

(e) A lure other than a fly with a barbless single hook.

(f) Bait.

(g) Weight attached to the leader or line.

(2) "Fly" means a lure on which thread, feathers, hackle, or yarn cover a minimum of half the shank of the hook. Metallic colored tape, tinsel, mylar, or beadeyes may be used as an integral part of the design of the fly pattern.

AMENDATORY SECTION (Amending Order 81-13, filed 2/17/81, effective 4/1/81)

WAC 220-56-225 (~~Salmon angling hours~~) Fresh-water angling hours. It is unlawful to ~~(take,)~~ fish for ~~(or possess salmon for)~~ personal use in ~~(all freshwater areas of the state)~~ those waters and during the period of a nonbuoyant lure restriction as provided for in WAC 220-56-125 from one hour after official sunset to one hour before official sunrise.

AMENDATORY SECTION (Amending WSR 94-14-069, filed 7/1/94, effective 8/1/94)

WAC 220-56-235 Possession limits—Bottomfish. It is unlawful ~~(, unless otherwise provided,)~~ for any ~~(one)~~ person to take in any ~~(one)~~ day more than the following quantities of bottomfish for personal use. The possession

limit at any ~~(one)~~ time shall not exceed the equivalent of two daily ~~(bag)~~ limits of fresh bottomfish. Additional bottomfish may be possessed in a frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4):

(a) Lingcod:

(i) 3 fish minimum length 22 inches in Catch Record Card Areas 1 through 3 and Area 4 west of the Bonilla-Tatoosh line;

(ii) 2 fish minimum length 22 inches in Catch Record Card Area 4 east of the Bonilla-Tatoosh line.

(b) Rockfish - ~~(+2)~~ 10 fish ~~(except 15 fish if taken from Catch Record Card Area 1)).~~

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolf-eel - 2 fish east of the Bonilla-Tatoosh line.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(f) All other species - no limit.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	5 fish
Surfperch	10 fish
Pacific cod	15 fish
Pollock	15 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	2 fish
Cabezon	2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish	5 fish
Surfperch	10 fish
Pacific cod	15 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish

(c) Catch Record Card Areas 8-1 through 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	3 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	5 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish

(d) It is unlawful to possess lingcod taken by angling less than 26 inches in length or greater than 40 inches in length.

(e) The daily ~~(bag)~~ limit taken by spear fishing may include no more than one lingcod. There is no size restriction on the one lingcod allowed in the daily ~~(bag)~~ limit if taken by spear fishing.

(f) It is unlawful to use a gaff to land lingcod taken in Catch Record Card Areas 5 through 13.

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AMENDATORY SECTION (Amending WSR 94-14-069, filed 7/1/94, effective 8/1/94)

WAC 220-56-240 ((Bag)) Daily limits((—)) sturgeon, smelt, herring and other food fish not otherwise provided for. It is unlawful for any ((one)) person to ((fish for or possess)) retain in any ((one)) day more than the following quantities and sizes of food fish taken for personal use. Unless otherwise provided, other food fish fishing is open the entire year:

(1) Sturgeon:

(a) 1 fish not less than 48 inches nor more than 66 inches in length in the Columbia River and tributaries upstream from the Dalles Dam to the United States/Canada border and those waters of the Snake River and tributaries from its mouth upstream to the powerline crossing below Highway 12 Bridge at Clarkston.

(b) 2 fish with the following size restrictions in all other state waters:

(i) Minimum size is 42 inches in length;

(ii) Maximum size is 66 inches in length;

(iii) Not more than one of the two fish may be less than 48 inches in length; and

(iv) Not more than one of the two fish may equal or exceed 48 inches in length.

(c) The possession limit is two daily ((bag)) limits of fresh sturgeon. Additional sturgeon may be possessed in a frozen or processed form.

(d) There is an annual personal use ((bag)) limit of 10 sturgeon.

(2) Smelt: 20 pounds. The daily ((bag)) limit and the possession limit are the same. It is unlawful for any person to possess more than 20 pounds of smelt at any time.

(3) Herring: 20 pounds fresh. Additional herring may be possessed in a frozen or processed form.

(4) All other food fish not otherwise provided for in this chapter: No limit.

AMENDATORY SECTION (Amending Order 88-15, filed 4/26/88)

WAC 220-56-265 Baitfish—Lawful gear. It shall be lawful to take, fish for and possess herring, candlefish, pilchards, anchovies and smelt taken for personal use with rake, hand dip net gear not exceeding 36 inches across the bag frame and baitfish jigger gear having not more than three treble or nine single hooks. Baitfish jigger gear hooks may not have a gap between the shank and the point exceeding 3/8 inch. ((Baitfish jigger gear as defined herein is considered as one lure.))

AMENDATORY SECTION (Amending Order 91-13, filed 4/2/91, effective 5/3/91)

WAC 220-56-282 Sturgeon—Lawful gear. It is unlawful to fish for sturgeon with other than ((natural)) bait and single barbless hooks((, and it is unlawful to use more than two single barbless hooks per natural bait, or to use more than two natural baits)). It is lawful to use artificial scent with bait when fishing for sturgeon.

AMENDATORY SECTION (Amending Order 93-20, filed 3/31/93, effective 5/1/93)

WAC 220-56-310 Shellfish—Daily ((bag)) limits. It is unlawful for any one person to take in any one day for personal use more than the following quantities and sizes of shellfish:

(1) Cockles, borers and clams in the shell, other than razor clams, geoduck clams and horse clams, 40 clams in the aggregate, or 10 pounds, whichever is achieved first except:

(a) In Skagit Bay, east of a line projected from Browns Point to Swinomish Slough entrance - diggers may additionally retain up to 20 pounds of eastern softshell clams in the shell.

(b) Willapa Bay - diggers may additionally retain up to twenty-four cockles.

(2) Razor clams: 15 clams.

(3) Geoduck clams: 3 clams.

(4) Horse clams: First 7 clams taken.

(5) Oysters: 18 oysters.

(6) Rock scallops: 12 scallops.

(7) Sea scallops: 12 scallops (over 4 inches).

(8) Common or pink scallops: 10 pounds or 5 quarts in the shell.

(9) Shrimp:

(a) In all waters except Shrimp District 5 - 10 pounds, whole in the shell.

(b) In Shrimp District 5 (Hood Canal) - 7 pounds, whole in the shell.

(10) Octopus: 2 octopus.

(11) Pinto abalone: ((3 abalone, minimum size limit 4 inches measured in horizontal line across the longest portion of the shell.)) Closed state-wide.

(12) Crawfish: 10 pounds in the shell.

(13) Squid: 10 pounds or 5 quarts.

(14) Sea cucumbers: 25 sea cucumbers.

(15) Red sea urchins: 18 sea urchins.

(16) Purple sea urchins: 18 sea urchins.

(17) Green sea urchins: 36 sea urchins.

(18) Dungeness crabs: 6 male crabs.

(19) Red rock crabs: ((42)) 6 crabs.

(20) Blue mussels and sea mussels: 10 pounds in the shell.

(21) Goose barnacles: 10 pounds of whole barnacles or 5 pounds of barnacle stalks.

(22) Ghost and mud shrimp: 10 dozen.

AMENDATORY SECTION (Amending Order 86-08, filed 4/9/86)

WAC 220-56-312 Shellfish—Possession limits. It is unlawful for any one person to possess at any time more than one daily ((bag)) limit of fresh shellfish. Additional shellfish may be possessed in a frozen or processed form.

AMENDATORY SECTION (Amending Order 93-20, filed 3/31/93, effective 5/1/93)

WAC 220-56-335 Crab—Unlawful acts. (1) It is unlawful for any person to take or possess for personal use any female Dungeness crabs.

(2) It is unlawful to take or possess any male Dungeness crabs taken for personal use which measure less than the following sizes:

(a) In Puget Sound (all contiguous waters east of the Bonilla-Tatoosh Line) except those waters of Hood Canal south of the Hood Canal Floating Bridge - 6 1/4 inch minimum size.

(b) In those waters of Hood Canal south of the Hood Canal Floating Bridge - 6 inch minimum size.

(c) In coastal waters west of the Bonilla-Tatoosh Line, Pacific Ocean waters, Grays Harbor, Willapa Bay and the Columbia River - 6 inch minimum size.

(3) It is unlawful to take or possess any red rock crabs taken for personal use that measure less than five inches.

(4) All measurement shall be made at the widest part of the shell (caliper measurement) immediately in front of the points (tips).

~~((4))~~ (5) It is unlawful to possess in the field any crab or parts thereof without retaining the back shell.

AMENDATORY SECTION (Amending Order 86-08, filed 4/9/86)

WAC 220-56-340 General provisions—Clams, cockles, mussels—Gear. (1)(a) It is lawful to take, dig for and possess clams (excluding razor clams), cockles, and mussels taken for personal use by hand or with hand-operated forks, picks, mattocks, rakes and shovels.

(b) It is lawful to take, dig for and possess razor clams taken for personal use by hand, shovels or with cylindrical cans, tubes or hinged digging devices. The opening of tubes or cans must be either circular or elliptical with the circular can/tube having a minimum outside diameter of 4 inches and the elliptical can/tube having a minimum dimension of 4 inches long and 3 inches wide outside diameter. The hinged digging device when opened in a cylindrical position, must have a minimum outside diameter of 4 inches at the bottom.

(2) Any newly-designed or modified digging device intended for the recreational use of razor clams must receive the specific approval of the director of ~~((fisheries))~~ fish and wildlife.

(3) In the field each digger, including holders of razor clam disability permits, must have his or her daily ~~((bag))~~ limit in a separate container.

AMENDATORY SECTION (Amending Order 86-08, filed 4/9/86)

WAC 220-56-365 Razor clams—Unlawful acts. It is unlawful to return any razor clams to the beach or water regardless of size or condition, and all razor clams taken for personal use must be retained by the digger as a part of his or her daily ~~((bag))~~ limit.

AMENDATORY SECTION (Amending Order 80-12, filed 2/27/80, effective 4/1/80)

WAC 220-56-370 Razor clams—Disability permits. It shall be lawful to dig the personal use daily ~~((bag))~~ limit of razor clams for another person if that person has in possession a physical disability permit signed by the director ~~((and is physically present with the digger on the site where such digging occurs and both the disabled person and the~~

~~digger are licensed to dig razor clams for personal use under chapter 75.25 RCW)).~~ Such permit may be obtained by providing to the director written certification from a licensed physician that said person is physically unable to dig razor clams.

AMENDATORY SECTION (Amending WSR 94-14-069, filed 7/1/94, effective 8/1/94)

WAC 220-56-390 Squid, octopus. (1) It is lawful to take, fish for or possess squid and octopus the entire year.

(2) It is unlawful to take, fish for or possess squid taken for personal use with more than one line. A maximum of four squid lures may be used. If gear utilizes conventional hooks, it shall not exceed a total of nine points. Herring rakes and hand dip net gear may be used to take squid. In the field each person taking squid must use a separate container to hold their catch.

(3) Octopus may be taken by hand or by any instrument which will not penetrate or mutilate the body except that it is lawful to retain octopus taken while angling with hook and line gear.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-56-125 Unlawful provisions—Shilshole Bay.
- WAC 220-56-127 Unlawful provisions—Budd Inlet.

WSR 95-04-072

PERMANENT RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed January 30, 1995, 11:07 a.m.]

Date of Adoption: January 30, 1995.

Purpose: The rules shown below are being revised to update current language, provide needed language to reflect the current procedures of the Transportation Improvement Board programs, and to reflect desired changes in the Transportation Improvement Board programs. Also, included are a set of rules to administer the new small city program.

Statutory Authority for Adoption: Chapter 47.26 RCW. Pursuant to notice filed as WSR 95-01-054 on December 14, 1994.

Effective Date of Rule: Thirty-one days after filing. January 30, 1995

Jerry M. Fay
Executive Director

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-01-010 Organization of transportation improvement board. The transportation improvement board is a ~~((fifteen))~~ eighteen-member board, organized under the provisions of chapter ~~((167, Laws of 1988 for the purpose of administering))~~ 172, Laws of 1993. The board administers the urban arterial trust account program ~~((and)),~~ the transpor-

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tation improvement account program, small city account program, city hardship assistance program and evaluates petitions requesting any additions or deletions from the state highway system created and financed under the provisions contained therein. (~~Eleven~~) Fifteen members of the board are appointed by the secretary of transportation, with six being city officials (~~and five~~), six being county officials and a representative of a public transit system, a private sector representative, and a public member. One member shall be appointed by the governor. The county road administration engineer, created by RCW 36.78.060 is an ex officio member of the board. The (~~state aid engineer for~~) assistant secretary for TransAid of the department of transportation is an ex officio member. The remaining ex officio member (~~s are~~) is the assistant secretary of the department of transportation whose primary responsibilities relate to planning and public transportation (~~and the assistant secretary for highways of the department of transportation~~)).

AMENDATORY SECTION (Amending WSR 92-12-014, filed 5/26/92, effective 6/26/92)

WAC 479-01-020 Time and place of meetings.

Regular public meetings of the board shall be held (~~beginning~~) on the fourth Friday of every month or the third Friday if that Friday is a holiday. Each such regular meeting shall be held at the offices of the board in Olympia, Washington, and begin at the hour of 9:00 a.m. or at such other time and place as designated by the board.

A special meeting of the board may be called by the chairperson or by a majority of the members of the board, by delivering personally or by mail written notice to all other members of the board at least twenty-four hours before the time of such meeting as specified in the notice. The notice calling a special meeting shall state the purpose for which the meeting is called and the date, hour, and place of such meeting and all provisions of chapter 42.30 RCW shall apply.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-01-030 Address of board. Persons wishing to obtain information or to make submissions or requests of any kind shall address their correspondence to:

Executive Director, Transportation Improvement Board
~~((Transportation Building))~~
Post Office Box 40901
Olympia, Washington 98504-0901.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-01-040 Definitions. For purposes of implementing the requirements of RCW 47.26.160 relative to the transportation improvement board, the following definitions shall apply:

- (1) Board - the transportation improvement board.
- (2) Director - the executive director of the transportation improvement board.
- ~~((3) Eligible agencies - the urban arterial trust account eligible agencies are the counties with urban areas and all~~

~~ities. The transportation improvement account eligible agencies are counties with urban areas, cities and transportation benefit districts.))~~

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-030 Exempted records. In accordance with RCW 42.17.310, (~~the following personal and other records shall be exempt~~) exemptions from public inspection and copying shall include, but not be limited to the following:

(1) Personal information in files maintained for employees, appointees or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(2) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.

(3) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(4) Information revealing the identity of persons who file complaints with investigative law enforcement or penology agencies, except as the complainant may authorize.

(5) Test questions scoring keys, and other examination data used to administer a license, employment or academic examination.

(6) Except as provided by chapter 8.26 RCW the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(7) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(8) Preliminary drafts, notes, recommendations and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(9) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(10) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(11) The residential addresses and residential telephone numbers of the employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(12) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or predeation of such sites.

(13) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for highway construction or improvement.

(14) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily unidentifiable person or persons.

(15) Responses to public records requests shall be made promptly in accordance with RCW 42.17.320.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-070 Requests for public records. Subject to the provisions of subsection (3) of this section, public records are obtainable by members of the public when those members of the public comply with the following procedures.

(1) A request shall be addressed to the public records officer. Such request shall include the following:

(a) The name of the person requesting the record.

(b) The time of day and calendar date on which the request was made.

(c) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as it is described in such current index.

(d) If the requested matter is not identifiable by reference to the board's current index, a statement that identifies the specific record requested.

(e) A verification that the records requested shall not be used to compile a commercial sales list.

(2) The public records officer shall inform the member of the public making the request whether the requested record is available for inspection or copying at the Transportation Improvement Boards office in Olympia, Washington.

(3) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party (~~(€)~~) or when such a request is made by or on behalf of an attorney for such a party (~~(€)~~) the request shall be referred to the assistant attorney general assigned to the board for appropriate response.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-100 Protection of public records. In order to implement the provisions of (~~(section 29, chapter 1, Laws of 1973))~~ RCW 42.17.290, requiring agencies to enact reasonable rules to protect public records from damage or disorganization, the following rules have been adopted.

(1) Copying of public documents shall be done by the board personnel and under the supervision of said personnel, upon the request of members of the public under the procedures set down in WAC 479-02-070.

(2) No document shall be physically removed by a member of the public from the area designated by the board

for the public inspection of documents for any reason whatever.

(3) When a member of the public requests to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents which can be identified and supplied by themselves, the board shall be allowed a reasonable time to inspect the file to determine whether information protected from disclosure by (~~(section 31, chapter 1, Laws of 1973))~~ RCW 42.17.310, is contained therein, and the board shall not be deemed in violation of its obligation to reply promptly to requests for public documents by reason of causing such an inspection to be performed.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-110 Denial of request. Each denial of a request for a public record shall be accompanied by a written statement to the person requesting the record clearly specifying the reasons for denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. (~~(Such statement shall be sufficiently clear and complete to permit the director or his or her designee to review the denial in accordance with WAC 479-02-120.)~~)

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-120 Review of (~~(denials of public records requests))~~ agency denial. (~~(1) Any person who objects to the denial of a request for a public record may petition the public records officer for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.~~)

(2) ~~After receiving a written request for review of a decision denying a public record, if the public records officer determines to affirm the denial, then the written request shall immediately be referred to the assistant attorney general assigned to the board. The assistant attorney general shall promptly consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.~~

(3) ~~Administrative remedies shall not be considered exhausted until the public records officer has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever first occurs.)~~ Whenever a person objects to a conclusion that a public record is exempt from disclosure, the person may request the attorney general to review the matter in accordance with RCW 42.17.325.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-130 Records index. (1) The board has available (~~(to all persons))~~ for public inspection and copying at its offices in Olympia a current index (~~(which provides~~

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identifying information as to)) of the following records ((issued, adopted or promulgated by the board)):

(a) ~~((Minutes of board meetings,))~~ State legislation and proposed rules and regulations pertaining to board standards.

(b) Those statements of policy and interpretations of policy, statute and ~~((the constitution))~~ bylaws which have been adopted by the board;

~~(c) ((Administrative staff manuals and instructions to staff that affect a member of the public;~~

~~(d) Planning policies and goals, and interim and final planning decisions;~~

~~(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others.))~~ Minutes of board meetings;

(d) Resolutions approved by the board;

(e) TIB program guidelines;

(f) Program reports and publications;

(g) Budgets and expenditures;

(h) TIB project administration and accounting files.

~~(2) A system of indexing ((for identification and location of the following records is hereby established by the board. Such records shall include the following:~~

~~(a) Final orders entered after June 30, 1990, issued in adjudicative proceedings as defined in RCW 34.05.010(1) that contain an analysis or decision of substantial importance to the board in carrying out its duties.~~

~~(b) Declaratory orders entered after June 10, 1990, that contain an analysis or decision of substantial importance to the board in carrying out its duties.~~

~~(c) Interpretive statements as defined in RCW 34.05.010(8).~~

~~(d) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010(14).~~

~~(3) A system of indexing))~~ shall be as follows:

(a) The indexing system will be administered by the board's public record officer ~~((and located in the Transportation Improvement Boards office in Olympia, Washington)).~~

(b) Copies of ~~((all indexes))~~ the index shall be available for public inspection and copying in the manner provided ~~((for the inspection and copying of public records))~~ in chapter 479-02 WAC.

~~(c) ((The public record officer shall establish and maintain a separate index for each item contained in subsections (1)(a) through (d) of this section as follows:~~

~~(i) The index shall list all final orders and declaratory orders selected by the department that contain decisions of substantial importance to the board which orders shall be listed alphabetically by the titles of the hearing or controversy and shall contain a phrase describing the issue or issues and relevant citations of law.~~

~~(ii) Interpretative statements and policy statements shall be indexed by the applicable program administered by the board.~~

~~(d))~~ The public record officer shall update ~~((all indexes))~~ the index at least once a year and shall revise ~~((such indexes))~~ the index when deemed necessary by the board.

NEW SECTION

WAC 479-12-005 Purpose and authority. RCW 47.26.160 provides that the transportation improvement board shall adopt reasonable rules necessary to implement the urban arterial trust account program. The intent of the urban arterial trust account program is to improve mobility and safety while supporting an environment essential to the quality of life of the citizens of Washington state.

NEW SECTION

WAC 479-12-008 Definitions. For purposes of implementing the requirements of RCW 47.26.185 relative to the urban arterial trust account, the following definitions shall apply:

(1) Board - when board is used in this chapter, it refers to the transportation improvement board.

(2) UATA - this is the abbreviation for the urban arterial trust account.

(3) Director - the executive director of the transportation improvement board.

(4) Eligible agencies - the urban arterial trust account eligible agencies are the counties with federal designated urban areas and cities with a population of five thousand or above.

(5) Urban area - the term "urban area" as used for the UATA program refers to the portion of a county within the federal urban area boundary as designated by FHWA.

(6) Eligible project - improvement on federally classified arterials within the urban area.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-12-010 Data to be submitted on proposed ~~((urban arterial trust account))~~ projects. When requested by the board, applications for proposed projects shall be submitted to the board by eligible cities and counties seeking allocation of funds ~~((from the urban arterial trust account)).~~ The application form will be provided by the board.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-12-020 Time and place for submission of proposed urban arterial trust account projects. All project prospectuses submitted by local governments shall be submitted to:

Executive Director, Transportation Improvement Board
((Transportation Building)) Post Office Box 40901
Olympia, Washington 98504-0901

Prospectuses for ~~((preliminary proposals))~~ predesign or design phase shall be requested by the board after:

(1) ~~((Projects contained in the local governments' current six year transportation programs and scheduled to begin in the subsequent biennium,))~~ Submitted project applications have been evaluated as to priority;

(2) The obligation status of the urban arterial trust account and legislative appropriation authority have been reviewed and capacity to authorize additional projects determined.

Prospectuses for ~~((preliminary proposals))~~ predesign phase or design phase shall be received by the board by the first day of the month preceding the month in which project authorization is proposed unless a later receipt ~~((date is specified and permitted, in writing,))~~ is approved by the director.

Prospectuses for the construction ((projects)) phase shall be received by the twentieth day of the month preceding the month in which construction project authorization is proposed unless a later receipt date is ~~((specified and permitted, in writing,))~~ approved by the director.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-13-010 Six-year transportation programs for urban areas. The six-year transportation programs of urban area cities and counties required, respectively, by RCW 35.77.010 and 36.81.121~~((, shall be divided into two sections:))~~

~~(1) The basic six-year transportation program for the following six years based upon estimated revenues other than proposals for urban arterial trust account funds for new projects:~~

~~(2) A separate section of the six-year transportation program setting forth proposals, if any, for urban arterial trust account funds for new projects to begin in the following biennial period:~~

~~The separate section of the six-year transportation program setting forth proposed new projects utilizing urban arterial trust account funds shall be considered as supplemental to the basic six-year transportation program and shall not contain duplicate projects: *Provided*, That the same project may appear in both the basic and supplemental six-year transportation programs if:~~

~~(1) The local agency intends to construct the project with other funds if urban arterial trust account funds are not approved.~~

~~(2) The total dollar amount of the basic six-year transportation program approximates estimated revenues available for construction for the following six-year period.~~

~~Upon board approval of any new project for financial assistance from the urban arterial trust account, such project shall be amended into the basic six-year transportation program.~~

~~The separate portion of the six-year transportation program, setting forth new project proposals for urban arterial trust account funding, shall be listed in order of their priority in the following manner:~~

~~(1) Federal urban area cities and counties shall divide arterials by functional class and list in order of their priority as provided for by RCW 47.26.220.~~

~~(2) Nonfederal urban area cities shall list all proposals in order of their priority.~~

~~The local agency shall evaluate its arterials by utilizing the criteria outlined in RCW 47.26.220 which covers the following:~~

- ~~(1) The structural ability to carry loads.~~
- ~~(2) Capacity to move traffic.~~
- ~~(3) Alignment and related geometries.~~
- ~~(4) Accident experience.~~
- ~~(5) Fatal accident experience.~~

~~The board will provide the agency with a listing of arterial deficiencies based on the information contained in the long-range plan as last updated by the agency. This information can be used to fulfill the requirement stipulated in RCW 47.26.220.~~

~~The requested urban arterial trust account funds to improve the project shall correct the deficiencies found on the section, considering design standards, project life, and unique local considerations.~~

~~Inventory data for each proposed project shall be prepared under the supervision of a registered engineer in the state of Washington.) must have proposed urban arterial trust account projects included prior to board approval and shall be consistent with the Growth Management Act, the state and Federal Clean Air Acts, and the Americans with Disabilities Act, where these acts are applicable.~~

~~A copy of the ((basic)) six-year transportation program including the proposed projects to be approved shall be submitted to the board along with a copy of the resolution of the city or county adopting such program. ((The separate section of the six-year transportation program, setting forth new project proposals for urban arterial trust account funding, shall be submitted to the board on forms provided by the board and shall be accompanied by a copy of the resolution of the city or county adopting the separate section of the six-year transportation program: *Provided*, That if the city or county does not desire to propose new projects for urban arterial trust account fund assistance, the only submission to the board shall be a written statement to that effect.))~~

NEW SECTION

WAC 479-13-011 Priority criteria for urban arterial trust account projects. The agencies shall evaluate their proposed urban arterial trust account projects by utilizing the following criteria which shall also be utilized by the transportation improvement board to prioritize projects.

- (1) Safety, improvements that will reduce accidents;
- (2) Mobility, improvements to increase mobility;
- (3) Structural condition of the roadway, improvements to the roadway surface;
- (4) Roadway widths, improvements to widen standard lanes and shoulders and adding sidewalks;
- (5) Multimodal, improvements for a variety of transportation modes such as transit, bicycle, trucks, etc;
- (6) Project cost, improvements with lower cost in relationship to traffic and length;
- (7) Other, consideration given to agencies that show initiative to improve their local transportation system in various ways.

AMENDATORY SECTION (Amending Order 87-01, Resolution No. 955, filed 10/19/87)

WAC 479-13-025 Six-year financial plan. At the beginning of each biennium the board shall update their six-year financial plan to determine the amount of estimated revenue to be available for new project starts in the ensuing biennium. The estimate of funds for new project starts shall take into consideration ~~((programming of funds after July 1, 1987, for))~~ projects approved by the board for the ~~((preliminary))~~ design phase where construction funding approval is pending.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-13-035 Value engineering study requirements. ~~((A value engineering (VE) study shall be required on all urban arterial trust account projects whose total cost exceeds one million dollars as reflected in the six year program. Upon request from a local agency, the board may grant a variance from this requirement. The board may also require a VE study for a project whose total cost is one million dollars or less upon a determination by the board that a VE study is warranted.~~

~~An agency that proposes to obtain a variance from the requirement shall submit justification to the board by the first day of the month preceding the month in which project authorization is proposed unless a later receipt date is specified and permitted, in writing, by the director.~~

~~The board shall not authorize funds for a project until the VE study has been performed by an interagency study team in compliance with guidelines furnished by the board.))~~ Value engineering studies shall be required in accordance with the policy adopted by the board.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-13-070 Procedures for ~~((two phase))~~ project(s) approval. ~~((After July 1, 1987, preliminary))~~ Pre-design, design proposals and related construction projects authorized by the board for financial assistance from the urban arterial trust account shall be selected for authorization based upon the following factors:

The ~~((preliminary and construction prospectus))~~ proposed project scope shall ~~((specifically address the type of))~~ include improvement that will ~~((correct the deficiencies))~~ address or mitigate the items for which the project was selected.

The board shall evaluate the project scope and may reduce the project scope if, in the board's opinion, the scope exceeds that which is necessary to ~~((improve the deficiencies))~~ address or mitigate the item in the selection process.

The following factors relative to each project, in addition to other factors required by law, shall be evaluated:

(1) Each project shall be evaluated on the availability and source of matching funds.

(2) Construction prospectuses for ~~((construction))~~ projects ~~((that relate to preliminary proposals initially authorized))~~ previously approved for design and right of way funding by the board ~~((for financial assistance))~~ from the urban arterial trust account shall be required to be accompanied by the following information demonstrating the readiness of the ~~((construction))~~ project to be placed under contract for construction.

(a) A certification from the legislative body or other designated responsible official, of the administering agency ~~((or agencies)),~~ that an environmental impact analysis has been conducted and an environmental impact statement including the conformity with the state and Federal Clean Air Acts or negative declaration of environmental impact, as appropriate, has been circulated pursuant to chapter 43.21C RCW, and that the results have been utilized in arriving at the decisions reflected in the prospectus for the construction project.

(b) A certification that all right of way required for the project is available or if right of way remains to be acquired that the agency has obtained a possession and use agreement on the parcels in question.

(c) A certification from the legislative body that the project is completely designed and ready to be advertised for bids.

(d) The date the project will be advertised for bids.

(e) Each construction project prospectus shall identify changes between the scope of work of the proposed construction project and the construction work contemplated in the current six-year transportation program or the ~~((preliminary))~~ project design prospectus ~~((and provide)).~~ An explanation and justification for such changes shall also be included.

(f) The board shall consider adjustments to the amount previously requested ~~((in the six year transportation program))~~ in accordance with the board's rule on increases in urban arterial trust account funds.

(3) Requests for authorization of funds for construction projects ~~((in:~~

~~((a) Federal urban areas))~~ shall be considered in the sequence in which the projects ~~((within each functional class of arterial within each region))~~ are, as defined by board rules, ready to be placed under contract for construction. In the event that two or more projects ~~((in the same functional class within the same region))~~ are proposed for funding at the same board meeting, the request for funds shall be considered in the same priority sequence ~~((within each functional class and region))~~ in which the related ~~((preliminary))~~ design phase proposals were approved.

If insufficient funds are available in the account to allow the board to fund the construction phase when requested, the board shall notify the agency that notice will be provided when funds are available to again proceed with the request. At that time the agency will resubmit their request and will be given priority within the appropriate region over all other requests for funding submitted after their original request for construction funds.

~~((b) Rural incorporated cities shall be considered in the sequence in which the projects within each region are, as defined by board rules, ready to be placed under contract for construction. In the event that two or more projects in the same region are proposed for funding at the same board meeting, the request for funds shall be considered in the same priority sequence within region in which the related preliminary proposals were approved.~~

~~If insufficient funds are available in the account to allow the board to fund the construction phase when requested, the board shall notify the agency that notice will be provided when funds are available to again proceed with the request. At that time the agency will resubmit their request and will be given priority within the appropriate region over all other requests for funding submitted after their original request for construction funds.~~

The board, when considering approval of the construction phase of a project that was previously approved for the preliminary engineering phase, shall take into consideration the current balance of available funds in the account and shall not authorize the construction phase if, in the board's opinion the total funding for construction will not be available within the ensuing twelve month time period.))

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-13-060 Procedures for two-phase projects.

AMENDATORY SECTION (Amending Order 32, filed 2/6/68)

WAC 479-16-010 Methods of construction. All construction, except utility and railroad relocations and adjustments and except installation of traffic control devices if accomplished by the personnel of the local governmental unit, done by cities and counties using ~~((urban arterial trust))~~ transportation improvement board funds shall be required to be done by advertisement, competitive bid and contract.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-015 Registered engineer in charge. All projects using ~~((urban arterial trust account))~~ transportation improvement board funds shall be planned, designed, and constructed under the supervision of a professional engineer registered in the state of Washington.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-016 Certification of ~~((completion))~~ completed work. Each ~~((voucher))~~ request for payment of board funds during the construction phase shall be ~~((accompanied by certification of))~~ certified by the registered engineer in charge that the work has been completed in accordance with plans and specifications.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-030 Utility and railroad adjustments and relocations. Utility and railroad adjustments and relocations may be performed by negotiated contract with the owner of those facilities. The administering agency shall review and approve a written statement that includes the items of work and an estimate of cost prepared by the utility or railroad for the work required as a result of the arterial improvement. Updated statements of items of work and estimates of cost may be reviewed and approved by the administering agency. All costs of utility and railroad adjustments, as finally approved by the administering agency, shall be subject to audit. If federal aid highway funds are included in the project, the negotiated contract shall include the applicable provisions of federal highway administration policies and procedures prescribed in ~~((FHPM 1-4-3, FHPM 6-6-2-1, Code of Federal Regulations,))~~ 23 CFR 140, 23 CFR 645 and 23 CFR 646, Federal Aid Policy Guide.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-035 Undergrounding utilities. Board funds ~~((shall participate))~~ may be used in the actual, necessary costs of relocating utility or other service facilities resulting from an approved urban arterial project when:

(1) The local agency administering the project directly incurs such costs; or

(2) The local agency administering the project is obligated by law or by previously established and documented policies and practices for such costs.

Board funds may ~~((participate))~~ be used in the costs ~~((of undergrounding))~~ to underground service connections for street illumination and traffic signal services within the prescribed limits of the approved project.

The board funds ~~((participation))~~ used in the actual, necessary costs of relocating utility or other service facilities, other than service connections for street illumination and traffic signal services within the prescribed limits of the approved project, shall be further limited as follows:

(a) Where a local agency requires that existing overhead facilities be placed underground, board ~~((participation))~~ funds shall be limited to the agency's actual cost thereof ~~((or the cost which would be incurred in placing them overhead, whichever is the lesser))~~. The board considers this type of improvements to be aesthetic in nature as is landscaping, therefore, the cost involved in undergrounding the utility facilities, in excess of the estimated cost to relocate them overhead, will be included within the three percent allowance for landscaping costs.

(b) If utility lines or other service facilities are already underground, board funds may ~~((participate))~~ be used in the costs of replacing such facilities on an underground basis.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-040 Traffic control devices. Traffic control devices included in a participating project may be installed by the employees and with the equipment and materials of the local governmental units: *Provided*, That the basis for payment of board funds is reimbursement of the appropriate portion of actual cost of such work, subject to ~~((appropriate))~~ audit.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-045 Project plantings. Board funds may ~~((participate))~~ be used at the appropriate matching ratio in the cost of street tree plantings and the use of other plantings and supporting materials within the project right of way to a maximum of three percent of the total authorized project costs: *Provided*, That requests for increases in the authorized amount of board funds to cover street tree planting and related costs shall be considered jointly with other cost increases and approval of all such requests shall be limited to the amount authorized by WAC ~~((479-20-036))~~ 479-20-037 to be approved by the director. Erosion control treatment shall not be considered a part of street tree planting costs.

The three percent limitation for street tree planting and related costs (~~(on a participating basis utilizing board funds)~~) shall not affect the local government's authority to include street tree plantings and the use of other plantings or supporting materials in the (~~(urban)~~) arterial project in amounts that exceed the three percent (~~(of total authorized project cost)~~) limit provided they are paid for solely with funds other than board supplied funds.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-060 Design standards for (~~(urban arterial trust account)~~) transportation improvement board projects. All (~~(urban arterial trust account)~~) transportation improvement board funded projects shall be prepared using currently applicable design standards.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-080 (~~(Rates of development of functional classes for urban arterial trust account projects.)~~) Apportionment of urban arterial trust account fund to regions. (~~(Urban arterial trust account funds apportioned to the five regions of the state within the federal urban areas shall be divided between functional classes of urban arterials. Beginning July 1, 1985,)~~) Beginning 1995, every four years, the board (~~(at the start of each new biennium)~~) shall determine the distribution formula to apportion unobligated arterial trust account funds to each (~~(functional class of arterial within a given)~~) urban region (~~(as set forth below)~~). The distribution (~~(of funds within each region shall be administered so as to permit complete urban arterial trust account projects in each arterial classification to be authorized and funded.~~

(1) ~~By determining a ratio between functional classes of roadway within each region, based on the estimated cost of improvement for backlog and first biennium deficiencies, found in the current city and county long range plan inventory for two lane roadways. All improvement costs shall be attributable to those sections with average daily traffic greater than the average traffic weighted by section length for two lane roadways established from the long range plan inventory for each functional class within region.~~

(2) ~~The ratio determined by subsection (1) of this section shall be weighted by the following amount for each classification to assure that the urban arterial construction program shall provide for a more rapid rate of completion of the long range construction needs of principal arterial roads than for minor and collector arterial roads pursuant to RCW 47.26.200 and 47.26.210.~~

- (a) ~~Principal arterial ratio weighted by three.~~
- (b) ~~Minor arterial ratio weighted by two.~~
- (c) ~~Collector arterial ratio weighted by one.~~

Urban arterial trust account funds apportioned to the five regions of the state outside the federal urban areas (~~(incorporated cities)~~) shall not be divided by functional class of arterial.) formula shall be defined in the following manner:

(1) One-third in the ratio which the population of the urban areas of each region bears to the total population of all

of the urban areas of the state as last determined by the office of financial management;

(2) One-third in the ratio the vehicle to mile ratio traveled on the classified arterial system prescribed in RCW 47.26.180, within the urban areas of each region bears to the total vehicle to mile ratio traveled on all classified urban arterial systems;

(3) One-third in the ratio which the city and county urban arterial needs within the urban areas of each region bears to the total urban arterial needs on city and county urban arterials within all urban areas of the state as last revised by the board.

The distribution of funds within each region shall be administered so as to permit complete urban arterial trust account projects in each arterial classification to be authorized and funded.

NEW SECTION

WAC 479-16-085 Funding for pedestrian facilities.

The board may set aside a percentage of urban arterial trust account funds to be used for the improvement or construction of pedestrian facilities.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-16-098 (~~(Evaluation and approval of designated bikeway system.)~~) Inclusion of bicycle facilities in transportation improvement board projects. (~~(The bikeway plan of each urban city or county shall be submitted.)~~) If an eligible agency has a project funded by transportation improvement board funds that includes the construction of bicycle facilities, the agency shall submit their bikeway plan to the board in map form along with the agency's verification that the plan has been:

- (1) Integrated with existing "user designated," as well as officially designated bikeways.
- (2) Integrated with bikeways of adjacent units and levels of government.
- (3) Reviewed with, and approved by, the agency's legislative body.

The total bikeway plan of the agency shall identify separately arterial bikeways, as previously defined, that would be desired to be improved in conjunction with an arterial construction project.

The board shall notify the submitting city or county of its concurrence in the bikeway plan after such plan has been reviewed and found to be reasonable in relation to the rules adopted by the board. The proposed bicycle facility shall be in accordance with definitions, criteria, and design standards shown in Chapter 1020 of the Washington Department of Transportation Design Manual.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 479-16-070 Standards for functional classification of urban arterials.

PERMANENT

WAC 479-16-072	Classification standards for arterials in rural incorporated areas.
WAC 479-16-090	Introduction and purpose.
WAC 479-16-091	Definitions.
WAC 479-16-092	Conceptual approach to bike-way system designation and development.
WAC 479-16-094	Criteria for bikeway system designation.
WAC 479-16-096	Design standards for bikeways.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-007 Matching ratios for urban arterial trust account funds. (~~Urban arterial trust account moneys for city and county arterial projects originally authorized by the board for either the design phase or the construction phase between May 20, 1971, and July 1, 1985, shall be matched from local funds by an amount not less than ten percent of the total cost of the construction for the life of the project.~~)

Urban arterial trust account (~~moneys~~) funds for (~~city and county~~) local agency arterial projects (~~lying within federally designated urban areas authorized by the board on or after July 1, 1985,~~) shall be matched (~~by an amount not less than twenty percent~~) in accordance with the following scheduled percentage of the total project cost (~~of the construction project~~).

City with a population from 5,000 to 9,999 or a 3rd Class county or smaller - 10% match

City with a population from 10,000 to 14,999 or a 1st or 2nd Class county - 15% match

City with a population from 15,000 and up or a Class AA county and over - 20% match

~~(Urban arterial trust account moneys for city arterial projects lying outside federally designated urban areas authorized by the board on or after July 1, 1985, shall be matched by not less than ten percent of the total cost of the construction project.)~~

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-010 Reimbursable costs. Project costs eligible for reimbursement from the account shall be those proper and allowable costs incurred on a project after the project is authorized by the board except as provided by the following:

~~((1) In the case of two phase project authorizations, approved by the board prior to July 1, 1987, the director may, after the administering agency has completed the environmental impact analysis, authorize right of way acquisition. Reimbursement from the account will be available for eligible right of way costs if and when the construction phase of the project is approved by the board. For projects approved by the board after July 1, 1987,))~~ Reimbursement of right of way acquisition costs are eligible within the (~~preliminary~~) design phase of the project. In the event the project is not built, those funds expended for right of way shall be refunded to the account.

~~((2) In the case where an agency is required to perform a value engineering study prior to authorization of the preliminary phase, those costs incurred prior to approval will be eligible for reimbursement if and when the project is approved for funding by the board.~~

~~(3) The eligible preliminary and construction engineering costs shall be limited to twenty five percent of the original bid amount including adjustments for construction overruns, underruns, or agency force construction. Agency costs for the value engineering study and the right of way appraisals and acquisition costs will not be used to determine the amount subject to the limit.))~~

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-011 Reimbursable costs for engineering. (~~After July 1, 1987, preliminary~~) Design and construction engineering costs eligible for reimbursement shall be limited to twenty-five percent of the approved contract bid amount including adjustments for change orders and actual quantity amounts during construction (~~overruns, underruns, or~~) and agency force construction. Agency costs for value engineering and other special studies and right of way appraisals and acquisition costs will not be used to determine the amount subject to the limit.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-013 Direct costs. Direct costs eligible for board participation are those costs which are directly attributable to a specific project and shall include:

(1) Direct labor (engineering and/or construction) including related employee benefits:

(a) Salaries and wages (at actual or average rates) covering productive labor hours of city and county employees (excluding the administrative organization of the operating unit involved) for periods of time, actively or incidentally engaged in (~~(a) preliminary~~) (i) predesign engineering, (ii) design engineering, (~~(b))~~ (iii) construction engineering, (~~(c))~~ (iv) acquisition of rights of way, and (~~(d))~~ (v) actual construction activities are considered a direct cost of construction projects. The cost of services rendered by employees generally classified as administrative are considered a direct cost only when such employees are assigned for short periods of time to perform on a full time basis the types of services described above and when similar procedures are followed for nonboard projects.

(b) Employee benefits relating to direct labor are considered a direct cost of construction projects. The following items may be included as employee benefits:

- (i) F.I.C.A. (Social Security) - employer's share
- (ii) Retirement benefits
- (iii) Hospital, health, dental and other welfare insurance
- (iv) Life insurance
- (v) Industrial and medical insurance
- (vi) Vacation
- (vii) Holiday
- (viii) Sick leave
- (ix) Military leave and jury duty

Employee benefits shall be calculated as a percentage of direct labor dollars. The computation of predetermined

percentage rates to be applied to current labor costs shall be based upon the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

(2) Contract engineering services

(3) Right of way acquisition costs including:

(a) Purchase of land and easements acquired for and devoted to the project;

(b) Purchase of improvements;

(c) Adjustment or reestablishment of improvements;

(d) Salaries, expenses or fees of appraisers, negotiators or attorneys;

(e) Removal or demolition of improvement;

(f) Other direct costs in connection with the acquisition.

Amounts received from the sale of excess real property or improvements and from any rentals shall be a reduction of the direct cost.

(4) Contract construction work

(5) Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county owned equipment, at the rental rates established by the city's or county's "equipment rental and revolving fund" following the methods prescribed by the division of (~~municipal corporations~~) audit: *Provided*, That such costs shall be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of 8,000 or less which may not use this type of fund shall be allowed the same rates as used by the department of (~~highways~~) transportation.

(6) Direct materials and supplies. The cost of materials used in projects shall be based upon methods prescribed for the "equipment rental and revolving fund" by the division of (~~municipal corporations~~) audit.

(a) An overhead rate or "loading factor" shall not be considered an appropriate additive to the actual cost of materials and supplies used on construction projects unless the factor is readily and properly supportable by the governmental unit's accounting records.

(b) The cost, or reasonable estimate thereof, of materials paid for as contract estimate items, but not used, shall be considered a reduction of direct costs. Any material which may be salvaged in connection with a project shall be assigned a reasonable value and considered a reduction of direct costs.

(7) Interdepartmental charges for work performed by county or city departments, other than the road or street department, for the benefit of specific construction projects shall be limited to direct costs plus an allocation of indirect costs based upon 10% of direct labor dollars, excluding employee benefits. Such indirect costs shall be determined by a rate which is readily and properly supportable by the governmental unit's accounting records and shall be the same rate as applied to nonboard projects; however, this rate shall not exceed the indirect cost allocation rate established by the board. If individual units of government do not have such an internal indirect cost allocation rate, the rate predetermined by the board shall be used in determining the amount of indirect costs (~~includible~~) includable in the total interdepartmental charges.

(8) Other direct costs incurred for materials or services acquired for a specific project shall be eligible for participa-

tion by board funds and may include, but shall not be limited to, such items as:

(a) Telephone charges

(b) Reproduction and photogrammetry costs

(c) Computer usage

(d) Printing and advertising.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-016 Indirect costs. Indirect costs incurred by a local government for common or joint objectives which include an authorized board funded project, and which are not included in those direct costs set forth and defined in WAC 479-20-013, shall be eligible for (~~urban arterial trust~~) board fund participation on a particular project at a rate not to exceed ten percent of direct labor costs, excluding employee benefits, expended by the local government on that project.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-020 Partial or progress payments for (~~construction~~) project costs. Participation and payment of board funds to counties and cities shall be governed by the following:

(1) Board participation. Board funds shall not participate in any cost which is not incurred in conformity with all applicable federal and state law and the rules, regulations and procedures as may be prescribed by the board promulgated in conformity with the statutes.

(2) Project agreements. Projects for which board funds are requested by the eligible agencies and for which the board has allocated funds will be the subject of a project agreement to be entered into by the eligible agency with the board evidencing acceptance of the conditions to payment of funds, as prescribed by laws and regulations, and the amount of funds to be obligated.

(3) Changes in project work and cost. No material change in the termini, character, or scope of the work on an approved project shall be made without prior concurrence in such changes by the board.

(4) Payments. Eligible agencies are to submit requests for payment(~~s~~) of funds claimed to be due on approved projects. Such requests are to be (~~in the form of vouchers as~~) on forms prescribed by the board, and shall be certified and accompanied by supporting data as may be required by the board. (~~Such vouchers~~) Requests for payment may be submitted from time to time as the work progresses and final requests shall be submitted (~~promptly at the completion of work on each project. Claims~~) within six months of contract completion. Payment of TIB funds shall at no time exceed the board's share of the project costs (~~of construction~~) incurred to the date of the (~~voucher covering such~~) payment request.

(5) Compliance with laws and regulations. If an eligible agency has failed to comply with laws and regulations with respect to a project, payment of funds may be withheld on such projects, or approval of additional projects may be withheld until compliance or remedial action has been accomplished by the eligible agency to the satisfaction of the board.

(6) Progress payments. Progress payments for project costs shall be limited to the board's percentage share of the costs for project development incurred to the date of the ~~((voucher))~~ payment request: *Provided*, That in all projects where the total project cost exceeds the amount of authorized board funds, there shall be imposed a limitation on progress payments in order that the percentage of board fund progress payments in relation to total progress costs as of each ~~((voucher))~~ payment request date shall not exceed the percentage determined by dividing the total authorized amount of board funds by the most recently determined total project cost.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-025 Record requirements. All eligible agencies requesting payment of board funds on authorized projects shall have procedures in effect that will provide adequate assurance that payments requested are proper and accurate:

(1) Quantities of complete construction contract work shall be supported by all related source documents upon which payment to the contractor is based. These source documents shall include, but shall not be limited to, tickets for items measured on a weight or volume basis, cross section notes, inspector's diaries, engineering calculations for items measured in place, material tests, shipping invoices for steel, and all other field records normally developed by field engineers to support final quantities paid to contractors. The quantity field record should be summarized so that final pay estimates would lend themselves to comparison with supporting records.

(2) All appraisal reports, record of negotiations with grantors including a negotiator's diary indicating dates of contracts, offers made, and final acceptance by grantor, title insurance documents, transfer documents such as warranty deeds, quit claim deeds, easements, contract and sale documents, shall be maintained.

(3) Daily labor time records, equipment use records, requisitions for materials used, invoices for goods and services, and other invoices shall be maintained. Records shall also be maintained which support employee benefit percentages which are used in calculating amounts charged to construction projects.

(4) All records shall be retained in compliance with the requirements of the division of ~~((municipal corporations))~~ audit and until ~~((after audit by the board designee))~~ notification from the board that a project audit is complete or is not required.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-027 Audits of urban arterial project records. Projects shall be audited in accordance with the policy adopted by the board. Project records for each project developed through the use of board funds may be audited to determine that funds paid can be attributed to the project and supported by project records. The audit will determine if there has been compliance with the rules of the board. Projects may be audited by the board at the time of

the project completion or at such additional times as may be directed by the director.

The director may, where the cumulative amount of audit exceptions is less than ~~(((\$250.00))~~ five hundred dollars in board funds, advise the agency that no recovery of funds is requested.

Audit exceptions which the director considers to be significant in relation to board rules or significant in amount to warrant potential recovery of funds, shall be furnished to the administering agency to allow an opportunity to respond in writing to the audit report.

After reviewing the written response, the director, shall advise the agency whether any recovery of funds is indicated.

If recovery of board funds is indicated, as determined by the director, or by the board, the agency shall be provided ninety days from the date of the notice from the board to make repayment.

If repayment of funds by the agency is not made within ninety days from the date of the notice from the board, the subject shall be placed before the board for review and action.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-031 Expenditure schedule of urban arterial trust account ~~((and transportation improvement account))~~ funds. Each eligible agency having an approved project shall, ~~((prior to the beginning of each quarter))~~ when requested by the director, submit an updated schedule of its estimated demand for board funds to the board. This schedule shall be on forms provided by the board and shall include the estimated demand for board funds ~~((for the project for:~~

(1) ~~The next succeeding quarter;~~
(2) ~~Subsequent quarters~~)) biannually until project completion.

Such estimates shall be differentiated between the ~~((preliminary))~~ design engineering, right of way and construction stages of project development.

Additional information pertaining to estimated demands for board funds by eligible agencies may be requested by the director as required to permit adequate funding of the programs.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-037 Procedure to request increase in board funds. The amount of funds approved ~~((by the board after July 1, 1987;))~~ will be based upon the amount requested in the ~~((current separate section of the local agency's six-year transportation program))~~ design prospectus. This amount may be adjusted from the amount shown in the project application with adequate justification. The authorized funds and scope of work approved by the board at the design phase will be the base for comparison in the following phases.

Local agencies may request an increase in the participation of funds over the amount set forth in the ~~((six-year transportation program at the preliminary prospectus;))~~ design phase, at the construction ~~((prospectus))~~ phase, bid

opening or contract completion (~~(stage)~~) of a project in accordance with the following procedures:

(1) At the (~~(preliminary or)~~) construction (~~(prospectus stage)~~) phase all requests shall be reviewed by the director (~~(and he)~~). The director shall report (his) the findings to the board for its review, consideration and final action. The board shall not grant a request for increase at (these stages) this phase if:

(a) The requested increase is to pay for an expansion of the scope of the work (~~(originally proposed; or)~~) that is beyond the work required to accomplish the intent of the project as approved at the design phase.

(b) The granting of the request will obligate funding beyond the level acceptable to the board or will in any way adversely affect authorized funds previously approved by the board including the reserve for the following:

(i) Increases at bid opening that will not exceed ten percent of the engineers estimate multiplied by the account matching ratio.

(ii) Increases for construction overruns at the amount equal to the account matching ratio multiplied by the sum of ten percent of the original contract amount up to one million dollars and five percent of the amount in excess of one million dollars for those projects which have been approved for the construction phase.

(2) Request for increases at bid opening shall not exceed ten percent of the engineers estimate submitted to the board at the time the construction phase was approved multiplied by the account matching ratio. Requests for increases at this (~~(stage)~~) phase will take priority over (~~(preliminary)~~) design and construction phase approvals. Such requests shall be reviewed by the director and will not be approved if:

(a) The requested increase is to pay for an expansion of the authorized scope of the work (~~(originally proposed)~~); or

(b) If the request is not substantiated and the director determines that the increased funds should have been anticipated by the local agency at the construction (~~(prospectus stage)~~) phase of the project.

(3) Requests for increases in funds submitted to the board at (~~(the)~~) contract completion (~~(stage)~~) shall not exceed the account matching ratio multiplied by the sum of ten percent of the original contract amount up to one million dollars and five percent of the amount in excess of one million dollars. Requests for increases at this (~~(stage)~~) phase will take priority over (~~(preliminary)~~) design and construction phase approvals. Such requests shall be reviewed by the director and will not be approved if:

(a) The requested increase is to pay for an expansion of the authorized scope of the work (~~(originally proposed)~~); or

(b) If the request is not substantiated and the director determines that the increased funds should have been anticipated by the local agency at the (~~(preliminary or)~~) construction (~~(prospectus stage)~~) approval phase of the project.

(4) If the director or the board, as the case may be, does not approve the request of a local agency for an increase (~~(at the preliminary prospectus, construction prospectus, bid opening or contract completion stage)~~), the administering agency may:

(a) Proceed with the project, paying for any additional costs with local or other funds; or

(b) Withdraw the request for participation; or, if applicable

(c) Within the (~~(original)~~) authorized amount (~~(requested)~~), and subject to approval by the director, reduce the scope of the project while retaining a usable and functional improvement.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-086 Review of delayed projects. The director (~~(shall)~~) may contact, in writing, each local agency administering a transportation improvement board-funded project that appears to be delayed when evaluated in relation to the (~~(approved)~~) proposed schedule for project development. (~~(Any)~~) If the agency (that) does not respond to the inquiry of the director within twenty days explaining whether the project is delayed and, if so, the reasons therefore, may be placed before the board as a candidate for cancellation as a delayed project.

