

Title 332 WAC

NATURAL RESOURCES, BOARD AND DEPARTMENT OF

Chapters			
332-08	Practice and procedure.	332-08-140	Service of process—Filing with agency.
332-10	Public records—Department of natural resources and board of natural resources.	332-08-150	Subpoenas where provided by law—Form.
		332-08-160	Subpoenas where provided by law—Issuance to parties.
332-12	Oil and gas leases.	332-08-170	Subpoenas where provided by law—Service.
332-16	Mineral prospecting leases and mining contracts.	332-08-180	Subpoenas where provided by law—Fees.
		332-08-190	Subpoenas where provided by law—Proof of service.
332-17	Geothermal drilling rules and regulations.	332-08-200	Subpoenas where provided by law—Quashing.
332-18	Surface mined land reclamation.	332-08-210	Subpoenas where provided by law—Enforcement.
332-20	Grazing lands.	332-08-220	Subpoenas where provided by law—Geographical scope.
332-22	State land leasing program guidelines.	332-08-230	Depositions and interrogatories in contested cases—Right to take.
332-24	Forest protection.	332-08-240	Depositions and interrogatories in contested cases—Scope.
332-26	Emergency and short term rules.	332-08-250	Depositions and interrogatories in contested cases—Officer before whom taken.
332-28	Harbor line commission.	332-08-260	Depositions and interrogatories in contested cases—Authorization.
332-30	Aquatic land management.	332-08-270	Depositions and interrogatories in contested cases—Protection of parties and deponents.
332-32	Insect and worm control.	332-08-280	Depositions and interrogatories in contested cases—Oral examination and cross-examination.
332-36	Road rules on state owned lands.	332-08-290	Depositions and interrogatories in contested cases—Recordation.
332-40	Guidelines interpreting and implementing the State Environmental Policy Act.	332-08-300	Depositions and interrogatories in contested cases—Signing attestation and return.
		332-08-310	Depositions and interrogatories in contested cases—Use and effect.
332-44	Stray logs.	332-08-320	Depositions and interrogatories in contested cases—Fees of officers and deponents.
332-48	Fire and game damage.	332-08-330	Depositions upon interrogatories—Submission of interrogatories.
332-52	Managed lands and roads—Use of.	332-08-340	Depositions upon interrogatories—Interrogation.
332-60	Natural areas—Natural area preserves.	332-08-350	Depositions upon interrogatories—Attestation and return.
332-100	Leases, sales, rights of way, etc.	332-08-360	Depositions upon interrogatories—Provisions of deposition rule.
332-110	Leases of state owned land.	332-08-370	Official notice—Matters of law.
332-120	Survey monuments—Removal or destruction.	332-08-380	Official notice—Material facts.
		332-08-390	Presumptions.
332-130	Survey standards.	332-08-400	Stipulations and admissions of record.
332-140	Forest Products Industry Recovery Act of 1982.	332-08-410	Form and content of decisions in contested cases.
332-150	Survey, plat and map filing and recording fees.	332-08-420	Definition of issues before hearing.
		332-08-430	Prehearing conference rule.
		332-08-440	Prehearing conference rule—Record of.
		332-08-450	Submission of documentary evidence in advance.
		332-08-460	Excerpts from documentary evidence.
		332-08-470	Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses.
		332-08-480	Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements.
		332-08-490	Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.
		332-08-500	Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 332-08-470 or 332-08-480.
		332-08-510	Continuances.
		332-08-520	Rules of evidence—Admissibility criteria.
		332-08-530	Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.
		332-08-540	Petitions for rule making, amendment, or repeal—Who may petition.
		332-08-550	Petitions for rule making, amendment, or repeal—Requisites.

Chapter 332-08 WAC PRACTICE AND PROCEDURE

WAC

332-08-010	Appearance and practice before agency—Who may appear.
332-08-020	Appearance and practice before agency—Appearance in certain proceedings may be limited to attorneys.
332-08-040	Appearance and practice before agency—Standards of ethical conduct.
332-08-050	Appearance and practice before agency—Appearance by former employee of department or former member of the attorney general's staff.
332-08-060	Appearance and practice before agency—Former employee as expert witness.
332-08-070	Computation of time.
332-08-080	Notice and opportunity for hearing in contested cases.
332-08-090	Service of process—By whom served.
332-08-100	Service of process—Upon whom served.
332-08-110	Service of process—Service upon parties.
332-08-120	Service of process—Method of service.
332-08-130	Service of process—When service complete.

332-08-560	Petitions for rule making, amendment, or repeal— Agency must consider.
332-08-570	Petitions for rule making, amendment, or repeal— Notice of disposition.
332-08-580	Declaratory rulings.
332-08-590	Forms.

WAC 332-08-010 Appearance and practice before agency—Who may appear. No person may appear in a representative capacity before the department of natural resources or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation. [Regulation .08.010, filed 2/7/61.]

WAC 332-08-020 Appearance and practice before agency—Appearance in certain proceedings may be limited to attorneys. In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the department of natural resources or its designated hearing officer determines that representative activity in such hearing requires a high degree of legal training, experience, and skill, the department of natural resources or its designated hearing officer may limit those who may appear in a representative capacity to attorneys at law. [Regulation .08.020, filed 2/7/61.]

WAC 332-08-040 Appearance and practice before agency—Standards of ethical conduct. All persons appearing in proceedings before the department of natural resources in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the department of natural resources may decline to permit such person to appear in a representative capacity in any proceeding before the department. [Regulation .08.040, filed 2/7/61.]

WAC 332-08-050 Appearance and practice before agency—Appearance by former employee of department or former member of the attorney general's staff. No former employee of the department of natural resources or member of the attorney general's staff may at any time after severing his employment with the department or the attorney general appear, except with the written permission of the department, in a representative capacity on behalf of other parties in a formal proceeding

wherein he previously took an active part as a representative of the department. [Regulation 08.050, filed 2/7/61.]

WAC 332-08-060 Appearance and practice before agency—Former employee as