The written response (~~(of each)~~) from the administering agency shall be reviewed to determine if the reason or reasons for (each) the project(s) delay is acceptable. (Any project that appears to be delayed for an unacceptable reason shall be so.) The administrative agency will be advised by certified mail by the director if the delay is for an unacceptable reason. The letter from the director shall advise the local agency that:

(1) The project is delayed for an unacceptable reason;

(2) The local (~~(government)~~) agency has a period of three months from the date of the director's letter to resolve the reason or reasons for delay and to provide evidence to the board that the problems have been resolved. Such evidence shall, if requested by the director, include a time schedule for project development (~~((CPM schedule))~~) which sets forth project development dates in sufficient detail to permit monthly monitoring of project progress.

(3) If the reason or reasons for delay are not resolved within the specified time period, the project may be placed before the board as a candidate for cancellation.

The administering agency for any project placed before the board as a candidate for cancellation shall be requested to appear before the board to explain the status of the project.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-20-095 Identification and consideration of (~~(underruns)~~) surplus funds on authorized urban arterial trust account projects. When requested by the director, by certified mail, each project authorized for financial assistance from the (urban arterial trust account shall be reviewed by the director as of the last day of each quarter) local agency shall review their project to identify probable (~~(underruns)~~) reductions in project cost in relation to the previously authorized amount of urban arterial trust funds. (Each agency administering a project on which there appears to be a probable underrun shall be contacted by certified mail and requested to) The agency shall review the project to:

(1) Close the project by submitting a final (~~(voucher)~~) request for payment and summary cost documents if all work has been completed; or

(2) Advise the board of total costs to date, remaining costs necessary to complete the project, and the amount of estimated ~~((underrun))~~ surplus funds, if any, on the project.

Each response shall be reviewed by the director to determine whether the explanations appear reasonable and whether the agency appears to be pursuing the completion of the project at a reasonable rate. Any project where the administering agency does not appear to be pursuing the project to completion at a reasonable rate, or fails to submit a final ~~((voucher when))~~ request for payment within six months from the date that all work appears to be ~~((completed))~~ complete, shall be referred by the director to the board for appropriate action.

Each agency administering a project that is not considered to be developing to completion at a reasonable rate, or fails to submit a final ~~((voucher))~~ request for payment within six months when all physical work appears to be completed, shall be notified by the director by certified mail that the project is being scheduled for a hearing before the board at a specified time and place. The agency shall be requested to provide suitable representation to such board meeting to explain the status of the ~~((previously))~~ authorized project, the reasons why the project has not been completed and finalized out, the amount of urban arterial trust funds estimated to be required to complete the project, and the resulting ~~((underrun))~~ surplus in relation to previously authorized urban arterial trust funds.

~~((Information presented by each agency regarding the status of each project upon which there appears to be an underrun in relation to the authorized amount of urban arterial trust funds shall be evaluated by the board. If the administering agency does not respond to the board's request for presentation to the board regarding the status of the project, or if the agency does not adequately substantiate its need to retain the originally authorized amount of urban arterial trust funds, the board may reduce the remaining amount of authorized urban arterial trust funds to that amount reasonably necessary to complete the authorized urban arterial project.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 479-20-033 Procedure for requesting an increase in authorized amount of urban arterial trust funds.
- WAC 479-20-036 Consideration of requests for an increase in authorized amount of urban arterial trust funds.
- WAC 479-20-075 Emergent nature urban arterial trust account projects.

AMENDATORY SECTION (Amending WSR 90-11-035, filed 5/10/90, effective 6/10/90)

WAC 479-24-030 Timing of the ~~((EIS))~~ environmental review process. (1) As provided by WAC 197-11-055, the ~~((EIS))~~ environmental review process shall be completed before the board is irrevocably committed to a particular course of action. At the same time, the ~~((EIS))~~ environmen-

tal review process should not be undertaken until a proposal is sufficiently definite to allow meaningful environmental analysis.

(2) The threshold determination or any required ~~((EIS))~~ environmental documentation for the board's action of a nonproject nature shall be completed prior to official adoption of the action in question.

(3) The threshold determination or any required ~~((EIS))~~ environmental documentation for board action of a project nature shall in all cases be completed prior to the determination to construct the project in question. While the board may tentatively affirm the choice of a particular location or design based upon completion of the draft ~~((EIS))~~ environmental documentation, final determination to construct shall not occur until a final threshold determination has been made or a final ~~((EIS))~~ environmental documentation has been prepared.

(4) As provided by chapter 173-420 WAC, in areas subject to a state implementation plan, no state agency or local government shall approve or fund a transportation project within or that affects a nonattainment area unless a determination has been made that the project conforms with the state implementation plan for air quality as required by the Federal Clean Air Act.

**Chapter 479-112 WAC
SUBMISSION OF PROPOSED ~~((TIA))~~ TRANSPORTATION IMPROVEMENT ACCOUNT (TIA) PROJECTS TO TRANSPORTATION IMPROVEMENT BOARD**

NEW SECTION

WAC 479-112-001 Purpose and authority. RCW 47.26.160 provides that the transportation improvement board shall adopt reasonable rules necessary to implement the transportation improvement account.

NEW SECTION

WAC 479-112-003 Transportation improvement account program intent. The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our state-wide transportation system needs.

NEW SECTION

WAC 479-112-0055 Definitions. For purposes of implementing the requirements of RCW 47.26.084 relative to the transportation improvement account, the following definitions shall apply:

- (1) Board - when board is used in this chapter, it refers to the transportation improvement board.
- (2) Director - the executive director of the transportation improvement board.
- (3) Urban area - the term "urban area" as used in this chapter refers to the portion of a county within the federal urban area boundary as designated by FHWA.
- (4) Eligible agencies - the transportation improvement account eligible agencies are:

PERMANENT

(a) Counties that have an urban area or a population of five thousand or more.

(b) All cities within an urban area.

(c) Urban area transportation benefit districts.

(5) Eligible projects.

(a) Improvements on federally classified arterials.

(b) Improvement involving state highway and transit when they are part of a joint project with eligible agencies.

(c) A project within the federal urban boundary or a project that extends partially or is totally beyond the federal urban boundary and is an extension of a federally classified arterial which connects two other federally classified arterials.

(d) A project that is on the federal functional classification system and in an area that is outside of the federal urban boundary, but has definite urban characteristics as defined by local comprehensive plans.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-112-008 Verification of coordination with planning authority for transportation improvement account projects. All applications for TIA funding shall be consistent with the regional transportation plan. In areas of the state where there is no regional transportation planning authority, a letter of verification shall be signed by the chair of the lead agency legislative authority.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-112-009 Planning requirements for multiagency transportation improvement account projects. The board requires joint planning for all TIA funded multiagency projects. The lead agency shall submit documentation to the board stating that the approving authority of each agency involved in the project has indicated support for the project. In the case of projects that stop at or near a corporate boundary or could affect other transportation agencies facilities or programs, a copy of a letter requesting review by other affected agencies shall accompany the project (~~(preapplication)~~) application.

AMENDATORY SECTION (Amending WSR 90-16-028, filed 7/23/90, effective 8/23/90)

WAC 479-112-017 Local/private matching funds on transportation improvement account projects. ~~((1))~~ TIA ~~((moneys))~~ funds for urban program projects authorized by the board shall be matched by an amount not less than twenty percent of the total cost of the transportation project. Matching funds will be considered to be all contributions other than those provided by the board.

~~((2))~~ TIA ~~moneys~~ for the small cities program projects authorized by the board for cities and towns with population greater than five hundred shall be matched by not less than five percent of the total cost of the transportation project. There is no matching fund requirement for cities and towns with a population equal to or less than five hundred. Matching funds will be considered to be all contributions other than those provided by the board.)

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-112-005 Agencies eligible for transportation improvement account funds.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-113-010 Six-year programs for transportation improvement account projects. ~~((1))~~ The six-year transportation programs of urban area cities and counties required, respectively, by RCW 35.77.010 and 36.81.121, shall be divided into sections:

(a) The basic six-year transportation program for the following six years based upon estimated revenues other than proposals for board funds for new projects.

(b) A separate supplemental section of the six-year transportation program setting forth proposals, if any, for board funds for new projects to begin in the following biennial period.

(2) The separate supplemental section of the six-year transportation program setting forth proposed new projects utilizing board funds shall be considered as supplemental to the basic six-year transportation program and shall not contain duplicate projects. *Provided*, That the same project may appear in both the basic and supplemental six-year transportation programs if:

(a) The local agency intends to construct the project with other funds if TIA funds are not approved.

(b) The total dollar amount of the basic six-year transportation program approximates estimated revenues available for construction for the following six-year period:

Upon board approval of any new project for financial assistance from the board, such project shall be amended into the basic six-year transportation program.

The responses to the TIA funding criteria questions and inventory data for each proposed project shall be prepared under the supervision of a registered engineer in the state of Washington.) All projects should be on the six-year program, as required by RCW 35.77.010 and 36.81.121, prior to transportation improvement board approval and shall be consistent with the Growth Management Act and the state and Federal Clean Air Acts, where applicable.

A copy of the ~~((basic))~~ six-year transportation program and the separate supplemental section of the six-year transportation program shall be submitted to the board along with a copy of the resolution of the city or county adopting such program. The TIA project ~~((preapplication form))~~ application setting forth new project proposals for the TIA funding, shall be submitted to the board on ~~((preapplication))~~ forms provided by the board.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-113-011 Priority criteria for transportation improvement account projects. The ~~((lead agency))~~ shall evaluate its proposed TIA projects by utilizing the)

following criteria (~~which~~) shall (~~also~~) be utilized by the TIB to prioritize projects:

~~((1) Multiagency involvement in projects.~~

(2) Multimodal solutions for projects including but not limited to transit, high occupancy vehicle (HOV) lanes, ferry or high capacity transit/rail.

~~(3) Improvements necessitated by existing or foreseeable congestion or safety problems due to economic development or growth.~~

~~(4) The percentage of agency(ies) and private matching funds.~~

~~(5) For the small cities program projects, structural or geometric deficiencies.~~

~~(6) Other factors deemed appropriate by the board on a case-by-case basis.)~~ (1) The percentage of agency(ies) and private matching funds.

(2) Multimodal solutions for projects including but not limited to transit, high occupancy vehicle (HOV) lanes, ferry, high capacity transit/rail, or intermodal facility.

(3) Economic development is encouraged.

(4) Multiagency involvement in projects.

(5) Mobility enhancement by betterment of service level.

(6) Improvements necessitated by existing or foreseeable congestion or safety problems due to economic development or growth.

(7) Other considerations demonstrating improvement of the local transportation system such as pavement management system (PMS), traffic demand management (TDM) or local transportation funding.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-113-029 Establishing regions for transportation improvement account program. For the purpose of apportioning TIA funds to the urban (~~and small cities~~) program(~~s~~), the counties of the state are grouped within three regions of the state as follows:

(1) East region shall include eligible agencies within the counties of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

(2) Puget Sound region shall include eligible agencies within the counties of King, Pierce, and Snohomish.

(3) West region shall include eligible agencies within the counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-113-031 Allocation of transportation improvement account funds to regions. (~~((1))~~) Of the funds in the urban program, forty percent will be allocated to projects on a state-wide basis and then, at least fifteen percent will be allocated to projects in the East region, at least fifteen percent to projects in the West region, and (~~at least~~) approximately thirty percent to projects in the Puget Sound region. (~~(An amount not to exceed ten percent of the urban funds will be placed in a contingency fund as provided for in WAC 479-113-032.~~

~~(2) Of the funds in the small cities program, the amount allocated to projects in a region will be within plus or minus five percent of the ratio which the population of cities under five thousand in a region bears to the state-wide population for cities under five thousand as last determined by the office of financial management.)~~

AMENDATORY SECTION (Amending WSR 90-16-028, filed 7/23/90, effective 8/23/90)

WAC 479-113-035 Value engineering study requirements for transportation improvement account projects. Value engineering studies shall be (~~performed~~) required in accordance with the policy adopted by the board.

NEW SECTION

WAC 479-113-070 Procedures for project phase approval for transportation improvement account projects. The procedures for project phase approvals shall be as provided for in WAC 479-13-070.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-113-032 Contingency fund for the transportation improvement account urban program.

NEW SECTION

WAC 479-116-010 Methods of construction for transportation improvement account projects. The methods of construction shall be as provided for in WAC 479-16-010.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-116-016 Certification of (~~completion of~~) completed work for transportation improvement account projects. Each (~~voucher~~) request for payment shall be submitted in accordance with WAC 479-16-016.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-116-035 Undergrounding utilities on transportation improvement account projects. TIA funds (~~shall participate in undergrounding~~) can be used to underground utilities under conditions as provided for in WAC 479-16-035.

AMENDATORY SECTION (Amending Order 89-2, Resolution No. 035, filed 6/22/89)

WAC 479-116-045 Project plantings on transportation improvement account projects. TIA funds may (~~participate in~~) be used for the cost of project plantings in accordance with WAC 479-16-045.

NEW SECTION

WAC 479-116-070 Funding for pedestrian facilities. The board may set aside a percentage of transportation improvement account funds to be used for the improvement or construction of pedestrian facilities.

NEW SECTION

WAC 479-116-080 Inclusion of bicycle facilities in TIB projects. If an eligible agency has a project funded by transportation improvement account funds that includes the construction of bicycle facilities, the agency shall submit their bikeway plan to the board in map form along with the agency's verification that the plan has been:

- (1) Integrated with existing "user designated," as well as officially designated bikeways.
- (2) Integrated with bikeways of adjacent units and levels of government.
- (3) Reviewed with, and approved by, the agency's legislative body.

The total bikeway plan of the agency shall identify separately arterial bikeways, as previously defined, that would be desired to be improved in conjunction with an arterial construction project.

The board shall notify the submitting city or county of its concurrence in the bikeway plan after such plan has been reviewed and found to be reasonable in relation to the rules adopted by the board.

The proposed bicycle facility shall be in accordance with definitions, criteria, and design standards as shown in Chapter 1020 of the *Washington State Department of Transportation Design Manual*.

NEW SECTION

WAC 479-120-010 Reimbursable costs for transportation improvement account projects. The reimbursable costs for transportation improvement account projects shall be in accordance with WAC 479-20-010.

NEW SECTION

WAC 479-120-011 Reimbursable costs for engineering for transportation improvement projects. The reimbursable costs for engineering for transportation improvement account projects shall be in accordance with WAC 479-20-011.

NEW SECTION

WAC 479-120-013 Direct costs for transportation improvement account projects. The direct costs eligible for reimbursement for transportation improvement account projects shall be as specified in WAC 479-20-013.

NEW SECTION

WAC 479-120-016 Indirect costs for transportation improvement account projects. The indirect costs eligible for reimbursement for transportation improvement account projects shall be as specified in WAC 479-20-016.

NEW SECTION

WAC 479-120-025 Record requirements for transportation improvement account projects. The record requirements for transportation improvement account projects shall be as specified in WAC 479-20-025.

NEW SECTION

WAC 479-120-027 Audits of transportation improvement account project records. Audits for transportation improvement account projects shall be in accordance with WAC 479-20-027.

NEW SECTION

WAC 479-120-031 Expenditure schedule of transportation improvement account funds. The demand for transportation improvement account funds shall be submitted to the board in accordance with WAC 479-20-031.

NEW SECTION

WAC 479-120-037 Procedure for requesting an increase in authorized amount of transportation improvement account funds. An increase in the amount of transportation improvement account funds in a project may be requested in accordance with the provisions of WAC 479-20-037.

NEW SECTION

WAC 479-120-086 Review of delayed projects for the transportation improvement account program. The review of delayed transportation improvement account projects shall be in accordance with WAC 479-20-086.

NEW SECTION

WAC 479-120-089 Recovery of transportation improvement account funds on canceled projects. The recovery of transportation improvement account funds paid to the local agency shall be in accordance with the provisions of WAC 479-20-089.

NEW SECTION

WAC 479-120-095 Identification and consideration of surplus funds on authorized transportation improvement account projects. The identification and consideration of surplus funds for transportation improvement account projects shall be in accordance with WAC 479-20-095.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-120-033 Procedure for requesting an increase in authorized amount of transportation improvement account funds.

**Chapter 479-216 WAC
REQUIREMENTS FOR ((ROAD)) ROUTE JURIS-
DICTION TRANSFER REQUESTS**

AMENDATORY SECTION (Amending WSR 91-23-091, filed 11/19/91, effective 12/20/91)

WAC 479-216-050 Annual cutoff date for jurisdiction transfer requests. Prior to ((April 1)) February 1, yearly, cities, counties or the department of transportation shall submit requests for jurisdiction transfer to the board using forms provided by the board. The request shall be in conformance with the procedures established in this chapter.

AMENDATORY SECTION (Amending WSR 91-23-091, filed 11/19/91, effective 12/20/91)

WAC 479-310-050 Adoption of rules. The board is required to utilize the following criteria, established by the ((road)) route jurisdiction study to adopt rules to implement the program:

- (1) Only those cities with a net gain in cost responsibility due to jurisdictional transfers in chapter 342, Laws of 1991, as determined by the board, may participate;
- (2) Cities with populations of fifteen thousand or less, as determined by the office of financial management, may participate;
- (3) The board shall develop criteria and procedures under which eligible cities may request funding for rehabilitation projects on city streets (acquired under chapter 342, Laws of 1991; and
- (4) The board shall also be authorized to allocate funds from the city hardship assistance program to cities with a population under twenty thousand to offset extraordinary costs associated with the transfer of roadways other than pursuant to chapter 342, Laws of 1991, that occur after January 1, 1991.

AMENDATORY SECTION (Amending WSR 91-23-091, filed 11/19/91, effective 12/20/91)

WAC 479-310-200 Administration costs. The board costs for necessary staff services and facilities that are attributable to the city hardship assistance program shall be paid from the ((urban arterial trust)) city hardship assistance account in the motor vehicle fund in a prorated amount of anticipated expenditures of the city hardship assistance program in ratio to the anticipated expenditures of the other programs administered by the board.

AMENDATORY SECTION (Amending WSR 91-23-091, filed 11/19/91, effective 12/20/91)

WAC 479-312-100 Data to be submitted for CHAP project application. Prior to ((April 1)) February 1, yearly, each eligible agency shall submit their proposed CHAP projects to the board on forms provided by the board. The type of work involved in the proposed projects shall be in accordance with the requirements of chapter 479-316 WAC. The application must be specific and accompanied by a detailed cost estimate.

**Chapter 479-410 WAC
SMALL CITY ACCOUNT PROGRAM RULES AND
REGULATIONS**

NEW SECTION

WAC 479-410-010 Purpose and authority. RCW 47.26.160 provides that the transportation improvement board shall adopt reasonable rules necessary to implement the small city account program. The board shall develop criteria and procedures under which eligible cities may request funding for projects on city streets.

NEW SECTION

WAC 479-410-020 Small city account program intent. The intent of the small city account program is to preserve and improve the roadway system in a manner that is consistent with local needs.

NEW SECTION

WAC 479-410-100 Funds for the small city account program. RCW 47.26.084 provides funding for the small city account program.

NEW SECTION

WAC 479-410-150 Definitions. For purposes of implementing the requirements of RCW 47.26.160, relative to the small city account, the following definitions shall apply:

- (1) Board - When board is used in this chapter, it refers to the transportation improvement board.
- (2) SCA - This is the abbreviation for the small city account. The account is funded from thirteen percent of the transportation improvement account and five percent of the urban arterial trust account.
- (3) Eligible agency - An eligible agency is a city or town that has a population of less than five thousand.
- (4) Eligible project - An eligible project is an improvement that has been approved by the board.
- (5) Rehabilitation - This work may include reworking or strengthening the base or subgrade, recycling or reworking existing materials to improve their structural integrity, adding underdrains, improving or widening shoulders.

NEW SECTION

WAC 479-410-160 Classification standards for arterials in small cities. Incorporated areas outside federal designated urban areas shall be required to identify their streets as either arterials or local access. An arterial shall be defined by at least one of the following standards:

- (1) Serves as the logical extension of a county arterial into the corporate boundary; or
- (2) Serves as a route connecting local (traffic) generators such as schools, medical facilities, social centers, recreational areas, commercial centers, or industrial sites within the corporate boundary; or
- (3) Acts as a bypass or truck route to relieve the central core area.

Streets failing to qualify under these standards for arterials are not eligible for small city account funds.

PERMANENT

NEW SECTION

WAC 479-410-170 Establishing regions for small city account program. Establishment of regions for the small city account will be in accordance with WAC 479-113-029.

NEW SECTION

WAC 479-410-180 Allocation of small city account funds to regions. Of the funds in the small city account, the amount allocated to projects in a region will be within plus or minus five percent of the ratio which the population of cities under five thousand in a region bears to the state-wide population for cities under five thousand as last determined by the office of financial management.

NEW SECTION

WAC 479-410-200 Administration costs. The board costs for necessary staff services and facilities that are attributable to the small city account shall be paid from the small city account in a prorated amount of anticipated expenditure of small city account funds in ratio to the other anticipated expenditures of funds from the other programs administered by the board.

**Chapter 479-412 WAC
SUBMISSION OF SMALL
CITY ACCOUNT PROJECTS**

NEW SECTION

WAC 479-412-020 Time and place for submission of proposed small city account projects. All project prospectuses submitted for funding from the small city account will be submitted in accordance with the requirements of WAC 479-12-020.

NEW SECTION

WAC 479-412-100 Application for small city account projects. Prior to March 1, yearly, eligible agencies shall submit their proposed small city account projects to the board on forms provided by the board. The application must be specific and accompanied by a detailed cost estimate.

NEW SECTION

WAC 479-412-150 Six-year transportation plan requirements for small city account projects. Prior to the board's approval of a small city account project, it shall be included in the annual update of the six-year transportation program of the local agency.

NEW SECTION

WAC 479-412-200 Other applicable federal, state and local regulations. All small city account projects shall comply with applicable federal, state and local laws, policies, regulations and ordinances.

NEW SECTION

WAC 479-412-250 Priority criteria for small city account projects. The board will use the following criteria to prioritize proposed small city account projects:

- (1) Structural ability to carry loads (pavement condition);
- (2) Roadway width;
- (3) Safety; and
- (4) Other factors: Criteria deemed appropriate by the board on a case-by-case basis.

NEW SECTION

WAC 479-412-300 Matching requirements for small city account projects. There will be no local agency matching requirements for cities with a population of five hundred or less. Those agencies with a population over five hundred must provide a minimum local match of five percent.

NEW SECTION

WAC 479-412-310 Order of construction funding of small city account projects. Small city projects shall be considered in the sequence in which the project within each region are, as designed by board rules, ready to be placed under contract for construction. In the event that two or more projects in the same region are proposed for funding at the same board meeting, the request for funds shall be considered in the same priority sequence within region in which the related design proposals were approved. If insufficient funds are available in the account to allow the board to fund the construction phase when requested, the board shall notify the agency that notice will be provided when funds are available to proceed with the request. At that time the agency will be given priority within the appropriate region over all other request for funding submitted after their original request for construction funds.

The board, when considering approval of the construction phase of a project that was previously approved for the design phase, shall take into consideration the current balance of available funds in the account and shall not authorize the construction phase if, in the board's opinion the total funding for construction is not available.

**Chapter 479-416 WAC
REQUIREMENTS FOR SMALL CITY PROJECT
DEVELOPMENT**

NEW SECTION

WAC 479-416-010 Methods of construction for small city account projects. The methods of construction shall be as provided for in WAC 479-16-010.

NEW SECTION

WAC 479-416-015 Registered engineer in charge for small city account projects. All projects using small city account funds shall be planned, designed, and constructed under the supervision of a professional engineer registered in the state of Washington.

NEW SECTION

WAC 479-416-016 Certification of completed work for small city account projects. Each request for payment shall be submitted in accordance with WAC 479-16-016.

NEW SECTION

WAC 479-416-018 Design standards for small city account program projects. All small city account funded projects shall be prepared using currently applicable design standards.

NEW SECTION

WAC 479-416-020 Standard specifications for small city account projects. All small city account funded projects shall be constructed in accordance with WAC 479-16-020.

NEW SECTION

WAC 479-416-030 Utility and railroad adjustments and relocations for small city account projects. Utility and railroad adjustments and relocations on small city account funded projects shall be constructed in accordance with WAC 479-16-030.

NEW SECTION

WAC 479-416-035 Undergrounding utilities on small city account projects. Small city account funds may be used in the cost to underground utilities under conditions as provided for in WAC 479-16-035.

NEW SECTION

WAC 479-416-040 Traffic control devices on small city account projects. Traffic control devices included in small city account funded projects shall be installed in conformance with WAC 479-16-040.

NEW SECTION

WAC 479-416-045 Project plantings on small city account projects. Small city account funds may participate in cost for project plantings in accordance with the requirements of WAC 479-16-045.

NEW SECTION

WAC 479-416-050 Acquisition of right of way for small city account program projects. Right of way for small city account funded projects shall be acquired in accordance with chapter 468-100 WAC.

**Chapter 479-420 WAC
FINANCIAL AND PAYMENT REQUIREMENTS
FOR SMALL CITY ACCOUNT PROJECTS**

NEW SECTION

WAC 479-420-010 Eligible project costs for small city account projects. Project costs eligible for reimbursement from the small city account shall be those proper and allowable costs incurred on a project after the project is

authorized by the board. Projects will be authorized in two phases, the first phase being design and the second phase being construction.

NEW SECTION

WAC 479-420-011 Eligible costs for engineering for small city account projects. The eligible design and construction engineering costs shall be limited to the amount approved by the board.

NEW SECTION

WAC 479-420-013 Direct costs for small city account projects. The direct costs eligible for reimbursements for small city account projects shall be as specified in WAC 479-20-013.

NEW SECTION

WAC 479-420-016 Indirect costs for small city account projects. The indirect costs eligible for reimbursement for small city account projects shall be as specified in WAC 479-20-016.

NEW SECTION

WAC 479-420-020 Partial or progress payments for small city account project costs. Participation and payment of small city account funds shall be governed by the requirements of WAC 479-20-020.

NEW SECTION

WAC 479-420-025 Record requirements for small city account projects. The record requirements for small city account projects shall be as specified in WAC 479-20-025.

NEW SECTION

WAC 479-420-027 Audits of small city account project records. Audits for small city account projects shall be in accordance with WAC 479-20-027.

NEW SECTION

WAC 479-420-031 Expenditure schedule of small city account funds. The demand for small city account funds shall be submitted to the board in accordance with WAC 479-20-031.

NEW SECTION

WAC 479-420-037 Procedure for requesting an increase in authorized amount of transportation improvement account funds. An increase in the amount of small city account funds for a project may be requested in accordance with the provisions of WAC 479-20-037, except, where in the board's judgment at project completion, ten percent of unexpected project costs would create an undue financial burden on the agency, the board may elect to fund all or a portion of the unexpected cost.

NEW SECTION

WAC 479-420-086 Review of delayed projects for the small city account program. The review of delayed small city account projects shall be in accordance with WAC 479-20-086.

January 30, 1995
Mark O. Brown
Director

NEW SECTION

WAC 479-420-089 Recovery of small city account funds on canceled projects. The recovery of small city account funds paid to the local agency shall be in accordance with the provisions of WAC 479-20-089.

NEW SECTION

WAC 479-420-095 Identification and consideration of surplus funds on authorized small city account projects. The identification and consideration of surplus funds for small city account projects shall be in accordance with WAC 479-20-095.

WSR 95-04-078
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 30, 1995, 9:05 p.m.]

Date of Adoption: January 30, 1995.

Purpose: To provide guidance and recommendations to employers concerning tasks that may cause their employees to be exposed to high levels of lead.

Citation of Existing Rules Affected by this Order: Amending WAC 296-62-07521.

Statutory Authority for Adoption: Chapter 49.17 RCW.

Pursuant to notice filed as WSR 94-15-094 on July 20, 1994.

Changes Other than Editing from Proposed to Adopted Version: After review of the testimony and comments received during the public comment period, the director of the Department of Labor and Industries made the judgment that it would not be appropriate to make the proposed changes to the lead standards mandatory at this time.

The director determined, however, that it would be appropriate to adopt some of the proposed concepts in a nonmandatory appendix to WAC 296-62-07521 in order to provide guidance to employers. There is substantial scientific support in the record for the recommendations to employers in this appendix.

Therefore, the Department of Labor and Industries has withdrawn the proposed amendatory language published as WSR 94-15-094, and has incorporated parts of those proposals in a nonmandatory appendix to WAC 296-62-07521, entitled "Recommendations to Employers Concerning High-Risk Tasks."

The original proposal had proposed amendments to the following sections of the Washington Administrative Code: WAC 296-62-07521, 296-155-17621, 296-155-17652 Appendix B, and 296-155-17654 Appendix C. That proposed language is hereby withdrawn and replaced with nonmandatory Appendix E to WAC 296-62-07521.

Effective Date of Rule: Thirty-one days after filing.

AMENDATORY SECTION (Amending Order 91-07, filed 11/22/91, effective 12/24/91)

WAC 296-62-07521 Lead. (1) Scope and application.

(a) This section applies to all occupational exposure to lead, except as provided in subdivision (1)(b).

(b) This section does not apply to the construction industry or to agricultural operations covered by chapter 296-306 WAC.

(2) Definitions as applicable to this part.

(a) "Action level" - employee exposure, without regard to the use of respirators, to an airborne concentration of lead of thirty micrograms per cubic meter of air (30 $\mu\text{g}/\text{m}^3$) averaged over an eight-hour period.

(b) "Director" - the director of the department of labor and industries.

(c) "Lead" - metallic lead, all inorganic lead compounds, and organic lead soaps. Excluded from this definition are all other organic lead compounds.

(3) General requirements.

(a) Employers will assess the hazards of lead in the work place and provide information to the employees about the hazards of the lead exposures to which they may be exposed.

(b) Information provided shall include:

(i) Exposure monitoring (including employee notification);

(ii) Written compliance programs;

(iii) Respiratory protection programs;

(iv) Personnel protective equipment and housekeeping;

(v) Medical surveillance and examinations;

(vi) Training requirements;

(vii) Recordkeeping requirements.

(4) Permissible exposure limit (PEL).

(a) The employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air (50 $\mu\text{g}/\text{m}^3$) averaged over an eight-hour period.

(b) If an employee is exposed to lead for more than eight hours in any work day, the permissible exposure limit, as a time weighted average (TWA) for that day, shall be reduced according to the following formula:

$$\text{Maximum permissible limit (in } \mu\text{g}/\text{m}^3) = 400 \div \text{hours worked in the day.}$$

(c) When respirators are used to supplement engineering and work practice controls to comply with the PEL and all the requirements of subsection (7) have been met, employee exposure, for the purpose of determining whether the employer has complied with the PEL, may be considered to be at the level provided by the protection factor of the respirator for those periods the respirator is worn. Those periods may be averaged with exposure levels during periods when respirators are not worn to determine the employee's daily TWA exposure.

(5) Exposure monitoring.

(a) General.

(i) For the purposes of subsection (5), employee exposure is that exposure which would occur if the employee were not using a respirator.

(ii) With the exception of monitoring under subdivision (5)(c), the employer shall collect full shift (for at least seven continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(iii) Full shift personal samples shall be representative of the monitored employee's regular, daily exposure to lead.

(b) Initial determination. Each employer who has a workplace or work operation covered by this standard shall determine if any employee may be exposed to lead at or above the action level.

(c) Basis of initial determination.

(i) The employer shall monitor employee exposures and shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations:

(A) Any information, observations, or calculations which would indicate employee exposure to lead;

(B) Any previous measurements of airborne lead; and

(C) Any employee complaints of symptoms which may be attributable to exposure to lead.

(ii) Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace.

(iii) Measurements of airborne lead made in the preceding twelve months may be used to satisfy the requirement to monitor under item (5)(c)(i) if the sampling and analytical methods used meet the accuracy and confidence levels of subdivision (5)(i) of this section.

(d) Positive initial determination and initial monitoring.

(i) Where a determination conducted under subdivision (5)(b) and (5)(c) of this section shows the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

(ii) Measurements of airborne lead made in the preceding twelve months may be used to satisfy this requirement if the sampling and analytical methods used meet the accuracy and confidence levels of subdivision (5)(i) of this section.

(e) Negative initial determination. Where a determination, conducted under subdivisions (5)(b) and (5)(c) of this section is made that no employee is exposed to airborne concentrations of lead at or above the action level, the employer shall make a written record of such determination. The record shall include at least the information specified in subdivision (5)(c) of this section and shall also include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

(f) Frequency.

(i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in subdivision (5)(g) of this section.

(ii) If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level

but below the permissible exposure limit the employer shall repeat monitoring in accordance with this subsection at least every six months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in subdivision (5)(g) of this section.

(iii) If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in item (5)(f)(ii), except as otherwise provided in subdivision (5)(g) of this section.

(g) Additional monitoring. Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to lead, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to lead, additional monitoring in accordance with this subsection shall be conducted.

(h) Employee notification.

(i) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

(i) Accuracy of measurement. The employer shall use a method of monitoring and analysis which has an accuracy (to a confidence level of ninety-five percent) of not less than plus or minus twenty percent for airborne concentrations of lead equal to or greater than $30 \mu\text{g}/\text{m}^3$.

(6) Methods of compliance.

(a) Engineering and work practice controls.

(i) Where any employee is exposed to lead above the permissible exposure limit for more than thirty days per year, the employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below, except to the extent that the employer can demonstrate that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposure to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest feasible level and shall supplement them by the use of respiratory protection which complies with the requirements of subsection (7) of this section.

(ii) Where any employee is exposed to lead above the permissible exposure limit, but for thirty days or less per year, the employer shall implement engineering controls to reduce exposures to $200 \mu\text{g}/\text{m}^3$, but thereafter may imple-

ment any combination of engineering, work practice (including administrative controls), and respiratory controls to reduce and maintain employee exposure to lead to or below 50 µg/m³.

TABLE I
IMPLEMENTATION SCHEDULE

Industry ¹	Compliance Dates ²		
	200 µg/m ³	100 µg/m ³	50 µg/m ³
Primary lead production	(³)	² June 29, 1984	² June 29, 1991.
Secondary lead production	(³)	² June 29, 1984	² June 29, 1986.
Lead-acid battery manufacturing	(³)	² June 29, 1983	² June 29, 1986.
Automobile manufacture/ solder grinding	(³)	N/A	² June 29, 1986.
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wall paper manufacture, can manufacture, and printing	(³)	N/A	² June 29, 1982.
Brass and bronze ingot manufacture, lead chemical manufacture, and secondary copper smelting	(³)	N/A	4 ⁵ years.
Nonferrous foundries	(³)	N/A	4.5 ⁵ years.
All other industries	(³)	N/A	4 ² 1/2 years.

Note: ¹ Includes ancillary activities located on the same worksite.
² This date is calculated by counting, from June 29, 1981, (the date when the United States Supreme Court denied certiorari and lifted the stay on the implementation of paragraph (6)(a)), the number of years specified for the particular industry in the original lead standard for compliance with the given airborne exposure level. The denial of certiorari followed a decision of the United States Court of Appeals for the District of Columbia Circuit finding compliance with paragraph (6)(a) to be feasible for the relevant industries.
³ On effective date. This continues an obligation from WAC 296-62-07515 Table 1 which had been in effect since 1973.
⁴ Expressed as the number of years from the date on which the court lifts the stay on the implementation of paragraph (6)(a) for the particular industry.
⁵ Large nonferrous foundries (20 or more employees) are required to achieve 50 µg/m³ by means of engineering and work practice controls. Small nonferrous foundries (fewer than 20 employees), however, are only required to achieve 75 µg/m³ by such controls. All foundries are required to comply within five years.

(b) Respiratory protection. Where engineering and work practice controls do not reduce employee exposure to or below the 50 µg/m³ permissible exposure limit, the employer shall supplement these controls with respirators in accordance with subsection (7).

(c) Compliance program.

(i) Each employer shall establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit, and interim levels if applicable, solely by means of engineering and work practice controls in accordance with the implementation schedule in subdivision (6)(a).

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which lead is emitted; e.g., machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Air monitoring data which documents the source of lead emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program which includes items required under subsections (8), (9) and (10) of this regulation;

(G) An administrative control schedule required by subdivision (6)(f), if applicable; and

(H) Other relevant information.

(iii) Written programs shall be submitted upon request to the director, and shall be available at the worksite for examination and copying by the director, any affected employee or authorized employee representatives.

(iv) Written programs shall be revised and updated at least every six months to reflect the current status of the program.

(d) Bypass of interim level. Where an employer's compliance plan provides for a reduction of employee exposures to or below the PEL solely by means of engineering and work practice controls in accordance with the implementation schedule in Table I, and the employer has determined that compliance with the 100 µg/m³ interim level would divert resources to the extent that it clearly precludes compliance, otherwise attainable, with the PEL by the required time, the employer may proceed with the plan to comply with the PEL in lieu of compliance with the interim level if:

(i) The compliance plan clearly documents the basis of the determination;

(ii) The employer takes all feasible steps to provide maximum protection for employees until the PEL is met; and

(iii) The employer notifies the director in writing within ten working days of the completion or revision of the compliance plan reflecting the determination.

(e) Mechanical ventilation.

(i) When ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made at least every three months. Measurements of the system's effectiveness in controlling exposure shall be made within five days of any change in production, process, or control which might result in a change in employee exposure to lead.

(ii) Recirculation of air. If air from exhaust ventilation is recirculated into the workplace, the employer shall assure that (A) the system has a high efficiency filter with reliable back-up filter; and (B) controls to monitor the concentration of lead in the return air and to bypass the recirculation system automatically if it fails are installed, operating, and maintained.

(f) Administrative controls. If administrative controls are used as a means of reducing employees TWA exposure to lead, the employer shall establish and implement a job rotation schedule which includes:

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(i) Name or identification number of each affected employee;

(ii) Duration and exposure levels at each job or work station where each affected employee is located; and

(iii) Any other information which may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

(7) Respiratory protection.

(a) General. Where the use of respirators is required under this section, the employer shall provide, at no cost to the employee, and assure the use of respirators which comply with the requirements of this subsection. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement engineering or work practice controls, except that after the dates for compliance with the interim levels in Table I, no employer shall require an employee to wear a negative pressure respirator longer than 4.4 hours per day;

(ii) In work situations in which engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit; and

(iii) Whenever an employee requests a respirator.

(b) Respirator selection.

(i) Where respirators are required under this section the employer shall select the appropriate respirator or combination of respirators from Table II.

(iii) The employer shall select respirators from among those approved for protection against lead dust, fume, and mist by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(c) Respirator usage.

(i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) Employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every six months thereafter for each employee wearing negative pressure respirators. The qualitative fit tests may be used only for testing the fit of half-mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix D. The tests shall be used to select facepieces that provide the required protection as prescribed in Table II.

(iii) If an employee exhibits difficulty in breathing during the fitting test or during use, the employer shall make available to the employee an examination in accordance with subitem (11)(c)(i)(C) of this section to determine whether the employee can wear a respirator while performing the required duty.

(d) Respirator program.

(i) The employer shall institute a respiratory protection program in accordance with WAC 296-62-071.

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(8) Protective work clothing and equipment.

(a) Provision and use. If an employee is exposed to lead above the PEL, without regard to the use of respirators or where the possibility of skin or eye irritation exists, the employer shall provide at no cost to the employee and assure that the employee uses appropriate protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, hats, and shoes or disposable shoe coverlets; and

(iii) Face shields, vented goggles, or other appropriate protective equipment which complies with WAC 296-24-078.

(b) Cleaning and replacement.

(i) The employer shall provide the protective clothing required in subdivision (8)(a) of this section in a clean and dry condition at least weekly, and daily to employees whose exposure levels without regard to a respirator are over 200 µg/m³ of lead as an eight-hour TWA.

(ii) The employer shall provide for the cleaning, laundering, or disposal of protective clothing and equipment required by subdivision (8)(a) of this section.

(iii) The employer shall repair or replace required protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only

TABLE II
RESPIRATORY PROTECTION FOR LEAD AEROSOLS

Airborne Concentration of Lead or Condition of Use	Required Respirator ¹
Not in excess of 0.5 mg/m ³ (10X PEL).	Half-mask, air-purifying respirator equipped with high efficiency filters. ^{4,3}
Not in excess of 2.5 mg/m ³ (50X PEL).	Full facepiece, air-purifying respirator with high efficiency filters. ³
Not in excess of 50 mg/m ³ (1000X PEL).	(1) Any powered, air-purifying respirator with high efficiency filters ³ ; or (2) Half-mask supplied air respirator operated in positive-pressure mode. ²
Not in excess of 100 mg/m ³ (2000X PEL).	Supplied-air respirators with full facepiece, hood, helmet, or suit, operated in positive pressure mode.
Greater than 100 mg/m ³ , unknown concentration or fire fighting.	Full facepiece, self-contained breathing apparatus operated in positive-pressure mode.

Note: ¹ Respirators specified for high concentrations can be used at lower concentrations of lead.
² Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.
³ A high efficiency particulate filter means 99.97 percent efficient against 0.3 micron size particles.

(ii) The employer shall provide a powered, air-purifying respirator in lieu of the respirator specified, in Table II whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

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in change rooms provided for that purpose as prescribed in subdivision (10)(b) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of lead outside the container.

(vi) The employer shall inform in writing any person who cleans or launders protective clothing or equipment of the potentially harmful effects of exposure to lead.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment required by subdivision (8)(b)(v) are labeled as follows:

CAUTION: CLOTHING CONTAMINATED WITH LEAD.
DO NOT REMOVE DUST BY BLOWING OR SHAKING.
DISPOSE OF LEAD CONTAMINATED WASH WATER IN
ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR
FEDERAL REGULATIONS.

(viii) The employer shall prohibit the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air.

(9) Housekeeping.

(a) Surfaces. All surfaces shall be maintained as free as practicable of accumulations of lead.

(b) Cleaning floors.

(i) Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air.

(ii) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other equally effective methods have been tried and found not to be effective.

(c) Vacuuming. Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner which minimizes the reentry of lead into the workplace.

(10) Hygiene facilities and practices.

(a) The employer shall assure that in areas where employees are exposed to lead above the PEL, without regard to the use of respirators, food or beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in change rooms, lunchrooms, and showers required under subdivision (10)(b) through (10)(d) of this section.

(b) Change rooms.

(i) The employer shall provide clean change rooms for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that change rooms are equipped with separate storage facilities for protective work clothing and equipment and for street clothes which prevent cross-contamination.

(c) Showers.

(i) The employer shall assure that employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators, shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with WAC 296-24-12009.

(iii) The employer shall assure that employees who are required to shower pursuant to item (10)(c)(i) do not leave the workplace wearing any clothing or equipment worn during the work shift.

(d) Lunchrooms.

(i) The employer shall provide lunchroom facilities for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply, and are readily accessible to employees.

(iii) The employer shall assure that employees who work in areas where their airborne exposure to lead is above the PEL without regard to the use of a respirator wash their hands and face prior to eating, drinking, smoking or applying cosmetics.

(iv) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface lead dust has been removed by vacuuming, downdraft booth, or other cleaning method.

(e) Lavatories. The employer shall provide an adequate number of lavatory facilities which comply with WAC 296-24-12009 (1) and (2).

(11) Medical surveillance.

(a) General.

(i) The employer shall institute a medical surveillance program for all employees who are or may be exposed above the action level for more than thirty days per year.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician.

(iii) The employer shall provide the required medical surveillance including multiple physician review under item (11)(c)(iii) without cost to employees and at a reasonable time and place.

(b) Biological monitoring.

(i) Blood lead and ZPP level sampling and analysis. The employer shall make available biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels to each employee covered under item (11)(a)(i) of this section on the following schedule:

(A) At least every six months to each employee covered under item (11)(a)(i) of this section;

(B) At least every two months for each employee whose last blood sampling and analysis indicated a blood lead level at or above 40 µg/100 g of whole blood. This frequency shall continue until two consecutive blood samples and analyses indicate a blood lead level below 40 µg/100 g of whole blood; and

(C) At least monthly during the removal period of each employee removed from exposure to lead due to an elevated blood lead level.

(ii) Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under item (12)(a)(i), the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

(iii) Accuracy of blood lead level sampling and analysis. Blood lead level sampling and analysis provided pursuant to this section shall have an accuracy (to a confidence level of ninety-five percent) within plus or minus fifteen percent or 6 µg/100 ml, whichever is greater, and shall be conducted by a laboratory licensed by the Center for Disease Control (CDC), United States Department of Health, Education and

Welfare or which has received a satisfactory grade in blood lead proficiency testing from CDC in the prior twelve months.

(iv) Employee notification. Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level exceeds 40 µg/100 g: (A) of that employee's blood lead level and (B) that the standard requires temporary medical removal with medical removal protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under item (12)(a)(i) of this section.

(c) Medical examinations and consultations.

(i) Frequency. The employer shall make available medical examinations and consultations to each employee covered under item (11)(a)(i) of this section on the following schedule:

(A) At least annually for each employee for whom a blood sampling test conducted at any time during the preceding twelve months indicated a blood lead level at or above 40 µg/100 g;

(B) Prior to assignment for each employee being assigned for the first time to an area in which airborne concentrations of lead are at or above the action level;

(C) As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during use; and

(D) As medically appropriate for each employee either removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited pursuant to a final medical determination.

(ii) Content. Medical examinations made available pursuant to subitems (11)(c)(i)(A) through (B) of this section shall include the following elements:

(A) A detailed work history and a medical history, with particular attention to past lead exposure (occupational and nonoccupational), personal habits (smoking, hygiene), and past gastrointestinal, hematologic, renal, cardiovascular, reproductive and neurological problems;

(B) A thorough physical examination, with particular attention to teeth, gums, hematologic, gastrointestinal, renal, cardiovascular, and neurological systems. Pulmonary status should be evaluated if respiratory protection will be used;

(C) A blood pressure measurement;

(D) A blood sample and analysis which determines:

(I) Blood lead level;

(II) Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology;

(III) Zinc protoporphyrin;

(IV) Blood urea nitrogen; and

(V) Serum creatinine;

(E) A routine urinalysis with microscopic examination; and

(F) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

The content of medical examinations made available pursuant to subitems (11)(c)(i)(C) through (D) of this section

shall be determined by an examining physician and, if requested by an employee, shall include pregnancy testing or laboratory evaluation of male fertility.

(iii) Multiple physician review mechanism.

(A) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, the employee may designate a second physician:

(I) To review any findings, determinations or recommendations of the initial physician; and

(II) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(B) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(I) The employee informing the employer that he or she intends to seek a second medical opinion, and

(II) The employee initiating steps to make an appointment with a second physician.

(C) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(D) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(I) To review any findings, determinations or recommendations of the prior physicians; and

(II) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(E) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(iv) Information provided to examining and consulting physicians.

(A) The employer shall provide an initial physician conducting a medical examination or consultation under this section with the following information:

(I) A copy of this regulation for lead including all appendices;

(II) A description of the affected employee's duties as they relate to the employee's exposure;

(III) The employee's exposure level or anticipated exposure level to lead and to any other toxic substance (if applicable);

(IV) A description of any personal protective equipment used or to be used;

(V) Prior blood lead determinations; and

(VI) All prior written medical opinions concerning the employee in the employer's possession or control.

(B) The employer shall provide the foregoing information to a second or third physician conducting a medical examination or consultation under this section upon request either by the second or third physician, or by the employee.

(v) Written medical opinions.

(A) The employer shall obtain and furnish the employee with a copy of a written medical opinion from each examining or consulting physician which contains the following information:

(I) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at increased risk of material impairment of the employee's health from exposure to lead;

(II) Any recommended special protective measures to be provided to the employee, or limitations to be placed upon the employee's exposure to lead;

(III) Any recommended limitation upon the employee's use of respirators, including a determination of whether the employee can wear a powered air purifying respirator if a physician determines that the employee cannot wear a negative pressure respirator; and

(IV) The results of the blood lead determinations.

(B) The employer shall instruct each examining and consulting physician to:

(I) Not reveal either in the written opinion, or in any other means of communication with the employer, findings, including laboratory results, or diagnoses unrelated to an employee's occupational exposure to lead; and

(II) Advise the employee of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment.

(vi) Alternate physician determination mechanisms. The employer and an employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination mechanism in lieu of the multiple physician review mechanism provided by this subsection so long as the alternate mechanism otherwise satisfies the requirements contained in this subsection.

(d) Chelation.

(i) The employer shall assure that any person whom he retains, employs, supervises or controls does not engage in prophylactic chelation of any employee at any time.

(ii) If therapeutic or diagnostic chelation is to be performed by any person in item (11)(d)(i), the employer shall assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that the employee is notified in writing prior to its occurrence.

(12) Medical removal protection.

(a) Temporary medical removal and return of an employee.

(i) Temporary removal due to elevated blood lead levels.

(A) First year of the standard. During the first year following the effective date of the standard, the employer shall remove an employee from work having a daily eight hour TWA exposure to lead at or above $100 \mu\text{g}/\text{m}^3$ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above $80 \mu\text{g}/100 \text{ g}$ of whole blood;

(B) Second year of the standard. During the second year following the effective date of the standard, the employer shall remove an employee from work having a daily eight hour TWA exposure to lead at or above $50 \mu\text{g}/\text{m}^3$ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above $70 \mu\text{g}/100 \text{ g}$ of whole blood;

(C) Third year of the standard, and thereafter. Beginning with the third year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above $60 \mu\text{g}/100 \text{ g}$ of whole blood; and

(D) Fifth year of the standard, and thereafter. Beginning with the fifth year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six months, whichever is longer) indicates that the employee's blood lead level is at or above $50 \mu\text{g}/100 \text{ g}$ of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below $40 \mu\text{g}/100 \text{ g}$ of whole blood.

(ii) Temporary removal due to a final medical determination.

(A) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(B) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the multiple physician review mechanism or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section.

(C) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to lead, the employer shall implement and act consistent with the recommendation.

(iii) Return of the employee to former job status.

(A) The employer shall return an employee to his or her former job status:

(I) For an employee removed due to a blood lead level at or above $80 \mu\text{g}/100 \text{ g}$, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below $60 \mu\text{g}/100 \text{ g}$ of whole blood;

(II) For an employee removed due to a blood lead level at or above $70 \mu\text{g}/100 \text{ g}$, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below $50 \mu\text{g}/100 \text{ g}$ of whole blood;

(III) For an employee removed due to a blood lead level at or above $60 \mu\text{g}/100 \text{ g}$, or due to an average blood lead level at or above $50 \mu\text{g}/100 \text{ g}$, when two consecutive blood

sampling tests indicate that the employee's blood lead level is at or below 40 µg/100 g of whole blood;

(IV) For an employee removed due to a final medical determination, when a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iv) Removal of other employee special protective measure or limitations. The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(v) Employer options pending a final medical determination. Where the multiple physician review mechanism, or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) Removal. The employer may remove the employee from exposure to lead, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) Return. The employer may return the employee to his or her former job status, end any special protective measures provided to the employee, and remove any limitations placed upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions. If:

(I) The initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(II) The employee has been on removal status for the preceding eighteen months due to an elevated blood lead level, then the employer shall await a final medical determination.

(b) Medical removal protection benefits.

(i) Provision of medical removal protection benefits. The employer shall provide to an employee up to eighteen months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to this section.

(ii) Definition of medical removal protection benefits. For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to lead or otherwise limited.

(iii) Follow-up medical surveillance during the period of employee removal or limitation. During the period of time that an employee is removed from normal exposure to lead or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iv) Workers' compensation claims. If a removed employee files a claim for workers' compensation payments for a lead-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment related expenses.

(v) Other credits. The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(vi) Employees whose blood lead levels do not adequately decline within eighteen months of removal. The employer shall take the following measures with respect to any employee removed from exposure to lead due to an elevated blood lead level whose blood lead level has not declined within the past eighteen months of removal so that the employee has been returned to his or her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(B) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and if not, what steps should be taken to protect the employee's health;

(C) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status.

(D) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable blood lead level, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the blood lead level removal criteria provided by this section.

(vii) Voluntary removal or restriction of an employee. Where an employer, although not required by this section to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on the employee's medical condi-

tion, the employer shall provide medical removal protection benefits to the employee equal to that required by item (12)(b)(i) of this section.

(13) Employee information and training.

(a) Training program.

(i) Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation.

(ii) The employer shall institute a training program for and assure the participation of all employees who are subject to exposure to lead at or above the action level or for whom the possibility of skin or eye irritation exists.

(iii) The employer shall provide initial training by one hundred eighty days from the effective date for those employees covered by item (13)(a)(ii) on the standard's effective date and prior to the time of initial job assignment for those employees subsequently covered by this subsection.

(iv) The training program shall be repeated at least annually for each employee.

(v) The employer shall assure that each employee is informed of the following:

(A) The content of this standard and its appendices;

(B) The specific nature of the operations which could result in exposure to lead above the action level;

(C) The purpose, proper selection, fitting, use, and limitations of respirators;

(D) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females);

(E) The engineering controls and work practices associated with the employee's job assignment;

(F) The contents of any compliance plan in effect; and

(G) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician.

(b) Access to information and training materials.

(i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the director.

(iii) In addition to the information required by item (13)(a)(v), the employer shall include as part of the training program, and shall distribute to employees, any materials pertaining to the Occupational Safety and Health Act, the regulations issued pursuant to the act, and this lead standard, which are made available to the employer by the director.

(14) Signs.

(a) General.

(i) The employer may use signs required by other statutes, regulations or ordinances in addition to, or in combination with, signs required by this subsection.

(ii) The employer shall assure that no statement appears on or near any sign required by this subsection which contradicts or detracts from the meaning of the required sign.

(b) Signs.

(i) The employer shall post the following warning signs in each work area where the PEL is exceeded:

WARNING
LEAD WORK AREA
POISON
NO SMOKING OR EATING

(ii) The employer shall assure that signs required by this subsection are illuminated and cleaned as necessary so that the legend is readily visible.

(15) Recordkeeping.

(a) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required in subsection (5) of this section.

(ii) This record shall include:

(A) The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) the environmental variables that could affect the measurement of employee exposure.

(iii) The employer shall maintain these monitoring records for at least forty years or for the duration of employment plus twenty years, whichever is longer.

(b) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by subsection (11) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of the duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to lead.

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under subsection (11) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information; and

(C) A copy of the results of biological monitoring.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least forty years, or for the duration of employment plus twenty years, whichever is longer.

(c) Medical removals.

(i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to lead pursuant to subsection (12) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date on each occasion that the employee was removed from current exposure to lead as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating whether or not the reason for the removal was an elevated blood lead level.

(iii) The employer shall maintain each medical removal record for at least the duration of an employee's employment.

(d) Availability.

(i) The employer shall make available upon request all records required to be maintained by subsection (15) of this section to the director for examination and copying.

(ii) Environmental monitoring, medical removal, and medical records required by this subsection shall be provided upon request to employees, designated representatives, and the assistant director in accordance with WAC 296-62-05201 through 296-62-05209 and 296-62-05213 through 296-62-05217. Medical removal records shall be provided in the same manner as environmental monitoring records.

(iii) Upon request, the employer shall make an employee's medical records required to be maintained by this section available to the affected employee or former employee or to a physician or other individual designated by such affected employee or former employees for examination and copying.

(e) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by subsection (15) of this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the director at least three months prior to the disposal of such records and shall transmit those records to the director if requested within the period.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in WAC 296-62-05215.

(16) Observation of monitoring.

(a) Employee observation. The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to lead conducted pursuant to subsection (5) of this section.

(b) Observation procedures.

(i) Whenever observation of the monitoring of employee exposure to lead requires entry into an area where the use of respirators, protective clothing or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of lead performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(17) Effective date. The effective date of this standard is September 6, 1980.

(18) Startup dates. All obligations of this standard commence on the effective date except as follows:

(a) The initial determination under subdivision (5)(b) shall be made as soon as possible but no later than thirty days from the effective date.

(b) Initial monitoring under subdivision (5)(d) shall be completed as soon as possible but no later than ninety days from the effective date.

(c) Initial biological monitoring and medical examinations under subsection (11) shall be completed as soon as possible but no later than one hundred eighty days from the effective date. Priority for biological monitoring and medical examinations shall be given to employees whom the employer believes to be at greatest risk from continued exposure.

(d) Initial training and education shall be completed as soon as possible but no later than one hundred eighty days from the effective date.

(e) Hygiene and lunchroom facilities under subsection (10) shall be in operation as soon as possible but no later than one year from the effective year.

(f) Respiratory protection required by subsection (7) shall be provided as soon as possible but no later than the following schedule:

(i) Employees whose eight-hour TWA exposure exceeds $200 \mu\text{g}/\text{m}^3$ - on the effective date.

(ii) Employees whose eight-hour TWA exposure exceeds the PEL but is less than $200 \mu\text{g}/\text{m}^3$ - one hundred fifty days from the effective date.

(iii) Powered, air-purifying respirators provided under (7)(b)(ii) - two hundred ten days from the effective date.

(iv) Quantitative fit testing required under item (7)(c)(ii) - one year from effective date. Qualitative fit testing is required in the interim.

(g) Written compliance plans required by subdivision (6)(c) shall be completed and available for inspection and copying as soon as possible but no later than the following schedule:

(i) Employers for whom compliance with the PEL or interim level is required within one year from the effective date - six months from the effective date.

(ii) Employers in secondary lead smelting and refining and in lead storage battery manufacturing—one year from the effective date.

(iii) Employers in primary smelting and refining industry - one year from the effective date from the interim level; five years from the effective date for PEL.

(iv) Plans for construction of hygiene facilities, if required - six months from the effective date.

(v) All other industries—one year from the date on which the court lifts the stay on the implementation of paragraph (6)(a) for the particular industry.

(h) The permissible exposure limit in subsection (4) shall become effective one hundred fifty days from the effective date.

(19) Appendices. The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(a) Appendix A. Substance Data Sheet for Occupational Exposure to Lead.

(i) Substance identification.

(A) Substance. Pure lead (Pb) is a heavy metal at room temperature and pressure and is a basic chemical element. It can combine with various other substances to form numerous lead compounds.

(B) Compounds covered by the standard. The word "lead" when used in this standard means elemental lead, all inorganic lead compounds (except those which are not biologically available due to either solubility or specific chemical interaction), and a class of organic lead compounds called lead soaps. This standard does not apply to other organic lead compounds.

(C) Uses. Exposure to lead occurs in at least 120 different occupations, including primary and secondary lead smelting, lead storage battery manufacturing, lead pigment manufacturing and use, solder manufacturing and use, shipbuilding and ship repairing, auto manufacturing, and printing.

(D) Permissible exposure. The Permissible Exposure Limit (PEL) set by the standard is 50 micrograms of lead per cubic meter of air ($50 \mu\text{g}/\text{m}^3$), averaged over an eight-hour work day.

(E) Action level. The standard establishes an action level of 30 micrograms per cubic meter of air ($30 \mu\text{g}/\text{m}^3$) time weighted average, based on an eight-hour work day. The action level initiates several requirements of the standard, such as exposure monitoring, medical surveillance, and training and education.

(ii) Health hazard data.

(A) Ways in which lead enters your body.

(I) When absorbed into your body in certain doses lead is a toxic substance. The object of the lead standard is to prevent absorption of harmful quantities of lead. The standard is intended to protect you not only from the immediate toxic effects of lead, but also from the serious toxic effects that may not become apparent until years of exposure have passed.

(II) Lead can be absorbed into your body by inhalation (breathing) and ingestion (eating). Lead (except for certain organic lead compounds not covered by the standard, such as tetraethyl lead) is not absorbed through your skin. When lead is scattered in the air as a dust, fume or mist, it can be inhaled and absorbed through your lungs and upper respiratory tract. Inhalation of airborne lead is generally the most important source of occupational lead absorption. You can also absorb lead through your digestive system if lead gets into your mouth and is swallowed. If you handle food, cigarettes, chewing tobacco, or make-up which have lead on them or handle them with hands contaminated with lead, this will contribute to ingestion.

(III) A significant portion of the lead that you inhale or ingest gets into your blood stream. Once in your blood stream lead is circulated throughout your body and stored in

various organs and body tissues. Some of this lead is quickly filtered out of your body and excreted, but some remains in your blood and other tissue. As exposure to lead continues, the amount stored in your body will increase if you are absorbing more lead than your body is excreting. Even though you may not be aware of any immediate symptoms of disease, this lead stored in your tissues can be slowly causing irreversible damage, first to individual cells, then to your organs and whole body systems.

(B) Effects of overexposure to lead.

(I) Short-term (acute) overexposure. Lead is a potent, systemic poison that serves no known useful function once absorbed by your body. Taken in large enough doses, lead can kill you in a matter of days. A condition affecting the brain called acute encephalopathy may arise which develops quickly to seizures, coma, and death from cardiorespiratory arrest. A short-term dose of lead can lead to acute encephalopathy. Short-term occupational exposures of this magnitude are highly unusual, but not impossible. Similar forms of encephalopathy may, however arise from extended, chronic exposure to lower doses of lead. There is no sharp dividing line between rapidly developing acute effects of lead, and chronic effects which take longer to acquire. Lead adversely affects numerous body systems, and causes forms of health impairment and disease which arise after periods of exposure as short as days or as long as several years.

(II) Long-term (chronic) overexposure.

a) Chronic overexposure to lead may result in severe damage to your blood-forming, nervous, urinary and reproductive systems. Some common symptoms of chronic overexposure include loss of appetite, metallic taste in the mouth, anxiety, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pain or soreness, fine tremors, numbness, dizziness, hyperactivity and colic. In lead colic there may be severe abdominal pain.

b) Damage to the central nervous system in general and the brain (encephalopathy) in particular is one of the most severe forms of lead poisoning. The most severe, often fatal, form of encephalopathy may be preceded by vomiting, a feeling of dullness progressing to drowsiness and stupor, poor memory, restlessness, irritability, tremor, and convulsions. It may arise suddenly with the onset of seizures, followed by coma, and death. There is a tendency for muscular weakness to develop at the same time. This weakness may progress to paralysis often observed as a characteristic "wrist drop" or "foot drop" and is a manifestation of a disease to the nervous system called peripheral neuropathy.

c) Chronic overexposure to lead also results in kidney disease with few, if any, symptoms appearing until extensive and most likely permanent kidney damage has occurred. Routine laboratory tests reveal the presence of this kidney disease only after about two-thirds of kidney function is lost. When overt symptoms of urinary dysfunction arise, it is often too late to correct or prevent worsening conditions, and progression of kidney dialysis or death is possible.

d) Chronic overexposure to lead impairs the reproductive systems of both men and women. Overexposure to lead may result in decreased sex drive, impotence and sterility in men. Lead can alter the structure of sperm cells raising the risk of birth defects. There is evidence of miscarriage and

stillbirth in women whose husbands were exposed to lead or who were exposed to lead themselves. Lead exposure also may result in decreased fertility, and abnormal menstrual cycles in women. The course of pregnancy may be adversely affected by exposure to lead since lead crosses the placental barrier and poses risks to developing fetuses. Children born of parents either one of whom were exposed to excess lead levels are more likely to have birth defects, mental retardation, behavioral disorders or die during the first year of childhood.

e) Overexposure to lead also disrupts the blood-forming system resulting in decreased hemoglobin (the substance in the blood that carries oxygen to the cells) and ultimately anemia. Anemia is characterized by weakness, pallor and fatigability as a result of decreased oxygen carrying capacity in the blood.

(III) Health protection goals of the standard.

a) Prevention of adverse health effects for most workers from exposure to lead throughout a working lifetime requires that worker blood lead (PbB) levels be maintained at or below forty micrograms per one hundred grams of whole blood (40 $\mu\text{g}/100\text{g}$). The blood lead levels of workers (both male and female workers) who intend to have children should be maintained below 30 $\mu\text{g}/100\text{g}$ to minimize adverse reproductive health effects to the parents and to the developing fetus.

b) The measurement of your blood lead level is the most useful indicator of the amount of lead absorbed by your body. Blood lead levels (PbB) are most often reported in units of milligrams (mg) or micrograms (μg) of lead (1 mg=1000 μg) per 100 grams (100g), 100 milliliters (100 ml) or deciliter (dl) of blood. These three units are essentially the same. Sometimes PbB's are expressed in the form of mg% or $\mu\text{g}\%$. This is a shorthand notation for 100g, 100ml, or dl.

c) PbB measurements show the amount of lead circulating in your blood stream, but do not give any information about the amount of lead stored in your various tissues. PbB measurements merely show current absorption of lead, not the effect that lead is having on your body or the effects that past lead exposure may have already caused. Past research into lead-related diseases, however, has focused heavily on associations between PbBs and various diseases. As a result, your PbB is an important indicator of the likelihood that you will gradually acquire a lead-related health impairment or disease.

d) Once your blood lead level climbs above 40 $\mu\text{g}/100\text{g}$, your risk of disease increases. There is a wide variability of individual response to lead, thus it is difficult to say that a particular PbB in a given person will cause a particular effect. Studies have associated fatal encephalopathy with PbBs as low as 150 $\mu\text{g}/100\text{g}$. Other studies have shown other forms of disease in some workers with PbBs well below 80 $\mu\text{g}/100\text{g}$. Your PbB is a crucial indicator of the risks to your health, but one other factor is extremely important. This factor is the length of time you have had elevated PbBs. The longer you have an elevated PbB, the greater the risk that large quantities of lead are being gradually stored in your organs and tissues (body burden). The greater your overall body burden, the greater the chances of substantial permanent damage.

e) The best way to prevent all forms of lead-related impairments and diseases—both short-term and long-term—is to maintain your PbB below 40 $\mu\text{g}/100\text{g}$. The provisions of the standard are designed with this end in mind. Your employer has prime responsibility to assure that the provisions of the standard are complied with both by the company and by individual workers. You as a worker, however, also have a responsibility to assist your employer in complying with the standard. You can play a key role in protecting your own health by learning about the lead hazards and their control, learning what the standard requires, following the standard where it governs your own action, and seeing that your employer complies with the provisions governing his actions.

(IV) Reporting signs and symptoms of health problems. You should immediately notify your employer if you develop signs or symptoms associated with lead poisoning or if you desire medical advice concerning the effects of current or past exposure to lead on your ability to have a healthy child. You should also notify your employer if you have difficulty breathing during a respirator fit test or while wearing a respirator. In each of these cases your employer must make available to you appropriate medical examinations or consultations. These must be provided at no cost to you and at a reasonable time and place.

(b) Appendix B. Employee Standard Summary. This appendix summarizes key provisions of the standard that you as a worker should become familiar with. The appendix discusses the entire standard.

(i) Permissible exposure limit (PEL). The standard sets a permissible exposure limit (PEL) of fifty micrograms of lead per cubic meter of air (50 $\mu\text{g}/\text{m}^3$), averaged over an eight-hour workday. This is the highest level of lead in air to which you may be permissibly exposed over an eight-hour workday. Since it is an eight-hour average it permits short exposures above the PEL so long as for each eight-hour workday your average exposure does not exceed the PEL.

(ii) Exposure monitoring.

(A) If lead is present in the work place where you work in any quantity, your employer is required to make an initial determination of whether the action level is exceeded for any employee. The initial determination must include instrument monitoring of the air for the presence of lead and must cover the exposure of a representative number of employees who are reasonably believed to have the highest exposure levels. If your employer has conducted appropriate air sampling for lead in the past year he may use these results. If there have been any employee complaints of symptoms which may be attributable to exposure to lead or if there is any other information or observations which would indicate employee exposure to lead, this must also be considered as part of the initial determination. If this initial determination shows that a reasonable possibility exists that any employee may be exposed, without regard to respirators, over the action level (30 $\mu\text{g}/\text{m}^3$) your employer must set up an air monitoring program to determine the exposure level of every employee exposed to lead at your work place.

(B) In carrying out this air monitoring program, your employer is not required to monitor the exposure of every employee, but he or she must monitor a representative number of employees and job types. Enough sampling must be done to enable each employee's exposure level to be

reasonably represented by at least one full shift (at least seven hours) air sample. In addition, these air samples must be taken under conditions which represent each employee's regular, daily exposure to lead.

(C) If you are exposed to lead and air sampling is performed, your employer is required to quickly notify you in writing of air monitoring results which represent your exposure. If the results indicate your exposure exceeds the PEL (without regard to your use of respirators), then your employer must also notify you of this in writing, and provide you with a description of the corrective action that will be taken to reduce your exposure.

(D) Your exposure must be rechecked by monitoring every six months if your exposure is over the action level but below the PEL. Air monitoring must be repeated every three months if you are exposed over the PEL. Your employer may discontinue monitoring for you if two consecutive measurements, taken at least two weeks apart, are below the action level. However, whenever there is a production, process, control, or personnel change at your work place which may result in new or additional exposure to lead, or whenever there is any other reason to suspect a change which may result in new or additional exposure to lead, your employer must perform additional monitoring.

(iii) Methods of compliance. Your employer is required to assure that no employee is exposed to lead in excess of the PEL. The standard establishes a priority of methods to be used to meet the PEL.

(iv) Respiratory protection.

(A) Your employer is required to provide and assure your use of respirators when your exposure to lead is not controlled below the PEL by other means. The employer must pay the cost of the respirator. Whenever you request one, your employer is also required to provide you a respirator even if your air exposure level does not exceed the PEL. You might desire a respirator when, for example, you have received medical advice that your lead absorption should be decreased. Or, you may intend to have children in the near future, and want to reduce the level of lead in your body to minimize adverse reproductive effects. While respirators are the least satisfactory means of controlling your exposure, they are capable of providing significant protection if properly chosen, fitted, worn, cleaned, maintained, and replaced when they stop providing adequate protection.

(B) Your employer is required to select respirators from the seven types listed in Table II of the respiratory protection section of chapter 296-62 WAC. Any respirator chosen must be approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH). This respirator selection table will enable your employer to choose a type of respirator which will give you a proper amount of protection based on your airborne lead exposure. Your employer may select a type of respirator that provides greater protection than that required by the standard; that is, one recommended for a higher concentration of lead than is present in your work place. For example, a powered air purifying respirator (PAPR) is much more protective than a typical negative-pressure respirator, and may also be more comfortable to wear. A PAPR has a filter, cartridge or canister to clean the air, and a power source which continuously blows filtered air

into your breathing zone. Your employer might make a PAPR available to you to ease the burden of having to wear a respirator for long periods of time.

(C) Your employer must also start a respiratory protection program. This program must include written procedures for the proper selection, use, cleaning, storage, and maintenance of respirators.

(D) Your employer must assure that your respirator facepiece fits properly. Proper fit of a respirator facepiece is critical. Obtaining a proper fit on each employee may require your employer to make available two or three different mask types. Any respirator which has a filter, cartridge or canister which cleans the work room air before you breathe it and which requires the force of your inhalation to draw air through the filtering element is a negative pressure respirator. A positive pressure respirator supplies air to you directly. A quantitative fit test uses a sophisticated machine to measure the amount, if any, of test material that leaks into the facepiece of your respirator. Appendix D describes "qualitative" procedures which are acceptable under certain conditions.

(E) You must also receive from your employer proper training in the use of respirators. Your employer is required to teach you how to wear a respirator, to know why it is needed, and to understand its limitations.

(F) The standard provides that if your respirator uses filter elements, you must be given an opportunity to change the filter elements whenever an increase in breathing resistance is detected. You also must be permitted to periodically leave your work area to wash your face and respirator facepiece whenever necessary to prevent skin irritation. If you ever have difficulty breathing during a fit test or while using a respirator, your employer must make a medical examination available to you to determine whether you can safely wear a respirator. The result of this examination may be to give you a positive pressure respirator (which reduces breathing resistance) or to provide alternative means of protection.

(v) Protective work clothing and equipment. If you are exposed to lead above the PEL, or if you are exposed to lead compounds such as lead arsenate or lead azide which can cause skin and eye irritation, your employer must provide you with protective work clothing and equipment appropriate for the hazard. If work clothing is provided, it must be provided in a clean and dry condition at least weekly, and daily if your airborne exposure to lead is greater than 200 $\mu\text{g}/\text{m}^3$. Appropriate protective work clothing and equipment can include coveralls or similar full-body work clothing, gloves, hats, shoes or disposable shoe coverlets, and face shields or vented goggles. Your employer is required to provide all such equipment at no cost to you. He or she is responsible for providing repairs and replacement as necessary and also is responsible for the cleaning, laundering or disposal of protective clothing and equipment. Contaminated work clothing or equipment must be removed in change rooms and not worn home or you will extend your exposure and expose your family since lead from your clothing can accumulate in your house, car, etc. Contaminated clothing which is to be cleaned, laundered or disposed of must be placed in closed containers in the change room. At no time may lead be removed from protective clothing or equipment by any means which disperses lead into the work room air.

(vi) Housekeeping. Your employer must establish a housekeeping program sufficient to maintain all surfaces as free as practicable of accumulations of lead dust. Vacuuming is the preferred method of meeting this requirement, and the use of compressed air to clean floors and other surfaces is absolutely prohibited. Dry or wet sweeping, shoveling, or brushing may not be used except where vacuuming or other equally effective methods have been tried and do not work. Vacuums must be used and emptied in a manner which minimizes the reentry of lead into the work place.

(vii) Hygiene facilities and practices.

(A) The standard requires that change rooms, showers and filtered air lunchrooms be constructed and made available to workers exposed to lead above the PEL. When the PEL is exceeded, the employer must assure that food and beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in these facilities. Change rooms, showers and lunchrooms, must be used by workers exposed in excess of the PEL. After showering, no clothing or equipment worn during the shift may be worn home and this includes shoes and underwear. Your own clothing worn during the shift should be carried home and cleaned carefully so that it does not contaminate your home. Lunchrooms may not be entered with protective clothing or equipment unless surface dust has been removed by vacuuming, downdraft booth or other cleaning methods. Finally, workers exposed above the PEL must wash both their hands and faces prior to eating, drinking, smoking or applying cosmetics.

(B) All of the facilities and hygiene practices just discussed are essential to minimize additional sources of lead absorption from inhalation or ingestion of lead that may accumulate on you, your clothes or your possessions. Strict compliance with these provisions can virtually eliminate several sources of lead exposure which significantly contribute to excessive lead absorption.

(viii) Medical surveillance.

(A) The medical surveillance program is part of the standard's comprehensive approach to the prevention of lead-related disease. Its purpose is to supplement the main thrust of the standard which is aimed at minimizing airborne concentrations of lead and sources of ingestion. Only medical surveillance can determine if the other provisions of the standard have effectively protected you as an individual. Compliance with the standard's provision will protect most workers from the adverse effects of lead exposure, but may not be satisfactory to protect individual workers (I) who have high body burdens of lead acquired over past years, (II) who have additional uncontrolled sources of nonoccupational lead exposure, (III) who exhibit unusual variations in lead absorption rates, or (IV) who have specific nonwork related medical conditions which could be aggravated by lead exposure (e.g., renal disease, anemia). In addition, control systems may fail, or hygiene and respirator programs may be inadequate. Periodic medical surveillance of individual workers will help detect those failures. Medical surveillance will also be important to protect your reproductive ability - regardless of whether you are a man or a woman.

(B) All medical surveillance required by the standard must be performed by or under the supervision of a licensed physician. The employer must provide required medical surveillance without cost to employees and at a reasonable

time and place. The standard's medical surveillance program has two parts - periodic biological monitoring, and medical examinations.

(C) Your employer's obligation to offer medical surveillance is triggered by the results of the air monitoring program. Medical surveillance must be made available to all employees who are exposed in excess of the action level for more than 30 days a year. The initial phase of the medical surveillance program, which included blood lead level tests and medical examinations, must be completed for all covered employees no later than 180 days from the effective date of this standard. Priority within this first round of medical surveillance must be given to employees whom the employer believes to be at greatest risk from continued exposure (for example, those with the longest prior exposure to lead, or those with the highest current exposure). Thereafter, the employer must periodically make medical surveillance - both biological monitoring and medical examinations - available to all covered employees.

(D) Biological monitoring under the standard consists of blood lead level (PbB) and zinc protoporphyrin tests at least every six months after the initial PbB test. A zinc protoporphyrin (ZPP) test is a very useful blood test which measures an effect of lead on your body. If a worker's PbB exceeds 40 µg/100g, the monitoring frequency must be increased from every six months to at least every two months and not reduced until two consecutive PbBs indicate a blood lead level below 40 µg/100g. Each time your PbB is determined to be over 40µg/100g, your employer must notify you of this in writing within five working days of the receipt of the test results. The employer must also inform you that the standard requires temporary medical removal with economic protection when your PbB exceeds certain criteria (see Discussion of Medical Removal Protection - subsection (12)). During the first year of the standard, this removal criterion is 80 µg/100g. Anytime your PbB exceeds 80 µg/100g your employer must make available to you a prompt follow-up PbB test to ascertain your PbB. If the two tests both exceed 80 µg/100g and you are temporarily removed, then your employer must make successive PbB tests available to you on a monthly basis during the period of your removal.

(E) Medical examinations beyond the initial one must be made available on an annual basis if your blood lead levels exceeds 40µg/100g at any time during the preceding year. The initial examination will provide information to establish a baseline to which subsequent data can be compared. An initial medical examination must also be made available (prior to assignment) for each employee being assigned for the first time to an area where the airborne concentration of lead equals or exceeds the action level. In addition, a medical examination or consultation must be made available as soon as possible if you notify your employer that you are experiencing signs or symptoms commonly associated with lead poisoning or that you have difficulty breathing while wearing a respirator or during a respirator fit test. You must also be provided a medical examination or consultation if you notify your employer that you desire medical advice concerning the effects of current or past exposure to lead on your ability to procreate a healthy child.

(F) Finally, appropriate follow-up medical examinations or consultations may also be provided for employees who

have been temporarily removed from exposure under the medical removal protection provisions of the standard (see item (ix) below).

(G) The standard specifies the minimum content of preassignment and annual medical examinations. The content of other types of medical examinations and consultations is left up to the sound discretion of the examining physician. Preassignment and annual medical examinations must include (I) a detailed work history and medical history, (II) a thorough physical examination, and (III) a series of laboratory tests designed to check your blood chemistry and your kidney function. In addition, at any time upon your request, a laboratory evaluation of male fertility will be made (microscopic examination of a sperm sample), or a pregnancy test will be given.

(H) The standard does not require that you participate in any of the medical procedures, tests, etc., which your employer is required to make available to you. Medical surveillance can, however, play a very important role in protecting your health. You are strongly encouraged, therefore, to participate in a meaningful fashion. Generally, your employer will choose the physician who conducts medical surveillance under the lead standard - unless you and your employer can agree on the choice of a physician or physicians. Some companies and unions have agreed in advance, for example, to use certain independent medical laboratories or panels of physicians. Any of these arrangements are acceptable so long as required medical surveillance is made available to workers.

(I) The standard requires your employer to provide certain information to a physician to aid in his or her examination of you. This information includes (I) the standard and its appendices, (II) a description of your duties as they relate to lead exposure, (III) your exposure level, (IV) a description of personal protective equipment you wear, (V) prior blood level results, and (VI) prior written medical opinions concerning you that the employer has. After a medical examination or consultation the physician must prepare a written report which must contain (I) the physician's opinion as to whether you have any medical conditions which places you at increased risk of material impairment to health from exposure to lead, (II) any recommended special protective measures to be provided to you, (III) any blood lead level determinations, and (IV) any recommended limitation on your use of respirators. This last element must include a determination of whether you can wear a powered air purifying respirator (PAPR) if you are found unable to wear a negative pressure respirator.

(J) The medical surveillance program of the lead standard may at some point in time serve to notify certain workers that they have acquired a disease or other adverse medical condition as a result of occupational lead exposure. If this is true these workers might have legal rights to compensation from public agencies, their employers, firms that supply hazardous products to their employers, or other persons. Some states have laws, including worker compensation laws, that disallow a worker to learn of a job-related health impairment to sue, unless the worker sues within a short period of time after learning of the impairment. (This period of time may be a matter of months or years.) An attorney can be consulted about these possibilities. It should be stressed that WISHA is in no way trying to either

encourage or discourage claims or lawsuits. However, since results of the standard's medical surveillance program can significantly affect the legal remedies of a worker who has acquired a job-related disease or impairment, it is proper for WISHA to make you aware of this.

(K) The medical surveillance section of the standard also contains provisions dealing with chelation. Chelation is the use of certain drugs (administered in pill form or injected into the body) to reduce the amount of lead absorbed in body tissues. Experience accumulated by the medical and scientific communities has largely confirmed the effectiveness of this type of therapy for the treatment of very severe lead poisoning. On the other hand it has also been established that there can be a long list of extremely harmful side effects associated with the use of chelating agents. The medical community has balanced the advantages and disadvantages resulting from the use of chelating agents in various circumstances and has established when the use of these agents is acceptable. The standard includes these accepted limitations due to a history of abuse of chelation therapy by some lead companies. The most widely used chelating agents are calcium disodium EDTA, (Ca Na₂EDTA), Calcium Disodium Versenate (Versenate), and d-penicillamine (penicillamine or Cupramine).

(L) The standard prohibits "prophylactic chelation" of any employee by any person the employer retains, supervises or controls. "Prophylactic chelation" is the routine use of chelating or similarly acting drugs to prevent elevated blood levels in workers who are occupationally exposed to lead, or the use of these drugs to routinely lower blood lead levels to predesignated concentrations believed to be safe. It should be emphasized that where an employer takes a worker who has no symptoms of lead poisoning and has chelation carried out by a physician (either inside or outside of a hospital) solely to reduce the worker's blood lead level, that will generally be considered prophylactic chelation. The use of a hospital and a physician does not mean that prophylactic chelation is not being performed. Routine chelation to prevent increased or reduce current blood lead levels is unacceptable whatever the setting.

(M) The standard allows the use of "therapeutic" or "diagnostic" chelation if administered under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring. Therapeutic chelation responds to severe lead poisoning where there are marked symptoms. Diagnostic chelation, involves giving a patient a dose of the drug then collecting all urine excreted for some period of time as an aid to the diagnosis of lead poisoning.

(N) In cases where the examining physician determines that chelation is appropriate, you must be notified in writing of this fact before such treatment. This will inform you of a potentially harmful treatment, and allow you to obtain a second opinion.

(ix) Medical removal protection.

(A) Excessive lead absorption subjects you to increased risk of disease. Medical removal protection (MRP) is a means of protecting you when for whatever reasons, other methods, such as engineering controls, work practices, and respirators, have failed to provide the protection you need. MRP involves the temporary removal of a worker from his or her regular job to a place of significantly lower exposure without any loss of earnings, seniority, or other employment

rights of benefits. The purpose of this program is to cease further lead absorption and allow your body to naturally excrete lead which has previously been absorbed. Temporary medical removal can result from an elevated blood lead level, or a medical opinion. Up to eighteen months of protection is provided as a result of either form of removal. The vast majority of removed workers, however, will return to their former jobs long before this eighteen month period expires. The standard contains special provisions to deal with the extraordinary but possible case where a long-term worker's blood lead level does not adequately decline during eighteen months of removal.

(B) During the first year of the standard, if your blood lead level is 80 µg/100g or above you must be removed from any exposure where your air lead level without a respirator would be 100 µg/m³ or above. If you are removed from your normal job you may not be returned until your blood lead level declines to at least 60 µg/100g. These criteria for removal and return will change according to the following schedule:

TABLE 1

Effective Date	Removal Blood Level (µg/100g)	Air Lead (µg/m ³)	Return Blood Lead (µg/100g)
9/6/81	At or above 70	50 or above	At or below 50
9/6/82	At or above 60	30 or above	At or below 40
9/6/84	At or above 50 averaged over six months	30 or above	At or below 40

(C) You may also be removed from exposure even if your blood lead levels are below these criteria if a final medical determination indicates that you temporarily need reduced lead exposure for medical reasons. If the physician who is implementing your employers medical program makes a final written opinion recommending your removal or other special protective measures, your employer must implement the physician's recommendation. If you are removed in this manner, you may only be returned when the physician indicates it is safe for you to do so.

(D) The standard does not give specific instructions dealing with what an employer must do with a removed worker. Your job assignment upon removal is a matter for you, your employer and your union (if any) to work out consistent with existing procedures for job assignments. Each removal must be accomplished in a manner consistent with existing collective bargaining relationships. Your employer is given broad discretion to implement temporary removals so long as no attempt is made to override existing agreements. Similarly, a removed worker is provided no right to veto an employer's choice which satisfies the standard.

(E) In most cases, employers will likely transfer removed employees to other jobs with sufficiently low lead exposure. Alternatively, a worker's hours may be reduced so that the time weighted average exposure is reduced, or he or she may be temporarily laid off if no other alternative is feasible.

(F) In all of these situations, MRP benefits must be provided during the period of removal - i.e., you continue to receive the same earnings, seniority, and other rights and

benefits you would have had if you had not been removed. Earnings include more than just your base wage; it includes overtime, shift differentials, incentives, and other compensation you would have earned if you had not been removed. During the period of removal you must also be provided with appropriate follow-up medical surveillance. If you were removed because your blood lead level was too high, you must be provided with a monthly blood test. If a medical opinion caused your removal, you must be provided medical tests or examinations that the physician believes to be appropriate. If you do not participate in this follow-up medical surveillance, you may lose your eligibility for MRP benefits.

(G) When you are medically eligible to return to your former job, your employer must return you to your "former job status." This means that you are entitled to the position, wages, benefits, etc., you would have had if you had not been removed. If you would still be in your old job if no removal had occurred, that is where you go back. If not, you are returned consistent with whatever job assignment discretion your employer would have had if no removal had occurred. MRP only seeks to maintain your rights, not expand them or diminish them.

(H) If you are removed under MRP and you are also eligible for worker compensation or other compensation for lost wages, your employer's MRP benefits obligation is reduced by the amount that you actually receive from these other sources. This is also true if you obtain other employment during the time you are laid off with MRP benefits.

(I) The standard also covers situations where an employer voluntarily removes a worker from exposure to lead due to the effects of lead on the employee's medical condition, even though the standard does not require removal. In these situations MRP benefits must still be provided as though the standard required removal. Finally, it is important to note that in all cases where removal is required, respirators cannot be used as a substitute. Respirators may be used before removal becomes necessary, but not as an alternative to a transfer to a low exposure job, or to a lay-off with MRP benefits.

(x) Employee information and training.

(A) Your employer is required to provide an information and training program for all employees exposed to lead above the action level or who may suffer skin or eye irritation from lead. This program must inform these employees of the specific hazards associated with their work environment, protective measures which can be taken, the danger of lead to their bodies (including their reproductive systems), and their rights under the standard. In addition, your employer must make readily available to all employees, included those exposed below the action level, a copy of the standard and its appendices and must distribute to all employees any materials provided to the employer under the Washington Industrial Safety and Health Act (WISHA).

(B) Your employer is required to complete this training for all employees by March 4, 1981. After this date, all new employees must be trained prior to initial assignment to areas where there is possibility of exposure over the action level. This training program must also be provided at least annually thereafter.

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(xi) Signs. The standard requires that the following warning sign be posted in work areas where the exposure to lead exceeds the PEL:

WARNING
LEAD WORK AREA
NO SMOKING OR EATING

(xii) Recordkeeping.

(A) Your employer is required to keep all records of exposure monitoring for airborne lead. These records must include the name and job classification of employees measured, details of the sampling and analytic techniques, the results of this sampling and the type of respiratory protection being worn by the person sampled. Your employer is also required to keep all records of biological monitoring and medical examination results. These must include the names of the employees, the physician's written opinion and a copy of the results of the examination. All of the above kinds of records must be kept for 40 years, or for at least 20 years after your termination of employment, whichever is longer.

(B) Recordkeeping is also required if you are temporarily removed from your job under the MRP program. This record must include your name and social security number, the date of your removal and return, how the removal was or is being accomplished, and whether or not the reason for the removal was an elevated blood lead level. Your employer is required to keep each medical removal record only for as long as the duration of an employee's employment.

(C) The standard requires that if you request to see or copy environmental monitoring, blood lead level monitoring, or medical removal records, they must be made available to you or to a representative that you authorize. Your union also has access to these records. Medical records other than PbBs must also be provided to you upon request, to your physician or to any other person whom you may specifically designate. Your union does not have access to your personal medical records unless you authorize their access.

(xiii) Observations of monitoring. When air monitoring for lead is performed at your work place as required by this standard, your employer must allow you or someone you designate to act as an observer of the monitoring. Observers are entitled to an explanation of the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of the monitoring, observers are entitled to record or receive the results of the monitoring when returned by the laboratory. Your employer is required to provide the observer with any personal protective devices required to be worn by employees working in the areas that is being monitored. The employer must require the observer to wear all such equipment and to comply with all other applicable safety and health procedures.

(xiv) Effective date. The standard's effective date is September 6, 1980, and the employer's obligation under the standard begin to come into effect as of that date. The standard was originally adopted as WAC 296-62-07349 and later recodified to WAC 296-62-07521.

(c) Appendix C. Medical Surveillance Guidelines.

(i) Introduction.

(A) The primary purpose of the Washington Industrial Safety and Health Act of 1973 is to assure, so far as

possible, safe and healthful working conditions for every working man and woman. The occupational health standard for inorganic lead* was promulgated to protect workers exposed to inorganic lead including metallic lead, all inorganic lead compounds and organic lead soaps.

*The term inorganic lead used throughout the medical surveillance appendices is meant to be synonymous with the definition of lead set forth in the standard.

(B) Under this final standard in effect as of September 6, 1980, occupational exposure to inorganic lead is to be limited to 50 µg/m³ (micrograms per cubic meter) based on an eight-hour time-weighted average (TWA). This level of exposure eventually must be achieved through a combination of engineering, work practice and other administrative controls. Periods of time ranging from one to ten years are provided for different industries to implement these controls which are based on individual industry considerations. Until these controls are in place, respirators must be used to meet the 50 µg/m³ exposure limit.

(C) The standard also provides for a program of biological monitoring and medical surveillance for all employees exposed to levels of inorganic lead above the action level of 30 µg/m³ for more than thirty days per year.

(D) The purpose of this document is to outline the medical surveillance provisions of the standard for inorganic lead, and to provide further information to the physician regarding the examination and evaluation of workers exposed to inorganic lead.

(E) Item (ii) provides a detailed description of the monitoring procedure including the required frequency of blood testing for exposed workers, provisions for medical removal protection (MRP), the recommended right of the employee to a second medical opinion, and notification and recordkeeping requirements of the employer. A discussion of the requirements for respirator use and respirator monitoring and WISHA's position on prophylactic chelation therapy are also included in this section.

(F) Item (iii) discusses the toxic effects and clinical manifestations of lead poisoning and effects of lead intoxication on enzymatic pathways in heme synthesis. The adverse effects on both male and female reproductive capacity and on the fetus are also discussed.

(G) Item (iv) outlines the recommended medical evaluation of the worker exposed to inorganic lead including details of the medical history, physical examination, and recommended laboratory tests, which are based on the toxic effects of lead as discussed in item (ii).

(H) Item (v) provides detailed information concerning the laboratory tests available for the monitoring of exposed workers. Included also is a discussion of the relative value of each test and the limitations and precautions which are necessary in the interpretation of the laboratory results.

(I) Airborne levels to be achieved without reliance or respirator protection through a combination of engineering and work practice or other administrative controls are illustrated in the following table:

Industry	Permissible Lead Level/Compliance Date		
	200µg/m ³	100µg/m ³	50µg/m ³
Primary Lead Production	1973	06/29/84	06/29/91
Secondary Lead Production	1973	06/29/84	06/29/91

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Lead Acid Battery Manufacturing	1973	06/29/83	06/29/91
Automobile Mfg./Solder, Grinding	1973	N/A	03/08/97
Electronics, Gray Iron Foundries, Ink Mfg., Paints and Coatings Mfg., Can Mfg., Wallpaper Mfg., and Printing.	1973	N/A	06/29/91
Lead Chemical Mfg., Nonferrous Foundries, Leaded Steel Mfg., Battery Breaking in the Collection and Processing of Scrap (when not a part of secondary lead smelter)			
Secondary Copper Smelter, Brass and Bronze Ingot Production.	1973	N/A	N/A ^{1*}
All Other Industries	1973	N/A	09/08/92

* Feasibility of achieving the PEL by engineering and work practice controls for these industries has yet to be resolved in court, therefore no date has been scheduled.

(ii) Medical surveillance and monitoring requirements for workers exposed to inorganic lead.

(A) Under the occupational health standard for inorganic lead, a program of biological monitoring and medical surveillance is to be made available to all employees exposed to lead above the action level of 30 $\mu\text{g}/\text{m}^3$ TWA for more than thirty days each year. This program consists of periodic blood sampling and medical evaluation to be performed on a schedule which is defined by previous laboratory results, worker complaints or concerns, and the clinical assessment of the examining physician.

(B) Under this program, the blood lead level of all employees who are exposed to lead above the action level of 30 $\mu\text{g}/\text{m}^3$ is to be determined at least every six months. The frequency is increased to every two months for employees whose last blood lead level was between 40 $\mu\text{g}/100\text{g}$ whole blood and the level requiring employee medical removal to be discussed below. For employees who are removed from exposure to lead due to an elevated blood lead, a new blood lead level must be measured monthly. Zinc protoporphyrin (ZPP) measurement is strongly recommended on each occasion that a blood lead level measurement is made.

(C) An annual medical examination and consultation performed under the guidelines discussed in item (iv) is to be made available to each employee for whom a blood test conducted at any time during the preceding twelve months indicated a blood lead level at or above 40 $\mu\text{g}/100\text{g}$. Also, an examination is to be given to all employees prior to their assignment to an area in which airborne lead concentrations reach or exceed the action level. In addition, a medical examination must be provided as soon as possible after notification by an employee that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice regarding lead exposure and the ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during respirator use. An examination is also to be made available to each employee removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited or specially protected pursuant to medical recommendations.

(D) Results of biological monitoring or the recommendations of an examining physician may necessitate removal of an employee from further lead exposure pursuant to the standard's medical removal program (MRP). The object of the MRP program is to provide temporary medical removals to workers either with substantially elevated blood lead levels or otherwise at risk of sustaining material health impairment from continued substantial exposure to lead. The following guidelines which are summarized in Table 10 were created under the standard for the temporary removal of an exposed employee and his or her subsequent return to work in an exposure area.

TABLE 10

	Effective Date:				
	Sept. 6, 1980	Sept. 6, 1981	Sept. 6, 1982	Sept. 6, 1983	Sept. 6, 1984 (final)
Blood lead level requiring employee medical removal (Level must be confirmed with second follow-up blood lead level within two weeks of first report.)	> 80 µg/100g.	> 70 µg/100g.	> 60 µg/100g.	> 60µg/100g	> 40µg/100g or average of last three blood samples or all blood samples over previous 6 months (whichever is over a longer time period) is 50 µg/100g or greater unless last blood sample is 40 µg/100g or less.
Frequency which employees exposed to action level of lead (30 µg/m ³ TWA) must have blood lead level checked. (ZPP is also strongly recommended in such occasion that a blood test is obtained):					
1. Last blood lead level less than 40 µg/100g.....	Every 6 months.	Every 6 months.	Every 6 months.	Every 6 months.	Every 6 months.
2. Last blood lead level between 40 µg/100g and level requiring medical removal (see A above)....	Every 2 months.	Every 2 months.	Every 2 months.	Every 2 months.	Every 2 months.
3. Employees removed from exposure to lead because of an elevated blood lead level.....	Every 1 month	Every 1 month	Every 1 month	Every 1 month	Every 1 month
Permissible airborne exposure limit for workers removed from work due to an elevated blood lead level (without regard to respirator protection).	100 µg/m ³ 8 hr TWA	50 µg/m ³ 8 hr TWA	30 µg/m ³ 8 hr TWA	30 µg/m ³ 8 hr TWA	30 µg/m ³ 8 hr TWA
Blood lead level confirmed with a second blood analysis, at which employee may return to work. Permissible exposure without regard to respirator protection is listed by industry in table 1.	> 60 µg/100g	> 50 µg/100g	> 40 µg/100g	> 40 µg/100g	> 40 µg/100g ² ."

NOTE: When medical opinion indicates that an employee is at risk of material impairment from exposure to lead, the physician can remove an employee from exposure exceeding the action level (or less) or recommend special protective measures as deemed appropriate and necessary. Medical monitoring during the medical removal period can be more stringent than noted in the table above if the physician so specifies. Return to work or removal of limitations and special protections is permitted when the physician indicates that the worker is no longer at risk of material impairment.

(E) Under the standard's ultimate worker removal criteria, a worker is to be removed from any work having any eight-hour TWA exposure to lead of 30 µg/m³ or more whenever either of the following circumstances apply. (I) a blood lead level of 60 µg/100g or greater is obtained and confirmed by a second follow-up blood lead level performed within two weeks after the employer receives the results of the first blood sample test, or (II) the average of the previous three blood lead determinations or the average of all blood lead determinations conducted during the previous six months, whichever encompasses the longest time period, equals or exceeds 50 µg/100g, unless the last blood sample indicates a blood lead level at or below 40 µg/100g, in which case the employee need not be removed. Medical removal is to continue until two consecutive blood lead levels are 40 µg/100g or less.

(F) During the first two years that the ultimate removal criteria are being phased in, the return criteria have been set to assure that a worker's blood lead level has substantially declined during the period of removal. From March 1, 1979, to March 1, 1980, the blood lead level requiring employee medical removal is 80 µg/100g. Workers found to have a confirmed blood lead at this level or greater need only be removed from work having a daily eight hour TWA exposure to lead at or above 100 µg/m³. Workers so removed are to be returned to work when their blood lead levels are at or

below 60 µg/100g of whole blood. From March 1, 1980, to March 1, 1981, the blood lead level requiring medical removal is 70 µg/100g. During this period workers need only be removed from jobs having a daily eight hour TWA exposure to lead at or above 50 µg/m³ and are to be returned to work when a level of 50 µg/100g is achieved. Beginning March 1, 1981, return depends on the worker's blood lead level declining to 40 µg/100g of whole blood.

(G) As part of the standard, the employer is required to notify in writing each employee whose whole blood lead level exceeds 40 µg/100g. In addition, each such employee is to be informed that the standard requires medical removal with MRP benefits, discussed below, when an employee's blood lead level exceeds the above defined limits.

(H) In addition to the above blood lead level criteria, temporary worker removal may also take place as a result of medical determinations and recommendations. Written medical opinions must be prepared after each examination pursuant to the standard. If the examining physician includes medical finding, determination or opinion that the employee has a medical condition which places the employee at increased risk of material health impairment from exposure to lead, then the employee must be removed from exposure to lead at or above the action level. Alternatively, if the examining physician recommends special protective measures for an employee (e.g., use of a powered air

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purifying respirator) or recommends limitations on an employee's exposure to lead, then the employer must implement these recommendations. Recommendations may be more stringent than the specific provisions of the standard. The examining physician, therefore, is given broad flexibility to tailor special protective procedures to the needs of individual employees. This flexibility extends to the evaluation and management of pregnant workers and male and female workers who are planning to conceive children. Based on the history, physical examination, and laboratory studies, the physician might recommend special protective measures or medical removal for an employee who is pregnant or who is planning to conceive a child when, in the physician's judgment, continued exposure to lead at the current job would pose a significant risk. The return of the employee to his or her former job status, or the removal of special protections or limitations, depends upon the examining physician determining that the employee is no longer at increased risk of material impairment or that the special measures are no longer needed.

(I) During the period of any form of special protection or removal, the employer must maintain the worker's earnings, seniority, and other employment rights and benefits (as though the worker has not been removed) for a period of up to eighteen months. This economic protection will maximize meaningful worker participation in the medical surveillance program, and is appropriate as part of the employer's overall obligation to provide a safe and healthful work place. The provisions of MRP benefits during the employee's removal period may, however, be conditioned upon participation in medical surveillance.

(J) On rare occasions, an employee's blood lead level may not acceptably decline within eighteen months of removal. This situation will arise only in unusual circumstances, thus the standard relies on an individual medical examination to determine how to protect such an employee. This medical determination is to be based on both laboratory values, including lead levels, zinc protoporphyrin levels, blood counts, and other tests felt to be warranted, as well as the physician's judgment that any symptoms or findings on physical examination are a result of lead toxicity. The medical determination may be that the employee is incapable of ever safely returning to his or her former job status. The medical determination may provide additional removal time past eighteen months for some employees or specify special protective measures to be implemented.

(K) The lead standard provides for a multiple physician review in cases where the employee wishes a second opinion concerning potential lead poisoning or toxicity. If an employee wishes a second opinion, he or she can make an appointment with a physician of his or her choice. This second physician will review the findings, recommendations or determinations of the first physician and conduct any examinations, consultations or tests deemed necessary in an attempt to make a final medical determination. If the first and second physicians do not agree in their assessment they must try to resolve their differences. If they cannot reach an agreement then they must designate a third physician to resolve the dispute.

(L) The employer must provide examining and consulting physicians with the following specific information: A copy of the lead regulations and all appendices, a description

of the employee's duties as related to exposure, the exposure level to lead and any other toxic substances (if applicable), a description of personal protective equipment used, blood lead levels, and all prior written medical opinions regarding the employee in the employer's possession or control. The employer must also obtain from the physician and provide the employee with a written medical opinion containing blood lead levels, the physician's opinion as to whether the employee is at risk of material impairment to health, any recommended protective measures for the employee if further exposure is permitted, as well as any recommended limitations upon an employee's use of respirators.

(M) Employers must instruct each physician not to reveal to the employer in writing or in any other way his or her findings, laboratory results, or diagnoses which are felt to be unrelated to occupational lead exposure. They must also instruct each physician to advise the employee of any occupationally or nonoccupationally related medical condition requiring further treatment or evaluation.

(N) The standard provides for the use of respirators when engineering and other primary controls have not been fully implemented. However, the use of respirator protection shall not be used in lieu of temporary medical removal due to elevated blood lead levels or findings that an employee is at risk of material health impairment. This is based on the numerous inadequacies of respirators including skin rash where the facepiece makes contact with the skin, unacceptable stress to breathing in some workers with underlying cardiopulmonary impairment, difficulty in providing adequate fit, the tendency for respirators to create additional hazards by interfering with vision, hearing, and mobility, and the difficulties of assuring the maximum effectiveness of a complicated work practice program involving respirators. Respirators do, however, serve a useful function where engineering and work practice are inadequate by providing interim or short-term protection, provided they are properly selected for the environment in which the employee will be working, properly fitted to the employee, maintained and cleaned periodically, and worn by the employee when required.

(O) In its final standard on occupational exposure to inorganic lead, WISHA has prohibited prophylactic chelation. Diagnostic and therapeutic chelation are permitted only under the supervision of a licensed physician with appropriate medical monitoring in an acceptable clinical setting. The decision to initiate chelation therapy must be made on an individual basis and take into account the severity of symptoms felt to be a result of lead toxicity along with blood lead levels, ZPP levels and other laboratory tests as appropriate. EDTA and penicillamine, which are the primary chelating agents used in the therapy of occupational lead poisoning, have significant potential side effects and their use must be justified on the basis of expected benefits to the worker.

(P) Unless frank and severe symptoms are present, therapeutic chelation is not recommended given the opportunity to remove a worker from exposure and allow the body to naturally excrete accumulated lead. As a diagnostic aid, the chelation mobilization test using CA-EDTA has limited applicability. According to some investigators, the tests can differentiate between lead-induced and other nephropathies.

The test may also provide an estimation of the mobile fraction of the total body lead burden.

(Q) Employers are required to assure that accurate records are maintained on exposure monitoring, medical surveillance, and medical removal for each employee. Exposure monitoring and medical surveillance records must be kept for forty years or the duration of employment plus twenty years, whichever is longer, while medical removal records must be maintained for the duration of employment. All records required under the standard must be made available upon request to representatives of the director of the department of labor and industries. Employers must also make environmental and biological monitoring and medical removal records available to affected employees and to former employees or their authorized employee representatives. Employees or their specifically designated representatives have access to their entire medical surveillance records.

(R) In addition, the standard requires that the employer inform all workers exposed to lead at or above the action level of the provisions of the standard and all its appendices, the purpose and description of medical surveillance and provisions for medical removal protection if temporary removal is required. An understanding of the potential health effects of lead exposure by all exposed employees along with full understanding of their rights under the lead standard is essential for an effective monitoring program.

(iii) Adverse health effects of inorganic lead.

(A) Although the toxicity of lead has been known for 2,000 years, the knowledge of the complex relationship between lead exposure and human response is still being refined. Significant research into the toxic properties of lead continues throughout the world, and it should be anticipated that our understanding of thresholds of effects and margins of safety will be improved in future years. The provisions of the lead standard are founded on two prime medical judgments; first, the prevention of adverse health effects from exposure to lead throughout a working lifetime requires that worker blood lead levels be maintained at or below 40 $\mu\text{g}/100\text{g}$, and second, the blood lead levels of workers, male or female, who intend to parent in the near future should be maintained below 30 $\mu\text{g}/100\text{g}$ to minimize adverse reproduction health effects to the parent and developing fetus. The adverse effects of lead on reproduction are being actively researched and WISHA encourages the physician to remain abreast of recent developments in the area to best advise pregnant workers or workers planning to conceive children.

(B) The spectrum of health effects caused by lead exposure can be sub-divided into five developmental states; normal, physiological changes of uncertain significance, pathophysiological changes, overt symptoms (morbidity), and mortality. Within this process there are no sharp distinctions, but rather a continuum of effects. Boundaries between categories overlap due to the wide variation of individual responses and exposures in the working population. WISHA's development of the lead standard focused on pathophysiological changes as well as later stages of disease.

(I) Heme synthesis inhibition.

a) The earliest demonstrated effect of lead involves its ability to inhibit at least two enzymes of the heme synthesis pathway at very low blood levels. Inhibition of delta aminolevulinic acid dehydrase (ALA-D) which catalyzes the

conversion of delta-aminolevulinic acid (ALA) to protoporphyrin is observed at a blood lead level below 20 $\mu\text{g}/100\text{g}$ whole blood. At a blood lead level of 40 $\mu\text{g}/100\text{g}$, more than twenty percent of the population would have seventy percent inhibition of ALA-D. There is an exponential increase in ALA excretion at blood lead levels greater than 40 $\mu\text{g}/100\text{g}$.

b) Another enzyme, ferrochelatase, is also inhibited at low blood lead levels. Inhibition of ferrochelatase leads to increased free erythrocyte protoporphyrin (FEP) in the blood which can then bind to zinc to yield zinc protoporphyrin. At a blood lead level of 50 $\mu\text{g}/100\text{g}$ or greater, nearly 100 percent of the population will have an increase FEP. There is also an exponential relationship between blood lead levels greater than 40 $\mu\text{g}/100\text{g}$ and the associated ZPP level, which has led to the development of the ZPP screening test for lead exposure.

c) While the significance of these effects is subject to debate, it is WISHA's position that these enzyme disturbances are early stages of a disease process which may eventually result in the clinical symptoms of lead poisoning. Whether or not the effects do progress to the later stages of clinical disease, disruption of these enzyme processes over a working lifetime is considered to be a material impairment of health.

d) One of the eventual results of lead-induced inhibition of enzymes in the heme synthesis pathway is anemia which can be asymptomatic if mild but associated with a wide array of symptoms including dizziness, fatigue, and tachycardia when more severe. Studies have indicated that lead levels as low as 50 $\mu\text{g}/100\text{g}$ can be associated with a definite decreased hemoglobin, although most cases of lead-induced anemia, as well as shortened red-cell survival times, occur at lead levels exceeding 80 $\mu\text{g}/100\text{g}$. Inhibited hemoglobin synthesis is more common in chronic cases whereas shortened erythrocyte life span is more common in acute cases.

e) In lead-induced anemias, there is usually a reticulocytosis along with the presence of basophilic stippling, and ringed sideroblasts, although none of the above are pathognomonic for lead-induced anemia.

(II) Neurological effects.

a) Inorganic lead had been found to have toxic effects on both the central and peripheral nervous systems. The earliest stage of lead-induced central nervous system effects first manifest themselves in the form of behavioral disturbances and central nervous system symptoms including irritability, restlessness, insomnia and other sleep disturbances, fatigue, vertigo, headache, poor memory, tremor, depression, and apathy. With more severe exposure, symptoms can progress to drowsiness, stupor, hallucinations, delirium, convulsions and coma.

b) The most severe and acute form of lead poisoning which usually follows ingestion or inhalation of large amounts of lead is acute encephalopathy which may arise precipitously with the onset of intractable seizures, coma, cardiorespiratory arrest, and death within 48 hours.

c) While there is disagreement about what exposure levels are needed to produce the earliest symptoms, most experts agree that symptoms definitely can occur at blood lead levels of 60 $\mu\text{g}/100\text{g}$ whole blood and therefore recommend a 40 $\mu\text{g}/100\text{g}$ maximum. The central nervous system effects frequently are not reversible following discontinued

exposure or chelation therapy and when improvement does occur, it is almost always only partial.

d) The peripheral neuropathy resulting from lead exposure characteristically involves only motor function with minimal sensory damage and has a marked predilection for the extensor muscles of the most active extremity. The peripheral neuropathy can occur with varying degrees of severity. The earliest and mildest form which can be detected in workers with blood lead levels as low as 50 $\mu\text{g}/100\text{g}$ is manifested by slowing of motor nerve conduction velocity often without clinical symptoms. With progression of the neuropathy there is development of painless extensor muscle weakness usually involving the extensor muscles of the fingers and hand in the most active upper extremity, followed in severe cases by wrist drop, much less commonly, foot drop.

e) In addition to slowing of nerve conduction, electromyographical studies in patients with blood lead levels greater than 50 $\mu\text{g}/100\text{g}$ have demonstrated a decrease in the number of acting motor unit potentials, an increase in the duration of motor unit potentials, and spontaneous pathological activity including fibrillations and fasciculation. Whether these effects occur at levels of 40 $\mu\text{g}/100\text{g}$ is undetermined.

f) While the peripheral neuropathies can occasionally be reversed with therapy, again such recovery is not assured particularly in the more severe neuropathies and often improvement is only partial. The lack of reversibility is felt to be due in part to segmental demyelination.

(III) Gastrointestinal. Lead may also effect the gastrointestinal system producing abdominal colic or diffuse abdominal pain, constipation, obstipation, diarrhea, anorexia, nausea and vomiting. Lead colic rarely develops at blood lead levels below 80 $\mu\text{g}/100\text{g}$.

(IV) Renal.

a) Renal toxicity represents one of the most serious health effects of lead poisoning. In the early stages of disease nuclear inclusion bodies can frequently be identified in proximal renal tubular cells. Renal functions remain normal and the changes in this stage are probably reversible. With more advanced disease there is progressive interstitial fibrosis and impaired renal function. Eventually extensive interstitial fibrosis ensues with sclerotic glomeruli and dilated and atrophied proximal tubules; all represent end stage kidney disease. Azotemia can be progressive, eventually resulting in frank uremia necessitating dialysis. There is occasionally associated hypertension and hyperuricemia with or without gout.

b) Early kidney disease is difficult to detect. The urinalysis is normal in early lead nephropathy and the blood urea nitrogen and serum creatinine increase only when two-thirds of kidney function is lost. Measurement of creatinine clearance can often detect earlier disease as can other methods of measurement of glomerular filtration rate. An abnormal Ca-EDTA mobilization test has been used to differentiate between lead-induced and other nephropathies, but this procedure is not widely accepted. A form of Fanconi syndrome with aminoaciduria, glycosuria, and hyperphosphaturia indicating severe injury to the proximal renal tubules is occasionally seen in children.

(V) Reproductive effects.

a) Exposure to lead can have serious effects on reproductive function in both males and females. In male

workers exposed to lead there can be a decrease in sexual drive, impotence, decreased ability to produce healthy sperm, and sterility. Malformed sperm (teratospermia), decreased number of sperm (hypospermia), and sperm with decreased motility (asthenospermia) can occur. Teratospermia has been noted at mean blood lead levels of 53 $\mu\text{g}/100\text{g}$ and hypospermia and asthenospermia at 41 $\mu\text{g}/100\text{g}$. Furthermore, there appears to be a dose-response relationship for teratospermia in lead exposed workers.

b) Women exposed to lead may experience menstrual disturbances including dysmenorrhea, menorrhagia and amenorrhea. Following exposure to lead, women have a higher frequency of sterility, premature births, spontaneous miscarriages, and stillbirths.

c) Germ cells can be affected by lead and cause genetic damage in the egg or sperm cells before conception and result in failure to implant, miscarriage, stillbirth, or birth defects.

d) Infants of mothers with lead poisoning have a higher mortality during the first year and suffer from lowered birth weights, slower growth, and nervous system disorders.

e) Lead can pass through the placental barrier and lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord at birth. Transplacental passage becomes detectable at 12-14 weeks of gestation and increases until birth.

f) There is little direct data on damage to the fetus from exposure to lead but it is generally assumed that the fetus and newborn would be at least as susceptible to neurological damage as young children. Blood lead levels of 50-60 $\mu\text{g}/100\text{g}$ in children can cause significant neurobehavioral impairments, and there is evidence of hyperactivity at blood levels as low as 25 $\mu\text{g}/100\text{g}$. Given the overall body of literature concerning the adverse health effects of lead in children, WISHA feels that the blood lead level in children should be maintained below 30 $\mu\text{g}/100\text{g}$ with a population mean of 15 $\mu\text{g}/100\text{g}$. Blood lead levels in the fetus and newborn likewise should not exceed 30 $\mu\text{g}/100\text{g}$.

g) Because of lead's ability to pass through the placental barrier and also because of the demonstrated adverse effects of lead on reproductive function in both males and females as well as the risk of genetic damage of lead on both the ovum and sperm, WISHA recommends a 30 $\mu\text{g}/100\text{g}$ maximum permissible blood lead level in both males and females who wish to bear children.

(IV) Other toxic effects.

a) Debate and research continue on the effects of lead on the human body. Hypertension has frequently been noted in occupationally exposed individuals although it is difficult to assess whether this is due to lead's adverse effects on the kidneys or if some other mechanism is involved.

b) Vascular and electrocardiographic changes have been detected but have not been well characterized. Lead is thought to impair thyroid function and interfere with the pituitary-adrenal axis, but again these effects have not been well defined.

(iv) Medical evaluation.

(A) The most important principle in evaluating a worker for any occupational disease including lead poisoning is a high index of suspicion on the part of the examining physician. As discussed in Section (ii), lead can affect numerous organ systems and produce a wide array of signs

and symptoms, most of which are nonspecific and subtle in nature at least in the early stages of disease. Unless serious concern for lead toxicity is present, many of the early clues to diagnosis may easily be overlooked.

(B) The crucial initial step in the medical evaluation is recognizing that a worker's employment can result in exposure to lead. The worker will frequently be able to define exposures to lead and lead-containing materials but often will not volunteer this information unless specifically asked. In other situations the worker may not know of any exposures to lead but the suspicion might be raised on the part of the physician because of the industry or occupation of the worker. Potential occupational exposure to lead and its compounds occur in at least 120 occupations, including lead smelting, the manufacture of lead storage batteries, the manufacture of lead pigments and products containing pigments, solder manufacture, shipbuilding and ship repair, auto manufacturing, construction, and painting.

(C) Once the possibility for lead exposure is raised, the focus can then be directed toward eliciting information from the medical history, physical exam, and finally from laboratory data to evaluate the worker for potential lead toxicity.

(D) A complete and detailed work history is important in the initial evaluation. A listing of all previous employment with information on work processes, exposure to fumes or dust, known exposures to lead or other toxic substances, respiratory protection used, and previous medical surveillance should all be included in the worker's record. Where exposure to lead is suspected, information concerning on-the-job personal hygiene, smoking or eating habits in work areas, laundry procedures, and use of any protective clothing or respiratory protection equipment should be noted. A complete work history is essential in the medical evaluation of a worker with suspected lead toxicity, especially when long-term effects such as neurotoxicity and nephrotoxicity are considered.

(E) The medical history is also of fundamental importance and should include a listing of all past and current medical conditions, current medications including proprietary drug intake, previous surgeries and hospitalizations, allergies, smoking history, alcohol consumption, and also nonoccupational lead exposures such as hobbies (hunting, riflery). Also known childhood exposures should be elicited. Any previous history of hematological, neurological, gastrointestinal, renal, psychological, gynecological, genetic, or reproductive problems should be specifically noted.

(F) A careful and complete review of systems must be performed to assess both recognized complaints and subtle or slowly acquired symptoms which the worker might not appreciate as being significant. The review of symptoms should include the following:

- General - weight loss, fatigue, decreased appetite.
- Head, Eyes, Ears, Nose, Throat (HEENT) - headaches, visual disturbance or decreased visual acuity, hearing deficits or tinnitus, pigmentation of the oral mucosa, or metallic taste in mouth.
- Cardio-pulmonary - shortness of breath, cough, chest pains, palpitations, or orthopnea.

- Gastrointestinal - nausea, vomiting, heartburn, abdominal pain, constipation or diarrhea.
- Neurologic - irritability, insomnia, weakness (fatigue), dizziness, loss of memory, confusion, hallucinations, incoordination, ataxia, decreased strength in hands or feet, disturbance in gait, difficulty in climbing stairs, or seizures.
- Hematologic - pallor, easy fatigability, abnormal blood loss, melena.
- Reproductive (male or female and spouse where relevant) - history of infertility, impotence, loss of libido, abnormal menstrual periods, history of miscarriages, stillbirths, or children with birth defects.
- Musculo-skeletal - muscle and joint pains.

(G) The physical examination should emphasize the neurological, gastrointestinal, and cardiovascular systems. The worker's weight and blood pressure should be recorded and the oral mucosa checked for pigmentation characteristic of a possible Burtonian or lead line on the gingiva. It should be noted, however, that the lead line may not be present even in severe lead poisoning if good oral hygiene is practiced.

(H) The presence of pallor on skin examination may indicate an anemia, which if severe might also be associated with a tachycardia. If an anemia is suspected, an active search for blood loss should be undertaken including potential blood loss through the gastrointestinal tract.

(I) A complete neurological examination should include an adequate mental status evaluation including a search for behavioral and psychological disturbances, memory testing, evaluation for irritability, insomnia, hallucinations, and mental clouding. Gait and coordination should be examined along with close observation for tremor. A detailed evaluation of peripheral nerve function including careful sensory and motor function testing is warranted. Strength testing particularly of extensor muscle groups of all extremities is of fundamental importance.

(J) Cranial nerve evaluation should also be included in the routine examination.

(K) The abdominal examination should include auscultation for bowel sounds and abnormal bruits and palpation for organomegaly, masses, and diffuse abdominal tenderness.

(L) Cardiovascular examination should evaluate possible early signs of congestive heart failure. Pulmonary status should be addressed particularly if respirator protection is contemplated.

(M) As part of the medical evaluation, the lead standard requires the following laboratory studies.

(I) Blood lead level.

(II) Hemoglobin and hematocrit determinations, red cell indices, and examination of the peripheral blood smear to evaluate red blood cell morphology.

(III) Blood urea nitrogen.

(IV) Serum creatinine.

(V) Routine urinalysis with microscopic examination.

(VI) A zinc protoporphyrin level.

(N) In addition to the above, the physician is authorized to order any further laboratory or other tests which he or she deems necessary in accordance with sound medical practice. The evaluation must also include pregnancy testing or laboratory evaluation of male fertility if requested by the employee.

(O) Additional tests which are probably not warranted on a routine basis but may be appropriate when blood lead and ZPP levels are equivocal include delta aminolevulinic acid and coproporphyrin concentrations in the urine, and dark-field illumination for detection of basophilic stippling in red blood cells.

(P) If an anemia is detected further studies including a careful examination of the peripheral smear, reticulocyte count, stool for occult blood, serum iron, total iron binding capacity, bilirubin, and, if appropriate vitamin B12 and folate may be of value in attempting to identify the cause of the anemia.

(Q) If a peripheral neuropathy is suspected, nerve conduction studies are warranted both for diagnosis and as a basis to monitor any therapy.

(R) If renal disease is questioned, a 24-hour urine collection for creatinine clearance, protein, and electrolytes may be indicated. Elevated uric acid levels may result from lead-induced renal disease and a serum uric acid level might be performed.

(S) An electrocardiogram and chest x-ray may be obtained as deemed appropriate.

(T) Sophisticated and highly specialized testing should not be done routinely and where indicated should be under the direction of a specialist.

(v) Laboratory evaluation.

(A) The blood level at present remains the single most important test to monitor lead exposure and is the test used in the medical surveillance program under the lead standard to guide employee medical removal. The ZPP has several advantages over the blood lead level. Because of its relatively recent development and the lack of extensive data concerning its interpretation, the ZPP currently remains an ancillary test.

(B) This section will discuss the blood lead level and ZPP in detail and will outline their relative advantages and disadvantages. Other blood tests currently available to evaluate lead exposure will also be reviewed.

(C) The blood lead level is a good index of current or recent lead absorption when there is no anemia present and when the worker has not taken any chelating agents. However, blood lead levels along with urinary lead levels do not necessarily indicate the total body burden of lead and are not adequate measures of past exposure. One reason for this is that lead has a high affinity for bone and up to 90 percent of the body's total lead is deposited there. A very important component of the total lead body burden is lead in soft tissue (liver, kidneys, and brain). This fraction of the lead body burden, the biologically active lead, is not entirely reflected by blood lead levels since it is a function of the dynamics of lead absorption, distribution, deposition in bone and excretion. Following discontinuation of exposure to lead, the excess body burden is only slowly mobilized from bone and other relatively stable stores and excreted. Consequently, a

high blood lead level may only represent recent heavy exposure to lead without a significant total body excess and likewise a low blood lead level does not exclude an elevated total body burden of lead.

(D) Also due to its correlation with recent exposures, the blood lead level may vary considerably over short time intervals.

(E) To minimize laboratory error and erroneous results due to contamination, blood specimens must be carefully collected after thorough cleaning of the skin with appropriate methods using lead-free containers and analyzed by a reliable laboratory. Under the standard, samples must be analyzed in laboratories which are approved by the Center for Disease Control (CDC) or which have received satisfactory grades in proficiency testing by the CDC in the previous year. Analysis is to be made using atomic absorption spectrophotometry anodic stripping; voltammetry or any method which meets the accuracy requirements set forth by the standard.

(F) The determination of lead in urine is generally considered a less reliable monitoring technique than analysis of whole blood primarily due to individual variability in urinary excretion capacity as well as the technical difficulty of obtaining accurate 24 hour urine collections. In addition, workers with renal insufficiency, whether due to lead or some other cause, may have decreased lead clearance and consequently urine lead levels may underestimate the true lead burden. Therefore, urine lead levels should not be used as a routine test.

(G) The zinc protoporphyrin test, unlike the blood lead determination, measures an adverse metabolic effect of lead and as such is a better indicator of lead toxicity than the level of blood lead itself. The level of ZPP reflects lead absorption over the preceding three to four months, and therefore is a better indicator of lead body burden. The ZPP requires more time than the blood lead to read significantly elevated levels; the return to normal after discontinuing lead exposure is also slower. Furthermore, the ZPP test is simpler, faster, and less expensive to perform and no contamination is possible. Many investigators believe it is the most reliable means of monitoring chronic lead absorption.

(H) Zinc protoporphyrin results from the inhibition of the enzyme ferrochelatase which catalyzes the insertion of an iron molecule into the protoporphyrin molecule, which then becomes heme. If iron is not inserted into the molecule then zinc, having a greater affinity for protoporphyrin, takes place in the iron, forming ZPP.

(I) An elevation in the level of circulating ZPP may occur at blood lead levels as low as 20-30 $\mu\text{g}/100\text{g}$ in some workers. Once the blood lead level has reached 40 $\mu\text{g}/100\text{g}$ there is more marked rise in the ZPP value from its normal range of less than 100 $\mu\text{g}/100\text{ml}$. Increases in blood lead levels beyond 40 $\mu\text{g}/100\text{g}$ are associated with exponential increases in ZPP.

(J) Whereas blood lead levels fluctuate over short time spans, ZPP levels remain relatively stable. ZPP is measured directly in red blood cells and is present for the cell's entire 120 day lifespan. Therefore, the ZPP level in blood reflects the average ZPP production over the previous three to four months and consequently the average lead exposure during that time interval.

(K) It is recommended that a hematocrit be determined whenever a confirmed ZPP of 50 $\mu\text{g}/100\text{ml}$ whole blood is obtained to rule out a significant underlying anemia. If the ZPP is in excess of 100 $\mu\text{g}/100\text{ml}$ and not associated with abnormal elevations in blood lead levels, the laboratory should be checked to be sure the blood leads were determined using atomic absorption spectrophotometry, anodic stripping voltammetry or any method which meets the accuracy requirements set forth by the standard, by a CDC approved laboratory which is experienced in lead level determinations. Repeat periodic blood lead studies should be obtained in all individuals with elevated ZPP levels to be certain that an associated elevated blood lead level has not been missed due to transient fluctuations in blood leads.

(L) ZPP has characteristic fluorescence spectrum with a peak at 594nm which is detectable with a hematofluorimeter. The hematofluorimeter is accurate and portable and can provide on-site, instantaneous results for workers who can be frequently tested via a finger prick.

(M) However, careful attention must be given to calibration and quality control procedures. Limited data on blood lead - ZPP correlations and the ZPP levels which are associated with the adverse health effects discussed in item (ii) are the major limitations of the test. Also it is difficult to correlate ZPP levels with environmental exposure and there is some variation of response with age and sex. Nevertheless, the ZPP promises to be an important diagnostic test for the early detection of lead toxicity and its value will increase as more data is collected regarding its relationship to other manifestations of lead poisoning.

(N) Levels of delta-aminolevulinic acid (ALA) in the urine are also used as a measure of lead exposure. Increasing concentrations of ALA are believed to result from the inhibition of the enzyme delta-aminolevulinic acid dehydrase (ALA-D). Although the test is relatively easy to perform, inexpensive, and rapid, the disadvantages include variability in results, the necessity to collect a complete 24 hour urine sample which has a specific gravity greater than 1.010, and also the fact that ALA decomposes in the presence of light.

(O) The pattern of porphyrin excretion in the urine can also be helpful in identifying lead intoxication. With lead poisoning, the urine concentrations of coproporphyrins I and II, porphobilinogen and uroporphyrin I rise. The most important increase, however, is that of coproporphyrin III; levels may exceed 5,000 $\mu\text{g}/1$ in the urine in lead poisoned individuals, but its correlation with blood lead levels and ZPP are not as good as those of ALA. Increases in urinary porphyrins are not diagnostic of lead toxicity and may be seen in porphyria, some liver diseases, and in patients with high reticulocyte counts.

(vi) Summary.

(A) The WISHA standard for inorganic lead places significant emphasis on the medical surveillance of all workers exposed to levels of inorganic lead above the action level of 30 $\mu\text{g}/\text{m}^3$ TWA. The physician has a fundamental role in this surveillance program, and in the operation of the medical removal protection program.

(B) Even with adequate worker education on the adverse health effects of lead and appropriate training in work practices, personal hygiene and other control measures, the physician has a primary responsibility for evaluating potential lead toxicity in the worker. It is only through a careful

and detailed medical and work history, a complete physical examination and appropriate laboratory testing that an accurate assessment can be made. Many of the adverse health effects of lead toxicity are either irreversible or only partially reversible and therefore early detection of disease is very important.

(C) This document outlines the medical monitoring program as defined by the occupational safety and health standard for inorganic lead. It reviews the adverse health effects of lead poisoning and describes the important elements of the history and physical examinations as they relate to these adverse effects.

(D) It is hoped that this review and discussion will give the physician a better understanding of the WISHA standard with the ultimate goal of protecting the health and well-being of the worker exposed to lead under his or her care.

(d) Appendix D. Qualitative Fit Test Protocols. This appendix specifies the only allowable qualitative fit test (QLFT) protocols permissible for compliance with WAC 296-62-07521 (7)(c)(ii).

(i) Isoamyl acetate protocol.

(A) Odor threshold screening.

(I) Three 1-liter glass jars with metal lids (e.g., Mason or Ball jars) are required.

(II) Odor-free water (e.g., distilled or spring water) at approximately 25° C shall be used for the solutions.

(III) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

(IV) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but may not be connected to the same recirculating ventilation system.

(V) The odor test solution is prepared in a second jar by placing .4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

(VI) A test blank is prepared in a third jar by adding 500 cc of odor-free water.

(VII) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically dried off and switched to avoid people thinking the same jars always has the IAA.

(VIII) The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2); "The purpose of this test is to determine if you can smell banana oil at low concentrations. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(IX) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(X) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA QLFT may not be used.

(XI) If the test subject correctly identifies the jar containing the odor test solution he or she may proceed to respirator selection and fit testing.

(B) Respirator selection.

(I) The test subject shall be allowed to select the most comfortable respirator from a large array of various sizes and manufacturers that includes at least three sizes of elastomeric half facepieces and units of at least two manufacturers.

(II) The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to assess a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This may not constitute formal training on respirator use, only a review.

(III) The test subject should understand that he or she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fit properly, will provide adequate protection.

(IV) The test subject holds each facepiece up to his or her face and eliminates those which are obviously not giving a comfortable fit. Normally, selection will begin with a half-mask and if a fit cannot be found here, the subject will be asked to go to the full facepiece respirators. (A small percentage of users will not be able to wear any half-masks.)

(V) The more comfortable facepieces are recorded; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in (VI) below. If the test subject is not familiar with using a particular respirator, he or she shall be directed to don the mask several times and to adjust the straps each time, so that he or she becomes adept at setting proper tension on the straps.

(VI) Assessment of comfort shall include reviewing the following points with the test subject:

- Chin properly placed.
- Positioning of mask on nose.
- Strap tension.
- Fit across nose bridge.
- Room for safety glasses.
- Distance from nose to chin.
- Room to talk.
- Tendency to slip.
- Cheeks filled out.
- Self-observation/in mirror.
- Adequate time for assessment.

(VII) The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g., see ANSI Z88.2-1980). Before conducting the negative or positive-pressure checks, the subject shall be told to "seat" his or her mask by rapidly moving the head side-to-side and up and down, taking a few deep breaths.

(VIII) The test subject is now ready for fit testing.

(IX) After passing the fit test, the test subjects shall be questioned again regarding the comfort of the respirator. If

it has become uncomfortable, another model of respirator shall be tried.

(X) The employee shall be given the opportunity to select a different facepiece and be retested if during the first two weeks of on-the-job wear, the chosen facepiece becomes unacceptably uncomfortable.

(C) Fit test.

(I) The fit test chamber shall be substantially similar to a clear 55 gallon drum liner suspended inverted over a two foot diameter frame, so that the top of the chamber is about six inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(II) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(III) After selecting, donning, and properly adjusting a respirator himself or herself, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hook, to prevent general room contamination.

(IV) A copy of the following test exercises and rainbow (or equally effective) passage shall be taped to the inside of the test chamber:

a) Normal breathing.

b) Deep breathing. Be certain breaths are deep and regular.

c) Turning head from side-to-side. Be certain movement is complete. Alert the test subject not to bump the respirator on the shoulders. Have the test subject inhale when his or her head is at either side.

d) Nodding head up-and-down. Be sure certain motions are complete and made about every second. Alert the test subject not to bump the respirator on the chest. Have the test subject inhale when his or her head is in the fully up position.

e) Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

f) Normal breathing.

(V) Each test subject shall wear his or her respirator for at least ten minutes before starting the fit test.

(VI) Upon entering the test chamber, the test subject shall be given a six inch by five inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject will hang the wet towel on the hook at the top of the chamber.

(VII) Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This

would be an appropriate time to talk with the test subject, to explain the fit test, the importance of his or her cooperation, the purpose of the head exercises, or to demonstrate some of the exercises.

(VIII) Each exercise described in segment (IV) above shall be performed for at least one minute.

(IX) If at any time during the test, the subject detects the banana-like odor of IAA, he or she shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(X) Upon returning to the selection room, the subject shall remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, etc. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(XI) If a person cannot be fitted with the selection of half-mask respirators, include full facepiece models in the selection process. When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having him break the face seal and take a breath before exiting the chamber.

(XII) When the test subject leaves the chamber he or she shall remove the saturated towel, returning it to the test conductor. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag. There is no significant IAA concentration buildup in the test chamber from subsequent tests.

(XIII) Persons who have successfully passed this fit test may be assigned the use of the tested respirator in atmospheres with up to ten times the PEL of airborne lead. In other words this IAA protocol may be used to assign a protection factor no higher than ten.

(ii) Saccharin solution aerosol protocol.

(A) Taste threshold screening.

(I) Threshold screening as well as fit testing employees shall use an enclosure about the head and shoulders that is approximately twelve inches in diameter by fourteen inches tall with at least the front portion clear and that allows free movement of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly of part #FT 14 and FT 15 combined is adequate.

(II) The test closure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(III) The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(IV) The test subject shall don the test enclosure. For the threshold screening test, he or she shall breathe through his or her open mouth with tongue extended.

(V) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(VI) The threshold check solution consists of 0.83 grams of sodium saccharin, USP water. It can be prepared by putting 1 cc of the test solution (see (C)(VI) below) in 100 cc of water.

(VII) To produce the aerosol the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to fully expand.

(VIII) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(IX) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(X) If the second response is negative ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(XI) The test conductor will take note of the number of squeezes required to elicit a taste response.

(XII) If the saccharin is not tasted after thirty squeezes (Step (A)(IX)) the test subject may not perform the saccharin fit test.

(XIII) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(XIV) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(XV) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(B) Respirator selection. Respirators shall be selected as described in Section (i)(B) above, except that each respirator shall be equipped with a particulate filter cartridge.

(C) Fit test.

(I) The fit test uses the same enclosure described in (i)(B)(I) and (II) above.

(II) Each test subject shall wear his or her respirator for at least ten minutes before starting the fit test.

(III) The test subject shall don the enclosure while wearing the respirator selected on Section (A) above. The respirator shall be properly adjusted and equipped with a particulate filter cartridge.

(IV) The test subject may not eat, drink (except plain water), or chew gum for fifteen minutes before the test.

(V) A second DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(VI) The first test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(VII) As before, the test subject shall breathe through the open mouth with tongue extended.

(VIII) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See (A)(X) above.)

(IX) After generation of the aerosol the test subject shall be instructed to perform the following exercises for one minute each.

a) Normal breathing.

b) Deep breathing. Be certain breaths are deep and regular.

c) Turning head from side-to-side. Be certain movement is complete. Alert the test subject not to bump the respirator on the shoulders. Have the test subject inhale when his or her head is at either side.

d) Nodding head up-and-down. Be certain motions are complete. Alert the test subject not to bump the respirator

on the chest. Have the test subject inhale when his or her head is in the fully up position.

e) Talking. Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

(X) Every thirty seconds, the aerosol concentration shall be replenished using one-half the number of squeezes as initially (C)(VIII).

(XI) The test subject shall so indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(XII) If the saccharin is detected the fit is deemed unsatisfactory and a different respirator shall be tried.

(XIII) Successful completion of the test protocol shall allow the use of the tested respirator in contaminated atmospheres up to ten times the PEL. In other words this protocol may be used to assign protection factors no higher than ten.

(iii) Irritant fume protocol.

(A) Respirator Selection. Respirators shall be selected as described in Section (i)(B) above, except that each respirator shall be equipped with high efficiency cartridges.

(B) Fit Test.

(I) The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize him or her with its characteristic odor.

(II) The test subject shall properly don the respirator selected as above, and wear it for at least ten minutes before starting the fit test.

(III) The test conductor shall review this protocol with the test subject before testing.

(IV) The test subject shall perform the conventional positive pressure and negative pressure fit checks. Failure of either check shall be cause to select an alternate respirator.

(V) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

(VI) Advise the subject that the smoke can be irritating to the eyes and instruct him or her to keep his or her eyes closed while the test is performed.

(VII) The test conductor shall direct the stream of irritant smoke from the tube toward the face seal area of the test subject. The conductor shall begin at least twelve inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(VIII) The following exercises shall be performed while the respirator seal is being challenged by the smoke. Each shall be performed for one minute.

a) Normal breathing.

b) Deep breathing. Be certain breaths are deep and regular.

c) Turning head from side-to-side. Be certain movement is complete. Alert the test subject not to bump the respirator on the shoulders. Have the test subject inhale when his or her head is at either side.

d) Nodding head up-and-down. Be certain motions are complete. Alert the test subject not to bump the respirator on the chest. Have the test subject inhale when his or her head is in the fully up position.

e) Talking—slowly and distinctly, count backwards from 100.

f) Normal breathing.

(IX) If the irritant smoke produces an involuntary reaction (cough) by the test subject, the test conductor shall stop the test. In this case the tested respirator is rejected and another respirator shall be selected.

(X) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube to determine whether he or she reacts to the smoke. Failure to evoke a response shall void the test.

(XI) Steps (B)(IV), (VII), and (VIII) of this protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the irritant smoke.

(XII) Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL. In other words this protocol may be used to assign protection factors not exceeding ten.

(e) Appendix E: Recommendations to employers concerning high-risk tasks (nonmandatory).

The department advises employers that the following tasks have a high risk for lead overexposure (this list is not complete; other tasks also can result in lead over-exposure):

- Any open flame operation involving lead-containing solder in a manner producing molten solder, including the manufacture or repair of motor vehicle radiators;
- Sanding, cutting or grinding of lead-containing solder;
- Breaking, recycling or manufacture of lead-containing batteries;
- Casting objects using lead, brass, or lead-containing alloys;
- Where lead-containing coatings or paints are present:
 - abrasive blasting
 - welding
 - cutting
 - torch burning
 - manual demolition of structures
 - manual scraping
 - manual sanding
 - heat gun applications
 - power tool cleaning
 - rivet busting

January 27, 1995
Vaughn Lein
Board Chairman

- clean-up activities where dry expendable abrasives are used
- abrasive blasting enclosure movement and removal;
- Spray-painting with lead-containing paint;
- Using lead-containing mortar;
- Lead burning;
- Operation or cleaning of shooting facilities where lead bullets are used;
- Formulation or processing of lead-containing pigments or paints;
- Cutting, burning, or melting of lead-containing materials.

The department recommends that annual blood lead testing be offered to all employees potentially overexposed to lead, including those performing the tasks listed above, regardless of air lead levels. Research has shown that air lead levels often do not accurately predict workers' lead overexposure. The blood lead testing will provide the most information if performed during a period of peak lead exposure.

Employers should be aware that the United States Public Health Service has set a goal of eliminating occupational exposures which result in whole blood lead levels of 25 µg/dl or greater. This goal should guide whether employees' blood lead levels indicate lead overexposure.

If blood lead levels are elevated in an employee performing a task associated with lead overexposure, employers should assess the maintenance and effectiveness of exposure controls, hygiene facilities, respiratory protection program, the employee's work practices and personal hygiene, and the employee's respirator use, if any. If a deficiency exists in any of these areas, the employer should correct the problem.

Reviser's note: The spelling errors in 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.

WSR 95-04-080
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed January 31, 1995, 11:27 a.m.]

Date of Adoption: January 27, 1995.

Purpose: WAC 308-12-025, to specify the dates that the examination is offered and clarify application administrative procedures; and WAC 308-12-083, to rescind the requirement for firms and architects to list designated architects in all forms of public correspondence, publications and advertisements.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-12-083 Identification of registrant; and amending WAC 308-12-025 Application for examination.

Statutory Authority for Adoption: RCW 18.08.340.

Pursuant to notice filed as WSR 94-22-023 (WAC 308-12-083) and WSR 94-22-024 (WAC 308-12-025) on October 25, 1994.

Effective Date of Rule: Thirty-one days after filing.

AMENDATORY SECTION (Amending Order PM 857, filed 8/10/89, effective 9/10/89)

WAC 308-12-025 Application for examination. (1) The application for examination must be submitted on forms approved by the board, accompanied by academic and/or practical experience verification to document eligibility under the provisions of RCW 18.08.350. Applications for admission to ~~((an))~~ a scheduled examination ~~((if scheduled,))~~ must be submitted or postmarked not later than the following dates:

<u>Examination Months/Divisions</u>	<u>Cut-off Dates</u>
June - All Divisions ((October - A, B(Written), D/F, E, G, H, I	April 1 September 10))
December - B(Graphic), C ((February - A, B(Written), D/F, E, G, H, I	October 1 December 10))

(2) On subsequent attempts examinees may retake any divisions offered not passed on previous attempts. Applications for examination or reexamination must be accompanied by the application fee for examination or reexamination fee and the appropriate examination fee for each division as established by the director and published in chapter 308-12 WAC, architect fees. For reexamination applicants, examination fees are listed by separate division.

(3) For the June and December examinations, notices of acceptance (examination admission letters) will be mailed to eligible applicants approximately six weeks prior to the examination, along with detailed information as to times, place, and scheduled examination divisions.

~~(4) ((For the February and October computer administered examinations, instruction packets will be mailed to eligible applicants approximately two weeks prior to the testing agency admission deadline.~~

~~(5))~~ The application fee~~((s))~~ for examination and the reexamination fee are administrative charges and will not be refunded. The examination fees ~~((costs of each test))~~ for each division may be refunded if notice of cancellation is received by the department prior to ordering of examinations from the national ~~((testing service))~~ test supplier.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-12-083 Identification of registrant.

WSR 95-04-083
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed January 31, 1995, 1:40 p.m.]

Date of Adoption: January 9, 1995.

PERMANENT

Purpose: To establish rules for the practice of veterinary medication clerks.

Citation of Existing Rules Affected by this Order: Emergency rules WAC 246-937-010, 246-937-020, 246-937-030, 246-937-040, 246-937-050, 246-937-060, 246-937-080, 246-937-090, 246-937-100 and 246-937-990.

Statutory Authority for Adoption: Chapter 18.92 RCW.

Pursuant to notice filed as WSR 94-19-095 on September 21, 1994.

Changes Other than Editing from Proposed to Adopted Version: Included an exemption for animal health technicians that are working in research facilities and not treating owner animals. At the public hearing on the rules, a question arose regarding the applicability of the rules to animal health technicians employed by research facilities and other similarly situated technicians. Although evident from the rules as originally proposed, the board clarified the issue by adding WAC 246-937-110.

Effective Date of Rule: Thirty-one days after filing.

January 9, 1994 [1995]

William T. Testerman, DVM
Chair

Veterinary Board of Governors

Chapter 246-937 WAC CERTIFIED VETERINARY MEDICATION CLERKS

NEW SECTION

WAC 246-937-010 Definitions. (1) "Certified veterinary medication clerk" means any person who has met the requirements for certification as established by the veterinary board of governors (board) and WAC 246-937-040.

(2) "Direct supervision" means the supervising licensed veterinarian is on the premises and is quickly and easily available.

(3) "Indirect supervision" means the supervising licensed veterinarian is not on the premises, but has given either written or oral instructions regarding policies and procedures for the handling of legend drugs.

(4) "On-the-job training program" means a program following the guidelines approved by the board.

(5) "Supervising veterinarian" means the licensed veterinarian who is responsible for closely supervising the certified veterinary medication clerk while he or she is performing daily duties.

(6) "Sponsoring veterinarian" means the licensed veterinarian who is responsible for the training and reviewing the work of a certified veterinary medication clerk. An appropriate degree of supervision is involved.

NEW SECTION

WAC 246-937-020 Responsibility for supervision. Licensed veterinarians are responsible and accountable for the ordering, inventory, labeling, counting, packaging and delivery of legend drugs utilized in their practice. In accordance with chapter 18.92 RCW, certain nondiscretionary pharmaceutical tasks may be delegated by a veterinarian to a qualified nonveterinarian. The delegating veterinarian is responsible for the supervision of pharmaceutical tasks performed by veterinary medication clerks and registered animal technicians. Records shall be maintained that account

for the receipt and disposition of all legend drugs. A certified veterinary medication clerk may be supervised by a licensed veterinarian other than his or her sponsor subject to the sponsoring veterinarian's approval. The sponsoring veterinarian shall be primarily responsible for the performance and acts of his or her certified veterinary medication clerk.

NEW SECTION

WAC 246-937-030 Tasks and prohibited functions.

(1) A certified veterinary medication clerk may perform the following tasks only under the direct supervision of a licensed veterinarian: Counting, labeling, and packaging of legend drugs. A licensed veterinarian must personally inspect all packaged medication orders to ensure the accuracy of the order prior to delivery to the client. The licensed veterinarian will document the medication inspection by placing his/her initials in the patient's record.

(2) A certified veterinary medication clerk may perform the following tasks under the indirect supervision of a licensed veterinarian: Ordering, stocking, inventorying, and the delivery of legend drugs. The identity of the client shall be confirmed before the delivery of legend drugs.

(3) The following functions shall not be delegated by a licensed veterinarian to a certified veterinary medication clerk:

(a) Consultation with a client regarding the medication order and/or any information involving professional clinical judgment.

(b) Dispensing any medication. The medication must be recorded in the patient's record by the authorizing veterinarian.

(c) Extemporaneous compounding of a medication order.

(d) Interpretation of data in a patient record.

(e) Final inspection of a completed medication order as described in WAC 246-937-030(1).

(f) Any duties required by law to be performed by a licensed veterinarian.

(g) Any ordering, accountability, packaging, or delivery of controlled substances as defined in or under chapter 69.50 RCW.

NEW SECTION

WAC 246-937-040 Training and education. (1) The training of veterinary medication clerks shall be obtained by completion of an on-the-job training program following guidelines approved by the board.

(2) The minimum educational requirement shall be high school graduation or equivalency.

NEW SECTION

WAC 246-937-050 Applications. Applications for registration as a certified veterinary medication clerk shall be on forms prepared by the secretary of the department of health and submitted to the department. The application, in addition to the required fee, shall be accompanied by evidence of completion of an on-the-job training program and completion of HIV/AIDS education as specified in WAC 246-937-080.

Said application shall be signed by the applicant and sworn before some person authorized to administer oaths. Additionally, the application will be signed by the sponsoring veterinarian attesting that the applicant is qualified to perform the responsibilities of a certified veterinary medication clerk and is familiar with the procedures and policies of the practice. Certification is valid only for employment at the veterinary practice identified in the application and/or pursuant to WAC 246-937-020.

NEW SECTION

WAC 246-937-060 Transfer of registration. In the event that a certified veterinary medication clerk who is currently registered, desires to be sponsored by another licensed veterinarian, application for transfer of registration to a new sponsoring veterinarian shall be made on forms provided by the board and be subject to the board's approval.

NEW SECTION

WAC 246-937-070 Termination of sponsorship. Upon termination of the working relationship, between the certified veterinary medication clerk and the sponsoring veterinarian, the sponsoring veterinarian shall notify the board.

NEW SECTION

WAC 246-937-080 HIV/AIDS prevention and information education requirements. (1) Definitions:

(a) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(b) "Office on AIDS" means that section within the department of health or any successor department with jurisdiction over public health matters as defined in chapter 70.24 RCW.

(2) Application for certification. Persons applying for certification shall submit, prior to becoming certified and in addition to the other requirements for certification, evidence to show compliance with the education requirements of subsection (3) of this section.

(3) AIDS education.

(a) Acceptable education. The board shall accept education that is consistent with the topical outline available from the office on AIDS. Alternatives to formal course work may be in the form of video tapes, professional journal articles, periodicals, or audio tapes, that contain current or updated information. Such education shall include the subjects of prevention, transmission and treatment of AIDS, and may include the following: Etiology and epidemiology; testing and counseling; infection control guidelines; clinical manifestations and treatment; legal and ethical issues including confidentiality; and psychosocial issues to include special population considerations.

(b) Documentation. The registrant shall:

(i) Certify, on forms provided, that the minimum education has been completed;

(ii) Keep records for two years documenting attendance or description of the learning;

(iii) Be prepared to validate, through submission of these records, that attendance or learning has taken place.

NEW SECTION

WAC 246-937-090 Grounds for denial, suspension, or revocation of registration. The board may suspend, revoke or deny the issuance or renewal of certification of any applicant and/or certified veterinary medication clerk if the applicant and/or certified veterinary medication clerk:

(1) Has employed fraud or misrepresentation in applying for or obtaining the certification;

(2) Has within ten years prior to the date of application been found guilty by any court of competent jurisdiction of violation of laws relating to the practice of veterinary medicine, surgery and dentistry, including, but not limited to:

(a) State or federal laws relating to the regulation of drugs;

(b) Chronic inebriety;

(c) Cruelty to animals;

(3) Has violated or attempted to violate any provision of chapter 18.92 RCW or any rule or regulation adopted pursuant to that chapter;

(4) Has assisted, abetted or conspired with another person to violate chapter 18.92 RCW, or any rule or regulation adopted pursuant to that chapter;

(5) Has performed any animal health care service not authorized by WAC 246-937-030.

NEW SECTION

WAC 246-937-100 Renewal of certification. (1) A certified veterinary medication clerk's certification shall be renewed annually on the certified veterinary medication clerk's birth anniversary date. A certified veterinary medication clerk shall apply for renewal by submitting to the department:

(a) The renewal fee specified in WAC 246-937-990;

(b) The name and address of the sponsoring veterinarian and the veterinary practice.

(2) Failure to renew annually shall invalidate the certification.

(3) A certified veterinary medication clerk may reinstate a certification that has been expired less than one year by submitting to the department:

(a) A renewal application provided by the department;

(b) The current renewal fee for the year in which the certification was expired, and the late renewal fee as specified in WAC 246-937-990;

(c) The name and address of the sponsoring veterinarian and the veterinary practice.

NEW SECTION

WAC 246-937-110 Exemption. All employees, including but not limited to, animal health technicians, employed by research facilities or other testing or educational businesses or institutions, shall be exempt from the provisions of this chapter provided, that said employees are under the direct supervision of licensed veterinarians and further, that animals being treated, tested or utilized are not client-owned animals.

WSR 95-04-084
PERMANENT RULES
DEPARTMENT OF HEALTH
 (Board of Optometry)
 [Filed January 31, 1995, 1:43 p.m.]

Date of Adoption: January 20, 1995.

Purpose: Uniformity in the adjudicative process.

Statutory Authority for Adoption: RCW 18.54.070, 18.130.050(1).

Pursuant to notice filed as WSR 94-24-017 on November 29, 1994.

Effective Date of Rule: Thirty-one days after filing.
 January 31, 1995
 Garard M. Gustafson, O.D.
 Board of Optometry, Chair

NEW SECTION

WAC 246-851-560 Adjudicative proceedings. The board of optometry adopts the model procedural rules for adjudicative proceedings of the department of health contained in chapter 246-11 WAC.

WSR 95-04-102
PERMANENT RULES
DEPARTMENT OF ECOLOGY
 [Filed February 1, 1995, 9:54 a.m.]

Date of Adoption: January 31, 1995.

Purpose: To privatize the underground storage tank contractor certification program.

Citation of Existing Rules Affected by this Order: Amending chapter 173-360 WAC.

Statutory Authority for Adoption: Chapter 90.76 RCW.
 Pursuant to notice filed as WSR 94-19-084 on September 21, 1994.

Changes Other than Editing from Proposed to Adopted Version: (1) The Department of Ecology has revised the proposed rule amendment to state that registered professional engineers who are competent to perform site assessments are not required to be certified by the International Fire Code Institute examination for site assessment work. This change to the proposed rule is in response to the concern of a few registered professional engineers who believe that they already meet the minimum site assessments standards tested in the International Fire Code Institute exam. This change returns registered professional engineers to the same status they had before ecology proposed an amendment to chapter 173-360 WAC.

To implement this change, the definition of "certified UST supervisor" (WAC 173-360-120) has been revised to read as follows: "Certified UST supervisor" means a person certified by the International Fire Code Institute or another nationally recognized organization, as approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

WAC 173-360-600 has had the following sentence added to the first paragraph: Washington registered professional engineers who are competent, by means of examina-

tion, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

Engineers will still need to be certified, as before the rule amendment, to do other types of underground storage tank services.

(2) The Department of Ecology will shift tank permit issuance to the Department of Licensing. WAC 173-360-130 has been modified to show that tank permits will be issued by ecology or its delegated agency.

WAC 173-360-130 Tank permits and delivery of regulated substances. (1) Requirement for a permit. After July 1, 1991, no underground storage tank system, as defined in this chapter, shall be operated without a valid permit from the department or its delegated agency.

(3) Ecology made a correction to a typographical error in WAC 173-360-190.

WAC 173-360-190 Annual tank fees. (Same as proposed language, but the words "shall be paid" will be added back in.)

(4) WAC 173-360-345 (6)(i)(v) has been revised to include the 95% probability of leak detection and the less than 5% probability of false alarm. This addition makes the subsection consistent with WAC 173-360-345 (6)(i)(i). The statistical inventory analysis reporting requirements have been changed from "inconclusive" to "fail" in order to clarify the criteria by which tank owners or operators are required to have tanks tightness tested.

Subsection (6)(i)(v) will read as follows: (v) If the results of a SIR analysis show a leak rate of 0.2 gallon per hour or greater in any single month, from any portion of the tank that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05, it shall be determined to be a "fail". If an owner or operator receives a "fail" for two consecutive months, the owner or operator shall have a tank tightness test conducted in accordance with (d) of this subsection within fifteen days of receiving the second "fail" from the SIR vendor.

(5) The definition of "belowground release" was clarified. It was revised as follows: WAC 173-360-120 Definitions. "Belowground Release" means any release to the subsurface of the land and/or to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

Effective Date of Rule: Thirty-one days after filing.
 January 31, 1995
 Mary Riveland

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-100 Purpose and authority. (1) The purpose of this chapter is to address the serious threat posed to human health and the environment by leaking underground storage systems containing petroleum and other regulated substances.

(2) The department of ecology is directed by chapter 90.76 RCW to establish an underground storage tank program designed, operated and enforced in a manner that,

at a minimum, meets the requirements for delegation of the Federal Underground Storage Tank Program of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901, et seq.). The legislative intent is that state-wide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the objectives outlined in the federal regulations. Because certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks, local requirements more stringent than the state-wide requirements may apply in these environmentally sensitive areas.

(Note: All codes, standards, rules, or regulations cited in this chapter are available for inspection at the Department of Ecology, ((Mailstop PV 11)) P.O. Box 47655, Olympia, WA 98504-((8711)) 7655.)

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-110 Applicability, exemptions, and deferrals. (1) The requirements of this chapter apply to all owners and operators of an underground storage tank (UST) system as defined in WAC 173-360-120 except as otherwise provided in subsections (2) and (3) of this section. It is the responsibility of owners and operators to ensure that any UST ((system service providers and)) supervisors they employ are properly ((licensed)) certified in accordance with WAC 173-360-600 through ((173-360-690)) 173-360-630.

(2) Exemptions. The following UST systems, including any piping connected thereto, are exempt from the requirements of this chapter:

(a) Any UST system holding hazardous wastes subject to Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.

(c) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(d) Any UST system whose capacity is one hundred ten gallons or less.

(e) Any UST system that ((contains)) has never contained more than a de minimis concentration of regulated substances as defined in WAC 173-360-120.

(f) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(g) Farm or residential UST systems of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes ((i.e., not for resale)) (see definition of "farm" and "residential");

(h) UST systems used for storing heating oil for consumptive use on the premises where stored; except that such systems which store in excess of one thousand one hundred gallons are subject to the release reporting requirements of WAC 173-360-372;

(i) Septic tanks;

(j) Any pipeline facility (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.); or

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.); or

(iii) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in (j) (i) or (ii) of this subsection;

(k) Surface impoundments, pits, ponds, or lagoons;

(l) Storm water or wastewater collection systems;

(m) Flow-through process tanks;

(n) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(o) Storage tanks situated in an underground area (such as a basement, cellar, vault, mineworking drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(3) Deferrals. The following UST systems are subject only to the requirements of WAC 173-360-130, 173-360-140, 173-360-160, 173-360-170, 173-360-190, 173-360-200, 173-360-372 ((and)), 173-360-385 and 173-360-390. Any new deferred UST systems shall also be subject to the performance standards of WAC 173-360-300:

(a) Wastewater treatment tank systems not regulated under section 307(b) or 402 of the Clean Water Act;

(b) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(c) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50 Appendix A;

(d) Airport hydrant fuel distribution systems;

(e) UST systems with field-constructed tanks.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-120 Definitions. For the purposes of this chapter, the following definitions shall apply:

"Abandoned" means left unused indefinitely, without being substantially emptied or permanently altered structurally to prevent reuse.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and/or to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer

operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

~~("Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems by passing an examination and obtaining a license for supervision of cathodic protection installation and testing in compliance with WAC 173-360-600 through 173-360-690. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure to soil potential, and component electrical isolation measurements of buried metal piping and tank systems.)~~

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Certified UST supervisor" means a person certified by the International Fire Code Institute or another nationally recognized organization, as approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

"Closure" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "decommissioning."

"Compatible" means the ability of two or more substances or materials to maintain their respective physical and chemical properties upon contact with one another such that the stored substance will not pass through the wall or lining of the tank and connected piping for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.

"Corrosion expert" means a person who possesses a thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, and is qualified to engage in the practice of corrosion control on

buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Decommissioning" means to take an underground storage tank out of operation, either temporarily or permanently, in accordance with WAC 173-360-380 or 173-360-385. The term is synonymous with "closure."

"Deferral" means a category of UST systems which are subject to certain, but not all, of the requirements of this chapter as specified in WAC 173-360-110(3).

"Delegated agency" means ~~((the))~~ a state or local government agency which has been delegated responsibility by the department for administering any portion of an UST program (approved in accordance with WAC 173-360-500).

"De minimis concentration" means either less than one inch of regulated substance, or less than a reportable quantity, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"Department" means the department of ecology.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Director" means the director of the department of ecology.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Emergency power generator" means an engine that uses fuel to produce auxiliary electrical or mechanical energy for use in emergencies.

"Emergency power generator tank" means a tank that stores fuel solely for use by an emergency power generator.

"Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing UST system" means an UST system used to contain an accumulation of regulated substances or for which installation had commenced on or before December 22, 1988. Installation is considered to have commenced if: The owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

Either a continuous on-site physical construction or installation program had begun; or

The owner or operator had entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"False alarm" means indicating that an UST system is leaking when in fact it is tight.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank

must be located on the farm property and used for farm purposes. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations. It does not include laboratories where animals are raised, land used to grow timber, pesticide aviation operations, retail stores or garden centers where nursery products are marketed but not grown, cemeteries, golf courses, or other facilities dedicated primarily to recreation or aesthetics, or other non-agricultural activities.

"Field-constructed tank" means an underground storage tank that is constructed in the field rather than factory built because of its large size.

"Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: A 10-K report submitted to the SEC; an annual report of tangible net worth submitted to Dun and Bradstreet; or annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

"Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorships, engaged in performing tank services.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Ground water" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Immiscible" means largely incapable of blending or mixing.

"Installation" means the activity of placing an underground storage tank system or any part thereof in the ground and preparing it to be placed in service.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: By the United States Environmental Protection Agency (EPA) or a state to require corrective action or to recover the costs of corrective action; by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or by any person to enforce the terms of a financial assurance mechanism.

~~("Licensed" means a firm or a person which has been issued a license by the department under this chapter.)~~

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing a regulated substance.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New UST system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988. (See also "existing tank system.")

"Noncommercial purposes" with respect to motor fuel means not for resale.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

Note: This definition is intended to assist in the understanding of WAC 173-360-400 through 173-360-499 and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under WAC 173-360-380 through 173-360-398.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means: In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use. In the event that the owner of an UST system cannot be physically

located, the owner shall be the person who owns the property where the UST system is located, except any lien holder and any agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to a release or threatened release of a regulated substance from the UST system.

"Owner or operator," means, for the purposes of WAC 173-360-400 through 173-360-499, when the owner or operator are separate parties, the party that is responsible for obtaining or has obtained financial assurances.

"Party" means a person or group concerned or having or taking part in any affair, matter, transaction, or proceeding.

"Permanently closed" means: (1) In the case of an UST system taken out of operation before December 22, 1988, the UST system was substantially emptied of regulated substances or permanently altered structurally to prevent reuse; (2) in the case of an UST system taken out of operation after December 21, 1988, and before the effective date of this chapter, the UST system was closed in accordance with 40 CFR 280; and (3) in the case of an UST system taken out of operation on or after the effective date of this chapter, the UST system was closed in accordance with WAC 173-360-385.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms

listed in WAC 173-360-413 through 173-360-436, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

"Regulated substance" means:

Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Federal Solid Waste Disposal Act, or a mixture of such hazardous waste and any other regulated substances); and

Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils. The term "regulated substance" does not include propane or asphalt or any other petroleum product which is not liquid at standard conditions of temperature and pressure.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST system to ground water, surface water or soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of a regulated substance from the UST system.

"Residential tank" is a tank located on property used primarily for dwelling purposes; such properties do not include dormitories, convents, mobile parks, apartments, hotels and similar facilities, unless the tank is used by the owner solely for his or her own personal use, rather than to maintain the overall facility.

"Retrofitting" means the repair or upgrading of an existing underground storage tank system including, but not limited to, installation of splash, spill and overflow protection, installing or replacing monitoring systems, adding cathodic protective systems, tank repair, replacement of piping, valves, fill pipes or vents and installing tank liners.

"Septic tank" is a water-tight covered receptacle designed and used to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site assessment" means investigating an UST site for the presence of a release at the time of closure or change-in-service.

"Site check" means investigating an UST site for the presence of a release when evidence indicates that a release may have occurred.

"Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary

to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Structural defect" means a hole or crack in the tank portion of the UST system, which has either caused a release from the system or is being repaired to prevent a release from the system.

"Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Supervisor" means a (~~licensed~~) person certified by the International Fire Code Institute, or other nationally recognized organization, operating independently or employed by a contractor, who is responsible for directing and overseeing the performance of tank services at a facility.

"Surface impoundment" is a natural topographic depression, excavation, or diked area formed primarily of earthen materials (although it may be lined with synthetic materials) that is not an injection well.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Tank permit" means a tank tag, as required by RCW 90.76.020(4).

"Tank services" include underground storage tank installation, decommissioning, retrofitting, and testing.

~~("Tank services provider" is a person or firm licensed to perform tank services on regulated underground storage tanks in Washington.)~~

"Termination" under WAC 173-360-476 and 173-360-480 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Testing" means applying a method to determine the integrity of an underground storage tank.

"Tightness testing" means a procedure for testing the ability of a tank system to prevent an inadvertent release of any stored substance into the environment or, ~~(in the case of an underground storage tank system,)~~ intrusion of ground water into a tank system.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This term does not include any of the exempt UST systems specified in WAC 173-360-110(2), or any piping connected thereto.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of regulated substances.

"UST site" or "site" means the location at which underground storage tanks are in place or will be placed. An UST site encompasses all of the property within a contiguous ownership that is associated with the use of the tanks.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-130 Tank permits and delivery of regulated substances. (1) Requirement for a permit. After July 1, 1991, no underground storage tank system, as defined in this chapter, shall be operated without a valid permit from the department or its delegated agency. However, possession of a valid permit does not preclude enforcement against the owner or operator of the underground storage tank under this or other laws.

(2) Application for a permit. Permits for UST systems shall be obtained as follows:

(a) To apply for a permit for ~~((an))~~ a new UST system ~~((which is to be newly installed,))~~ the owner or operator shall complete ~~((a notice of intent to install an UST system, as specified in WAC 173-360-200(1), and submit it to the department at least thirty days prior to installation of the system. An initial permit, valid for ninety days, will be provided by the department so the UST system can be tested and operation of the system can begin. If necessary, and if circumstances warrant, an additional permit valid for ninety days will be provided by the department. Upon receipt of the following items, a permit valid until the following June 30, if the UST system remains in compliance, will be provided by the department for the newly installed UST system:~~

~~((i) A properly completed))~~ an UST notification form, as specified in WAC 173-360-200(2)(c) and submit it with payment of the applicable annual fee, as specified in WAC 173-360-190, to the delegated agency. If no delegated agency exists, the application shall be submitted to the department.

~~((ii) A properly completed installation checklist, as specified in WAC 173-360-200(3).))~~

(b) To apply for a permit for an existing UST system not previously reported to the department, the owner or operator shall complete a Washington state underground storage tank notification form, as specified in WAC 173-360-200(2), and submit it to the ~~((department))~~ delegated agency with a payment of the applicable annual fee, as specified in WAC 173-360-190, including any fees which should have been paid for earlier fiscal years if the UST system had been properly registered, but which were not paid. If no delegated agency exists, the application shall be made to the department.

(c) To apply for a permit for a tank which has been temporarily out of service, the owner or operator shall notify the department of the change in status and follow the provisions of WAC 173-360-380.

(d) Each year the department will request owners and operators of reported UST systems to certify compliance with the requirements of this chapter. UST systems which are in the department's notification data base when the department requests this certification will receive permits by July 1 of each year if:

(i) Adequate documentation of compliance, as specified by the department, is submitted to the ~~((department))~~ delegated agency, or, if no delegated agency exists, to the department; and

(ii) ~~((The documentation of compliance is submitted by the deadline for submittal established by the department in its request))~~ Applicable fees have been paid.

(3) Eligibility for a permit. Tanks which are temporarily closed under WAC 173-360-380 are not eligible to receive permits. Underground storage tank systems are eligible for a permit if the following conditions are met:

(a) The owner or operator is in compliance with all requirements of this chapter, including the financial responsibility requirements, and chapter 173-340 WAC, if applicable, or the owner or operator is in conformance with a compliance schedule negotiated with and agreed to by the department;

(b) The storage tank system is not known by the owner or operator to be leaking; and

(c) All annual state tank fees and local environmentally sensitive area tank fees have been remitted.

(4) Delivery of regulated substances. Regulated substances shall not be delivered to any underground storage tank requiring a permit under this section unless a valid permit is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located or unless otherwise authorized in writing by the department. This subsection applies only to suppliers who directly transfer regulated substances into underground storage tank systems.

(5) Waste oil tanks. Tanks used to collect and store used or waste oil regulated under this chapter shall not be pumped by a used or waste oil collector unless a valid permit is displayed on such tank itself or a device connected thereto or, where appropriate, in the office or kiosk of the facility where the tank is located. This prohibition does not apply to a one-time removal of substances from tanks which will not be used again for the storage of used or waste oil once the substances are removed; such tanks must be properly closed or undergo the procedures for a change-in-

service in accordance with WAC 173-360-385. This subsection applies only to used or waste oil collectors who directly transfer regulated substances from underground storage tanks.

(6) Delivery prohibited to leaking tanks. ~~((Except as specified in subsection (10) of this section;))~~ Suppliers shall not deliver regulated substances to any underground storage tank which is known by the supplier to be leaking, or to have leaked and not been properly repaired, regardless of the permit status of the tank.

(7) Delivery of regulated substances. If a confirmed release occurs from a permitted tank, in addition to meeting the reporting requirements of WAC 173-360-372, within twenty-four hours of having knowledge of the release the owner or operator shall lock the fill pipe and remove from display the permit for the tank from which the release has occurred. At no time can the owner or operator receive regulated substances, ~~((except as specified in subsection (10) of this section;))~~ until all the applicable requirements of this chapter and chapter 173-340 WAC have been met. If the department determines that reasonable progress is not being made in meeting these requirements it may request that the owner or operator surrender the permit, as specified in subsection (8) of this section, for the tank from which the release occurred.

(8) Permit revocation. The department may request the surrender of a permit for any tank which does not remain in compliance with the requirements of this chapter, including financial responsibility requirements and payment of fees, or for any violation of the chapter by an underground storage tank owner or operator, including refusal of access to property under WAC 173-360-140. Upon request of a representative of the department or delegated agency or upon receipt of a letter from the department or delegated agency requesting surrender of the permit, the owner or operator must return the permit to the department or delegated agency within seven days.

(9) When a tank is closed, any active permit must be returned to ecology within thirty days of the completion of the closure procedures.

(10) Appeals. The revocation of a permit may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

~~((11) Display of permits for tightness testing. A permit which has been removed from display in accordance with subsection (7) of this section may be redisplayed for the purpose of receiving regulated substances in order to conduct a volumetric tightness test on the storage system. If a leak is determined to exist in the uppermost level of the system, the regulated substance shall be immediately removed to a point below the source of the leak. If a leak is determined to exist below the uppermost level of the system, all regulated substances shall be immediately removed from the system. The requirements of subsection (7) of this section and the requirement for reporting of confirmed releases specified in WAC 173-360-372 shall be followed, regardless of the location of the source of the release in the storage tank system;))~~

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-190 Annual tank fees. An annual state tank fee of seventy-five dollars per tank (~~for the fiscal year ending June 30, 1992, and each fiscal year thereafter~~) shall be paid (~~within thirty days of the billing date and no later than the December 31st of each fiscal year~~) by every person who owns an underground storage tank which:

- (1) Is located in this state;
- (2) Was required to be reported to the department under the Federal Underground Storage Tank Program of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901, et seq.);
- (3) Is not permanently closed according to the requirements of this chapter (~~on June 30 of the fiscal year preceding the fiscal year for which the fee is assessed~~) as of the billing date; and
- (4) If required, for which corrective action has not been completed in accordance with this chapter.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-200 Notification requirements. (1) Notice of intent to install a new UST system. Except in the circumstances defined in subsection (5) of this section, any owner who intends to install a new UST system shall submit a notice of such intent to the department or delegated agency at least thirty days and not more than ninety days prior to installing the UST system. Such notice shall meet the following requirements:

- (a) The notice of intent shall be provided on the appropriate Washington state form, which is available from the department;
- (b) Each UST system to be installed which is regulated under this chapter shall be reported;
- (c) Owners may provide notice for more than one UST system using a single form, but UST systems to be installed at separate sites shall be reported on separate forms; and
- (d) The completed form shall include all of the information required on the form.

(2) Notification of new UST systems in use. Within thirty days of bringing any newly installed UST system regulated under this chapter into use, the owner shall submit notice of such UST system to the department. This notice shall meet the following requirements:

- (a) The notice shall be provided on the appropriate Washington state underground storage tank notification form, which is available from the department;
- (b) Each tank regulated under this chapter shall be reported;
- (c) Owners may provide notice for more than one tank using a single notification form, but owners who own tanks located at more than one site shall file a separate notification form for each site;
- (d) Notification required under this section shall include all of the information required on the form for each tank for which notice must be given; and
- (e) Notification for tanks installed after December 22, 1988, shall also certify compliance with the following requirements:

- (i) Corrosion protection of steel tanks and piping under WAC 173-360-305 (1) and (2);
- (ii) Financial responsibility under WAC 173-360-400 through 173-360-499; and
- (iii) Release detection under WAC 173-360-335 and 173-360-340.

(3) Certification of installation (checklist). All owners and operators of new UST systems shall ensure that (~~a licensed installation supervisor certifies that~~) the methods used to install the tanks and piping comply with the requirements in WAC 173-360-305(4). Such certification shall be accomplished by completing (~~an installation checklist~~) a notification form, which is available from the department, as specified in WAC 173-360-305(5). The form must be signed by the certified UST supervisor.

(4) Notification of existing UST systems. Owners of any existing UST system regulated under this chapter which has not previously been reported to the department shall provide notification regarding such UST system immediately, following the requirements of subsection (2) (a) through (e) of this section.

Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the department in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by Washington state unless notice was given pursuant to section 103(c) of CERCLA.

(5) Emergency replacement of UST systems.

(a) An exception to the thirty-day notice requirement for new installations in subsection (1) of this section is allowed when an UST system is being replaced on an emergency basis due to a release from the system being replaced. An emergency shall be regarded as a newly discovered release from an UST system which is:

- (i) In operation at the time of the release;
- (ii) Located at an operating facility; and
- (iii) Necessary for the normal operation of the facility.

(b) Under the circumstances described in (a) of this subsection, the notice of intent to install an UST system may be provided after the installation of the new system but no more than seven days after the installation is completed. The information which must be included in the notice of intent form is the same as in subsection (1) of this section. A site assessment meeting the requirements of WAC 173-360-390 shall be completed prior to installing a tank in the excavation pit of a tank being replaced and prior to installing new piping in the piping trench of piping being replaced.

(6) Changes to UST systems. Any changes in the information initially reported in the notification form submitted under subsection (2), (4) or (5) of this section, including temporary closure of an UST system that was initially reported as being in use, shall be reported to the department or delegated agency by submitting a new notification form within thirty days after such changes occur.

(7) Beginning October 24, 1988, any person who sells a new tank which is intended to be used as an underground storage tank, or an existing UST system or property including an existing UST system which is intended to be used as an UST system, shall notify the purchaser of such tank or UST system of the owner's notification obligations under this section.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-210 Reporting and recordkeeping requirements. Owners and operators of UST systems shall cooperate fully with inspections, monitoring, and testing conducted by the department or delegated agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to RCW 90.76.060.

(1) Reporting. Owners and operators shall submit the information specified in (a) through (e) of this subsection to the department or delegated agency:

(a) Notification for all UST systems (WAC 173-360-200), which includes certification of installation for new UST systems (WAC 173-360-305(5));

(b) Reports of all suspected releases (WAC 173-360-360), confirmed releases (WAC 173-360-372), and spills and overfills (WAC 173-360-375);

(c) Reports required for corrective actions under chapter 173-340 WAC;

(d) A notification before permanent closure or change-in-service (WAC 173-360-385); and

(e) The appropriate forms, certificates of compliance, and evidence of financial responsibility (WAC 173-360-446).

(f) Checklists required for tank service activities, site checks, and site assessments shall be ~~((submitted by tank service providers or persons registered to perform site checks and site assessments, as applicable (WAC 173-360-630(12))))~~ signed by certified UST supervisors and submitted to the department by the owner or operator.

(2) Recordkeeping. Owners and operators shall maintain the following information:

(a) Documentation of operation of corrosion protection equipment (WAC 173-360-320);

(b) Documentation of UST system repairs (WAC 173-360-325(7));

(c) Recent compliance with release detection requirements (WAC 173-360-355);

(d) Results of the site assessment conducted at permanent closure (WAC 173-360-398);

(e) Corrective action records in accordance with chapter 173-340 WAC; and

(f) Evidence of financial assurance mechanisms used to demonstrate financial responsibility (WAC 173-360-450).

(3) Availability and maintenance of records. Owners and operators shall keep the records required either:

(a) At the UST site and immediately available for inspection by the department or delegated agency; or

(b) At a readily available alternative site and be provided for inspection to the department or delegated agency upon request.

(c) In the case of permanent closure records required under WAC 173-360-398, owners and operators are also provided with the additional alternative of mailing closure records to the department or delegated agency if they cannot be kept at the site or an alternative site as indicated above.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-305 Performance standards for new UST systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the

UST system is used to store regulated substances, all owners and operators of new UST systems shall meet the following requirements:

(1) Tanks. Each tank shall be properly designed and constructed with material that is compatible with and impermeable to the stored substance, and any portion underground that routinely contains regulated substances shall be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified under (a) through (d) below:

(a) The tank is constructed of fiberglass-reinforced plastic; or

Note: The following industry codes may be used to comply with subsection (1)(a) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(b) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) The tank is equipped with a factory-installed or field-installed cathodic protection system designed by a corrosion expert;

(iii) Cathodic protection systems are designed and installed to include provisions for testing to allow a determination of current operating status as required in WAC 173-360-320(2) and to facilitate testing by the department or delegated agency in accordance with WAC 173-360-325 (5) and (6); and

(iv) Cathodic protection systems are operated and maintained in accordance with WAC 173-360-320 or according to guidelines established by the department or delegated agency; or

Note: The following codes and standards may be used to comply with subsection (1)(b) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP- 02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(c) The tank is constructed of a steel-fiberglass-reinforced- plastic composite; or

Note: The following industry codes may be used to comply with subsection (1)(c) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(d) The tank construction and corrosion protection are determined by the department or delegated agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subsection (1)(a) through (c) of this section.

(2) Piping. The piping that routinely contains regulated substances and is in contact with the ground shall be properly designed and constructed with material that is compatible with and impermeable to the stored substance, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(a) The piping is constructed of fiberglass-reinforced plastic; or

Note: The following codes and standards may be used to comply with subsection (2)(a) of this section:

(i) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(ii) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(iii) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(iv) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(b) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Cathodic protection systems are designed and installed to include provisions for testing to allow a determination of current operating status as required in WAC 173-360-320(2) and to facilitate testing by the department or delegated agency in accordance with WAC 173-360-325 (5) and (6); and

(iv) Cathodic protection systems are operated and maintained in accordance with WAC 173-360-320 or guidelines established by the department or delegated agency; or

Note: The following codes and standards may be used to comply with subsection (2)(b) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP- 01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(c) The piping construction and corrosion protection are determined by the department or delegated agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subsection (2)(a) and (b) of this section.

(d) Metal flexible underground hose connectors shall be cathodically protected or covered with sleeves or jackets that will provide corrosion protection over the operating life of the UST system.

(3) Spill and overfill prevention equipment.

(a) Except as provided in subsection (3)(b) of this section, to prevent spilling and overfilling associated with transfer of regulated substances to the UST system, owners and operators shall use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full;

(B) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow thirty minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to regulated substances due to overfilling.

Note: Overflow prevention equipment that will automatically shut off or restrict flow into the tank should not be used where a pressurized fuel transfer system may be employed since an overflow may occur when the flow is suddenly shut off or restricted.

(b) Owners and operators are not required to use the spill and overfill prevention equipment specified in subsection (3)(a) of this section if:

(i) Alternative equipment is used that is determined by the department or delegated agency to be no less protective of human health and the environment than the equipment specified in subsection (3)(a)(i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than twenty-five gallons at one time.

(4) Installation. All tanks and piping shall be properly installed by ~~((a licensed tank services provider))~~ an UST supervisor who is certified in tank system installation in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of subsection (4) of this section:

(a) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(b) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(c) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National

Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

(5) Certification of installation. All owners and operators shall ensure ~~((that a licensed tank services provider certifies))~~ compliance with subsection (4) of this section by submitting a properly completed ~~((installation checklist))~~ notification form to the ~~((department on a form provided by the department as required in WAC 173-360-630(12)))~~ delegated agency, or, if no delegated agency exists, to the department. The form must be signed by a certified UST supervisor.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-310 Upgrading requirements for existing UST systems. (1) Alternatives allowed. Not later than December 22, 1998, all existing UST systems shall comply with one of the following requirements:

(a) New UST system performance standards under WAC 173-360-305;

(b) The upgrading requirements in subsections (2) through (4) of this section; or

(c) Closure requirements under WAC 173-360-380 through 173-360-398, including applicable requirements for corrective action under WAC 173-360-399.

(2) Tank upgrading requirements. Steel tanks shall be upgraded ~~((by a licensed tank services provider))~~ by a certified UST supervisor to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(a) Interior lining. A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of WAC 173-360-325; and

(ii) Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications, unless cathodic protection is also installed within ten years of lining the tank, as specified in WAC 173-360-310 (2)(c).

(b) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of WAC 173-360-305 (1)(b)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed or internally lined for less than ten years and is monitored monthly for releases in accordance with WAC 173-360-345 (6)(e) through ~~((6)(f)))~~ (i); or

(iii) The tank has been installed or internally lined for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of WAC 173-360-345 (6)(d). The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between three

and six months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the department or delegated agency to prevent releases in a manner that is no less protective of human health and the environment than subsection (2)(b)(i) through (iii) of this section.

(c) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of WAC 173-360-325; and

(ii) The cathodic protection system is installed within ten years of the tank being lined and meets the requirements of WAC 173-360-305 (1)(b)(ii), (iii), and (iv).

Note: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP- 02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems";

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(E) Steel Tank Institute Publication STI F894-91 "Specifications for External Corrosion Protection FRP Composite Underground Steel Storage Tanks."

(3) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground shall be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and shall meet the requirements of WAC 173-360-305 (2)(b)(ii), (iii), and (iv).

Note: The codes and standards listed in the note following WAC 173-360-305 (2)(b) may be used to comply with this requirement.

(4) Spill and overflow prevention equipment. To prevent spilling and overflowing associated with transfer of regulated substances to the UST system, all existing UST systems shall comply with new UST system spill and overflow prevention equipment requirements specified in WAC 173-360-305(3), except that an UST system that is filled by transfers of no more than twenty-five gallons at a time is not required to use spill and overflow prevention equipment.

(5) ~~((Tank services providers))~~ Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by ~~((submitting))~~ signing the appropriate checklist(s) ~~((to))~~ provided by the department ~~((in accordance with WAC 173-360-630(12)))~~.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-320 Operation and maintenance of corrosion protection. All owners and operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(1) All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(2) All UST systems equipped with cathodic protection systems shall be inspected for proper operation by ~~((a licensed supervisor of cathodic protection installation and testing))~~ an UST supervisor who is certified in cathodic protection in accordance with the following requirements:

(a) Frequency. All cathodic protection systems shall be tested when they are installed, and again between one and six months after installation, and at least every three years thereafter or according to another reasonable time frame established by the department or delegated agency; and

(b) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section shall be in accordance with a code of practice developed by a nationally recognized association.

Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with subsection (2)(b) of this section.

(3) UST systems with impressed current cathodic protection systems shall also be inspected every 60 days to ensure the equipment is running properly.

(4) For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(a) The results of the last three inspections required in subsection (3) of this section; and

(b) The results of testing from the last two inspections required in subsection (2) of this section.

(5) ~~((Tank services providers))~~ Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by ~~((submitting))~~ signing the appropriate checklist(s) ~~((to))~~ provided by the department ~~((in accordance with WAC 173-360-630(12)))~~.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-325 Repairs of UST systems. Repairs to UST systems shall be performed by a certified UST supervisor. Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. Any UST system which is repaired to correct a structural defect must also be upgraded at the time of the repair to meet the requirements specified

in WAC 173-360-310 (1)(a) or (b), and must employ a method of release detection for the tank as specified in WAC 183-360-335, 173-360-340 or 173-360-345, as applicable, and a method of release detection for the piping as specified in WAC 173-360-350. The repairs shall meet the following requirements:

(1) Repairs to UST systems shall be properly conducted ~~((by a licensed tank services provider))~~ by an UST supervisor certified in tank installation and retrofitting in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

Note: The following codes and standards may be used to comply with subsection (1) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(2) Repairs to fiberglass-reinforced plastic tanks shall be made in accordance with the manufacturer's specifications or a code of practice developed by a nationally recognized association or an independent testing laboratory.

(3) Metal pipe sections and fittings that have released regulated substances as a result of corrosion or other damage shall be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(4) Repaired tanks and piping shall be tightness tested in accordance with WAC 173-360-345 (6)(d) and 173-360-350 (3)(b) within thirty days following the date of the completion of the repair except as provided in subsection (4) (a) through (c), of this section:

(a) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(b) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in WAC 173-360-345 (6)(e) through ~~((6)(i)))~~ (j); or

(c) Another test method is used that is determined by the department or delegated agency to be no less protective of human health and the environment than those listed above.

(5) Except as specified in subsection (6) of this section, within six months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with WAC 173-360-320 (2) and (3) to ensure that it is operating properly.

(6) Any repair to a cathodic protection system shall be tested in accordance with WAC 173-360-320 (2) and (3), at the time of the repair and again between one and six months following the repair.

(7) UST system owners and operators shall maintain records of each repair for the remaining operating life of the UST site that demonstrate compliance with the requirements of this section.

(8) ~~((Tank services providers))~~ Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the

requirements of this section by ~~((submitting))~~ signing the appropriate checklist(s) ~~((to))~~ provided by the department ~~((in accordance with WAC 173-360-630(12)))~~.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-330 Release detection compliance schedule. Owners and operators of all UST systems shall comply with the release detection requirements of WAC 173-360-330 through 173-360-355 by December 22 of the year listed in the following table:

TABLE: SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year System was installed	Year when release detection is required (by December 22 of the year indicated)						
	1989	1990	1991	1992	1993	1994	1995
Before 1965 or date unknown.	RD	P	E				
1965-69..		P/RD		E			
1970-74..		P	RD		E		
1975-79..		P		RD		E	
1980-88..		P			RD		E

New tanks (after December 22, 1988,) immediately upon installation, except that emergency generator tanks installed between 1989 and 1990 must have release detection by 1996 and emergency generator tanks installed after December 29, 1990, must have release detection immediately upon installation.

P- Except for pressurized piping associated with emergency power generator tanks, ~~((must begin))~~ release detection required by December 22, ~~((1992))~~ 1990.

RD- Except for emergency power generator tanks, must begin release detection for tanks and suction piping in accordance with WAC 173-360-335 (2)(a), 173-360-350 (2)(b), and 173-360-340.

E- Must begin release detection for emergency power generator tanks and piping in accordance with WAC 173-360-335 (2)(a) and 173-360-350 (2)(a) or (b).

((Note: Dates preceding the effective date of this rule correspond to federal requirements under 40 CFR 280 and are included here to reflect conformity to the federal rule.))

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-335 Release detection for petroleum UST systems. (1) Owners and operators of new and existing petroleum UST systems shall provide a method, or combination of methods, of release detection that:

(a) Can detect a release from any portion of the tank and the connected underground piping that routinely contains a regulated substance;

(b) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(c) Meets the performance requirements in WAC 173-360-345 or 173-360-350.

(2) Owners and operators of petroleum UST systems shall monitor tanks and piping for releases as follows:

(a) Tanks. Tanks shall be monitored at least every thirty days for releases using one of the methods listed in WAC 173-360-345 (6)(e) through ~~((6)(i)))~~ (i) except as provided in WAC 173-360-345 (2) through (5).

(b) Piping. Underground piping that routinely contains regulated substances shall be monitored for releases as required under WAC 173-360-350.

(3) Owners and operators of any existing UST system that cannot apply a method of release detection that complies with the applicable requirements of WAC 173-360-330 through 173-360-355 shall complete the closure procedures in WAC 173-360-380 through 173-360-398 by the date on which release detection is required for that UST system under WAC 173-360-330.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-340 Release detection for hazardous substance UST systems. Owners and operators of hazardous substance UST systems shall provide release detection that meets the following requirements:

(1) Release detection at existing hazardous substance UST systems shall meet the requirements for petroleum UST systems in WAC 173-360-335. By December 22, 1998, all existing hazardous substance UST systems shall meet the release detection requirements for new systems in subsection (2) of this section.

(2) Release detection at new hazardous substance UST systems shall employ some method of release containment such as secondary containment systems, double-walled tanks, or external liners (e.g., in a pit or excavation). Such methods shall meet the following requirements:

(a) Secondary containment systems shall be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent precipitation and ground water from entering the external liner and prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every thirty days.

Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

(b) Double-walled tanks shall be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(c) External liners (including vaults) shall be designed, constructed, and installed to:

(i) Contain one hundred ten percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(d) Underground piping shall be equipped with secondary containment that satisfies the requirements of subsection

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(2)(a) of this section (e.g., trench liners, jacketing ((~~of~~) double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with WAC 173-360-350 (3)(a).

(e) Other methods of release detection may be used if owners and operators:

(i) Demonstrate to the department or delegated agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in WAC 173-360-345 (6)(b) through ~~((6)(i))~~ (i) can detect a release of petroleum;

(ii) Provide information to the department or delegated agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

(iii) Obtain approval from the department or delegated agency to use the alternate release detection method before the installation and operation of the new UST system.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-345 Methods of release detection for tanks. (1) Any method of release detection for tanks shall meet the performance requirements of this section. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in subsection (6)(b), (c), (d), and (e) of this section with a probability of detection of 0.95 and a probability of false alarm of 0.05. (That is, under test conditions, a method will correctly detect at least ninety-five of one hundred actual releases, and will falsely indicate a release no more than five times in one hundred tests of nonleaking systems.)

Note: The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not in any way meant to imply that actual leak rates less than these limits are allowable. No release is acceptable, and any indication that a release may have occurred should be investigated in accordance with WAC 173-360-360. Manufacturers and ~~((tank services providers))~~ certified UST supervisors installing or utilizing leak detection equipment and/or methods ~~((are encouraged to))~~ must follow EPA's standard test procedures for evaluating leak detection methods to demonstrate compliance with the requirements of subsection (1) of this section.

(2) UST systems that meet the new tank or upgraded tank performance standards in WAC 173-360-305 or 173-360-310, and the inventory control requirements in subsection (6) (a) or (b) of this section, may use tank tightness testing (conducted in accordance with subsection (6)(d) of this section) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under WAC 173-360-310(2), whichever is later.

(3) UST systems that do not meet the new tank or upgraded tank performance standards in WAC 173-360-305 or 173-360-310 may use inventory controls (conducted in accordance with subsection (6) (a) or (b) of this section) and annual tank tightness testing (conducted in accordance with subsection (6)(d) of this section) until December 22, 1998, when the tank shall be upgraded under WAC 173-360-310 or permanently closed under WAC 173-360-385.

(4) Tanks with capacity of one thousand gallons or less may use weekly tank gauging conducted in accordance with subsection (6)(b) of this section.

(5) Tanks that store fuel solely for use by emergency power generators may use the following methods of release detection:

(a) Emergency power generator tanks with nominal capacity of one thousand gallons or less may use monthly tank gauging conducted in accordance with subsection (6)(c) of this section.

(b) Emergency power generator tanks with nominal capacity of ~~((five hundred fifty one))~~ one thousand one to two thousand gallons may use monthly tank gauging conducted in accordance with subsection (6)(c) of this section, in conjunction with annual tank tightness testing conducted in accordance with subsection (6)(d) of this section.

(c) Except as provided in subsection (2) of this section, emergency power generator tanks with nominal capacity greater than two thousand gallons may use weekly tank gauging conducted in accordance with subsection (6)(b) of this section, in conjunction with annual tank tightness testing conducted in accordance with subsection (6)(d) of this section.

(6) Each method of release detection for tanks used to meet the requirements of WAC 173-360-335 shall be conducted in accordance with the following:

(a) Daily inventory control. Daily inventory control (or another test of equivalent performance) shall be conducted in a manner capable of detecting a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch;

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(v) Dispensing of regulated substances is metered and recorded within the local standards for meter calibration or an accuracy of at least six cubic inches for every five gallons of regulated substances which is withdrawn; and

(vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.

(b) Weekly tank gauging. Only tanks of one thousand gallons or less nominal capacity may use weekly tank gauging as the sole method of release detection. Tanks of one thousand one to two thousand gallons may use the method in place of daily inventory control in (a) of this subsection, in conjunction with tank tightness testing, as specified in (d) of this subsection. Tanks of greater than two

thousand gallons nominal capacity may use this method to meet the requirements of WAC 173-360-330 through 173-360-355 only if such tanks store fuel solely for use by emergency power generators. Weekly tank gauging shall meet the following requirements:

(i) Tank liquid level measurements are taken weekly at the beginning and ending of a period of at least thirty-six hours during which no liquid is added to or removed from the tank;

(ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period (that is, four measurements shall be taken, two consecutive measurements at the beginning and two consecutive measurements at the end of the period during which no liquid has been added or removed from the tank);

(iii) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch;

(iv) If the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table, a leak may be occurring and the requirements of WAC 173-360-360 through 173-360-375 shall be followed:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard ((average of four tests))
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons
2,001 gallons or more*	.75% of capacity	.5% of capacity

(*Emergency Power Generator Tanks only.)

(c) Monthly tank gauging. Only tanks that store fuel solely for use by emergency power generators with a nominal capacity of two thousand gallons or less may use monthly tank gauging as a method of release detection. Such tanks with nominal capacity of (~~five hundred fifty-one~~) one thousand one to two thousand gallons (~~shall also have an annual tank tightness test~~) may use manual tank gauging in conjunction with tank tightness testing conducted in accordance with ((d) of) this ((subsection)) section. Monthly tank gauging shall meet the following requirements:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded whenever inputs or withdrawals occur;

(ii) Tank liquid level measurements reconciled with inventory volume measurements are taken monthly at the beginning and ending of a period of at least twenty-one days, except when extreme snowfall or other travel obstructions occurring in remote locations and preventing access are specifically documented by the owner and operator;

(iii) Level measurements are based on an average of two consecutive readings at both the beginning and ending of the period (that is, four measurements shall be taken, two consecutive measurements at the beginning and two consecutive measurements at the end of the period);

(iv) The equipment used is capable of measuring the level of regulated substance in the tank over the full range of the tank's height to the nearest one-eighth of an inch or a corresponding amount of gallons;

(v) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month;

(vi) If the variation between beginning and ending measurements exceeds the monthly standards in the following table, a leak may be occurring and the requirements of WAC 173-360-360 through 173-360-375 shall be followed:

Nominal Tank Capacity	Monthly Standard ((average of four tests))
550 gallons or less	5 gallons
551-1,000 gallons	7 gallons
1,001-2000 gallons	13 gallons

(d) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) shall be capable of detecting at least a 0.1 gallon per hour leak rate from any portion of the tank (~~that routinely contains a regulated substance~~) up to the ninety-five percent full level or up to the product level limited by an overfill prevention device while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table. Tank tightness testing shall be conducted and the results reported in accordance with the instructions for that method.

(e) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control shall meet the following requirements:

(i) The automatic product level monitor test can detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance; (~~and~~)

(ii) Daily inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of (a) of this subsection; and

(iii) Automatic tank gauging equipment must be operated in the test mode at least once per year, and the results kept on file.

(f) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:

(i) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation (~~area~~) zone;

(ii) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(iii) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty days;

(iv) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(v) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(vi) In the UST excavation zone, the site is evaluated for its appropriateness for installation of vapor monitors to ensure compliance with the requirements of this subsection and to establish the number and positioning of monitoring

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wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance; and

(vii) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

Note: Monitoring wells must also comply with the minimum standards for construction, maintenance, and abandonment of resource protection wells specified in chapter 173-160 WAC. UST system owners and operators are encouraged to retain the services of a qualified professional who is experienced in determining the design and placement of vapor monitoring wells surrounding an UST system.

(g) Ground water monitoring. Testing or monitoring for liquids on or in the ground water shall meet the following requirements:

(i) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(ii) Ground water is never more than twenty feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(iii) The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(iv) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(v) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(vi) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(vii) Within and immediately below the UST system excavation zone, the site is evaluated for its appropriateness for installation of ground water monitors to ensure compliance with the requirements in (g)(i) through (v) of this subsection and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains a regulated substance; and

(viii) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

Note: Monitoring wells must also comply with the minimum standards for construction, maintenance, and abandonment of wells specified in chapter 173-160 WAC. UST system owners and operators are encouraged to retain the services of a qualified professional who is experienced in determining the design and placement of ground water monitoring wells surrounding an UST system.

(h) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains a regulated substance and also meets one of the following requirements:

(i) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in

any portion of the tank that routinely contains a regulated substance;

Note: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(ii) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(A) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(B) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(C) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(D) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days;

(E) The site is evaluated for its appropriateness for installation of interstitial monitors to ensure that the secondary barrier is always above the ground water and not in a twenty-five-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(F) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(iii) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(i) Statistical inventory reconciliation. Statistical inventory reconciliation (SIR) shall meet the following requirements:

(i) Statistical inventory reconciliation must detect at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05; and

(ii) Daily inventory control must be performed in accordance with the requirements of (a) of this subsection; and

(iii) Owners and operators must submit daily inventory records from at least the previous thirty days on a monthly basis to a SIR vendor whose statistical analysis method has been demonstrated to meet the performance standard of (i) of this subsection; and

(iv) The SIR vendor must perform an independent SIR analysis on the daily inventory records submitted and report the results to the owner or operator within fifteen days of receiving them; and

(v) If the results of a SIR analysis show a 0.2 gallon per hour or greater leak rate in any single month, from any portion of the tank that routinely contains a regulated substance with a probability of detection of at least 0.95 and a probability of false alarm of no more than 0.05, it shall be

determined to be a "fail." If an owner or operator receives a "fail" for two consecutive months, the owner or operator shall have a tank tightness test conducted in accordance with (d) of this subsection within fifteen days of receiving the second "fail" from the SIR vendor.

(i) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(i) It can detect a 0.2 gallon per hour leak rate or a release of one hundred fifty gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(ii) The department or delegated agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in (d) through (i) of this subsection. In comparing methods, the department or delegated agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department or delegated agency on its use to ensure the protection of human health and the environment.

~~((7) Tank services providers who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).))~~

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-350 Methods of release detection for piping. (1) Any method of release detection for piping shall meet the performance requirements of this section, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, release detection methods (~~used after December 22, 1990~~), except for those methods permanently installed prior to ((that date)) December 22, 1990, shall be capable of detecting the leak rate or quantity specified for that method in subsection (3)(a) and (b) of this section with a probability of detection of 0.95 and a probability of false alarm of 0.05. (That is, under test conditions, a method will correctly detect at least ninety-five of one hundred actual releases, and will falsely indicate a release no more than five times in one hundred tests of nonleaking systems.)

Note: The establishment of leak indication thresholds is a means of setting a standard for the equipment or method used. It is not in any way meant to imply that actual leak rates less than these limits are allowable. No release is acceptable, and any indication that a release may have occurred should be investigated in accordance with WAC 173-360-360.

(2) Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the following requirements:

(a) Pressurized piping. Underground piping that conveys regulated substances under pressure shall:

(i) Be equipped with an automatic line leak detector conducted in accordance with subsection (3)(a) of this section; and

(ii) Have an annual line tightness test conducted by a ~~((licensed tank services provider))~~ certified UST supervisor

in accordance with subsection (3)(b) of this section or have monthly monitoring conducted in accordance with subsection (3)(c) of this section.

(b) Suction piping. Underground piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every three years beginning when release detection is required and in accordance with subsection (3)(b) of this section, or use a monthly monitoring method conducted in accordance with subsection (3)(c) of this section. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with subsection (2)(b)(ii) through (iv) of this section to be readily determined.

(3) Each method of release detection for piping used to meet the requirements of WAC 173-360-335 shall be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at ten pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure, or if it can detect a leak rate equal to multiplying 0.1 gallon per hour by the square root of the value obtained by dividing the line pressure during testing by 1.5 times the operating pressure. Line tightness testing shall be conducted and results interpreted and reported in accordance with the department's guidance document for tightness testing, or as otherwise directed by the department or delegated agency.

(c) Applicable tank methods. Any of the methods in WAC 173-360-345 (6)(f) through ~~((#))~~ (j) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) ~~((Tank services providers))~~ Certified UST supervisors who perform any of the tank services described in this section shall certify that such services comply with the requirements of this section by ~~((submitting))~~ signing the appropriate checklist(s) ~~((to))~~ provided by the department ~~((in accordance with WAC 173-360-630(12))).~~

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-370 Release investigation and confirmation steps. Unless corrective action is initiated in accordance with WAC 173-360-399, owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under WAC 173-360-360 within seven days of discovery, or another reasonable time period specified by the department or delegated agency, using either the following steps or another procedure approved by the department or delegated agency:

(1) System test. Owners and operators shall have ~~((a licensed tank services provider conduct))~~ tests conducted (according to the requirements for tightness testing in WAC 173-360-345 (6)(d) and 173-360-350 (3)(b)) that determine whether a leak exists in any portions of the UST system that routinely contains a regulated substance, including the tank and the attached delivery piping, and in any connected tanks and piping that may or may not be in use. All such portions shall be tested either separately or together or in combinations thereof.

(a) Owners and operators shall have ~~((a licensed tank services provider repair, replace, upgrade, or close the UST system,))~~ their system repaired, replaced, upgraded or closed by a certified UST supervisor and shall begin corrective action in accordance with WAC 173-360-399 if the test results for the system, tank, or delivery piping indicate that a leak exists.

(b) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(c) Owners and operators shall conduct a site check in accordance with subsection (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators shall have a ~~((person registered by the department to perform site assessments))~~ certified UST supervisor, as specified in WAC 173-360-610, sample for the presence of a release. Such samples shall be taken, analyzed, and results reported to the department or delegated agency in accordance with the department's guidance document for site checks and site assessments, or as otherwise directed by the department or delegated agency, where contamination is most likely to be present at the UST site.

(a) If the site check results indicate that a release has occurred, owners and operators shall report to the department or delegated agency in accordance with WAC 173-360-372 and begin corrective action in accordance with WAC 173-360-399.

(b) If the site check results ~~((do not))~~ indicate that a release has occurred, further investigation is not required under this chapter, but the release must be characterized and remediated in accordance with chapter 173-340 WAC.

(3) ~~((Tank services providers))~~ Certified UST supervisors who perform any of the tank services described in this section, ~~((and persons who perform site checks,))~~ shall certify that such services ~~((or site checks, as applicable,))~~

comply with the requirements of this section by ~~((submitting))~~ signing the appropriate checklist(s) ~~((to))~~ provided by the department ~~((in accordance with WAC 173-360-630(12))~~.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-380 Temporary closure of UST systems. (1) When an UST system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with WAC 173-360-320, and any release detection in accordance with WAC 173-360-330 through 173-360-355. WAC 173-360-360 through 173-360-375 and 173-360-399 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(2) When an UST system is temporarily closed for three months or more, owners and operators shall also comply with the following requirements:

(a) Leave vent lines open and functioning; and

(b) Cap and secure all other lines, pumps, entryways, and ancillary equipment.

(3) Any UST system temporarily closed for three months or more shall be tightness tested by a ~~((licensed tank services provider))~~ certified UST supervisor in accordance with WAC 173-360-345 (6)(d) and 173-360-350 (3)(b) prior to being put back into service unless the system is subject to and in compliance with the release detection requirements of WAC 173-360-330.

(4) When an UST system is temporarily closed for more than twelve months, owners and operators shall have a ~~((licensed tank services provider))~~ certified UST supervisor permanently close the UST system if it does not either meet the performance standards in WAC 173-360-305 for new UST systems or the upgrading requirements in WAC 173-360-310 (2) and (3). Such UST systems shall be permanently closed in accordance with WAC 173-360-385 through 173-360-398 at the end of the twelve-month period unless the department or delegated agency provides an extension before expiration of the twelve-month temporary closure period. Owners and operators shall have a site assessment completed in accordance with WAC 173-360-390 before such an extension is applied for.

(5) ~~((Tank services providers who perform any of the tank services described in this section, and persons who perform site assessments, shall certify that such services and site assessments, as applicable, comply with the requirements of this chapter by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12).))~~

~~((6))~~ Any active permits for those systems being temporarily closed shall be returned to the department within thirty days of completion of the temporary closure activities.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-385 Permanent closure and change-in-service. Permanent closure shall be completed by a certified UST supervisor.

(1) At least thirty days before beginning either permanent closure or a change-in-service under subsections (2) and (3) of this section, or within another reasonable time period determined by the department or delegated agency, owners and operators shall notify the department or delegated agency in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The site assessment required under WAC 173-360-390 shall be performed after notifying the department or delegated agency but before completion of the permanent closure or a change-in-service.

(2) Permanent closure shall be completed by a ~~((licensed tank services provider))~~ certified UST supervisor within sixty days after expiration of the thirty-day notice, unless a written request for an extension, explaining the reason for the request, is approved by the department or delegated agency. Any UST system not permanently closed by a compliance date that the UST system is subject to, shall be in compliance with the requirement associated with the compliance date, including the payment of fees. Any UST system not in compliance with any such requirement will be subject to the penalties described in WAC 173-360-170.

(3) To permanently close an UST system, the ~~((tank services provider))~~ certified UST supervisor shall empty and clean the tank by removing all liquids and accumulated sludges.

Note: Any sludges removed must also be designated and disposed of in accordance with chapter 173-303 WAC.

(4) All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material. All piping shall either be capped (except any vent lines) or removed from the ground.

(5) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall have a ~~((licensed tank services provider))~~ certified UST supervisor empty and clean the tank by removing all liquid and accumulated sludge, and shall have a site assessment conducted in accordance with WAC 173-360-390.

Note: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard...Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

~~((5)) Tank services providers who perform any of the tank services described in this section, and persons who perform site assessments, shall certify that such services or site assessments, as applicable, comply with the requirements of this section by submitting the appropriate checklist(s) to the department in accordance with WAC 173-360-630(12);))~~

(6) Owners and operators are responsible for submitting checklists for any of the tank services described in this section. Any active tank permits for the systems being closed shall be returned to the department within thirty days of closure activities.

AMENDATORY SECTION (Amending WSR 90-24-017, filed 11/28/90, effective 12/29/90)

WAC 173-360-600 Purpose of Part VI. After the effective date of these regulations, individuals who perform tank services must be certified by the International Fire Code Institute, or other nationally recognized association that the department has determined provides an examination and credentials whereby individuals can demonstrate their knowledge of various regulatory codes, standards and practices pertaining to underground storage tanks, or have passed another qualifying exam approved by the department. Washington registered professional engineers who are competent, by means of examination, experience, or education, to perform site assessments, are not required to be certified for site assessment work.

The purpose of WAC 173-360-600 through ~~((173-360-690))~~ 173-360-630 is to ~~((regulate firms and persons that service and inspect underground storage tank systems in order to assure that underground storage tank systems are being serviced in a manner which will protect human health and the environment))~~ set forth standards for certification and responsibilities for certified UST supervisors.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-610 Scope. ~~((1))~~ WAC 173-360-610 through ~~((173-360-690))~~ 173-360-630 establishes requirements for:

~~((a)) Registration and licensing of firms that~~ Certification of UST supervisors who perform services on underground storage tank systems;

~~((b)) Examination, qualification, and licensing of persons who supervise the performance of underground storage tank system service;~~

~~((c)) Examination and licensing of persons conducting underground storage tank system inspections for determination of compliance with the state underground storage tank regulations; and~~

~~((d)) Administration and enforcement of these rules by the department.~~

(2) Except as specified in WAC 173-360-655, 173-360-610 through 173-360-690 applies)) these rules apply to any person ((or firm)) who performs the installation, retrofitting, decommissioning, testing, site check, site assessment, ((and inspection for compliance with state regulations, by any person;)) of underground storage tanks regulated by chapter 90.76 RCW.

~~((3)) A site assessment or site check shall only be performed by a hydrogeologist, geologist, licensed profes-~~

sional engineer, professional soil scientist, certified ground water professional or other person whose experience, education, and/or training meet criteria established by the department. A person performing site assessments and site checks must register with the department on a form provided by the department. No license is required for this activity.

(4) The)) These requirements ((of this licensing program)) do not apply to persons performing the activities specified in subsection (2) of this section for tanks which are exempt ((or deferred)) from the UST rule, as provided in WAC 173-360-110 (1) and (2).

NEW SECTION

WAC 173-360-620 Types of certifications. The department requires certifications in the following areas:

- (1) Tank installation and retrofitting;
- (2) Tank decommissioning;
- (3) Tightness testing;
- (4) Cathodic protection installation and testing; and
- (5) Site assessment associated with tank closure.

AMENDATORY SECTION (Amending Order 91-26, filed 10/29/91, effective 11/29/91)

WAC 173-360-630 ((Registration and licensing of tank service providers.)) Responsibilities of certified UST supervisors. (((1) Only firms that are licensed by the department shall perform tank services in the state of Washington.

(2) Application for a license shall be accomplished by:

(a) Completing an application form provided by the department, including submission of the following information to the department:

(i) The name, address, and telephone number of the firm;

(ii) The nature of the tank services to be offered;

(iii) A summary of the recent project history of the firm (the two year period immediately preceding the application) including the number of projects completed by the firm in each tank services category and identification of any other industry or government licenses held by the firm related to specific tank services;

(iv) Identifying the names of employees or principals responsible for on-site project supervision; and

(b) Including a signed statement that certifies that:

"I (name), am the chief executive officer of (company) and do hereby certify that I will comply with the applicable laws, and rules, and procedures pertaining to the regulation of underground storage tanks in the state of Washington and will direct the employees and principals of this company to perform the tank services rendered by this company in a manner that is consistent with these requirements."

(3) Only tank services providers who have obtained a license from the department may install, retrofit, test, decommission, or inspect for the purpose of determining compliance with state regulations, an underground storage tank system in the state of Washington.

(4) An application for a tank services provider license must be submitted to the department and must include:

(a) The information required by subsection (2)(a) and (b) of this section;

(b) A list of employees licensed by the department to supervise tank services, and identification of the specific tank services for which they are licensed; the date the employee received a license from the department; and the license number of the employee.

(5) The department will review the license application for completeness. If the application is incomplete, the department shall notify the applicant of the deficiencies. The department shall deny, in writing, a license to an applicant who has not satisfied the license application requirements. The department shall issue a license to the applicant after approving the application.

(6) The department shall issue licenses for a period not to exceed two years.

(7) Renewals:

(a) License renewals must be applied for in the same manner as is required for an initial license, pursuant to subsection (4) of this section.

(b) The complete license renewal application shall be submitted to the department no later than thirty days prior to the expiration date of the current license.

(8) The department may suspend or revoke a license if the tank services provider:

(a) Fraudulently obtains or attempts to obtain a license;

(b) Fails at any time to satisfy the requirements for a license or comply with any rules or procedures adopted by the department;

(c) Fails to meet any applicable state or federal standard relating to the service performed under the license; or

(d) Fails to employ and designate a licensed supervisor for each underground storage tank project which is directly overseen by the tank services provider.

(9) A tank services provider who has a license suspended or revoked may reapply for a license after demonstrating to the department that the cause of the revocation has been resolved.

(10) In the event a tank services provider no longer employs a supervisor licensed to perform a particular tank service, the tank services provider must stop providing this service on any regulated underground storage tank system. Work involving this service shall not start until a supervisor licensed for the particular service is again employed by the provider and written notice of the hiring of a licensed supervisor is received by the department.

((11)) (1) Any ((tank services provider licensed by the department under the provisions of this chapter)) certified UST supervisor shall((:

(a)) comply with WAC 173-360-600 through ((173-360-690;

(b) Maintain a current address on file with the department; and

(e)) 173-360-630, and comply with all federal and state regulations and procedures when performing tank services.

((12)) (2)(a) A checklist must be completed for each regulated activity performed. The ((service provider)) certified UST supervisor shall ((submit)) sign the checklist ((to)) provided by the department within thirty days following the completion of an underground storage tank installation, retrofit, decommissioning, or test((; using the appropriate form provided by the department. The checklist must be signed by the owner or operator, by an executive officer of

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the service provider firm, or his or her designee, and by the licensed tank services supervisor).

(b) ~~((A checklist must be completed for each site check or site assessment performed. The person performing the site check or site assessment shall submit the checklist to the department within thirty days following the completion of the site check or site assessment. A checklist for a site check or site assessment must be signed by the person registered to perform site assessments (rather than a licensed supervisor) and an executive officer of the firm or his or her designee, and the tank owner or operator.~~

(e) ~~The firm shall submit~~) An as-built site plan, showing the location of completed tank system installations or retrofitted tank system, including adjacent structures, if present shall be submitted for installations and retrofits. The as-built site plan shall be submitted on the appropriate form provided by the department, or shall be an 8 1/2 inch by 11 inch single page drawing.

~~((13) A licensed tank services provider, or person qualified to conduct a site assessment or site check))~~ (3) A certified UST supervisor shall report to the department and the tank owner or operator the existence of any confirmed release from an underground tank system that poses a threat to human health and the environment. This report shall be provided to the tank owner or operator immediately, and to the department within seventy-two hours of the discovery of the condition. If the owner or operator are not immediately available, the report should be made immediately to the department.

(4) A certified UST supervisor shall be present on site at all times tank service activities are being carried out at a tank installation, retrofit, testing, decommissioning project unless otherwise determined by the department. These tasks may include but may not be limited to:

(a) Preparing the excavation immediately prior to receiving backfill and placement of the tank into the excavation;

(b) Any movement of the tank vessel, including but not limited to transferring the vessel from the vehicle used to transport it to the project site;

(c) Setting the tank and its associated piping into the excavation, including placing any anchoring devices and strapping, if any, and backfilling to the level of the tank;

(d) Placing and connecting the piping system to the tank vessel;

(e) Installing cathodic protection systems;

(f) All pressure testing of the underground storage tank system, including associated piping, performed during the installation or retrofitting;

(g) Completing the backfill and filling of the installation;

(h) Evaluating preparation for and installing any tank lining system;

(i) Tank purging or inerting;

(j) Removal of the tank, removal of sludge from the tank, and cleaning of the tank;

(k) Removing flammable vapors from tanks;

(l) Excavating around tanks for removal;

(m) Field installation and operational testing of cathodic protection systems;

(n) Inspecting of existing tank and piping systems for corrosion;

(o) Tank or line tightness testing;

(p) Inspection of existing tanks for structural integrity;

(q) Installation of release detection equipment; and

(r) Conducting a site assessment at tank closure.

(5) If a certified UST supervisor obtains knowledge, in the course of performing regulated activities, that a regulated underground storage tank has not been registered with the department, or is otherwise out of compliance with the requirements of this chapter, the individual shall inform the tank owner or operator of the notification requirement and any other applicable requirements.

(6) Proof of supervisor certification shall be available for inspection at any project site.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 173-360-640 Types of licenses.
- WAC 173-360-650 Examination and licensing of tank services supervisors.
- WAC 173-360-655 Examination and licensing of persons who perform inspections.
- WAC 173-360-660 Study guide fees.
- WAC 173-360-680 Reciprocity with other states.
- WAC 173-360-690 Appeals.
- WAC 173-360-695 Inactive license.

**WSR 95-04-112
PERMANENT RULES
HEALTH SERVICES COMMISSION**

[Filed February 1, 1995, 11:50 a.m.]

Date of Adoption: January 26, 1995.

Purpose: The purpose of these new rules is to set forth the form and manner of written petitions and requests for informal opinions submitted to the commission. The rules also set forth an adjudicative hearing process for reviewing written petitions.

Statutory Authority for Adoption: RCW 43.72.310.

Pursuant to notice filed as WSR 94-24-085 on December 7, 1994.

Effective Date of Rule: Thirty-one days after filing.
January 31, 1995
Bernadene Dochnahl
Commission Chair

WASHINGTON HEALTH SERVICES COMMISSION

Washington Administrative Code (WAC)
Chapter 245-02

**ANTITRUST IMMUNITY
AND COMPETITIVE OVERSIGHT**

Procedural Rules

PERMANENT

NEW SECTION

WAC 245-02-100 Purpose. The purpose of WAC 245-02-110 through WAC 245-02-175 is to implement RCW 43.72.310 by setting forth the form and procedure for: (1) requests for informal opinions from the attorney general as to whether particular conduct is authorized by the Act, and (2) written petitions to the commission requesting approval of conduct that could tend to lessen competition in a relevant market.

NEW SECTION

WAC 245-02-110 Form of petition and request for informal opinion. A petition, request for informal opinion, or request for adjudicatory proceeding shall adhere generally to the following form:

(1) At the top of the page shall appear the wording "before the Washington Health Services Commission." On the left side of the page, below the foregoing, the following caption shall be set out "In the Matter of [name of applicant]." Opposite the foregoing caption shall appear the words "petition," or "request for informal opinion," or, "request for adjudicatory proceeding," whichever is applicable.

(2) The materials required by WAC 245-02-115 through WAC 245-02-125 shall be attached to the foregoing.

(3) The petition or request shall be signed and dated by the entity named in the first paragraph, or by its attorney. The original and five (5) copies shall be filed with the commission as described in WAC 245-02-130.

(4) Information required by this chapter may be submitted in hard copy or in machine readable form:

(a) If hard copy, documents shall be submitted and organized by request;

(b) If in machine readable form, the data should comply with specifications acceptable to the commission and attorney general, which will be provided upon request.

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 245-02-115 Contents of requests for informal opinions and written petitions. The following information shall accompany any written petition or request for informal opinion submitted to the commission:

(1) **Identification of parties.** Identify all parties to the proposal, and their parent entities, and for each one state:

(a) The name(s) under which it is doing business, or proposes to do business, in Washington;

(b) Its business address(es);

(c) Its type of business organization (for example, corporation, sole proprietorship, partnership, or association);

(d) A brief description of the nature or type of business conducted at each of its business locations within the state of Washington; and

(e) The person to whom questions regarding the request or petition should be directed.

(2) **Nature and description of proposal.** State or describe:

(a) The nature and type of transaction (for example, joint venture, acquisition, or merger)

(b) The business(es) involved or affected;

(c) The products and services involved or affected;

(d) The scheduled timeline, including expected dates of any major events required to consummate the proposed activity;

(e) The geographic area(s) in which business will be conducted;

(f) Whether the same products or services as those listed in (c), above, are currently offered within thirty (30) miles of the geographic area(s) identified in (e), above, and if so, by whom; and

(g) The extent to which the participants share substantial risk including, but not limited to: (1) the extent to which the venture agrees to provide services on a capitated basis, or (2) the extent to which the venture creates significant financial incentives for its participants as a group to achieve specified cost containment goals, such as withholding a substantial amount of compensation due to participants, with distribution of that amount to participants only if the cost containment goals are met.

(h) A general description of any anticipated impact of the proposal on competition, including but not limited to the description of the business(es) involved or affected, the effect upon the parties in their competition with each other, the changes in market share among certified plans, health care providers or health care facilities in the geographic product or service area, the presence and entry of new market participants sufficient to deter or counteract the anti-competitive effects of the proposed activity, and availability of arrangements less restrictive to competition that would achieve the same or similar benefits to the community in health care delivery.

(i) The exclusive or non-exclusive nature of the proposal including, but not limited to (1) the extent to which viable competing networks or plans with adequate provider participation currently exist in the market, (2) the extent to which providers in the proposed network actually participate in other networks or contract individually with health benefit plans, or other evidence of their willingness and incentives to do so, (3) the extent to which providers in the proposed network will earn substantial revenue outside the network, (4) the absence of any indication of significant departicipation from other networks in the market as a result of the proposed venture, and (5) the absence of any indications of coordination among the providers in the network regarding price or other competitively significant terms of participation in other networks or plans.

(3) **Simultaneous review.** Identify any other state or federal agency reviewing the proposal and state the date on which each review was requested.

(4) Identify the name and address of all employee organizations representing the applicant's employees.

(5) **Description of how conduct will meet the goals of health care reform.** Describe in narrative form how the proposal will:

(a) Enhance the quality, access and cost of health services to consumers;

(b) Gain cost efficiency in the provision of health services;

(c) Improve utilization of health services, facilities and equipment;

(d) Avoid duplication of health services resources;

(e) Facilitate the exchange of information relating to performance expectations;

(f) Develop comprehensive, integrated, and cost-effective health services delivery in the geographic, product or service area;

(g) Reduce competition among certified health plans, health care providers, or health care facilities;

(h) Have an impact on the quality, availability, or price of health services to consumers;

(i) Reduce the number of people employed or otherwise impact how employees deliver health care services; and

(j) Change or otherwise have an impact on employee to patient ratios and how this will affect the quality of health services available to consumers.

NEW SECTION

WAC 245-02-120 Continuing oversight and reporting requirements. Written petitions and requests for informal opinions must include, in narrative form, a description of the nature of the continued supervision and oversight the parties' believe would be necessary and appropriate to ensure the proposal continues to be consistent with the petition or request and that its benefits continue to outweigh its disadvantages. The description shall include a recommendation for the form of annual or more frequent progress reports appropriate to the transaction and sufficient to allow the commission and attorney general to evaluate the continuing conduct.

NEW SECTION

WAC 245-02-125 Additional information. An applicant shall submit additional relevant information it believes is sufficient to support its petition or request for an informal opinion. The commission or attorney general may require the submission of additional information as may be required to complete the analysis necessary to form an opinion or respond to a written petition. Depending on the size, scope and nature of the proposed transaction, the material may include some or all of the following:

(1) Contracts, agreements, correspondence, corporate minutes, memoranda, or other documents describing the proposal;

(2) Financial statements for the parties to the proposal for the most recent fiscal year;

(3) Documents filed with any other state or federal agency with respect to the proposal;

(4) Plans, studies, or reports prepared in anticipation of the proposal;

(5) The parties' and their parent organizations' articles of incorporation, bylaws, and documents sufficient to identify the names of the parties' board of directors, owners, and officers; and

(6) Advertisements, brochures, or other publications used for marketing the parties' products or services within the state of Washington during the last fiscal year.

If the proposal includes collaboration between parties, including but not limited to mergers or joint ventures, the commission or the attorney general may request some or all

of the following additional information depending on the size, scope, and nature of the proposed transaction:

(1) Each participant's contribution of capital, equipment, or other value to the transaction;

(2) Each participant's ownership interest and its expected consideration or return from the proposal;

(3) Each participant's nonmonetary involvement in the arrangement;

(4) The market share of each participant in the proposed collaborative effort, for each of the products sold by that participant, identifying the relevant geographic market; and

(5) A statement describing whether arrangements less restrictive to competition would achieve the same or similar benefits as those described in response to section (4) above.

If the proposal is for the merger of acute care inpatient hospitals, the commission or the attorney general may request some or all of the following additional information for the three years prior to the proposed merger, depending on the size, scope, or nature of the proposed merger:

(1) Data reported to the Comprehensive Hospital Abstract Reporting System (CHARS), in computerized form if possible;

(2) Copies of the parties' responses to the American Hospital Association's Annual Hospital Survey;

(3) The identities of the ten (10) largest purchasers of hospital services for each hospital; and

(4) The average number of licensed, staffed, and occupied beds for each year.

NEW SECTION

WAC 245-02-130 Submission of information. (1) The applicant requesting an informal opinion or submitting a written petition shall direct the request or written petition to the Chair of the Commission at the Washington Health Services Commission, P.O. Box 41185, Olympia, Washington 98504-1185. Upon receipt of an informal opinion request or written petition, the commission will send a copy of the request or written petition to the Office of the Attorney General, Antitrust Section, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012.

(2) The applicant shall also send a copy of the petition and request for informal opinion to any organization representing employees of the applicant.

(3) Each petition and request for informal opinion shall contain a certificate from each person submitting information stating that the information submitted is true and accurate to the best of that person's knowledge.

NEW SECTION

WAC 245-02-131 Public notice and comment. (1) The commission may solicit comments from the public on the petition, request for informal opinion or request for adjudicatory proceeding by causing notice to be published in the state register of the subject matter of a petition, request for informal opinion or request for adjudicatory proceeding, and indicating how, when and where persons may comment.

(2) No later than three days after its publication in the state register, the commission shall cause a copy of the notice of a petition, request for informal opinion or request for adjudicatory proceeding to be mailed to each person who has made a request to the agency for a mailed copy of such

notice. The commission will charge for the actual cost of providing individual mailed copies of these notices.

NEW SECTION

WAC 245-02-135 Commission to provide copy of informal opinion to applicant. (1) Within five (5) days of receipt of an attorney general's informal opinion requested by the commission under RCW 43.72.310(1), the commission shall mail a copy of the informal opinion to the requesting applicant. The applicant shall provide a copy of the informal opinion to the employee organizations representing the applicant's employees.

(2) No later than three days after its mailing of a copy of the informal opinion to the requesting party, the commission shall cause a copy of the attorney general's informal opinion to be mailed to each person who has made a request to the agency for a mailed copy. The commission may charge for the actual cost of providing individual mailed copies of these informal opinions.

NEW SECTION

WAC 245-02-140 Attorney general to provide informal opinion and advice on petitions to the commission. As required by RCW 43.72.310(1), the attorney general will respond to a request for an informal opinion, or for advice regarding a written petition. The attorney general shall have discretion over the scope of the informal opinion or advice provided.

(1) An informal opinion rendered by the attorney general pursuant to RCW 43.72.310(1) will include the following:

- (a) A statement of the facts relied upon in the opinion;
- (b) A statement of the issues presented by the applicant;
- (c) The attorney general's analysis; and
- (d) The attorney general's conclusion as to whether the proposed conduct is authorized by RCW 43.72.

(2) If the attorney general concludes that the proposed conduct is authorized, the informal opinion will include the following, taking into account the size, scope, and nature of the proposed conduct:

(a) A general description of the nature of the continued supervision and oversight the attorney general believes is necessary and appropriate to ensure the proposal continues to be authorized by RCW 43.72 and that its benefits continue to outweigh its disadvantages;

(b) A general description of the form of annual, or more frequent, progress reports the attorney general believes is appropriate to the transaction and sufficient to allow the commission and the attorney general to evaluate the continuing conduct; and

(c) An indication of the types of data the attorney general believes are necessary to evaluate continuing conduct.

(3) The informal opinion, and any written advice provided to the commission regarding a written petition, should include an explanation of when and under what conditions the attorney general would commit not to file an antitrust enforcement action if the informal opinion concludes that the proposed conduct is authorized, or if the commission approves the petition.

NEW SECTION

WAC 245-02-145 Applicant may request an adjudicative proceeding or file a petition. An applicant may request an adjudicative proceeding in the following circumstances:

(1) Where the applicant has received an informal opinion pursuant to RCW 43.72.310 and within thirty (30) days of the applicant's receipt of the opinion, the applicant requests an adjudicatory proceeding to determine whether the proposed conduct should be authorized pursuant to RCW 43.72.310 (2)(a) because it is likely to achieve the policy goals of RCW 43.72 and a more competitive alternative is impractical;

(2) If the attorney general concludes in its informal opinion that the conduct proposed is not authorized by RCW 43.72, the requesting applicant shall have thirty (30) days from the date of receipt of the informal opinion from the commission to file a written petition with the commission requesting approval of conduct that could tend to lessen competition in the relevant market pursuant to RCW 43.72.310(3). The petition shall constitute an application for an adjudicatory proceeding under RCW 34.05.413; or

(3) Pursuant to RCW 43.72.310(3) an applicant may file a written petition with the commission requesting approval of conduct that could tend to lessen competition in the relevant market regardless of whether it has previously sought an informal opinion. The petition shall constitute an application for an adjudicatory proceeding under RCW 34.05.413.

NEW SECTION

WAC 245-02-150 Decision not to conduct an adjudication. If the commission decides not to conduct an adjudicative proceeding in response to an application, the commission shall furnish the applicant a copy of its decision in writing, with a brief statement of the commission's reasons and of any administrative review available to the applicant.

NEW SECTION

WAC 245-02-155 Adjudicative proceeding—Rules of procedure. An application for an adjudicative proceeding shall be accompanied by all of the information required for requests for informal opinions and written petitions, as described in WAC 245-02-115 to 245-02-125. The applicant may incorporate by reference any materials previously provided to the commission or attorney general. Except as set forth in WAC 245-02-160 through WAC 245-02-175, the commission adopts for its use the Model Rules of Procedure set forth in chapter 10-08 WAC.

NEW SECTION

WAC 245-02-160 Adjudicative proceedings—Notice of hearing. (1) Within thirty (30) days of receipt of an application for adjudicative proceeding or petition, the commission shall notify the applicant of any obvious errors or omissions, request any additional information it requires and is permitted by law to require regarding the application for adjudicative proceeding or petition, and notify the

applicant of the name, mailing address, and telephone number that may be contacted regarding the application.

(2) Within sixty (60) days after receipt of the application, the commission shall commence an adjudicative proceeding by serving notice of hearing on the applicant and all other persons required by RCW 34.05.434; RCW 34.05.417 (1)(b), or decide not to conduct an adjudicative proceeding and furnish the applicant with a copy of its decision in writing, with a brief statement of its reasons for doing so and of any administrative review available.

NEW SECTION

WAC 245-02-165 Presiding officer. The determination of the presiding officer for an adjudicative proceeding before the commission shall be governed by RCW 34.05.425.

NEW SECTION

WAC 245-02-170 Commission to retain jurisdiction. A grant or denial of authority to engage in proposed conduct shall be deemed a final order of the commission. Where authorization is granted, the commission shall retain jurisdiction over the applicant for purposes of continuing oversight and supervision as required by RCW 43.72.310(6).

NEW SECTION

WAC 245-02-175 Adjudicative proceedings—Reconsideration. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the commission.

NEW SECTION

WAC 245-02-180 Notice of modification or withdrawal of authorization. If at anytime during its ongoing supervision of authorized conduct pursuant to RCW 43.72.310(6), the commission determines that reason exists to revoke or modify its authorization, the commission shall immediately notify the applicant in writing. An applicant may request an adjudicative proceeding within thirty (30) days of receipt of the notice. If no adjudicative hearing is requested by the applicant within thirty (30) days of receipt of the notice, the commission shall immediately revoke or modify its authorization.

WSR 95-04-115

PERMANENT RULES

HEALTH SERVICES COMMISSION

[Filed February 1, 1995, 11:53 a.m., effective October 1, 1995]

Date of Adoption: January 26, 1995.

Purpose: The purpose of WAC 245-02-010 through 245-02-050 is to establish the substantive framework for applying antitrust laws in the state of Washington in the context of health care reform.

Statutory Authority for Adoption: RCW 43.72.310.

Pursuant to notice filed as WSR 94-24-084 on December 7, 1994.

Changes Other than Editing from Proposed to Adopted Version: Change in the effective date, clarifying language added to WAC 245-02-035, 245-02-040 and 245-02-050.

Effective Date of Rule: October 1, 1995.

January 31, 1995

Bernadene Dochnahl

Commission Chair

WASHINGTON HEALTH SERVICES COMMISSION

Washington Administrative Code (WAC)
Chapter 245-02

ANTITRUST IMMUNITY AND COMPETITIVE OVERSIGHT

Substantive Rules

NEW SECTION

WAC 245-02-010 Definitions. Unless the context requires otherwise, the definitions contained in this section apply throughout this chapter.

(1) "**Attorney General**" means the antitrust section of the Office of the Attorney General.

(2) "**Applicant**" means a certified health plan, health care facility, health care provider, or other person involved in the development, delivery, or marketing of health services or certified health plans.

(3) "**Parties**" means the natural persons, corporations, or associations involved in the plan or activity which is the subject of the proposal being reviewed.

(4) "**Petition**" means the document that shall be filed with the commission pursuant to RCW 43.72.310(3) by an applicant in order to request approval of conduct that could tend to lessen competition in the relevant market.

(5) "**Proposal**" means the plan or activity that is being reviewed.

(6) "**Request for informal opinion**" means the document that may be filed with the commission pursuant to RCW 43.72.310(1) by an applicant.

(7) "**Exclusive dealing clause**" means a clause in a contract between a certified health plan and a health care provider or facility by which the provider or facility agree not to provide services to another certified health plan.

(8) "**Health care network**" means a group of providers or facilities controlled by the providers, facilities or intermediary organizations including, but not limited to, physician-hospital organizations and independent practice associations.

(9) "**Most favored nations clause**" means terms in a contract between a certified health plan and a health care provider or facility by which the provider or facility agrees they will not charge other plans a lower price than the price charged the plan instituting the clause.

(10) "**Rural area**" means a geographical area outside the boundaries of Metropolitan Statistical Areas (MSAs) or an area within an MSA, but more than thirty minutes average travel time from an urban area of at least ten thousand population.

NEW SECTION

WAC 245-02-020 General policy statement—Anti-trust immunity and competitive oversight. (1) The purpose of WAC 245-02-020 through WAC 245-02-050 is to implement provisions of the Act that require the commission to adopt rules governing antitrust immunity, competitive oversight, and conduct of certified health plans, health care providers, and health care facilities. The provisions of these rules shall be strictly construed. Whenever there is doubt as to the meaning of these rules or as to their applicability to particular conduct or circumstances, these rules shall be interpreted in a manner consistent with existing antitrust law principles of this state and of the federal government, including final orders of the Federal Trade Commission and final decisions of the federal courts interpreting the various federal antitrust statutes.

(2) Unless explicitly permitted under this chapter or pursuant to a petition approved in accordance with the provisions of RCW 43.72.310 (3) and (4), nothing in these rules shall be deemed or interpreted to permit activities or to grant immunity for those activities prohibited under RCW 43.72.300(3) or any other activity which would constitute a per se violation of state or federal antitrust laws.

NEW SECTION

WAC 245-02-025 Scope and applicability. The provisions of WAC 245-02-010 through WAC 245-02-050 shall govern contracts and conduct among health care providers, health care facilities, and certified health plans entered into or renewed on and after October 1, 1995.

NEW SECTION

WAC 245-02-030 Cooperative activities—Policy statement. The commission recognizes that reforms in the health system will occur through the development of comprehensive, integrated, and cost-effective health services delivery systems. Because the health services market place is evolving in anticipation of changes required by the Act, it would not be appropriate to establish with precision specific areas where cooperative activities are entitled to immunity from antitrust laws. Pursuant to RCW 34.05.023, the commission therefore adopts as an interim policy statement the *Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust* issued by the U.S. Department of Justice and the Federal Trade Commission on September 27, 1994. These nine policy statements address: (1) mergers among hospitals; (2) hospital joint ventures involving high-technology or other expensive health care equipment; (3) hospital joint ventures involving specialized clinical or other expensive health care services; (4) providers' collective provision of nonfee-related information to purchasers of health care services; (5) providers' collective provision of fee-related information to purchasers of health care services; (6) provider participation in exchanges of price and cost information; (7) joint purchasing arrangements among health care providers; (8) physician network joint ventures; and (9) analytical principles relating to multiprovider networks.

NEW SECTION

WAC 245-02-035 Consumer access to local health services in rural areas. An applicant may petition the commission for approval of a managed health care finance and delivery system in a rural area that may violate existing antitrust law principles or provisions of WAC 245-02-040, WAC 245-02-045 or WAC 245-02-050 but is necessary to preserve local access to regular and ongoing health services in a rural area. In addition to the requirements set forth in WAC 245-02-110, et seq., such petitions shall include information demonstrating that the proposed system: (a) has been developed through a community-based process that takes into consideration the concerns of local residents, health care providers, public and private health care facilities, local community organizations, and appropriate state agency health planning organizations located in or with responsibility for health services in rural areas, (b) will achieve quality improvements and cost efficiencies over present health service capabilities in the rural area, (c) will result in local access to regular and ongoing services required under the uniform benefits package, (d) will combine health care service delivery and financing, and (e) will or will not have special community governance arrangements. Nothing contained in this section shall be deemed to relieve an applicant from meeting the requirements imposed by law for registration and certification of certified health plans.

NEW SECTION

WAC 245-02-040 Collective negotiations—Policy statement—Permitted negotiations—Petitions. (1) The Commission finds that collective negotiation by competing health care providers of certain non-fee terms and conditions of contracts with certified health plans may result in procompetitive effects in the absence of any express or implied threat of retaliatory collective action by health care providers. However, the Commission finds few or no procompetitive effects in permitting competing health care providers to collectively negotiate contract terms and conditions that include fees or prices for provider services. The potential anticompetitive harms arising from collective exchanges of fee or price information by competing providers and collective negotiation by competing providers of the fees to be paid providers by plans far outweigh any potential gains in simplifying provider and plan negotiations, any reduction in transaction costs, and any potential gains in cost-effective health care delivery systems. To the contrary, the Commission finds that collective negotiation of fees or other prices for services by competing health care providers creates the potential to thwart the cost containment goals of health care reform by enabling health care providers to resist health plan and purchaser pressure to reduce or limit the increase in prices for health care services. Except as herein provided, nothing contained in this section shall authorize any person or entity to engage in activities that would constitute violations of state or federal antitrust laws.

(2) Competing health care providers within the service area of a certified health plan may meet and communicate for the purposes of collectively negotiating the following terms and conditions of contracts with certified health plans:

(a) respective provider and health plan liability for the treatment or lack of treatment of health plan enrollees;

(b) administrative procedures including methods and timing of provider payment for services;

(c) dispute resolution procedures relating to disputes between plans and providers including disputes between providers and plans that originate from enrollees;

(d) patient referral procedures;

(e) formulation and application of reimbursement methodology, e.g., risk pools, capitation, and capitation between providers and hospitals, except as provided in section 3;

(f) quality assurance programs;

(g) health service utilization review procedures; and

(h) carrier provider selection and termination criteria, or whether to engage in selective contracting.

Nothing herein shall be construed to allow a boycott.

(3) Competing health care providers shall not meet and communicate for the purposes of collectively negotiating the following terms and conditions of contracts with certified health plans:

(a) the fees or prices for services, including those arrived at by applying any reimbursement methodology procedures;

(b) the conversion factor in a resource based relative value scale reimbursement methodology or similar methodologies;

(c) the amount of any discount on the price of services to be rendered by providers;

(d) the dollar amount of capitation or fixed payment for health services rendered by providers to plan enrollees; or

(e) the inclusion or alteration of terms and conditions to the extent they are the subject of government regulation prohibiting or requiring the particular term or condition in question; however, such restriction does not limit provider rights to collectively petition government for a change in such regulation.

(4) Competing health care providers' exercise of collective negotiation rights granted by this section shall conform to the following criteria:

(a) providers shall communicate or negotiate with certified health plans through a third party who is authorized by the providers;

(b) each competing provider involved in the communication and negotiation with certified health plans shall make an independent decision to accept or reject a specific offer from a certified health plan;

(c) certified health plans communicating or negotiating with the providers' representative shall remain free to contract with or offer different contract terms and conditions to individual competing providers;

(d) the providers' representative shall not recommend to providers that providers accept or reject the certified health plan offer; the representative may only deliver the offer to providers and communicate to providers an evaluation of the positive or negative aspects of the offer;

(e) the providers' representative shall not represent more than 30% of the market of practicing providers for the provision of services of a particular provider type or specialty in the service area or proposed service area of a certified health plan with less than 5% of the market, as measured by

1) the number of covered lives as reported by the Insurance

Commissioner, or 2) the actual number of consumers of prepaid comprehensive health services; and

(f) the providers' representative shall comply with the provisions of subsection (5) of this section.

(5) Any person or organization proposing to act or acting as a representative of providers for the purpose of exercising the authority granted under this section shall comply with the following requirements:

(a) before engaging in any collective negotiation with certified health plans on behalf of competing health care providers, the representative shall file with the Commission information identifying the representative, the representative's plan of operation, and the representative's procedures to ensure compliance with this section;

(b) Before engaging in any collective negotiations with certified health plans on behalf of providers, the representative shall furnish for the Commission's approval, a brief report identifying the proposed subject matter of the negotiations or discussions with certified health plans and the efficiencies expected to be achieved thereby.

Approval shall be withheld by the Commission if the proposed negotiations would exceed the authority granted under this section. The representative shall supplement the report to the Commission as new information becomes available that indicates that the subject matter of the negotiations with the plan has or will change;

(c) within fourteen days of a certified health plan decision declining negotiation, terminating negotiation, or failing to respond to a request for negotiation the representative shall report to the Commission the end of negotiations;

(d) before reporting the results of negotiations with a certified health plan and before giving providers an evaluation of any offer made by a certified health plan, the representative shall furnish for the Commission's approval prior to dissemination to providers, a copy of all communications to be made to providers related to negotiations, discussions, and certified health plan offers.

(6) With the advice of the attorney general, the Commission shall either approve or disapprove the activity as identified in the report within thirty days of filing. If disapproved, the Commission shall furnish a written explanation of any deficiencies along with a statement of specific remedial measures as to how such deficiencies could be corrected. A representative who fails to obtain the Commission's approval is deemed to act outside the authority granted under this section.

(7) Nothing contained in this section is intended to authorize competing providers to act in concert in response to a report issued by the providers' representative related to the representative's discussions or negotiations with certified health plans. The representative of the providers shall advise providers of the provisions of this section and shall warn providers of the potential for legal action against providers who violate state or federal antitrust laws by exceeding the authority granted under this section.

NEW SECTION

WAC 245-02-045 "Most favored nations clauses"—Policy statement. "Most favored nations clauses" may discourage discounting by the affected seller, may facilitate oligopolistic pricing and deter entry by more efficient

competitors. "Most favored nations clauses" are often used as a replacement for innovation or efficiency by large competitors and act as a disincentive for creativity by small competitors. The commission finds that the use of "most favored nations clauses" in contracts between a health care provider or facility and a certified health plan create the potential to thwart the cost containment goals of health care reform. For these reasons, the use of "most favored nations clauses" in contracts between a health care provider or facility and a certified health plan is prohibited.

NEW SECTION

WAC 245-02-050 Exclusive dealing clauses—Policy statement. (1) Exclusive dealing clauses in health care provider and facility contracts with certified health plans may enhance the quality of health services, achieve economic efficiencies, or improve the cost-effective use of health services and equipment. Exclusive dealing clauses may also reduce competition among certified health plans, providers, and facilities when the clauses prevent other competitors from entering the relevant market, thereby increasing the probability of the creation of a monopoly in that market.

(2) A contract between a certified health plan and a health care facility or provider may not contain an exclusive dealing clause if the plan holds more than forty percent (40%) of the relevant market.

(3) A contract between a certified health plan and a health care facility or provider may contain an exclusive dealing clause if the plan holds twenty percent (20%) or less of the relevant market.

(4) A contract between a certified health plan and a health care facility or provider may contain an exclusive dealing clause if the plan holds between twenty (20%) and forty percent (40%) of the relevant market and the commission has explicitly permitted its use. To obtain such approval, a plan must request an informal opinion as to use of the clause in the particular circumstances or seek approval by written petition pursuant to the procedures set forth in WAC 245-02-110, et seq.

(5) A contract between a health care network and a health care facility or provider may not contain an exclusive dealing clause if the health care network holds more than forty percent (40%) of the relevant market.

(6) A contract between a health care network and a health care facility or provider may contain an exclusive dealing clause if the health care network holds twenty percent (20%) or less of the relevant market.

(7) A contract between a health care network and a health care facility or provider may contain an exclusive dealing clause if the network holds between twenty and forty percent (40%) of the relevant market and the commission has explicitly permitted its use. To obtain such approval, a network must request an informal opinion as to use of the clause in the particular circumstances or seek approval by written petition pursuant to the procedures set forth in WAC 245-02-110, et seq.

(8) The provisions of this section do not apply to contracts between a staff or group model health maintenance organization and its health care facilities or providers.



WSR 95-04-004
EMERGENCY RULES
EXECUTIVE ETHICS BOARD

[Filed January 18, 1995, 2:38 p.m.]

Date of Adoption: January 13, 1995.

Purpose: To implement chapter 42.52 RCW which establishes ethical standards for state officers and employees. The rules set out the basic organizational and procedural rules of the Executive Ethics Board.

Statutory Authority for Adoption: RCW 42.52.360 (2)(b).

Pursuant to 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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The ethical standards established in the chapter 42.52 RCW went into effect on January 1, 1995. The Executive Ethics Board is responsible for enforcing those standards with regard to state officers and employees in the executive branch of government. The emergency rules set out basic organizational and procedural rules for the board. The rules are necessary for the preservation of the public health, safety and general welfare because citizens need to know about the operation of the board and the procedure for filing a complaint in order to make chapter 42.52 RCW effective. Since the board is a new agency, observing the time requirements of notice and opportunity to comment would leave a significant gap that would limit the effectiveness of chapter 42.52 RCW. The emergency rules are necessary to implement the law while the board goes through the procedure of adopting permanent rules. The emergency rules are also required by state law. RCW 42.52.360 (2)(b) provides that the board shall adopt rules governing the conduct of business of the board. Since the board began conducting business on January 1, 1995, it must put basic rules in place immediately under RCW 42.52.360 (2)(b) while it goes through the process of adopting permanent rules.

Effective Date of Rule: Immediately.

January 13, 1995
 Reverend Cheryl L. J. Rohret
 Chair

CHAPTER 292-100 WAC

AGENCY PROCEDURAL RULES

NEW SECTION

WAC 292-100-010 Definitions. In general, words are used with this title in the same meaning as they are used in the law relating to ethics, chapter 42.52 RCW. See, in particular, RCW 42.52.010. The following words are used with the meaning given, unless the context clearly indicates another meaning.

(1) "Administrative Procedure Act" means chapter 34.05 RCW.

(2) "Chairperson" means the chairperson of the board.

(3) "Vice Chair" means the vice chair of the board.

(4) "Clerk" means the clerk of the board appointed pursuant to WAC 292-100-020(2).

(5) "Board" means the Washington executive ethics board.

(6) "Complainant" means a person who has filed a complaint under authority of RCW 42.52.410.

(7) "Complaint" means a formal complaint filed with the board pursuant to RCW 42.52.410 and these rules.

(8) "Member" means a member of the board, except where the context indicates another meaning is intended.

(9) "Respondent" means one against whom a complaint has been filed under authority of RCW 42.52.410.

NEW SECTION

WAC 292-100-020 Organization and operations. (1) Membership. The Washington executive ethics board consists of five members appointed by the governor for staggered five-year terms.

(2) Officers. The board shall annually elect a chairperson from its members. The chairperson shall preside over board meetings. The board may annually elect a vice chair from its members. The vice chair will carry out the duties of the chairperson if the chairperson is absent or unable to carry out the duties of the chairperson.

(3) Meetings. The board holds regular meetings commencing at 9:30 a.m. on the second Friday of each month, at various places throughout the state. The places and dates of the meetings can be learned by writing or calling the board clerk at the Olympia office at (206) 586-3751.

(4) Quorum. Three members constitute a quorum. The affirmative vote of a majority of those present is action of the board when there is a quorum at a meeting.

(5) Offices. The board's office is 1125 Washington Street, Post Office Box 40100, Olympia, Washington 98504-0100.

(6) Where to obtain information. Information on the application of the ethics law and related material is available from the clerk of the board at the board's Olympia office.

(7) Where to make submissions or requests. Submissions, requests, or complaints to the board may be directed to the clerk of the board at the board's Olympia office.

NEW SECTION

WAC 292-100-030 Authority of executive ethics board. (1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to state-wide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized in chapter 42.52 RCW;

(c) Issue advisory opinions;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) The executive ethics board may review and approve agency policies as provided for in this chapter.

NEW SECTION

WAC 292-100-040 Clerk. (1) **Designation.** The board shall designate a staff member provided by the attorney general's office to serve as clerk of the board.

(2) **Duties.** The clerk shall:

(a) Attend board meetings and provide aid and services to the chairperson and members as requested;

(b) Keep custody of the minutes of board meetings, declaratory rulings, rule-making orders, and the board's order register, and other records of action by the members.

(c) Act as rules coordinator for the board in compliance with RCW 34.05.312.

NEW SECTION

WAC 292-100-050 Advisory opinions. The board shall issue written opinions to persons who request advice as to the application of the state ethics laws. The opinions shall not be inconsistent with the statute, or the regulations or policies of the board. The counsel to the board may provide advisory opinions to the board.

NEW SECTION

WAC 292-100-060 Complaints and investigations.

(1) Any person may file a complaint with the board alleging violation of chapter 42.52 RCW or rules adopted under it. A complaint shall be made in writing on a form provided by the board. A complaint may be made personally or by the complainant's attorney. The complaint must be served on the clerk of the board at the board's office in Olympia.

(2) If it has reason to believe that any person has violated chapter 42.52 RCW or the rules adopted under it, the board may issue a complaint.

(3) Upon receipt of the complaint, the staff of the board shall investigate and evaluate the allegations. The investigation shall be limited to the alleged facts contained in the complaint. The result of the investigation shall be reduced to writing and the staff of the board shall make a written recommendation whether there is reasonable cause to believe that a violation of chapter 42.52 RCW or the rules adopted under it has been committed. The results of the written

investigation by the staff of the board shall be transmitted to the board.

NEW SECTION

WAC 292-100-070 Determination of reasonable cause. Upon receipt of the report from the staff of the board, the board shall determine if there is reasonable cause to believe that a violation of chapter 42.52 RCW or the rules adopted under it has occurred. If the board determines that there is reasonable cause to believe a violation has occurred, the board shall schedule a public hearing on the merits of the complaint. If the board determines that there is not reasonable cause to believe that a violation has occurred, it shall dismiss the complaint. The written investigation by the staff of the board and the board's determination shall be provided to both the complainant and the respondent.

NEW SECTION

WAC 292-100-080 Respondent's answer to complaint. The respondent shall file a written answer to the complaint not later than 30 days after receipt of the determination by the board that there is reasonable cause to believe a violation has occurred.

NEW SECTION

WAC 292-100-090 Adoption of model rules of procedure. Part IV-Adjudicative Proceedings—chapter 34.05 RCW and model rules of procedure, chapter 10.08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250 are hereby adopted for use by the board. In case of conflict between chapter 34.05 RCW or the model rules of procedure and chapter 42.52 RCW, the procedural rules in chapter 42.52 RCW shall take precedence.

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 292-100-100 Decision by the board. (1) If, based on a preponderance of the evidence at the public hearing, the board finds that the respondent has violated this chapter or rules adopted under it, the board shall file an order stating findings of fact and enforcement action as authorized in chapter 42.52 RCW.

(2) If, upon the evidence at the public hearing, the board finds that the respondent has not violated chapter 42.52 RCW or rules adopted under it, the board shall state findings of fact and issue an order dismissing the complaint.

NEW SECTION

WAC 292-100-110 Sanctions. If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may order payment of the following amounts: (1) any damages sustained by the state that are caused by the conduct constituting the violation; (2) from each person a civil penalty of up to \$5,000 per violation or three times the economic value of anything received or sought in violation of chapter 42.52 RCW or rules adopted under it, whichever

is greater; and (3) costs, including reasonable investigative costs, which shall be included as part of the limit under (2) of this section. The costs may not exceed the penalty imposed. The payment owed on the penalty shall reduced by the amount of costs paid.

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 95-04-055
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed January 26, 1995, 10:40 a.m.]

Date of Adoption: January 26, 1995.

Purpose: To correct unintended negative financial impacts upon school districts due to recent revisions in student reporting requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-106(4).

Statutory Authority for Adoption: RCW 28A.150.290.

Pursuant to 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 recent amendment of WAC 392-121-106 to condition student counts for state funding purposes upon student participation in school during the semester or quarter failed to recognize that one or more student count days would coincide with mid-school year semester or quarter commencement days with abnormally low student attendance. That is an unanticipated and unintended effect which is inconsistent with WAC 392-121-122 which recognizes and makes allowance for the fact student attendance is abnormally low during the first three startup days of a school year.

Effective Date of Rule: Immediately.

January 26, 1995
Judith A. Billings
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250); or

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's appropriate official to be entered on the school district's rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter) in a course of study offered by the school district as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

WSR 95-04-060
EMERGENCY RULES
WASHINGTON STATE PATROL
[Filed January 26, 1995, 3:48 p.m.]

Date of Adoption: January 26, 1995.

Purpose: Remove exemption giving law enforcement the option whether to seatbelt subjects riding in patrol vehicles. Change would require subjects riding in any law enforcement vehicle equipped with a seatbelt system to use seatbelts.

Citation of Existing Rules Affected by this Order: Amending WAC 204-41-030.

Statutory Authority for Adoption: RCW 46.61.688.

Other Authority: RCW 46.37.510.

Pursuant to 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: Currently law enforcement officers have the option whether to belt a subject riding in their vehicles. This change will remove that option and require law enforcement to follow the statute for using seatbelts if the vehicle is equipped with a seatbelt system.

Effective Date of Rule: Immediately.

January 26, 1995
Roger W. Bruett
Chief

EMERGENCY

AMENDATORY SECTION (Amending Order 86-1, filed 9/25/86)

WAC 204-41-030 Seat belting of prisoners. If the patrol vehicle is equipped with a seat belt system, it is intended that all prisoners being transported in a passenger style patrol vehicle wear a seat belt. ((However, if the prisoner is combative or for any other reason, the officer in charge of the prisoner has the option to not place the prisoner in a seat belt system.))

Prisoners that are transported in the front seat of a patrol vehicle should be placed in a seat belt assembly.

**WSR 95-04-063
EMERGENCY RULES
LOTTERY COMMISSION**
[Filed January 27, 1995, 4:02 p.m.]

Date of Adoption: January 27, 1995.

Purpose: To amend WAC 315-11A-122 to add an "A" play symbol to the game, and to make the "A" the highest play symbol.

Citation of Existing Rules Affected by this Order: Amending WAC 315-11A-122.

Statutory Authority for Adoption: RCW 67.70.040.

Pursuant to 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 rule governs the instant game "High Card." WAC 315-11A-122 was first adopted on May 6, 1994, with an "A" play symbol. On September 9, 1994, the rule was amended deleting the "A" play symbol. However, tickets for the game were printed with the "A" play symbol, as required by the original rule. Further, the game was programmed and printed with the "A" play symbol being the play symbol that "beats" all others. The game is currently on sale to the public, and the public interest requires a rule be in effect which corresponds to the tickets on sale to the public.

Effective Date of Rule: Immediately.

January 27, 1995
Evelyn P. Yenson
Director

AMENDATORY SECTION (Amending WSR 94-19-063, filed 9/20/94, effective 10/21/94)

WAC 315-11A-122 Instant Game Number 122 ("High Card"). (1) **Definitions for Instant Game Number 122.**

(a) Play symbols: The following are the "play symbols": "7"; "8"; "9"; "10"; "J"; "Q"; ~~((and "K."))~~ "K"; and "A." One of these play symbols appears in each of the three play spots in the "your card" column and in each of the three play spots in the "dealer's card" column in the playfield on the front of the ticket.

(b) Play symbol captions: The small printed characters appearing below each play symbol which verify and corre-

spond with that play symbol. The caption is a spelling out, in full or abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The number 1, 2 or 3 precedes each play symbol caption to indicate the location of the play symbol in Game (row) 1, Game 2 or Game 3. For Instant Game Number 122, the captions which correspond with and verify the play symbols are:

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
7	SVN
8	EGT
9	NIN
10	TEN
J	JCK
Q	QUE
K	KNG
<u>A</u>	<u>ACE</u>

(c) Prize symbols: The following are the "prize symbols": "\$1.00"; "\$2.00"; "\$6.00"; "\$9.00"; "\$40.00"; and "\$4,000." One of these prize symbols appears for each game in the prize column on the front of the ticket.

(d) Prize symbol captions: The small printed characters appearing below the prize symbol which verify and correspond with that prize symbol. The caption is a spelling out, in full or abbreviated form, of the prize symbol. Only one caption appears under each prize symbol. The number 1, 2 or 3 precedes each prize symbol caption to indicate the location of the prize symbol in Game 1, Game 2 or Game 3. For Instant Game Number 122, the prize symbol captions which correspond with and verify the prize symbols are:

<u>PRIZE SYMBOL</u>	<u>CAPTION</u>
\$ 1.00	ONE DOL
\$ 2.00	TWO DOL
\$ 6.00	SIX DOL
\$ 9.00	NIN DOL
\$ 40.00	\$FORTY\$
\$ 4,000	FORTHOU

(e) Validation number: The unique nineteen-digit number on the front of the ticket. The number is covered with latex.

(f) Pack-ticket number: The twelve-digit number of the form 12200001-1-000 printed on the back of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 122 constitute the "pack number" which starts at 12200001; the last three digits constitute the "ticket number" which starts at 000 and continues through 199 within each pack of tickets.

(g) Retailer verification codes: Codes consisting of small letters found under the removable latex covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$600.00 and less. For Instant Game Number 122, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

EMERGENCY

VERIFICATION CODE	PRIZE
ONE	\$ 1.00
TWO	\$ 2.00 (\$1 AND \$1)
SIX	\$ 6.00 (\$2, \$2 AND \$2; \$6)
TLV	\$ 12.00 (\$6 AND \$6; \$9, \$2 AND \$1)
EGN	\$ 18.00 (\$6, \$6 AND \$6; \$9 AND \$9)
FRY	\$ 40.00
ETY	\$ 80.00 (\$40 AND \$40)

(h) Pack: A set of two hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

(2) Criteria for Instant Game Number 122.

(a) The price of each instant game ticket shall be \$1.00.

(b) Determination of prize winning tickets: An instant prize winner is determined in the following manner: The bearer of a ticket having a play symbol in the "your card" column that is superior to the play symbol in the "dealer's card" column in the same game shall win the prize shown in the prize column for that game. The bearer of a ticket having winning play symbols in more than one game shall win the sum of the prizes in each winning game. Play symbols in different games may not be combined to win a prize.

(c) For purposes of this game, the ("~~K~~") "A" shall be the play symbol with the highest superiority followed by "K," "Q," "J," "10," "9," "8," and "7" in that order.

(d) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(e) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 122 set forth in subsection (3) of this section, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(f) Notwithstanding any other provisions of these rules, the director may:

(i) Vary the length of Instant Game Number 122; and/or

(ii) Vary the number of tickets sold in Instant Game Number 122 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

(3) Ticket validation requirements for Instant Game Number 122.

(a) In addition to meeting all other requirements in these rules and regulations, a valid instant game ticket for Instant Game Number 122 shall comply with all of the following validation requirements.

(i) Exactly one play symbol must appear in each of the three play spots in the "your card" column and in each of the three play spots in the "dealer's card" column under the latex covering on the front of the ticket.

(ii) Each of the six play symbols must have a caption below and each must agree with its caption.

(iii) Exactly one prize symbol for each of the three games must appear under the latex covering in the prize column on the front of the ticket.

(iv) Each of the three prize symbols must have a caption below it and each must agree with its caption.

(v) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the specifications on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

(vi) Each of the play symbols and its caption, prize symbol and its caption, the validation number, pack-ticket number, and the retailer verification code must be printed in black ink.

(vii) Each of the play symbols must be exactly one of those described in subsection (1)(a) of this section and each of the play symbol captions must be exactly one of those described in subsection (1)(b) of this section, each of the prize symbols must be exactly one of those described in subsection (1)(c) of this section and each of the prize symbol captions must be exactly one of those described in subsection (1)(d) of this section.

(b) Any ticket not passing all the validation requirements in WAC 315-10-070 and (a) of this subsection is invalid and ineligible for any prize.

**WSR 95-04-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 95-07—Filed January 30, 1995, 9:24 a.m.]

Date of Adoption: January 28, 1995.

Purpose: Personal use game fish regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-619 and 232-28-619.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to 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 merged game fish and food fish sport pamphlet will have effective date of May 1, 1995. The existing game fish rules are only effective through April 15, 1995, and require extension through the month of April. Many lakes and a few streams have a special opening each year on the last Saturday in April. The permanent rules identify that date as April 30 (correct in 1994), but in 1995, April 29 is the last Saturday of the month.

Effective Date of Rule: Immediately.

January 28, 1995

John C. McGlenn, Chairman
Fish and Wildlife Commission

EMERGENCY

NEW SECTION

WAC 232-12-61900A 1994-1995 Washington game fish regulations (1) Notwithstanding the provisions of WAC 232-12-619 that specifies that the regulations are effective from April 16, 1994 to April 15, 1995, both dates inclusive, WAC 232-12-619 as last amended 10/20/93, effective 04/16/94, remains in full effect through April 30, 1995.

NEW SECTION

WAC 232-28-61900A 1995—Washington game fish—Opening day Notwithstanding the provisions of WAC 232-28-619, the opening date for the 1995 fishing season is April 29, 1995, for the following lakes and streams:

ABERDEEN LAKE (Grays Harbor Co.)
 AENEAS LAKE (Okanogan Co.)
 ALDRICH LAKE (Mason Co.)
 ALDWELL LAKE (Clallam Co.)
 ALPOWA CREEK (Garfield Co.)
 ALTA LAKE (Okanogan Co.)
 AMBER LAKE (Spokane Co.)
 ANDERSON LAKE (Jefferson Co.)
 ARMSTRONG LAKE (Snohomish Co.)
 BADGER LAKE (Spokane Co.)
 BAKER LAKE (Whatcom Co.)
 BATTLE GROUND LAKE (Clark Co.)
 BAY LAKE (Pierce Co.)
 BAYLEY LAKE (Stevens Co.)
 BC MILL POND (Stevens Co.)
 BEARPAW LAKE (Whatcom Co.)
 BEAVER PONDS in Kitsap Co. and those ponds in Mason Co. on Tahuya Peninsula west of Belfair-Bremerton Hwy. (SR3)
 BEEHIVE (LAKE) RESERVOIR (Chelan Co.)
 BENSON LAKE (Mason Co.)
 BIG MEADOW LAKE (Pend Oreille Co.)
 BIG TWIN LAKE (Okanogan Co.)
 BLACK LAKE (Lower Wheeler Reservoir) (Chelan Co.)
 BLACK LAKE (Stevens Co.)
 BLACK LAKE (Pacific Co.)
 BLUE LAKE (Grant Co.)
 BLUE LAKE (Sinlahekin - Okanogan Co.)
 BLUE LAKE (near Wannacut Lake) (Okanogan Co.)
 BLUE CREEK (Walla Walla Co.)
 BLUE LAKE (Cowlitz Co.)
 BOSWORTH LAKE (Snohomish Co.)
 BOYLE LAKE (King Co.)
 BRIDGES LAKE (King Co.)
 BROWNS LAKE and Inlet Streams (Pend Oreille Co.)
 BUCK LAKE (Kitsap Co.)
 CADY LAKE (Mason Co.)
 CAIN LAKE (Whatcom Co.)
 CALDWELL LAKE (Pend Oreille Co.)
 CARL'S LAKE (Pend Oreille Co.)
 CARLISLE LAKE (Lewis Co.)
 CARNEY LAKE (Pierce/Kitsap Co.)
 CARSON LAKE (Mason Co.)
 CASCADE LAKE (San Juan Co.)
 CEDAR LAKE (Stevens Co.)

CHAPMAN LAKE (Spokane Co.)
 CHEHALIS RIVER POTHoles (adjacent to the Chehalis River south of Hwy. 12 in Grays Harbor Co., this does not include sloughs or beaver ponds)

CHOPAKA LAKE (Okanogan Co.)
 CLARA LAKE (Mason Co.)
 CLEAR LAKE (Chelan Co.)
 CLEAR LAKE (Thurston Co.)
 COAL CREEK (near Snoqualmie) from mouth to Hwy. 10 (King Co.)

CONCONULLY LAKE (Okanogan Co.)
 CONCONULLY RESERVOIR (Okanogan Co.)
 CONGER POND (Pend Oreille Co.)
 COPPEI CREEK (Walla Walla Co.)
 COTTAGE LAKE (King Co.)
 COTTONWOOD CREEK (Lincoln Co.) outside city limits of Davenport

CRABAPPLE LAKE (Snohomish Co.)
 CRAWFISH LAKE (Okanogan Co.)
 CRESCENT LAKE (Pend Oreille Co.)
 DAVIS LAKE (Ferry Co.)
 DAVIS LAKE (Lewis Co.)
 DE COURSEY POND (Pierce Co.)
 DEEP LAKE (Thurston Co.)
 DEEP LAKE (Grant Co.)
 DEEP LAKE (Stevens Co.)
 DEER LAKE (Stevens Co.)
 DEER LAKE (Mason Co.)
 DEER LAKE (Island Co.)
 DEER LAKE (Deer Springs) (Lincoln Co.)
 DEVEREAUX LAKE (Mason Co.)
 DEVIL'S LAKE (Jefferson Co.)
 DIAMOND LAKE (Pend Oreille Co.)
 DOWNS LAKE (Lincoln/Spokane Co.)
 DRY FALLS LAKE (Grant Co.)
 DRY CREEK (Walla Walla Co.)
 ELBOW LAKE (Stevens Co.)
 ELL LAKE (Okanogan Co.)
 ELLEN LAKE (Ferry Co.)
 EMPIRE LAKE (Ferry Co.)
 ERIE LAKE (Skagit Co.)
 FAILOR LAKE (Grays Harbor Co.)
 FAN LAKE (Pend Oreille Co.)
 FISH LAKE (Ferry Co.)
 FISH LAKE (Spokane Co.)
 FISH LAKE (Okanogan Co.)
 FISHHOOK POND (Walla Walla Co.)
 FISHTRAP LAKE (Lincoln/Spokane Co.)
 FORT BORST PARK LAKE (Lewis Co.)
 FORTSON MILL POND #2 (Snohomish Co.)
 FRATER LAKE (Pend Oreille Co.)
 GENEVA LAKE (King Co.)
 GILLETTE LAKE (Stevens Co.)
 GOSS LAKE (Island Co.)
 GRASS LAKE (Mason Co.)
 HATCHERY LAKE (Mason Co.)
 HAVEN LAKE (Mason Co.)
 HEADGATE POND (Asotin Co.)
 HEART LAKE (Skagit Co. - near Anacortes)
 HERITAGE LAKE (Stevens Co.)

- HICKS LAKE (Thurston Co.)
HORSESHOE LAKE (Pend Oreille Co.)
HORSESHOE LAKE (Lewis/Cowlitz Co.)
HORSESHOE LAKE (Jefferson Co.)
HORSESHOE LAKE (Kitsap Co.)
HORSETHIEF LAKE (Klickitat Co.)
HOWARD LAKE (Snohomish Co.)
HOWELL LAKE (Mason Co.)
ICEHOUSE LAKE (Skamania Co.)
JAMESON LAKE (Douglas Co.)
JEFFERSON PARK POND (Walla Walla Co.)
JENNINGS PARK POND
JUMP-OFF JOE LAKE (Stevens Co.)
KALISPELL CREEK and all tributaries (Pend Oreille Co.)
KENNEDY CREEK POND (Thurston or Mason Co.)
KI LAKE (Snohomish Co.)
KIDNEY LAKE (Skamania Co.)
KIMBALL CREEK (near Snoqualmie) (King Co.)
KLAUS LAKE (King Co.)
KLINELINE PONDS (Clark Co.)
KOENEMAN LAKE (formerly Fern Lake) (Kitsap Co.)
KRESS LAKE (Cowlitz Co.)
LANGLOIS LAKE (King Co.)
LEADER LAKE (Okanogan Co.)
LEDBETTER LAKE (Pend Oreille Co.)
LEDKING LAKE (Pend Oreille Co.)
LENICE LAKE (Grant Co.)
LEO LAKE (Pend Oreille Co.)
LEWIS RIVER, NORTH FORK (Cowlitz Co.)
LIBERTY LAKE (Spokane Co.)
LILLY LAKE (Chelan Co.)
LITTLE ASH LAKE (Skamania Co.)
LITTLE LOST LAKE (Pend Oreille Co.)
LITTLE TWIN LAKE (Stevens Co.)
LITTLE KLICKITAT RIVER within Goldendale city limits
(Klickitat Co.)
LITTLE SPOKANE RIVER (Spokane Co.) from SR 291 Bridge
upstream to west branch
LOMA LAKE (Snohomish Co.)
LONG LAKE (Thurston Co.)
LONG LAKE (Ferry Co.)
LONG LAKE (Okanogan Co.)
LOOMIS LAKE (Pacific Co.)
LOON LAKE (Stevens Co.)
LOST LAKE (Jefferson Co.)
LYONS PARK POND (College Place) (Walla Walla Co.)
MAGGIE LAKE (Mason Co.)
MARGARET LAKE (King Co.)
MARSHAL LAKE (Pend Oreille Co.)
MARTHA LAKE (AM) (Snohomish Co.)
MCDOWELL LAKE (Stevens Co.)
MCINTOSH LAKE (Thurston Co.)
MCLANE CREEK PONDS (Thurston Co.)
MCMURRAY LAKE (Skagit Co.)
MEDICAL LAKE, WEST (Spokane Co.)
MEDICAL LAKE (Spokane Co.)
MELBOURNE LAKE (Mason Co.)
MERRY LAKE (Grant Co.)
MILL CREEK (Clallam Co.)
MILL POND (Pend Oreille Co.)
MILL POND (Auburn) (King Co.)
MINERAL LAKE (Lewis Co.)
MIRROR LAKE (Grant Co.)
MISSION LAKE (Kitsap Co.)
MUD LAKE (Mason Co.)
MUDGET LAKE (Stevens Co.)
MUNN LAKE (Thurston Co.)
MUSKEGON LAKE (Pend Oreille Co.)
MYSTIC LAKE (Pend Oreille Co.)
NEGRO CREEK (Whitman Co.)
NEW MIRE CREEK (tributary of Lake Sawyer) (King Co.)
NILE LAKE (Pend Oreille Co.)
NO NAME LAKE (Pend Oreille Co.)
NORTH LAKE (King Co.)
NORTHERN STATE HOSPITAL POND (Skagit Co.)
NORTHWESTERN RESERVOIR (Klickitat/Skamania Co.)
NUNNALLY LAKE (Grant Co.)
OFFUTT LAKE (Thurston Co.)
OLD FISHING HOLE POND (Kent) (King Co.)
OSBORNE LAKE (Mason Co.)
PACKWOOD LAKE (Lewis Co.)
PADDEN LAKE (Whatcom Co.)
PAMPA POND (Whitman Co.)
PANHANDLE LAKE (Mason Co.)
PANTHER LAKE (Kitsap/Mason Co.)
PARK LAKE (Grant Co.)
PARKER LAKE (Pend Oreille Co.)
PATAHA CREEK (within city limits of Pomeroy) (Garfield
Co.)
PATTERSON LAKE (Okanogan Co.)
PATTISON LAKE (Thurston Co.)
PEABODY CREEK (Clallam Co.)
PEARRYGIN LAKE (Okanogan Co.)
PERCH LAKE (Grant Co.)
PETIT LAKE (Pend Oreille Co.)
PHILLIPS LAKE (Stevens Co.)
PINE LAKE (Mason Co.)
PINE LAKE (King Co.)
PLUMMER LAKE (Lewis Co.)
POTTER'S POND (Stevens Co.)
PRICES LAKE (Mason Co.)
RAPJOHN LAKE (Pierce Co.)
RATTLESNAKE LAKE (King Co.)
RAVENSDALE LAKE (King Co.)
RENNER LAKE (Ferry Co.)
RIGLEY LAKE (Stevens Co.)
RILEY LAKE (Snohomish Co.)
ROBBINS LAKE (Mason Co.)
ROCKY LAKE (Stevens Co.)
ROSE LAKE (Mason Co.)
ROUND LAKE (Okanogan Co.)
ROWLAND LAKES (Klickitat Co.)
ROYAL LAKE (Adams Co.)
SACHEEN LAKE (Pend Oreille Co.)
SATSOP LAKES (Grays Harbor Co.)
SERENE LAKE (Snohomish Co.)
SHANNON LAKE (Skagit Co.)
SHERRY LAKE (Stevens Co.)
SHOE LAKE (Mason Co.)
SILENT LAKE (Jefferson Co.)
SILVER LAKE (Whatcom Co.)
SILVER LAKE (Pierce Co.)
SIXTEEN LAKE (Skagit Co.)
SKOOKUM LAKE, SOUTH (Pend Oreille Co.)

SKOOKUM LAKE, NORTH (Pend Oreille Co.)
 SPADA LAKE (RESERVOIR) (Snohomish Co.)
 SPEARFISH LAKE (Klickitat Co.)
 STARVATION LAKE (Stevens Co.)
 STEEL LAKE (King Co.)
 STEVES LAKE (Mason Co.)
 STORM LAKE (Snohomish Co.)
 STUMP LAKE (Mason Co.)
 SUMMIT LAKE (Stevens Co.)
 SUMMIT LAKE (Thurston Co.)
 SWAN LAKE (Ferry Co.)
 SWIFT RESERVOIR (Skamania Co.)
 SYLVIA LAKE (Grays Harbor Co.)
 TARBOO LAKE (Jefferson Co.)
 TENAS LAKE (Mason Co.)
 THOMAS LAKE (Stevens Co.)
 TIGER LAKE (Kitsap/Mason Co.)
 TOAD LAKE (Whatcom Co.)
 TROUT LAKE (Ferry Co.)
 TUNNEL LAKE (Skamania Co.)
 TWIN LAKE (Jefferson Co.)
 U LAKE (Mason Co.)
 VALLEY CREEK (Clallam Co.)
 VANCE CREEK/ELMA PONDS (Grays Harbor Co.)
 VANES LAKE (Pend Oreille Co.)
 VIC MEYERS (RAINBOW) LAKE (Grant Co.)
 WAGNERS LAKE (Snohomish Co.)
 WAITTS LAKE (Stevens Co.)
 WALKER LAKE (King Co.)
 WALUPT LAKE (Lewis Co.)
 WANNACUT LAKE (Okanogan Co.)
 WAPATO LAKE (Chelan Co.)
 WARD LAKE (Thurston Co.)
 WARD LAKE (Ferry Co.)
 WHATCOM, LAKE (Whatcom Co.)
 WHATCOM CREEK (Whatcom Co.)
 WILDBERRY LAKE (Mason Co.)
 WILDCAT LAKE (Kitsap Co.)
 WILDERNESS LAKE (King Co.)
 WILLAME LAKE (Lewis Co.)
 WILLIAMS LAKE (Spokane Co.)
 WOOD LAKE (Mason Co.)
 WOOTEN LAKE (Mason Co.)
 YELLOWJACKET PONDS (Lewis Co.)
 YOKUM LAKE (Pend Oreille Co.)

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 95-04-074
EMERGENCY RULES
FOREST PRACTICES BOARD

[Filed January 30, 1995, 12:58 p.m., effective February 2, 1995]

Date of Adoption: January 13, 1995.

Purpose: To modify forest practices rules, in order to protect public resources while maintaining a viable timber industry.

Citation of Existing Rules Affected by this Order:
 WAC 222-16-010, 222-16-080, 222-24-030, 222-30-050,

222-30-060, 222-30-070, 222-30-100, 222-38-020 and 222-38-030; and new sections added WAC 222-30-065 and 222-30-075.

Statutory Authority for Adoption: RCW 76.09.040 and chapter 34.05 RCW.

Pursuant to 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 emergency rule provides protection to the northern spotted owl and the marbled murrelet while the Forest Practices Board conducts the permanent rule adoption process. The northern spotted owl was listed as threatened by the United States Fish and Wildlife Service in July 1990 and by the Washington Wildlife Commission in January 1988. The marbled murrelet was listed in October 1992 and October 1993 respectively.

Effective Date of Rule: February 2, 1995.

January 27, 1995

Jennifer M. Belcher

Commissioner of Public Lands

AMENDATORY SECTION (Amending WSR 94-17-033, filed 8/10/94, effective 8/13/94)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"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.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"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.

"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.

"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.

"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.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior 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 15.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"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.

"Department" means the department of natural resources.

"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 state line.

"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.

"Erodible soils" means those soils 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) 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.

"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.

"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 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.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"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.

"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.

"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.

"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.

"Northern spotted owl site center" means the location documented by the department of fish and wildlife for Status 1, 2 or 3 northern spotted owls. The department shall rely upon the department of fish and wildlife for the determination of status based on the following definitions:

Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.

Status 2 Two birds, pair status unknown - the presence or response of two birds of the opposite sex where pair status cannot be determined and where at least one member must meet the resident 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 multiple responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

"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:

A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occurs:

- A nest is located; or
- Downy chicks or eggs or egg shells are found; or
- Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- Birds calling from a stationary location within the area; or
- Birds circling above the canopy; or
- A contiguous forested area which is not 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.

The outer perimeter of the occupied site shall be presumed to be the beginning of any gap greater than three hundred feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat." For sites defined above, it shall be the beginning of any gap greater than three hundred feet wide where one or more of the distinguishing vegetative characteristics important to murrelets is lacking.

The department shall rely upon the department of fish and wildlife for the determination of location of these occupied marbled murrelet sites.

"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 repel-

lents, 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.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"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 management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"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.

"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 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.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"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.

"Suitable marbled murrelet habitat" means a contiguous forested area with all of the following characteristics:

• Within forty miles of marine waters;

• Containing at least eight trees per acre equal to or greater than 32 inches dbh;

• At least forty percent of the trees equal to or greater than thirty-two inches are Douglas-fir, western hemlock, western red cedar or sitka spruce; and

• Containing at least two nesting platforms per acre. Nesting platforms shall include any horizontal limb, tree structure, or deformity equal to or greater than seven inches in diameter and fifty feet or more in height above the ground.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"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 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: Irrigation 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.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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 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 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 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 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 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 wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of fish and wildlife.

~~((This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date))~~ The forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.

~~((The department shall rely upon the department of wildlife for the determination of status based on the following definitions:~~

~~Status 1 Pair or reproductive — the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.~~

~~Status 2 Two birds, pair status unknown — the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.~~

~~Status 3 Resident territorial single — the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area.)~~

(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) Operation of heavy equipment, during the critical nesting season, within an occupied marbled murrelet site.

(iii) Use of aircraft below one thousand three hundred feet above ground level, during the critical nesting season, over an occupied marbled murrelet site or the required managed buffer zone adjacent to that site.

(iv) Harvesting within a three hundred foot wide managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stem stand density of seventy-five trees per acre greater than 6 inches dbh; provided that twenty-five of which shall be greater than 12 inches dbh including five trees greater than 20 inches 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 two hundred feet and extended to maximum of four hundred feet as long as an average of three hundred feet is maintained.

(v) Blasting and slash burning, during the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vi) Harvesting, road construction, operation of heavy equipment, timber hauling, or use of aircraft below one thousand three hundred feet above ground level, during the daily peak activity periods within the critical nesting season, within 0.25 mile of an occupied marbled murrelet site.

(vii) Marbled murrelet critical wildlife habitat (state) shall not include habitat where a current marbled murrelet survey has been conducted and no use of the suitable marbled murrelet habitat by a bird has been detected. Surveys shall be conducted utilizing a survey protocol which is acceptable to the department of fish and wildlife.

(viii) Site status determination and completion of marbled murrelet surveys shall not be a landowner responsibility.

(ix) This rule is intended to be interim and shall be changed as necessary, such as upon completion of a state or

federal recovery plan for the marbled murrelet or significant new information.

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner is preferred and shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of fish and wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) 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 wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of 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 15 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)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) 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 wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 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 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.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by 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).

AMENDATORY SECTION (Amending WSR 92-23-056, filed 11/17/92, effective 12/18/92)

WAC 222-24-030 Road construction. (1) **Right of way timber.** Merchantable 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:

(i) Loose stumps, logs or chunks containing more than 5 cubic feet in the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

(ii) 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.

(iii) 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.

***(5) Channel clearance.** Clear stream channel of all debris and slash generated during operations prior to the removal of equipment from the vicinity, or the winter season, whichever is first.

***(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 flood level of a Type 1, 2, 3, or 4 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 flood level of Type 1, 2, 3, or 4 Waters or in other 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.

(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.

(10) Disturbance avoidance. Road construction, operation of heavy equipment and blasting shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-050 Felling and bucking. ***(1) Falling along water.**

(a) No trees will be felled into Type 1, 2 and 3 Waters, or Type A or B Wetlands except trees which cannot practically and safely be felled outside the stream, lake or pond using techniques in general use and these trees must then be removed promptly.

Such felling and removing in Type 1, 2 or 3 Waters shall comply with the hydraulic project approval of the departments of fisheries or wildlife.

(b) Within riparian management 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.

(c) Trees may be felled into Type 4 Water if logs are removed as soon thereafter as practical. See forest practices board manual guidelines for clearing slash and debris from Type 4 and 5 Water.

***(2) Bucking in water.**

(a) No bucking or limbing shall be done on trees or portions thereof lying between the banks of Type 1, 2 or 3 Waters or in open water areas of Type A Wetlands, except as necessary to remove the timber from the water.

(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.** Felling and bucking shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-060 Cable yarding. ***(1) Type 1, 2 and 3 Waters.** No timber shall be cable yarded in or across a Type 1, 2 or 3 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 departments of fisheries or wildlife.

***(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 and 4 Waters shall not be removed or unnecessarily disturbed without approval of the departments of fisheries or 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 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 or 3 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.** The operation of heavy equipment shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

NEW SECTION

WAC 222-30-065 Helicopter yarding. Helicopter operations shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-070 Tractor and wheeled skidding systems. ***(1) Typed waters and wetlands.**

(a) Tractor and wheeled skidders shall not be used in Type 1, 2 or 3 Water, except with approval by the department and with a hydraulic project approval of the departments of fisheries or 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.

***(2) Riparian management zone.**

(a) Logging will be permitted within the zone. However, any use of tractors, wheeled skidders, or other 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 in or through the riparian management zone is necessary, the number of skidding routes through the zone shall be minimized.

(c) Logs shall be skidded 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.

(b) Where feasible logs shall be skidded 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.

***(4) Deadfalls.** Logs firmly embedded in the bed or bank of Type 1, 2, 3 or 4 Waters shall not be removed or unnecessarily disturbed without hydraulic project approval of the departments of fisheries or wildlife.

***(5) Moisture conditions.** Tractor and wheeled skidders shall not be used on exposed erodible soils or saturated soils when soil moisture content is so high that unreasonable soil compaction, soil disturbance, or wetland, stream, lake or pond siltation would 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 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.

***(8) Skid trail maintenance.** 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.

***(9) Slope restrictions.** Tractor and wheeled skidders shall not be used on slopes where in the opinion of the department this method of operation would cause unnecessary or material damage to a public resource.

(10) Disturbance avoidance. The operation of heavy equipment shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

NEW SECTION

WAC 222-30-075 Timber and rock hauling. The following limits on timber hauling shall apply within 0.25 mile northern spotted owl site center between March 1 and August 31:

(1) At all times of the day vehicle speed shall be limited to fifteen miles per hour; and

(2) Timber and rock hauling shall be limited to one hour after official sunrise to one hour before official sunset; and

(3) All reasonable attempts shall be made to minimize traffic within suitable habitat, attempt to route traffic through nonhabitat.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-100 Slash disposal or prescribed burning. (1) **Slash disposal techniques:**

***(a)** Any conventional method of slash disposal may be used, except in Type A or B Wetlands, wetland management zones, and riparian management zones and on sites where the department determines that a particular method would

cause unreasonable risk to 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 zones, slash disposal shall be by hand, unless approved by the department. Scarification shall not be allowed within wetlands. Machine piling is discouraged in 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, 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) **Slash isolation, reduction, or abatement** is required when the department determines there is an extreme fire hazard according to law (see WAC 332-24-360).

(3) **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) 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 or 4 Waters, to above the 50-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-year flood level of Type 1, 2, 3 or 4 Waters, slash disposal is required. See the forest practices board manual for "Guidelines for clearing slash and debris from Type 4 and 5 Waters."

***(5) 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, 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) Disturbance avoidance. Burning shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

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 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.** Pesticide treatments within the riparian management zone 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 buffer strip 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.

(b) Apply the initial swath parallel to the buffer strip 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. Avoid applications that might result in drift causing direct entry of pesticides into riparian management zones, Type A and B Wetlands, wetland management zones, and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

(c) Use a bucket or spray device capable of immediate shutoff.

(d) Shut off spray equipment during turns and over open water.

(e) Leave at least a 200 foot buffer strip around residences and 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.

(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 overflight of the area shall be made by the pilot with the marked photos or maps.

(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 aerially 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.

(h) Disturbance avoidance. Helicopter operations shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

* (6) **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.

* (7) **Hand application of pesticides.**

Apply only to specific targets, such as vegetation, trees, stumps, and burrows, or as bait or in traps.

* (8) **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) **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) **Daily records - aerial application of pesticides.**

On all aerial applications of pesticides, the operator shall maintain for 3 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.

* (11) **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.** Fertilizer treatments within a riparian 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 on all Type 1, 2, and 3 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 overflight 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.

(g) **Disturbance avoidance.** Helicopter operations shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and July 31.

***(5) Ground and hand application of fertilizers.** Prevent fertilizer from entering Type A and B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

***(6) 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.

WSR 95-04-075
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed January 30, 1995, 3:30 p.m.]

Date of Adoption: January 27, 1995.

Purpose: Rule is designed to carry out the purposes of chapter 70.47 RCW, the Health Care Access Act.

Citation of Existing Rules Affected by this Order: Amending WAC 55-01-010, 55-01-020, 55-01-030, 55-01-040, 55-01-050, 55-01-060, and 55-01-070.

Statutory Authority for Adoption: RCW 70.47.050.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Changes have been made to accommodate revisions in the provisions for Medicaid/basic

health plan eligibility coordination in the Health Services Act, E2SSB 5304.

Effective Date of Rule: Immediately.

January 27, 1995

Elin Meyer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-14-088, filed 6/30/92, effective 7/31/92)

WAC 55-01-010 Definitions. The following definitions apply throughout these rules.

(1) "Administrator" means the ~~((Washington basic health plan))~~ administrator of the Washington state health care authority (HCA) or designee.

~~((2) "Certificate of coverage" means a written document issued by the plan to a subscriber which describes the covered services, premiums, grievance procedures and other rights and responsibilities of enrollees. The certificate of coverage issued to a subscriber shall pertain to the subscriber and family dependents.))~~

(2) "Appeal procedure" means a written procedure for resolution of problems or concerns raised by enrollees.

(3) "Basic health plan" (BHP) means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the HCA administrator through managed health care systems, created by chapter 70.47 RCW. The Washington state basic health plan is a program within the Washington state health care authority.

~~((3))~~ (4) "Copayment" means a payment indicated in the schedule of benefits which is made by an enrollee to a managed health care system, ~~((or health care provider, or to the plan, when specifically instructed to do so by the plan, for covered services provided to the enrollee.))~~

~~((4))~~ (5) "Covered services" means those services and benefits to which an enrollee is entitled, under the ~~((certificate of coverage))~~ benefit booklet issued by the ~~((plan))~~ HCA to the enrollee (or to a subscriber on behalf of the enrollee), in exchange for payment of premium and applicable copayments.

~~((5))~~ "Dependent child" means an individual's unmarried natural child, stepchild, or legally adopted child, who is either (a) younger than age nineteen, or (b) younger than age twenty three and (i) is a full time student at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, or (ii) is pursuing a full time course of institutional on farm training under the supervision of an educational organization described in WAC 55-01-010 (5)(b)(i);))

(6) "Effective date of enrollment" means the first date, as established by the ~~((plan))~~ HCA, on which an enrollee is entitled to receive covered services from the enrollee's respective participating managed health care system.

(7) "Eligible dependents." The following are eligible as dependents under the BHP:

(a) Lawful spouse of the subscriber, if not legally separated, who resides in the same residence.

(b) Dependent child who is an unmarried child and who is:

(i) Younger than age nineteen and is a natural child, stepchild or legally adopted child.

(ii) Younger than age twenty-three who is a registered student in full-time attendance at an accredited secondary school, college, university, vocational school, or school of nursing. Dependent student eligibility continues year-round for those who attend three of the four school quarters and for the quarter following graduation provided the subscriber is covered at the same time; the dependent limiting age has not been exceeded; and the dependent meets all other eligibility requirements.

(iii) Legal dependent of any age who is incapable of self-support due to developmental disability or physical handicap.

(8) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

~~((7))~~ (9) "Enrollee" means a person who meets all eligibility requirements, who is enrolled in the ((plan)) BHP, and for whom applicable premium payments have been made.

~~((8))~~ (10) "Family" means an individual or an individual and the individual's ((spouse, if not legally separated, and the individual's dependent children)) eligible dependents. For purposes of eligibility determination and enrollment in the ((plan)) BHP, an individual, or dependent cannot be a member of more than one family.

~~((9))~~ "Family dependent" means a subscriber's legal spouse, if not legally separated, or the subscriber's dependent child, who meets all eligibility requirements, is enrolled in the plan, and for whom the applicable premium has been paid.

(11) "Financial sponsor" means a person, employer or other entity that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any family dependents.

~~((10))~~ "Grievance procedure" means the formal process for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction. "Grievance" means a problem or concern presented for resolution through a grievance procedure.)

~~((11))~~ (12) "Gross family income" means ((the total income of all members of an enrollee's family, regardless of whether those family members enroll in the plan.

(a) For purposes of this definition, for applications for enrollment which are received by the plan on or before March 31, 1989, "income" includes but is not limited to wages and salaries, net income from rentals or self-employment, tips, interest income, dividends, royalties, public or private pensions, and Social Security benefits.

(b) For purposes of this definition, for applications for enrollment which are received by the plan on or after April 1, 1989 and for premium payments which are made for coverage on or after June 1, 1989, "income" means)) total cash receipts of the subscriber and eligible dependents before taxes from all sources, with the exceptions noted in (b) below. ~~((12))~~ (a) Income includes: (i) money wages and salaries before any deductions regardless of whether those eligible dependents enroll in BHP; (ii) net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); (iii) net

receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); (iv) regular payments from Social Security, child support, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance ((including aid to families with dependent children, supplemental security income, emergency assistance money payments, and non-federally-funded general assistance or general relief money payments), and training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions)) (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships and assistantships, if received as or convertible by the recipient into cash; (v) work study; and (vi) dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

~~((12))~~ (b) Income does not include the following types of money received: (i) Capital gains; (ii) any assets drawn down as withdrawals from a bank, the sale of property, a house or a car; (iii) tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury (except workers' compensation)((- Also excluded are)); (iv) noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance(-); (v) ~~((e) "Income" shall not include))~~ income earned by dependent children except for regular payments from Social Security, nor shall it include income of a family member who resides in another household when such income is not available to ((those family members)) the subscriber and eligible dependents seeking enrollment in the ((plan)) BHP; and (vi) university scholarships, grants, fellowships and assistantships if not convertible to cash.

~~((d))~~ In the event that an item of income is received periodically, but less frequently than once per month, the latest amount received will be divided by the number of months in the period (i.e., between payments) in order to calculate an average amount per month. That monthly average will be combined with other monthly items of income to derive a monthly total, which will be used in the calculation of income as a percentage of federal poverty level. (For example, if an applicant receives quarterly interest payments in January, April, July, and October, and applies for coverage by the plan in September, the July payment will be divided by three to obtain a monthly income amount.))

~~((12))~~ (13) "Managed health care system" (or "MHCS") means any health care organization who has entered into a contract with the HCA to provide the BHP to enrollees, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, on a prepaid

capitated basis to ~~((a defined patient population enrolled in the plan and in the managed health care system))~~ enrollees. On and after July 1, 1995, "MHCS" means a certified health plan as defined in RCW 43-72-010.

~~(14)~~ "Medicaid" means the Title XIX Medicaid program. This medical care program is administered by the Medical Assistance Administration to the "categorically needy" as defined in chapters 388-82 and 388-92 WAC and to those defined as "medically needy" under WAC 388-80-005(45).

~~((13))~~ (15) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(16) "Benefit booklet" means a written document issued by the HCA to a subscriber which describes the covered services, premiums, appeal procedures and other rights and responsibilities of enrollees. The benefit booklet represents the enrollee's certificate of coverage. The benefit booklet issued to a subscriber shall apply to the subscriber and enrolled dependents.

(17) "Nonsubsidized enrollee" means an enrollee who pays, or on whose behalf is paid (excluding Medicaid recipients or those enrollees who are eligible to receive Medicaid benefits), the full costs for participation in BHP, including administrative costs, without any subsidy from BHP.

~~((14))~~ (18) "Open enrollment" means a time period designated by the administrator during which enrollees may apply to transfer their ~~((membership))~~ enrollment from one participating managed health care system to another. ~~((There shall be at least one open enrollment period of at least twenty consecutive days, at least once annually, in each site served by the plan.))~~

~~((15))~~ "Participating," when referring to a managed health care system, means one that has entered into a contract with the plan to provide covered services to enrollees. When referring to a health care provider, "participating" means one who is employed by or has entered into a contract with a participating managed health care system to provide covered services to enrollees.

~~((16))~~ (19) "Premium" means a periodic payment, based upon gross family income and determined under RCW 70.47.060(2), which a subscriber or financial sponsor makes to the ~~((plan))~~ HCA on behalf of the subscriber and ~~((family))~~ eligible dependents in consideration for enrollment in the ~~((plan))~~ BHP.

~~((17))~~ "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

~~((18))~~ (20) "Rate" means the per capita amount, including any applicable premium and prepayment tax imposed under RCW 48.14.020, negotiated by the administrator with and paid to a ~~((participating))~~ managed health care system, ~~((that is based upon the enrollment of enrollees in the plan and in that MHCS))~~ to provide the schedule of benefits described in the benefit booklet to enrollees.

(21) "Residence" means the one principal physical location at which an individual lives.

~~((19))~~ "Schedule of benefits" means the basic health care services adopted and from time to time amended by the

administrator, which enrollees shall be entitled to receive from participating managed health care systems.

~~((20))~~ (22) "Service area" means the geographic area served by a ~~((participating))~~ managed health care system as defined in its contract with the ~~((plan))~~ HCA.

~~((21))~~ (23) "Site" means a geographic area designated by the ~~((plan))~~ HCA in which one or more ~~((participating))~~ managed health care systems are offered to enrollees for selection.

~~((22))~~ (24) "Subscriber" is a person who meets all applicable eligibility requirements, is enrolled in the BHP, and for whom the monthly premium has been paid. Notices (with the exception of disenrollment notices) to a subscriber, or if applicable to a financial sponsor, shall be considered notice to the subscriber and his/her enrolled dependents. Disenrollment notices will be sent to the subscriber, or the parent or legal guardian of an enrolled dependent child. ~~((means an enrollee, or the parent or legal guardian of an enrolled dependent child, who has been designated by the plan as the individual to whom the plan and the managed health care system will issue all notices, information requests and premium bills on behalf of all enrolled family members. For purposes of chapter 55-01 WAC, notice to a subscriber shall be considered notice to all enrolled members of the subscriber's family as well.))~~

~~((23))~~ "Subsidy" means the difference between the rate paid by the administrator to a managed health care system on behalf of an enrollee and the enrollee's premium responsibility.

(25) "Subsidized enrollee" means an enrollee whose gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the U.S. Department of Health and Human Services, for whom funds are available to provide a partial subsidy of the premium according to a premium schedule adopted by the administrator. Medicaid recipients who are enrolled in managed health care systems through the BHP are also considered by the HCA and the department of social and health services to be "subsidized" enrollees.

(26) "Subsidy" means the difference between the premium responsibility of a subsidized enrollee, who is not a Medicaid recipient, and the costs incurred by the HCA in providing coverage to that subsidized enrollee. The costs incurred include both the rate paid by the HCA to a managed health care system on behalf of the enrollee and that portion of the administrative cost of providing the BHP allocated by the administrator to that enrollee.

~~((24))~~ "Washington basic health plan" or "plan" means the system of enrollment and payment on a prepaid capitated basis for basic health care services, administered by the plan administrator through participating managed health care systems, ~~created by chapter 70.47 RCW.~~

Reviser's note: The typographical errors in 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: 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 92-14-097, filed 6/30/92, effective 7/31/92)

WAC 55-01-020 Schedule of benefits. (1) The administrator shall design and from time to time may revise a schedule of benefits which shall include such physician services, inpatient and outpatient hospital services, prescription drugs and medications, proven preventive and primary care services, all services necessary for prenatal, postnatal and well-child care, and other services as determined by the administrator to be necessary for basic health care and which enrollees shall receive in return for premium payments to the ~~((plan))~~ HCA and payment of required copayments. The schedule of benefits is subject to copayments, limitations and exclusions detailed in the benefit booklet. ~~((However, for the period beginning July 1, 1992, and ending June 30, 1993, the schedule of benefits shall not include prenatal or postnatal services for enrollees who are eligible for coverage under the medical assistance program under chapter 74.09 RCW, except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider, or except to provide any such services associated with pregnancies diagnosed by the managed care provider before July 1, 1992. The schedule of benefits may include copayments, limitations and exclusions which the administrator determines are appropriate and consistent with the goals and objectives of the plan.~~

~~((2))~~ (2) In designing and revising the schedule of benefits, the administrator will consider the effects of particular benefits, copayments, limitations and exclusions on access to necessary basic health care services, as well as the cost to the enrollees and to the state, and will also consider generally accepted practices of the health insurance and managed health care industries.)

~~((3))~~ (2) Prior to enrolling in the ~~((plan))~~ BHP, each applicant will be given a complete written description of covered benefits, including all copayments, limitations and exclusions. Enrollees will also be given information on the services, providers, facilities, hours of operation, and other information descriptive of the managed health care system(s) available to enrollees in a given site.

~~((4))~~ (3) Subscribers will be given written notice by the ~~((plan))~~ HCA of any ~~((planned revisions to the benefit package and the accompanying premiums;))~~ changes in the amount and scope of benefits provided under the BHP. Such notice ~~((to))~~ will be mailed at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect. ~~((For purposes of this provision, notice shall be deemed complete upon depositing the written revisions in the United States mail, first class postage paid, directed to the enrollee at the enrollee's last mailing address on file with the plan. The administrator will make available a separate schedule of benefits for children, eighteen years of age and younger, for those who choose to enroll only their dependent children in the plan.))~~

AMENDATORY SECTION (Amending WSR 92-14-088, filed 6/30/92, effective 7/31/92)

WAC 55-01-030 Premiums and copayments. (1) ~~((Each))~~ Subscribers shall be responsible for paying a monthly premium to the ~~((plan))~~ HCA, on behalf of the

subscriber and all ~~((family))~~ enrolled dependents ~~((, according to a premium schedule to be provided by the plan at the time the subscriber is enrolled by the plan)).~~ A third party may, with the approval of the administrator, become a financial sponsor and pay all or a designated portion of the premium on behalf of any enrollee.

~~((2))~~ (2) Any co-payments required will be established initially in the contract between the HCA and the MHCS and will be detailed in the benefit booklet. Premiums are based on the subscriber's gross family income, the total number of people in the family, and the age of each enrollee. The benefit booklet shall specify the terms of payment and notice requirement for changes in the premium. ~~((The amount of premium payable by any subscriber will be based upon the subscriber's gross family income and rates payable to participating managed health care systems, and may vary with the number and ages of individuals enrolled from a given family. A third party may, with the approval of the administrator and through a mechanism acceptable to the administrator, pay the premium on behalf of any enrollee. Premium amounts payable shall be a monthly dollar payment or a percentage of the total rate payable by the plan. A statement of the monthly amount due will be mailed to the subscriber upon determination of eligibility for the plan.~~

~~((2))~~ (2) Based on the information provided by an enrollee on the application for enrollment, and any other information obtained by the plan, the enrollee will be informed of the premium amount due. The plan will notify subscribers in writing of any revisions to the premium schedule or to the premium amounts payable to the plan, such notice to be mailed at least thirty days prior to the due date of the premium payment for the month in which such revisions are to take effect, except that retroactive enrollment of a newborn or newly adopted child (as provided in WAC 55-01-050(6)) may result in a corresponding retroactive increase in premium payable to the plan. For purposes of this provision, notice shall be deemed complete upon depositing the written revisions in the United States mail, first class postage paid, directed to the enrollee at the enrollee's last mailing address on file with the plan.

~~((3))~~ (3) Once the plan has determined that a subscriber and members of the subscriber's family (if any) are eligible for enrollment, the plan will bill the subscriber for the family's first month's premium. The subscriber and family members will not be eligible to receive covered services on the effective date of enrollment specified by the plan unless the premium bill is paid in full by the due date specified on the bill. Thereafter, the plan will bill each subscriber monthly, and the subscriber shall be responsible for payment of the billed amount in full by the date specified on the bill.

~~((4))~~ (4) Premium bills must be paid in full by the date specified on the bill. Payment may be made in person at the plan's administrative office in Olympia, Washington, or by mail to the address specified on the bill. If the plan does not receive payment in full of a premium bill by 5:00 p.m. on the date specified on the bill, the plan shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with the plan, requiring payment in full by a date not less than ten days from the date of the notice. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be disenrolled effective the first day of the month

following the last month for which full premium payment was received by the plan. Partial payment of premiums due will be regarded as nonpayment. The plan may disenroll a subscriber and enrolled family members in the event that the subscriber receives more than two delinquency notices in a twelve-month period.

~~((5))~~ (3) Enrollees shall be responsible for paying any required copayment, ~~((directly to the provider of a covered service, unless the enrollee has been instructed by his or her managed health care system or the plan to make payment to another party. Copayments must be paid in full by the enrollee at the time of service.))~~ Failure to pay a required copayment in full at the time of service may result in the denial or rescheduling of that service by the managed health care system. Repeated failure to pay copayments in full on a timely basis may result in disenrollment, as provided in WAC 55-01-060(2).

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 Order 88-001, filed 12/2/88)

WAC 55-01-040 Eligibility. (1) To be eligible for enrollment in the plan, an individual must:

(a) ~~((Be under age sixty-five;~~

~~((b) Not be eligible for medicare;))~~ Not be eligible for medicare;

(b) At the time of enrollment, not have or not have voluntarily relinquished health insurance more comprehensive than that offered by the BHP based upon a determination by the administrator. Factors which may be considered in determining whether insurance is more comprehensive include, but are not limited to, enrollee's current benefit plan and the associated co-pays, co-insurance, deductibles and benefit exclusions;

(c) Reside within the service area of a ~~((participating))~~ managed health care system; and

~~((d) ((Have a gross family income at the time of enrollment that does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the Federal Department of Health and Human Services.)) If subsidized and if requested by the administrator, provide proof that a Medicaid eligibility determination has been completed within the last thirty days, including the results of that determination.~~

Persons not meeting all of these criteria (with the exception of (b)), at the time of initial application, as evidenced by information submitted on the application for enrollment or otherwise obtained by the ((plan)) HCA, will not be enrolled. Criterion (b) must be met at the time of enrollment. An enrollee who subsequently fails to meet all of the criteria, or is later determined to have failed to meet all of the criteria at the time of enrollment, will be disenrolled from the ((plan)) BHP as provided in WAC 55-01-060((—except that an enrollee whose gross family income exceeds twice the federal poverty level may continue as an enrollee for up to six months, provided all other criteria are met and provided that the enrollee pays a monthly premium equal to the rate stated in the contract

~~between the plan and the participating managed health care system selected by the enrollee)).~~

(2) To be eligible for subsidized enrollment in the BHP, an individual must have a gross family income that does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the U.S. Department of Health and Human Services.

The administrator may require enrollees or prospective enrollees to complete the following eligibility determination process, as further defined under chapter 74.09 RCW (pertaining to eligibility for the Medicaid program), prior to enrollment or continued participation in the BHP.

(a) A prospective or current enrollee shall comply with an HCA request to provide evidence to the administrator that a Medicaid eligibility determination has been completed within the past thirty days and the results of this determination.

(b) The administrator shall ensure that all prospective or current BHP enrollees who are determined to be eligible for Medicaid receive complete information regarding the benefits available through the Medicaid program compared to the benefits they would receive (or are currently receiving) under the BHP.

(c) Failure or refusal on the part of a prospective or current enrollee to comply with a request to complete the Medicaid eligibility determination process may preclude enrollment and may affect continued participation in the BHP subsidy.

~~((2))~~ (3) An individual otherwise eligible for enrollment in the ~~((plan))~~ BHP may be denied enrollment if the administrator has determined that acceptance of additional enrollment in a given service area would exceed limits established by the legislature ~~((, would jeopardize the orderly development of the plan in that service area, or would result in an overexpenditure of plan funds))~~ or additional enrollment in a given MHCS would exceed established contract limits, or would result in an overexpenditure of BHP funds, or would jeopardize the orderly development of BHP. In the event that the administrator closes enrollment in a given service area, the ~~((plan))~~ HCA will continue to accept applications for enrollment, but will not process those applications for determination of eligibility. The ~~((plan))~~ HCA will place the names of applicants on a waiting list in the order in which applications are received, and will so notify the applicants. In the event that enrollment is re-opened by the administrator, applicants whose names appear on the waiting list will be notified by the ~~((plan))~~ HCA of the opportunity to enroll; provided that the ~~((plan))~~ HCA may require new application forms and documentation from applicants on the waiting list, or may contact applicants to verify continued interest in applying, prior to determining their eligibility.

(4) The HCA will accept applications for group enrollment in the BHP from business owners on behalf of themselves and their employees, spouses and dependent children if:

(a) The BHP is the only health plan offered by the business to its eligible employees;

(b) The business owner pays at least fifty percent of the nonsubsidized premium cost of the BHP on behalf of each employee enrolled in the plan; and

(c) The employee is not eligible for medicare.

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.

AMENDATORY SECTION (Amending WSR 92-14-097, filed 6/30/92, effective 7/31/92)

WAC 55-01-050 Enrollment in the plan. (1) Any individual applying for enrollment in the ~~((plan))~~ BHP must complete, sign and submit ~~((the plan's))~~ a BHP application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or legal guardian, who shall also be held responsible ~~((by the plan))~~ for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the benefit booklet.

(2) Each applicant shall ~~((complete and sign the application for enrollment.))~~ list ~~((ing))~~ those family members to be enrolled and supply ~~((ing))~~ such other information and documentation as required by the ~~((plan))~~ HCA.

(a) Documentation will be required, showing the amount and sources of ~~((applicant's))~~ applicant's year to date income to include ~~((for))~~ the most recent complete calendar month as of the date of application, ~~((Applicants will also be required to submit))~~ and a signed copy of their most recently filed federal income tax form. Acceptable ~~((income earning))~~ income documentation shall be required for all ~~((income earning))~~ family members, including those not applying for enrollment, except for family members who reside in another household and whose income is not available to the family seeking enrollment, and dependent children.

(b) Documentation of the applicant's name and physical residence shall also be required, ~~((displaying the applicant's name and address.))~~

(c) The ~~((plan))~~ HCA may request additional information from applicants for purposes of establishing or verifying eligibility, including Medicaid eligibility in chapter 74.09 RCW, premium responsibility or managed health care system selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in the ~~((plan))~~ BHP. Intentional submission of false information may result in disenrollment of the applicant and all enrolled family members, retroactive to the date upon which coverage began.

(3) Each family applying for enrollment must designate a ~~((participating))~~ managed health care system from which all enrolled family members will receive covered services. All applicants from the same family must receive covered services from the same managed health care system (except in cases where a subscriber, who is paying child support for his/her dependents, lives in another covered services area). No applicant will be enrolled for whom designation of a ~~((participating))~~ managed health care system has not been made as part of the application for enrollment. The administrator will establish procedures for the selection of man-

aged health care systems, which will include conditions under which an enrollee may change from one managed health care system to another. Such procedures will allow enrollees to change from one managed health care system to another during open enrollment, or otherwise upon showing of good cause for the transfer.

(4) Except as provided in WAC 55-01-040~~((2))~~ (3), applications for enrollment will be reviewed by the ~~((plan))~~ HCA within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(5) Eligible applicants will be enrolled in the ~~((plan))~~ BHP in the order in which their completed applications, including all required documentation, have been received by the ~~((plan))~~ HCA, provided that the applicant also remits full payment of the first premium bill to the ~~((plan))~~ HCA by the due date specified by the ~~((plan))~~ HCA.

(6) Not all family members are required to apply for enrollment in the ~~((plan))~~ BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply may not subsequently enroll as a family dependent until the next open enrollment period available to that family member, unless that family member loses other health coverage. Eligible newborn and newly adopted children may be enrolled effective from the date of birth or physical placement with the adoptive parents for adoption, provided that application for enrollment is submitted to the ~~((plan))~~ HCA within sixty days of the date of birth or such placement for adoption. A newly acquired spouse of an enrollee may apply for enrollment within thirty days of the date of marriage and, if found eligible by the ~~((plan))~~ HCA, will be enrolled on the first of a month following completion of the enrollment process by the ~~((plan))~~ HCA, provided that the addition of the spouse does not otherwise render the family ineligible for coverage by the ~~((plan))~~ HCA.

(7) ~~((Any e))~~ Enrollees who disenroll~~((s))~~ from the ~~((plan for reasons other than ((a) ineligibility due to an increase in gross family income or (b)))~~ coverage by another health care benefits program may not reenroll in the plan for a period of twelve months from the effective date of disenrollment. ~~((An enrollee who disenrolls because of ineligibility due to an increase in gross family income may reenroll in the event that gross family income subsequently falls to a level which qualifies the enrollee for eligibility.))~~ An enrollee who disenrolls because of coverage by another health care benefits program may reenroll in the event that the enrollee becomes ineligible for such other coverage, provided that the enrollee has been continuously covered since the date of disenrollment from the plan, and provides documentation of such continuous coverage to the plan. Before any person shall be reenrolled in the plan, that person must)) BHP due to loss of eligibility may re-enroll provided they complete a new application for enrollment and ((must be)) are determined by the ((plan)) HCA to be otherwise eligible for enrollment as of the date of application. Enrollees who are disenrolled from BHP in accordance with WAC 55-01-060(2), except for loss of eligibility, and who do not maintain continuous coverage may not re-enroll for a period of twelve months from the effective date of disenrollment.

Continuous coverage will be defined as coverage with no lapse greater than 90 days.

(8) The ~~((plan))~~ HCA may require any enrollee or applicant for enrollment in the ~~((plan))~~ BHP who appears to meet eligibility requirements for medical care under chapter 74.09 RCW to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the ~~((plan))~~ BHP.

(9) Once every six months, the ~~((plan))~~ HCA will request verification of information from enrollees ("recertification"), which may include a request to complete a new application form and submit required documentation. For good cause, the HCA may recertify on a more frequent basis. At recertification, enrollees will be required to report their gross family income for the ~~((most recent complete))~~ preceeding calendar month, ~~((as of the recertification date specified by the plan,~~ and to provide the same documentation of such income as required of applicants. ~~((The plan may request information more frequently from an enrollee for the purpose of verifying eligibility if the plan has good cause to believe that the enrollee's income, residence, family size or other eligibility criteria may have changed since the date on which information was last received by the plan. Enrollees shall be given at least twenty days from the date of any such information request to respond to the request. Failure to respond within the time designated in any information request shall result in a second request from the plan.))~~ Failure to respond within the time designated ~~((in any second request for information))~~ may result in disenrollment of the enrollee. Each enrollee is responsible for notifying the ~~((plan))~~ HCA within thirty days of any changes which could affect the enrollee's eligibility or premium responsibility. If, as a result of the eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee failed to inform the HCA of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the poverty level.

Reviser's note: The typographical errors in 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 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.

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 92-14-097, filed 6/30/92, effective 7/31/92)

WAC 55-01-060 Disenrollment from the ~~((plan))~~ BHP. (1) An enrollee may disenroll effective the first day of any month by giving the ~~((plan))~~ HCA at least ten days prior written notice of the intention to disenroll. Reenrollment in the ~~((plan))~~ BHP shall be subject to the provisions of WAC 55-01-050(7). The administrator shall also establish procedures for notice by an enrollee of a disenrollment decision, including the date upon which

disenrollment shall become effective. Nonpayment of premium by an enrollee or financial sponsor, including employer group, shall be considered an indication of the enrollee's or group's intention to disenroll from the ~~((plan))~~ BHP.

(2) The ~~((plan))~~ HCA may disenroll any enrollee from the ~~((plan))~~ BHP for good cause, which shall include: (a) Failure to meet the eligibility requirements set forth in WAC 55-01-040; ~~((loss of eligibility;))~~ (b) nonpayment of premium; (c) repeated failure to pay copayments in full on a timely basis; ~~((failure to provide eligibility information necessary to determine whether the enrollee may be eligible for medical care under chapter 74.09 RCW within thirty days of the date of request by the plan; failure to apply when such application is required by the plan to the department of social and health services for determination of eligibility for medical care under chapter 74.09 RCW within thirty days of the date of request by the plan;))~~ (d) knowingly providing false information; (e) fraud or abuse ~~((including but not limited to serious misconduct));~~ (f) intentional misconduct; and (g) refusal to accept or follow procedures or medical treatment determined by a ~~((participating provider))~~ MHCS to be essential to the health of the enrollee, where the managed health care system demonstrates to the satisfaction of the ~~((plan))~~ HCA that no professionally acceptable alternative form of treatment is available from the managed health care system, and the enrollee has been so advised by the managed health care system. The ~~((plan))~~ HCA shall provide the enrollee or legal guardian/parent of a child with advance written notice of its intent to disenroll the enrollee. Such notice shall specify an effective date of disenrollment, which shall be at least ten days from the date of the notice, and shall describe the procedures for disenrollment, including the enrollee's right to appeal the disenrollment decision as set forth in WAC 55-01-070. Prior to the effective date specified, if the enrollee submits an ~~((grievance))~~ appeal to the ~~((plan))~~ HCA contesting the disenrollment decision, as provided in WAC 55-01-070(3), disenrollment shall not become effective until the date, if any, established as a result of the ~~((plan))~~ HCA's ~~((grievance))~~ appeal procedure, provided that the enrollee otherwise remains eligible and continues to make all premium payments when due; and further provided that the enrollee does not pose a threat of nonconsensual violent, aggressive or sexually aggressive behavior, assault or battery or purposeful damage to or theft of managed health care system property, or the property of staff or providers, patients or visitors while on the property of the managed health care system or one of its participating providers.

(3) Any ~~((applicant for enrollment))~~ enrollee ~~((in the plan))~~ who ~~((knowingly))~~ provides false information to the ~~((plan))~~ HCA or to a ~~((participating))~~ managed health care system may ~~((be disenrolled by the plan and may))~~ be held financially responsible for any covered services obtained ~~((from))~~ through the ~~((plan))~~ BHP. The administrator may apply other available remedies as well.

AMENDATORY SECTION (Amending Order 88-001, filed 12/2/88)

~~WAC 55-01-070 ((Hearings and grievances. The plan will develop procedures for the expeditious resolution of enrollees' grievances, and will require participating managed health care systems to do the same.~~

~~(1) If an enrollee has an grievance pertaining to a managed health care system, the enrollee shall exhaust the managed health care system's grievance procedure prior to requesting consideration of the grievance by the plan. The managed health care system's grievance procedure shall provide for expeditious resolution by managed health care system personnel with authority to require corrective action. There shall be a written reply from the managed health care system stating either the decision and its basis, or the reasons for failure to reach a decision, within thirty days of receipt of the written grievance. An enrollee has the right to request consideration of the grievance by the administrator if the final decision is adverse or if the written reply is not received within thirty days from the date the managed health care system received the written grievance.~~

~~(2) If an enrollee has a grievance pertaining to actions of the plan, the enrollee may submit the grievance to the plan for resolution by the plan's grievance procedure. A written description of the plan's grievance procedure will be provided to the enrollee upon enrollment, or at any time upon request. The plan's grievance procedure shall provide for resolution of the grievance within thirty days of receipt of complete information describing the grievance and its basis.~~

~~(3) An enrollee who is involuntarily disenrolled by the plan may contest the disenrollment by submitting a grievance to the plan, within ten days of the notice of disenrollment, for resolution by the plan's grievance procedure. The plan shall issue and mail a written decision within thirty days of receiving the grievance.~~

~~(4) An individual whose application for enrollment in the plan is denied may contest the denial of enrollment by submitting a grievance to the plan, within ten days of the notice by the plan of such denial, for resolution by the plan's grievance procedure. The plan shall issue and mail a written decision within thirty days of receiving the grievance.~~

~~(5) If the plan's decision resulting from its grievance procedure is adverse to an enrollee or applicant, he or she may, within fifteen days of receiving notice of the grievance decision, request a hearing under chapters 34.04 and 34.12 RCW in order to contest the plan's decision.) Appeals and mediation of grievances. (1) The following decisions by the BHP may be appealed pursuant to this section:~~

~~(a) A determination that an applicant for enrollment as a subsidized enrollee is ineligible pursuant to WAC 55-01-040;~~

~~(b) A decision to disenroll an enrollee pursuant to WAC 55-01-060.~~

~~(2) Appeals under subsection (1) shall be conducted as brief adjudicative proceedings pursuant to RCW 34.05.482 through 34.05.494 and WAC 182-16-060.~~

~~(3) Disputes arising between enrollees and the managed health care system in which they are enrolled are considered to be contractual disputes between those parties. The HCA offers a mediation service aimed at resolving those disputes~~

as quickly, efficiently and fairly as possible. Both enrollees and managed health care systems are expected, as a condition of participation in the BHP, to participate fully and cooperatively in this mediation process once invoked by either party to such dispute. In the event the dispute cannot be resolved by mediation, and both enrollee and the managed health care system agree, the HCA will designate a person to act as binding arbitrator of the dispute.

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 95-04-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 95-09—Filed January 31, 1995, 2:58 p.m.]

Date of Adoption: January 30, 1995.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-35000C and 220-56-38000W; and amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to 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: A harvestable surplus of clams and oysters exists for recreational harvest in some areas and other areas require conservation closure.

Effective Date of Rule: Immediately.

January 30, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-56-35000D Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to harvest or possess clams, cockles, borers or mussels taken for personal use from the following tidelands except during the times shown:

(1) Cama Beach State Park - state-owned tidelands beginning at the section line marker of Section 26, Township 31 North Range 2 East and following the shoreline north approximately 850 feet are closed until further notice.

(2) Penrose State Park - Closed until further notice.

(3) Oak Bay County Park - Open until further notice.

(4) Wolfe Property State Park - Open until further notice.

(5) Nahcotta Tidelands - Closed immediately. Open March 1, 1995 through March 31, 1995 during daylight hours only.

Nahcotta Tidelands are 400 feet of tidelands defined by the seawater pipe line at the north end and Paul's slough as the south end. Boundary will be marked by white posts.

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 220-56-38000X 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 tidelands except during the times shown:

- (1) Rendsland Creek - **Open** until further notice.
- (2) Twanoh State Park - **Open** until further notice.
- (3) West Dewatto (DNR 44A) - **Open** until further notice.
- (4) Nahcotta Tidelands - **Closed** immediately. **Open** March 1, 1995 through March 31, 1995 during daylight hours only.

Nahcotta Tidelands are 400 feet of tidelands defined by the seawater pipe line at the north end and Paul's slough as the south end. Boundary will be marked by white posts.

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-56-35000C Clams other than razor clams—Areas and seasons. (94-175)
- WAC 220-56-38000W Oysters—Areas and seasons. (94-175)

**WSR 95-04-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 95-12—Filed January 31, 1995, 3:02 p.m.]

Date of Adoption: January 31, 1995.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to 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: Harvestable numbers of sturgeon are available in the Columbia River between Bonneville and McNary dams. This rule is consistent with the recommendation of the Columbia River Compact

meeting of January 27, 1995, and sturgeon management task force catch guidelines.

Effective Date of Rule: Immediately.

January 31, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-32-05100M Columbia river salmon seasons above Bonneville. (1)Notwithstanding the provisions of WAC 220-32-051, and 220-32-052, 220-32-053, 220-32-056, 220-32-057, and 220-32-058, effective immediately, it is unlawful for a person to take or possess salmon, shad or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1F, 1G or 1H, except those individuals possessing treaty fishing rights under the Yakama, Warm springs, Umatilla or Nez Perce treaties may fish or possess salmon, sturgeon and shad under the following provisions:

- (a) Open for salmon, sturgeon and shad:
Noon February 1, 1995 to noon March 18, 1995.
Closed noon Saturday to noon Monday weekly.
- (b) Open Area: SMCRA 1F, 1G, and 1H
- (c) Mesh: No mesh restriction
- (2) Notwithstanding the provisions of WAC 220-32-058, closed areas at the mouth of:
 - (a) Hood River is those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the breakwall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.
 - (b) Herman Creek is those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.
 - (c) Deschutes River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between point one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline.
 - (d) Umatilla River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one mile downstream from the western shoreline.
 - (e) Big White Salmon River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located one-half mile downstream from the west bank upstream to light "35".
 - (f) Wind River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.
 - (g) Klickitat River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle

EMERGENCY

Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

(h) Little White Salmon River is those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia river between Light "27" upstream to a marker located approximately one-half mile upstream from the eastern shoreline.

(3) Notwithstanding the provisions of WAC 220-22-010, during the open periods in subsection (1):

(a) Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of Gods, and downstream from the west end of the 3 mile rapids located approximately 1.8 miles below the Dalles Dam.

(b) Area 1G includes those waters of the Columbia River upstream from a line drawn between deadline marker on the Oregon shore located approximately 3/4 mile above the Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in midriver, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy light below John Day Dam.

(c) Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately one-half mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

**WSR 95-04-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 95-08—Filed January 31, 1995, 3:04 p.m., effective February 1, 1995]

Date of Adoption: January 30, 1995.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 220-49-017, 220-49-020, and 220-49-023.

Statutory Authority for Adoption: RCW 75.08.080.

Pursuant to 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: Sufficient numbers of herring are available for limited harvest.

Effective Date of Rule: February 1, 1995.

January 30, 1995
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-49-02000H Baitfish — Seasons Notwithstanding the provisions of WAC 220-49-020, WAC 220-49-017 and WAC 220-49-023, it is unlawful to take, fish for or possess herring in Marine Fish and Shellfish Catch Reporting Area 20A, except as provided in the following subsections:

(1) FISHING AREA: Marine Fish and Shellfish Catch Reporting Area 20A, excluding those waters inside and southerly of a line projected due east from the most northern tip of Point Semiahmoo (Drayton Harbor).

(2) FISHING PERIODS:

Open 8:00 a.m. to 6:00 p.m. daily, February 1 through February 3

Open 8:00 a.m. to 6:00 p.m. daily, February 6 through February 10

Open 8:00 a.m. to 6:00 p.m. daily, February 13 through February 17

Open 8:00 a.m. to 6:00 p.m. daily, February 20 through February 24

Open 8:00 a.m. to 6:00 p.m. daily, February 27 through March 3

Open 8:00 a.m. to 6:00 p.m. daily, March 6 through March 10

Open 8:00 a.m. to 6:00 p.m. daily, March 13 through March 17

(3) GEAR: Gill nets which shall not exceed 720 feet in length or contain meshes less than 2 1/8 inch stretch measure.

(4) SPECIAL CONSIDERATIONS

(a) The fishery will close once the quota of 51 tons (short) of herring is estimated to have been taken, regardless of the fishing periods listed above.

(b) The Director may close the fishery anytime when it is deemed to be in the best interests of fishery management.

(c) Fishers are required to allow authorized Department of Fish and Wildlife employees on board their vessel while fishing.

(d) Fishers are required to maintain a daily fishing log as provided by the Department and to report each day's landing to the agency's Mount Vernon office at (360) 428-1007 no later than 8:00 a.m. the following morning.

EMERGENCY

WSR 95-04-009
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE
 [Memorandum—January 19, 1995]

Board of Trustees Meeting
 January 20, 1995
 Sno-King Building
 Room 103
 (2:00 - 3:15)

The facilities for this meeting are free of mobility barriers and interpreters for deaf individuals and braille or taped information for blind individuals will be provided upon request when adequate notice is given.

WSR 95-04-011
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE LIBRARY
 (Public Information Access Policy Taskforce)
 [Memorandum—January 17, 1995]

The Public Information Access Policy Taskforce will meet in Senate Conference Rooms B and C, at the John A. Cherberg Building, Capitol Campus, Olympia, Washington, on the following dates:

Wednesday, February 1, 1995, and Monday, March 6, 1995, from 10:00 a.m. until 3:00 p.m.

WSR 95-04-014
NOTICE OF PUBLIC MEETINGS
**DEPARTMENT OF COMMUNITY,
 TRADE AND ECONOMIC DEVELOPMENT**
 (Fire Protection Services Division)
 [Memorandum—January 13, 1995]

REGION ONE LIFE SAFETY COUNCIL
 (Clallam, East Jefferson, Kitsap, Mason)

Bainbridge Fire Department
 8895 Madison Avenue North
 Bainbridge Island
 February 8, 1995
 10:00 a.m. to noon

WSR 95-04-015
NOTICE OF PUBLIC MEETINGS
CLEMENCY AND PARDONS BOARD
 [Memorandum—January 17, 1995]

The Washington State Clemency and Pardons Board hereby files with the code reviser the following schedule of its regular meetings for 1995: March 3, June 2, September 1 and December 1, starting at 9:00 a.m. in Senate Hearing Room #3, in the John A. Cherberg Building.

WSR 95-04-020
NOTICE OF PUBLIC MEETINGS
**WORKFORCE TRAINING AND
 EDUCATION COORDINATING BOARD**
 [Memorandum—January 19, 1995]

On October 16, 1994, the Washington State Workforce Training and Education Coordinating Board adopted a 1995 meeting schedule. Since then, the location of the board's February 23, 1995, meeting changed from the Association of Washington Businesses to North Thurston High School.

- Thursday, January 12, 1995
 South Puget Sound Community College, Olympia
- Thursday, February 23, 1995
 Bower Center, North Thurston High School, Olympia
- Wednesday, April 12, 1995
 Boeing-Quality through Training Program, Tukwila
- Thursday, May 25, 1995
 Puget Sound High School, Olympia
- Thursday, July 27, 1995
 Bellingham Technical College, Bellingham
- Thursday, September 14, 1995
 Spokane Intercollegiate Research & Technology Institute (SIRTI), Spokane
- Thursday, October 26, 1995
 Wenatchee High School, Wenatchee
- Thursday, November 30, 1995
 Key Bank, Aberdeen

WSR 95-04-021
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 18, 1995]

Following is the meeting schedule(s) for regular meetings to be held by the University of Washington's Oceanography Department, SEPA Committee and ASUW subcommittees.

Meeting Dates	Oceanography Faculty Location	Time
January 4	123 Marine Scis.	10:30 a.m.
February 1	123 Marine Scis.	10:30 a.m.
March 1	123 Marine Scis.	10:30 a.m.
April 5	123 Marine Scis.	10:30 a.m.
May 3	123 Marine Scis.	10:30 a.m.
June 7	123 Marine Scis.	10:30 a.m.
October 4	123 Marine Scis.	10:30 a.m.
November 1	123 Marine Scis.	10:30 a.m.
December 6	123 Marine Scis.	10:30 a.m.

MISCELLANEOUS

SEPA Committee

Meeting Dates	Location	Time
Third Thursdays of each month as needed	Conference Room B University Facilities Building	9:45 to 11:30

**Student Activities and Union Facilities
ASUW Board of Control**

Meeting Dates	Location	Time
January 5, 1995	HUB 204M	3:30
January 12, 1995	HUB 204M	3:30
January 19, 1995	HUB 204M	3:30
January 26, 1995	HUB 204M	3:30
February 2, 1995	HUB 204M	3:30
February 9, 1995	HUB 204M	3:30
February 16, 1995	HUB 204M	3:30
February 23, 1995	HUB 204M	3:30
March 2, 1995	HUB 204M	3:30
March 9, 1995	HUB 204M	3:30
March 30, 1995	HUB 204M	3:30
April 6, 1995	HUB 204M	3:30
April 13, 1995	HUB 204M	3:30
April 20, 1995	HUB 204M	3:30
April 27, 1995	HUB 204M	3:30
May 4, 1995	HUB 204M	3:30
May 11, 1995	HUB 204M	3:30
May 18, 1995	HUB 204M	3:30
May 25, 1995	HUB 204M	3:30
June 1, 1995	HUB 204M	3:30
(last meeting)		

**Student Activities and Union Facilities
ASUW Judicial Committee**

Meeting Dates	Location	Time
January 13	HUB 204M	12:30
January 20	HUB 204M	12:30
January 27	HUB 204M	12:30
February 3	HUB 204M	12:30
February 10	HUB 204M	12:30
February 17	HUB 204M	12:30
February 24	HUB 204M	12:30
March 3	HUB 204M	12:30
March 10	HUB 204M	12:30

**Student Activities and Union Facilities
ASUW Personnel Committee**

Meeting Dates	Location	Time
January 3, 10, 17, 24, 31	HUB 204M	3:30-
February 7, 14, 21, and 28		5:30
March 7 and 14		
March 28	HUB 204M	3:30-
April 4, 11, 18, 25		5:30
May 2, 9, 16, 23, 30		

WSR 95-04-022

**RULES COORDINATOR
COMMISSION ON
HISPANIC AFFAIRS**

[Filed January 20, 1995, 1:55 p.m.]

This is to advise you that this agency has designated the following individual as rules coordinator:

Marvin G. Martinez
Director
Commission on Hispanic Affairs
1011 10th Avenue S.E.
Olympia, WA 98504-0924

Marvin G. Martinez
Director

WSR 95-04-024

**NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE LIBRARY**

(Library Commission)

[Memorandum—January 17, 1995]

The Washington State Library Commission will hold meetings at the Washington State Library, in the CCB Conference Room, at 16th and Water Street, Olympia, Washington, on the following two dates:

Commission Workshop Meeting
Thursday
February 16, 1995
at 9:00 a.m.

Commission Meeting Briefing
Thursday
March 9, 1995
at 3:00 p.m.

The Washington State Library Commission will hold its regular business meeting on Friday, March 10, 1995, beginning at 10:00 a.m. at Timberland Regional Library Service Center, 415 Airdustrial Way S.W., Olympia, WA.

WSR 95-04-025

**NOTICE OF PUBLIC MEETINGS
HIGHLINE COMMUNITY COLLEGE**

[Memorandum—January 13, 1995]

The following information regarding the regular monthly meetings of the Community College District 9 board of trustees for the calendar year January through December 1995 is forwarded in compliance with RCW 42.30.075. All meetings are held in Building 25 and begin at 8:00 a.m. with a study session followed by the regular meeting at 10:00 a.m. These meeting dates were approved by the board of trustees at their January 12, 1995, meeting.

January 12, 1995
February 9
March 9
April 13
May 11
June 8

MISCELLANEOUS

July 6
 September 14
 October 12
 November 9
 December 7

WSR 95-04-026
NOTICE OF PUBLIC MEETINGS
BENTON COUNTY
CLEAN AIR AUTHORITY
 [Memorandum—January 19, 1995]

The Benton County Clean Air Authority board of directors monthly board meetings will be held the third Thursday of each month, at 7:00 p.m. in the conference room of the Benton County Annex, 5600 West Canal Place, Kennewick, WA. Any changes in time or location will be published in the local paper.

WSR 95-04-027
NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY
 [Memorandum—January 23, 1995]

BOARD OF TRUSTEES
 January 27, 1995, 9:00 a.m.
 Louise Anderson Hall, First Floor Lounge

Breakfast, which is open to the public, will be served to board members prior to the meeting at 8:00 a.m. in Room 323 in the Pence Union Building.

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling President's Office, 359-2371.

Board of Trustees
Eastern Washington University
1995 Meeting Schedule

- Friday, January 27, 9:00 a.m., Louise Anderson Hall, First Floor Lounge
- Friday, February 24, 9:00 a.m., Spokane Center, Second Floor Mall
- Friday, April 7, 9:00 a.m., Louise Anderson Hall, First Floor Lounge
- Friday, May 26, 9:00 a.m., Spokane Center, Second Floor Mall
- Friday, June 23, 9:00 a.m., Louise Anderson Hall, First Floor Lounge
- Friday, July 21, 9:00 a.m., Spokane Center, Second Floor Mall
- Friday, September 22, 9:00 a.m., Louise Anderson Hall, First Floor Lounge
- Friday, October 27, 9:00 a.m., Spokane Center, Second Floor Mall
- Friday, December 1, 9:00 a.m., Louise Anderson Hall, First Floor Lounge

WSR 95-04-029
ATTORNEY GENERAL OPINION
Cite as: AGO 1995 No. 1
 [January 18, 1995]

DEPARTMENT OF AGRICULTURE - DEPARTMENT OF HEALTH - AGRICULTURE - HEALTH - AUTHORITY TO EMBARGO FOOD GROWN IN A "FOOD CONTROL AREA"

Neither the Department of Agriculture nor the Department of Health has authority to administratively designate a "food control area" (such as the area surrounding the site of a chemical or nuclear accident) and embargo all food grown within the area without some particularized determination of the products which are contaminated or are likely to pose a threat to human health.

Requested by:
 James Jesernig
 Director
 Department of Agriculture
 P.O. Box 42560
 Olympia, WA 98504-2560
 Bruce A. Miyahara
 Secretary
 Department of Health
 P.O. Box 47890
 Olympia, WA 98504-7890

WSR 95-04-030
NOTICE OF PUBLIC MEETINGS
RULES COORDINATOR
CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
 [Filed January 24, 1995, 9:55 a.m.]

Pursuant to RCW 42.30.075, the Code Reviser's Office is notified that the Central Puget Sound Growth Management Hearings Board will continue to hold its regular meetings during 1995 at 10:00 a.m. on the second Thursday of each month at the board's Seattle office:

2329 One Union Square
 600 University Street
 Seattle, WA 98101-1129

The above-referenced meeting time and location is consistent with the information provided at WAC 242-02-074 (1)(c).

Pursuant to RCW 34.05.312, M. Peter Philley remains the designated rules coordinator for the three joint growth planning hearings boards of the state of Washington. Correspondence to the rules coordinator should be sent to the Central Puget Sound Growth Management Hearings Board address:

Central Puget Sound Growth Management Hearings Board
 2329 One Union Square
 600 University Street
 Seattle, WA 98101-1129
 (206) 389-2625

M. Peter Philley
 Rules Coordinator

WSR 95-04-031
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 19, 1995]

Following is the 1995 meeting schedule(s) for regular meetings to be held by the University of Washington's

MISCELLANEOUS

Neurological Surgery Department General Faculty as well as the Board of Health Sciences Deans.

Neurological Surgery
General Faculty Meeting Schedule for 1995

The following is advance notification of the four general faculty meeting dates for 1995. Please note these dates in your calendar:

- Monday March 13 5:00 p.m. HMC Board Room (1C-30)
- Monday June 12 5:00 p.m. HMC Board Room (1C-30)
- Monday Sept. 18 5:00 p.m. HMC Board Room (1C-30)
- Monday Dec. 11 5:00 p.m. HMC Board Room (1C-30)

Board of Health Sciences Deans 1995 Meeting Schedule

The 1995 Board of Health Sciences Deans will meet in D-310 from 10:00 a.m. - 12:00 noon on the following dates:

- February 1
- March 1
- April 12
- May 10
- June 14
- July 12
- August 9
- September 13
- October 11
- November 1
- December 13

WSR 95-04-041

NOTICE OF PUBLIC MEETINGS
GAMBLING COMMISSION

[Memorandum—January 24, 1995]

The Gambling Commission will be holding the regular meetings for the remainder of the year at the following locations:

- March 10, 1995 Sheraton Hotel
1320 Broadway Plaza
Tacoma, WA 98405
- April 14, 1995 Red Lion Inn/Yakima Valley
1507 North First Street
Yakima, WA 98901
- May 12, 1995 Red Lion Inn at the Quay
100 Columbia
Vancouver, WA 98660
- June 9, 1995 Hampton Inn
2010 South Assembly Road
Spokane, WA 99204
- July 14, 1995 Silverdale On Bay
3037 Bucklin Hill Road
Silverdale, WA 98310
- August 11, 1995 Campbell's Lodge
104 West Woodin
Chelan, WA 98816
- September 15, 1995 Lakeway Inn/Best Western
714 Lakeway Drive

Miscellaneous

Bellingham, WA 98226

October 13, 1995

Ramada Inn
435 Clover Island
Kennewick, WA 99336

November 17, 1995

Embassy Suites Hotel
20610 44th Avenue West
Lynnwood, WA 98036

December 1994 [1995] No meeting.

We will notify you of any changes occurring of meeting dates or locations.

WSR 95-04-042
RULES COORDINATOR
GAMBLING COMMISSION

[Filed January 25, 1995, 11:36 a.m.]

In accordance with RCW 34.05.310, I wish to notify you that the rules coordinator for the Washington State Gambling Commission is:

Carrie Sutherland
Special Assistant to the Director
Washington State Gambling Commission
P.O. Box 42400
649 Woodland Square Loop S.E.
Olympia, WA 98504-2400
(206) 438-7654 ext. 373
SCAN 585-7654 ext. 373

Frank L. Miller
Director

WSR 95-04-045

NOTICE OF PUBLIC MEETINGS
TRANSPORTATION COMMISSION

[Memorandum—January 23, 1995]

The February 1995 Washington State Transportation Commission meetings will be held at 11:15 a.m. on Wednesday, February 15, and 9:00 a.m. on Thursday, February 16, 1995, at the Red Lion Inn at the Quay, Vancouver, Washington. There will be committee meetings at 9:00 a.m., Wednesday, February 15, at the Red Lion Inn at the Quay, Vancouver, Washington.

The March 1994 Washington State Transportation Commission meetings will be held at 1:00 p.m. on Wednesday, March 15, and 9:00 a.m. on Thursday, March 16, 1995, in the Transportation Commission Room (1D2), Transportation Building, Olympia, Washington. There will be committee meetings at 9:00 a.m., Wednesday, January 18, in the Transportation Building, Rooms 1D2 and 3F21, Olympia, Washington.

The Transportation Commission will also hold a joint meeting with the Oregon Transportation Commission at 10:00 a.m. on Wednesday, March 8, 1995, in the ODOT Region 1 Building, 123 Northwest Flanders, Portland, Oregon.

MISCELLANEOUS

WSR 95-04-046
NOTICE OF PUBLIC MEETINGS
LAKE WASHINGTON
TECHNICAL COLLEGE
 [Memorandum—January 20, 1995]

The regular meetings of this college's board of trustees during 1995 will be held the second Wednesday of each month, at 7:30 a.m. on even-numbered months; and at 6:30 p.m. on odd-numbered months, at Lake Washington Technical College, 11605 132nd Avenue N.E., Kirkland, WA 98034, in the Board Room (W305).

WSR 95-04-059
NOTICE OF PUBLIC MEETINGS
RULES COORDINATOR
COMMISSION ON
ASIAN AMERICAN AFFAIRS
 [Filed January 26, 1995, 1:58 p.m.]

The commission has moved its previously set retreat on August 12, 1995, in Pasco to Saturday, June 3, 1995, in Olympia. Exact location for the retreat has not been determined. Please have interested individuals call our office for more detailed information.

The following is information regarding our rules coordinator: David J. Della, Executive Director, State of Washington Commission on Asian American Affairs, 501 South Jackson, Suite 301, Seattle, WA 98104.

Loan Nguyen
 Office Manager

WSR 95-04-062
NOTICE OF PUBLIC MEETINGS
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION
 [Memorandum—January 26, 1995]

The Interagency Committee for Outdoor Recreation (IAC) will meet Monday, March 6, in Meeting Room 175 of the Natural Resources Building, beginning at 8:30 a.m. The Natural Resources Building is located at 1111 Washington Street S.E. in Olympia.

Planned agenda items include: Adoption of revisions to IAC policy manuals regarding the NOVA program and project reimbursements, Initiative 215 Program Review and Policy Plan discussion, briefing on ethics rules, redistribution of WWRP funds and reallocation of LWCF funds.

Following the meeting, there will be a reception celebrating the 30th anniversary of the IAC in the State Reception Room of the Legislative Building on the Capitol Campus. For further information, please contact Carolyn Hendricks, Confidential Secretary at (360) 902-3004.

If you plan to participate or have materials for committee review, please submit information to IAC no later than February 17. This will allow time for distribution to committee members in a timely fashion.

IAC public meetings are held in locations accessible to people with disabilities. Arrangements for individuals with

hearing or visual impairments can be provided by contacting IAC by Friday, February 17, at (360) 902-3000 or TDD (360) 902-1996.

WSR 95-04-067
RULES COORDINATOR
EASTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD
 [Filed January 30, 1995, 9:33 a.m.]

For publication in the Washington State Register, please designate M. Peter Phillely as rules coordinator on behalf of this board, Eastern Washington Growth Management Hearings Board. Mr. Phillely's address is 2329 One Union Square, 600 University Street, Seattle, WA 98101-1129.

Tom A. Williams
 Administrative Chairman

WSR 95-04-077
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF ECOLOGY
 [Memorandum—January 30, 1995]

Notice of public hearing concerning the proposed priority list of projects for grant award for the 1996-97 biennium under the Department of Ecology water and shorelands resources program's flood control assistance account program as mandated by WAC 173-145-010(3).

When: March 28, 1995

Time: 9:30 a.m. to 12:00 noon

Place: Ecology Headquarters Building
 300 Desmond Drive (off Martin Way)
 Lacey, WA

Room : ROA-32 (Lower Level, Auditorium)

Purpose: For public review and comment on the proposed priority list for grant awards funded by the flood control assistance account program for the 1996-97 biennium.

Contacts: Tim D'Acci, 407-6796 or Bev Huether, 407-7254.

WSR 95-04-081
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
NATURAL RESOURCES
 [Memorandum—January 30, 1995]

The Board of Natural Resources Independent Review Committee has scheduled a public meeting to invite comment on the scope of a review of the board's policies and practices. The review is to be conducted between now and June 30, 1995, with the assistance of a consultant team under the direction of the Independent Review Committee. The committee is to provide recommendations to the Board of Natural Resources.

The session will be held on Tuesday, February 28, 1995, from 8:00 a.m. until noon at the Knox Administration Center Board Room, 1113 Legion Way Southeast, in Olympia.

Comments and input will be accepted. No final action will be taken at this session.

Interested citizens and associations may provide written copies of their comments at the public meeting or mail them directly to Secretary of State Ralph Munro, Committee Chairman, P.O. Box 40220, Olympia, WA 98504-0220. Other committee members are State Auditor Brian Sonntag, former Governor John Spellman and retired Supreme Court Justice Vernon Pearson.

WSR 95-04-092

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF REVENUE**

(Governor's Telecommunications Policy Coordination Task Force)

[Memorandum—January 31, 1995]

Meeting: The Governor's Telecommunications Policy Coordination Task Force

Dates: February 3, 1995
February 10, 1995

The Governor's Telecommunications Policy Coordination Task Force will meet in Olympia on February 3 and February 10 to hear testimony from the telecommunications companies that do business in Washington state.

Both meetings will begin at 3:30 p.m. in Senate Hearing Room 4 of the John A. Cherberg Building on the capitol campus.

The task force will take public comment at the end of each meeting.

Representatives of the cable industry will make presentations at the February 3 meeting. At the February 10 meeting, the Washington Utilities and Transportation Commission will discuss federal and state telecommunications legislation, followed by presentations by the software and supporting industries.

The task force will take additional testimony on other issues regarding telecommunications before making recommendations to the governor and legislature by November 1, 1995.

For more information, contact Connie Michener at (206) 586-3687.

WSR 95-04-093

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF AGRICULTURE**

(Strawberry Commission)

[Memorandum—January 28, 1995]

This letter is in regard to 1995 meetings of the commission. The Washington Strawberry Commission has scheduled three meetings, the annual meeting will be held in Tacoma on January 7, 1995; the strawberry field day will be held in June in Puyallup; and the research meeting will be held in early December in Puyallup. Interested parties should call the commission office, (206) 491-6567, for the scheduled dates and times.

WSR 95-04-098

**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH**

(Dispensing Optician Committee)

[Memorandum—January 30, 1995]

This is to let you know of a change in the meeting date for the March 10, 1995, meeting.

The above meeting has now been scheduled for March 31, 1995, and is going to be held at the Wyndham Gardens Hotel, 18118 Pacific Highway South, Seattle, WA 98188.

The following is a list of the Dispensing Optician Committee meeting dates for 1995:

- | | |
|------------------|---|
| January 27, 1995 | WestCoast Sea-Tac Hotel
18220 Pacific Highway South
Seattle, WA 98188 |
| March 10, 1995 | Place to be scheduled at a later date |
| August 25, 1995 | WestCoast Sea-Tac Hotel
18220 Pacific Highway South
Seattle, WA 98188 |
| October 20, 1995 | Place to be scheduled at a later date |

All meetings will begin at 8:00 a.m. to 5:00 p.m.

WSR 95-04-103

ATTORNEY GENERAL'S OFFICE

[Filed February 1, 1995, 9:55 a.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION

WASHINGTON ATTORNEY GENERAL

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of the opinion request will be published in the state register. If you would like additional information about the Attorney General's opinions process or any opinion request summarized in the register, call the Attorney General's Office at (206) 753-4114, or write to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100.

During the period covered by this register there are no opinion requests for which the Attorney General's Office seeks public input.

WSR 95-04-109

DEPARTMENT OF ECOLOGY

[Filed February 1, 1995, 11:17 a.m.]

ANNOUNCEMENT OF ISSUANCE OF GENERAL PERMIT FOR UPLAND FIN-FISH HATCHING AND REARING FACILITIES (FISH HATCHERIES)

Introduction: On February 3, 1995, ecology reissued a wastewater discharge general permit for upland fish hatcher-

MISCELLANEOUS

ies located in Washington state. This permit will take effect on April 1, 1995. The proposed permit implements the Federal Clean Water Act and State Water Pollution Control Act. The purpose of the permit is to control the discharge of pollutants from upland fish hatcheries into waters of the state.

Dischargers who require coverage under this permit include all state, private, and tribal hatcheries located on state or private lands which produce more than 20,000 pounds of fish a year or feed more than 5,000 pounds of fish food during a month of maximum feeding. Tribal facilities on tribal lands are not subject to this permit.

Summary of Public Involvement Process: Notice of the proposed permit was published in the state register and in five newspapers of general circulation around the state on December 7, 1994. A public workshop and hearing on the proposed permit was held in Tacoma on January 10, 1995. Some changes were made to the permit as a result of the comments received during the formal public comment period. Nearly all of the changes were made to clarify permit conditions and requirements. A summary of the changes made to the permit and a complete responsiveness summary is available upon request.

How Can Coverage be Obtained: Contact Bill Ward of ecology's water quality program at (360) 407-6098 to request an application form. The completed application should be submitted along with any appropriate attachments to the department at least one hundred eighty days in advance of the proposed discharge.

For More Information or to Request Copies of the Permit: Requests for copies of the permit, fact sheet, and response to comments may be made by contacting Bill Ward through the address noted below or by telephoning him at (360) 407-6098.

Bill Ward
Water Quality Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Appeal Procedures: Pursuant to RCW 43.21B.310 the terms and conditions of the permit may be appealed on or before March 17, 1995. An appeal must be filed with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. In addition, a copy of this appeal must be served on the Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600. The procedures and requirements for the appeal process are contained in RCW 43.21B.310.

Ecology is an equal opportunity agency. If you have special accommodation needs or require this document in an alternative format, please contact Bill Ward at (360) 407-6098 or (360) 407-6006 (TDD).



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
- OBJEC = 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 previous emergency rule
- REVIEW = Review of previously adopted rule

Suffixes:

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- S = Supplemental notice
- W = Withdrawal of proposed action
- 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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51-20-0404	REP-P	95-04-106	51-20-3104	REP-P	95-04-106	51-22-001	REP-P	95-04-106
51-20-0407	REP-P	95-04-106	51-20-3105	REP-P	95-04-106	51-22-002	REP-P	95-04-106
51-20-0409	REP-P	95-04-106	51-20-3106	REP-P	95-04-106	51-22-003	REP-P	95-04-106
51-20-0414	REP-P	95-04-106	51-20-3107	REP-P	95-04-106	51-22-004	REP-P	95-04-106
51-20-0417	REP-P	95-04-106	51-20-3108	REP-P	95-04-106	51-22-005	REP-P	95-04-106
51-20-0420	REP-P	95-04-106	51-20-3109	REP-P	95-04-106	51-22-007	REP-P	95-04-106
51-20-0500	REP-P	95-04-106	51-20-3110	REP-P	95-04-106	51-22-008	REP-P	95-04-106
51-20-0503	REP-P	95-04-106	51-20-3111	REP-P	95-04-106	51-22-0400	REP-P	95-04-106
51-20-0514	REP-P	95-04-106	51-20-3112	REP-P	95-04-106	51-22-0423	REP-P	95-04-106
51-20-0515	REP-P	95-04-106	51-20-3113	REP-P	95-04-106	51-22-0500	REP-P	95-04-106
51-20-0551	REP-P	95-04-106	51-20-3114	REP-P	95-04-106	51-22-0504	REP-P	95-04-106
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51-20-0605	REP-P	95-04-106	51-20-3152	REP-P	95-04-106	51-22-0807	REP-P	95-04-106
51-20-0700	REP-P	95-04-106	51-20-3153	REP-P	95-04-106	51-22-1000	REP-P	95-04-106
51-20-0702	REP-P	95-04-106	51-20-3154	REP-P	95-04-106	51-22-1002	REP-P	95-04-106
51-20-0800	REP-P	95-04-106	51-20-3155	REP-P	95-04-106	51-22-1100	REP-P	95-04-106
51-20-0801	REP-P	95-04-106	51-20-3156	REP-P	95-04-106	51-22-1104	REP-P	95-04-106
51-20-0802	REP-P	95-04-106	51-20-3300	REP-P	95-04-106	51-22-1500	REP-P	95-04-106
51-20-0900	REP-P	95-04-106	51-20-3304	REP-P	95-04-106	51-22-1508	REP-P	95-04-106
51-20-0901	REP-P	95-04-106	51-20-3306	REP-P	95-04-106	51-22-1900	REP-P	95-04-106
51-20-0902	REP-P	95-04-106	51-20-3315	REP-P	95-04-106	51-22-1903	REP-P	95-04-106
51-20-1000	REP-P	95-04-106	51-20-3350	REP-P	95-04-106	51-24	PREP	95-03-086
51-20-1011	REP-P	95-04-106	51-20-3800	REP-P	95-04-106	51-24-001	REP-P	95-04-106
51-20-1200	REP-P	95-04-106	51-20-3801	REP-P	95-04-106	51-24-002	REP-P	95-04-106
51-20-1201	REP-P	95-04-106	51-20-3802	REP-P	95-04-106	51-24-003	REP-P	95-04-106
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51-20-1230	REP-P	95-04-106	51-20-93115	REP-P	95-04-106	51-24-10000	REP-P	95-04-106
51-20-1231	REP-P	95-04-106	51-20-93116	REP-P	95-04-106	51-24-10201	REP-P	95-04-106

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WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
51-24-10507	REP-P	95-04-106	132G-126-310	REP-P	95-04-008	182-13-010	NEW-W	95-03-074
51-24-25000	REP-P	95-04-106	132G-126-320	REP-P	95-04-008	182-13-010	NEW-P	95-03-075
51-24-25107	REP-P	95-04-106	132G-126-330	REP-P	95-04-008	182-13-020	NEW-P	95-03-063
51-24-45000	REP-P	95-04-106	132G-126-340	REP-P	95-04-008	182-13-020	NEW-W	95-03-074
51-24-45211	REP-P	95-04-106	132G-126-350	REP-P	95-04-008	182-13-020	NEW-P	95-03-075
51-24-78000	REP-P	95-04-106	132G-126-360	REP-P	95-04-008	182-13-030	NEW-P	95-03-063
51-24-78201	REP-P	95-04-106	132G-126-370	REP-P	95-04-008	182-13-030	NEW-W	95-03-074
51-24-79000	REP-P	95-04-106	132G-126-380	REP-P	95-04-008	182-13-030	NEW-P	95-03-075
51-24-79601	REP-P	95-04-106	132G-126-390	REP-P	95-04-008	182-13-040	NEW-P	95-03-063
51-24-79603	REP-P	95-04-106	132G-126-400	REP-P	95-04-008	182-13-040	NEW-W	95-03-074
51-24-79809	REP-P	95-04-106	132Q-04-097	NEW	95-03-060	182-13-040	NEW-P	95-03-075
51-24-79901	REP-P	95-04-106	139-10-210	AMD-P	95-04-068	182-16	PREP	95-04-057
51-24-80000	REP-P	95-04-106	173-06-010	REP-P	95-03-081	182-18	PREP	95-04-057
51-24-80101	REP-P	95-04-106	173-06-020	REP-P	95-03-081	192-12-130	PREP	95-04-104
51-24-80103	REP-P	95-04-106	173-06-030	REP-P	95-03-081	192-12-141	PREP	95-04-104
51-24-80108	REP-P	95-04-106	173-06-040	REP-P	95-03-081	197-11-225	NEW-E	95-03-059
51-24-80109	REP-P	95-04-106	173-06-100	NEW-P	95-03-081	197-11-228	NEW-E	95-03-059
51-24-80110	REP-P	95-04-106	173-06-110	NEW-P	95-03-081	197-11-230	NEW-E	95-03-059
51-24-80111	REP-P	95-04-106	173-06-120	NEW-P	95-03-081	197-11-232	NEW-E	95-03-059
51-24-80113	REP-P	95-04-106	173-06-130	NEW-P	95-03-081	197-11-235	NEW-E	95-03-059
51-24-80114	REP-P	95-04-106	173-12	PREP	95-03-080	204-24-050	AMD-S	95-03-089
51-24-80120	REP-P	95-04-106	173-19-250	PREP	95-04-101	204-41-030	AMD-E	95-04-060
51-24-80202	REP-P	95-04-106	173-19-260	PREP	95-04-076	220-12-020	AMD	95-04-066
51-24-80301	REP-P	95-04-106	173-19-3507	AMD-P	95-03-082	220-32-05100M	NEW-E	95-04-087
51-24-80303	REP-P	95-04-106	173-19-3514	AMD-P	95-03-078	220-32-05700Q	NEW-E	95-03-002
51-24-80305	REP-P	95-04-106	173-360-100	AMD	95-04-102	220-33-04000A	NEW-E	95-03-013
51-24-80315	REP-P	95-04-106	173-360-110	AMD	95-04-102	220-49-02000H	NEW-E	95-04-088
51-24-80401	REP-P	95-04-106	173-360-120	AMD	95-04-102	220-52-07300V	REP-E	95-03-064
51-24-80402	REP-P	95-04-106	173-360-130	AMD	95-04-102	220-52-07300W	NEW-E	95-03-067
51-24-99500	REP-P	95-04-106	173-360-190	AMD	95-04-102	220-56	AMD-C	95-04-064
51-24-99510	REP-P	95-04-106	173-360-200	AMD	95-04-102	220-56-100	AMD	95-04-066
51-25	PREP	95-03-086	173-360-210	AMD	95-04-102	220-56-105	AMD	95-04-066
51-25-001	REP-P	95-04-106	173-360-305	AMD	95-04-102	220-56-115	AMD	95-04-066
51-25-002	REP-P	95-04-106	173-360-310	AMD	95-04-102	220-56-116	AMD	95-04-066
51-25-003	REP-P	95-04-106	173-360-320	AMD	95-04-102	220-56-125	REP	95-04-066
51-25-007	REP-P	95-04-106	173-360-325	AMD	95-04-102	220-56-127	REP	95-04-066
51-25-008	REP-P	95-04-106	173-360-330	AMD	95-04-102	220-56-130	AMD	95-04-066
55-01	PREP	95-04-058	173-360-335	AMD	95-04-102	220-56-180	AMD	95-04-066
55-01-010	AMD-E	95-04-075	173-360-340	AMD	95-04-102	220-56-185	AMD	95-04-066
55-01-020	AMD-E	95-04-075	173-360-345	AMD	95-04-102	220-56-188	AMD	95-04-066
55-01-030	AMD-E	95-04-075	173-360-350	AMD	95-04-102	220-56-19100H	REP-E	95-02-069
55-01-040	AMD-E	95-04-075	173-360-370	AMD	95-04-102	220-56-19100I	NEW-E	95-02-069
55-01-050	AMD-E	95-04-075	173-360-380	AMD	95-04-102	220-56-205	AMD	95-04-066
55-01-060	AMD-E	95-04-075	173-360-385	AMD	95-04-102	220-56-210	AMD	95-04-066
55-01-070	AMD-E	95-04-075	173-360-600	AMD	95-04-102	220-56-225	AMD	95-04-066
60-12-010	PREP	95-04-090	173-360-610	AMD	95-04-102	220-56-235	AMD	95-04-066
67-35-030	PREP	95-04-012	173-360-620	NEW	95-04-102	220-56-240	AMD	95-04-066
67-35-210	PREP	95-04-012	173-360-630	AMD	95-04-102	220-56-265	AMD	95-04-066
67-35-215	PREP	95-04-012	173-360-640	REP	95-04-102	220-56-282	AMD	95-04-066
67-35-220	PREP	95-04-012	173-360-650	REP	95-04-102	220-56-310	AMD	95-04-066
67-35-230	PREP	95-04-012	173-360-655	REP	95-04-102	220-56-312	AMD	95-04-066
67-35-350	PREP	95-04-012	173-360-660	REP	95-04-102	220-56-335	AMD	95-04-066
67-35-360	PREP	95-04-012	173-360-680	REP	95-04-102	220-56-340	AMD	95-04-066
67-35-430	PREP	95-04-012	173-360-690	REP	95-04-102	220-56-35000C	REP-E	95-04-086
132G-126-010	REP-P	95-04-008	173-360-695	REP	95-04-102	220-56-35000D	NEW-E	95-04-086
132G-126-020	REP-P	95-04-008	173-430-010	AMD	95-03-083	220-56-365	AMD	95-04-066
132G-126-030	REP-P	95-04-008	173-430-020	AMD	95-03-083	220-56-370	AMD	95-04-066
132G-126-040	REP-P	95-04-008	173-430-030	AMD	95-03-083	220-56-38000W	REP-E	95-04-086
132G-126-050	REP-P	95-04-008	173-430-040	AMD	95-03-083	220-56-38000X	NEW-E	95-04-086
132G-126-060	REP-P	95-04-008	173-430-050	AMD	95-03-083	220-56-390	AMD	95-04-066
132G-126-070	REP-P	95-04-008	173-430-060	AMD	95-03-083	220-57	AMD-C	95-04-064
132G-126-080	REP-P	95-04-008	173-430-070	AMD	95-03-083	220-57A	AMD-C	95-04-064
132G-126-200	REP-P	95-04-008	173-430-080	AMD	95-03-083	220-95-011	REP-P	95-03-088
132G-126-210	REP-P	95-04-008	173-430-090	NEW	95-03-083	220-95-013	NEW-P	95-03-088
132G-126-220	REP-P	95-04-008	173-430-100	NEW	95-03-083	220-95-016	REP-P	95-03-088
132G-126-230	REP-P	95-04-008	173-563-015	AMD	95-02-066	220-95-018	NEW-P	95-03-088
132G-126-240	REP-P	95-04-008	173-564-040	AMD	95-02-066	220-95-021	REP-P	95-03-088
132G-126-250	REP-P	95-04-008	178-01	PREP	95-04-016	220-95-022	NEW-P	95-03-088
132G-126-260	REP-P	95-04-008	178-01-010	REP-P	95-04-017	220-95-026	REP-P	95-03-088
132G-126-270	REP-P	95-04-008	182-04	PREP	95-04-057	220-95-027	NEW-P	95-03-088
132G-126-280	REP-P	95-04-008	182-08	PREP	95-04-057	220-95-031	REP-P	95-03-088
132G-126-290	REP-P	95-04-008	182-12	PREP	95-04-057	220-95-032	NEW-P	95-03-088
132G-126-300	REP-P	95-04-008	182-13-010	NEW-P	95-03-063	222-10-030	NEW-C	95-04-073
						222-10-040	NEW-C	95-04-073

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222-16-010	AMD-C	95-04-073	245-02-020	NEW	95-04-115
222-16-010	AMD-E	95-04-074	245-02-025	NEW	95-04-115
222-16-075	NEW-C	95-04-073	245-02-030	NEW	95-04-115
222-16-080	AMD-C	95-04-073	245-02-035	NEW	95-04-115
222-16-080	AMD-E	95-04-074	245-02-040	NEW	95-04-115
222-21-010	NEW-C	95-04-073	245-02-045	NEW	95-04-115
222-21-020	NEW-C	95-04-073	245-02-050	NEW	95-04-115
222-21-030	NEW-C	95-04-073	245-02-100	NEW	95-04-112
222-21-040	NEW-C	95-04-073	245-02-110	NEW	95-04-112
222-24-030	AMD-C	95-04-073	245-02-115	NEW	95-04-112
222-24-030	AMD-E	95-04-074	245-02-120	NEW	95-04-112
222-30-050	AMD-C	95-04-073	245-02-125	NEW	95-04-112
222-30-050	AMD-E	95-04-074	245-02-130	NEW	95-04-112
222-30-060	AMD-C	95-04-073	245-02-131	NEW	95-04-112
222-30-060	AMD-E	95-04-074	245-02-135	NEW	95-04-112
222-30-065	NEW-C	95-04-073	245-02-140	NEW	95-04-112
222-30-065	NEW-E	95-04-074	245-02-145	NEW	95-04-112
222-30-070	AMD-C	95-04-073	245-02-150	NEW	95-04-112
222-30-070	AMD-E	95-04-074	245-02-155	NEW	95-04-112
222-30-075	NEW-C	95-04-073	245-02-160	NEW	95-04-112
222-30-075	NEW-E	95-04-074	245-02-165	NEW	95-04-112
222-30-100	AMD-C	95-04-073	245-02-170	NEW	95-04-112
222-30-100	AMD-E	95-04-074	245-02-175	NEW	95-04-112
222-38-020	AMD-C	95-04-073	245-02-180	NEW	95-04-112
222-38-020	AMD-E	95-04-074	245-04-090	AMD-P	95-03-101
222-38-030	AMD-C	95-04-073	245-04-100	AMD-P	95-03-101
222-38-030	AMD-E	95-04-074	245-04-110	AMD-P	95-03-101
230-02-010	AMD-P	95-04-043	245-04-115	AMD-P	95-03-101
230-02-183	AMD-P	95-04-039	245-04-125	NEW-P	95-04-113
230-02-240	AMD-P	95-04-037	245-04-130	NEW-P	95-04-113
230-02-350	AMD-P	95-04-038	245-04-135	NEW-P	95-04-113
230-02-360	AMD-P	95-04-038	245-04-140	NEW-P	95-04-113
230-02-370	AMD-P	95-04-038	245-04-145	NEW-P	95-04-113
230-02-380	AMD-P	95-04-038	245-04-150	NEW-P	95-04-113
230-02-418	AMD-P	95-04-037	245-04-155	NEW-P	95-04-113
230-04-080	AMD-P	95-04-038	245-04-160	NEW-P	95-04-113
230-04-145	AMD-P	95-04-037	245-04-165	NEW-P	95-04-113
230-04-147	AMD-P	95-04-037	245-04-170	NEW-P	95-04-113
230-04-280	AMD-C	95-04-040	245-04-175	NEW-P	95-04-113
230-04-400	AMD-C	95-04-040	245-04-180	NEW-P	95-04-113
230-08-070	AMD-P	95-04-039	245-04-185	NEW-P	95-04-113
230-08-130	AMD-P	95-04-038	245-04-190	NEW-P	95-04-113
230-08-160	AMD-P	95-04-038	245-04-195	NEW-P	95-04-113
230-12-040	AMD-P	95-04-039	245-08-010	NEW-P	95-04-114
230-12-079	NEW-P	95-04-037	245-08-020	NEW-P	95-04-114
230-20-070	AMD-P	95-04-037	245-08-030	NEW-P	95-04-114
230-20-300	AMD-P	95-04-039	245-08-040	NEW-P	95-04-114
230-20-325	AMD-P	95-04-039	245-08-050	NEW-P	95-04-114
230-20-335	NEW-P	95-04-039	246-170	AMD	95-04-035
230-50-010	AMD-C	95-04-040	246-170-001	REP	95-04-035
232-12-131	AMD	95-03-034	246-170-002	NEW	95-04-035
232-12-227	AMD	95-02-070	246-170-010	REP	95-04-035
232-12-61900A	NEW-E	95-04-065	246-170-011	NEW	95-04-035
232-28-02202	AMD	95-03-024	246-170-020	REP	95-04-035
232-28-02203	AMD	95-03-025	246-170-021	NEW	95-04-035
232-28-02204	AMD	95-03-026	246-170-030	REP	95-04-035
232-28-02205	AMD	95-03-027	246-170-031	NEW	95-04-035
232-28-02206	AMD	95-03-028	246-170-040	REP	95-04-035
232-28-02210	AMD	95-03-029	246-170-041	NEW	95-04-035
232-28-02220	AMD	95-03-040	246-170-050	REP	95-04-035
232-28-02280	AMD	95-03-030	246-170-051	NEW	95-04-035
232-28-240	AMD	95-03-031	246-170-055	NEW	95-04-035
232-28-241	AMD	95-03-032	246-170-060	REP	95-04-035
232-28-24102	NEW	95-03-035	246-170-061	NEW	95-04-035
232-28-242	AMD	95-03-033	246-170-065	NEW	95-04-035
232-28-246	NEW	95-03-036	246-170-070	REP	95-04-035
232-28-24601	NEW-E	95-03-068	246-170-080	REP	95-04-035
232-28-247	NEW	95-03-037	246-170-090	REP	95-04-035
232-28-248	NEW	95-03-038	246-249-020	AMD-P	95-04-100
232-28-249	NEW	95-03-039	246-249-080	AMD-P	95-04-100
232-28-61900A	NEW-E	95-04-065	246-272-25001	AMD-P	95-04-034
232-28-61952	NEW-W	95-03-066	246-815-050	AMD-P	95-03-018
245-02-010	NEW	95-04-115	246-815-070	AMD	95-02-056
246-838-990	PREP	95-04-069			
246-839-990	PREP	95-04-069			
246-851-560	NEW	95-04-084			
246-861	AMD-C	95-03-070			
246-891-020	AMD-P	95-04-099			
246-891-030	AMD-P	95-04-099			
246-937-010	NEW	95-04-083			
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246-937-040	NEW	95-04-083			
246-937-050	NEW	95-04-083			
246-937-060	NEW	95-04-083			
246-937-070	NEW	95-04-083			
246-937-080	NEW	95-04-083			
246-937-090	NEW	95-04-083			
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250-44-110	AMD-E	95-02-068			
250-44-130	AMD-E	95-02-068			
263-12-015	AMD	95-02-065			
263-12-080	AMD	95-02-065			
263-12-140	AMD	95-02-065			
263-12-155	AMD	95-02-065			
263-12-190	AMD	95-02-065			
284-24-060	PREP	95-03-077			
284-30-900	NEW-P	95-02-075			
284-30-905	NEW-P	95-02-075			
284-30-910	NEW-P	95-02-075			
284-30-920	NEW-P	95-02-075			
284-30-930	NEW-P	95-02-075			
284-30-940	NEW-P	95-02-075			
284-30-950	NEW-P	95-02-075			
284-54-020	AMD-W	95-03-076			
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284-54-350	AMD-W	95-03-076			
284-87-030	AMD-P	95-02-076			
292-100-010	NEW-E	95-04-004			
292-100-020	NEW-E	95-04-004			
292-100-030	NEW-E	95-04-004			
292-100-040	NEW-E	95-04-004			
292-100-050	NEW-E	95-04-004			
292-100-060	NEW-E	95-04-004			
292-100-070	NEW-E	95-04-004			
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296-23-265	AMD	95-04-056			
296-56-60001	AMD	95-04-007			
296-56-60003	AMD	95-04-007			
296-56-60005	AMD	95-04-007			
296-56-60009	AMD	95-04-007			
296-56-60062	AMD	95-04-007			
296-56-60073	AMD	95-04-007			
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296-56-60097	AMD	95-04-007			
296-56-60098	AMD	95-04-007			
296-56-60235	AMD	95-04-007			
296-59-060	AMD	95-04-007			
296-62-05411	AMD	95-04-006			

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296-62-07105	AMD	95-04-007	308-96A-470	PREP	95-02-071	388-49-410	AMD-P	95-03-044
296-62-07521	AMD	95-04-078	308-96A-480	PREP	95-02-071	388-49-420	AMD-P	95-03-045
296-62-07711	AMD	95-04-007	308-96A-490	PREP	95-02-071	388-49-430	AMD-P	95-03-044
296-62-11001	AMD	95-04-007	308-124-005	AMD	95-03-012	388-49-480	PREP	95-04-013
296-62-145	AMD	95-04-007	308-124A-025	AMD	95-03-012	388-51-210	AMD	95-03-047
296-62-14500	NEW	95-04-007	308-124A-110	AMD	95-03-012	388-51-220	NEW	95-03-047
296-62-14501	AMD	95-04-007	308-124A-420	AMD	95-03-012	388-51-250	AMD	95-03-047
296-62-14503	AMD	95-04-007	308-124A-422	AMD	95-03-012	388-87-072	AMD	95-04-033
296-62-14505	AMD	95-04-007	308-124A-425	AMD	95-03-012	388-218-1050	AMD	95-04-048
296-62-14507	AMD	95-04-007	308-124A-590	NEW	95-03-012	388-218-1400	AMD	95-04-048
296-62-14509	AMD	95-04-007	308-124A-595	NEW	95-03-012	388-218-1500	AMD	95-04-048
296-62-14511	AMD	95-04-007	308-124A-600	AMD	95-03-012	388-218-1520	AMD	95-04-048
296-62-14513	AMD	95-04-007	308-124H-011	AMD	95-03-012	388-235-9000	AMD	95-03-048
296-62-14515	AMD	95-04-007	308-124H-025	AMD	95-03-012	388-250-1700	AMD	95-03-046
296-62-14517	AMD	95-04-007	308-124H-035	REP	95-03-012	388-505-0590	AMD	95-04-047
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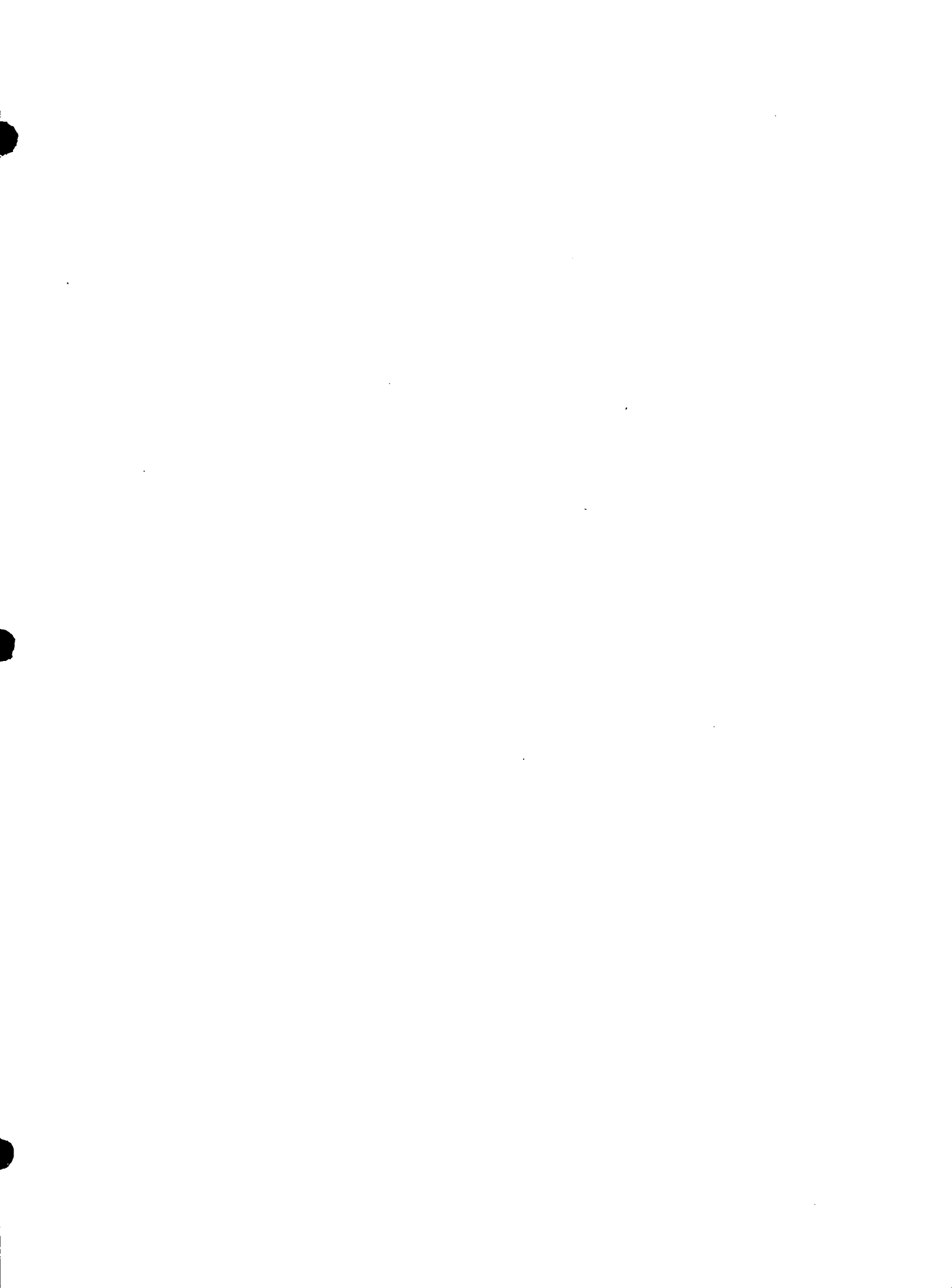
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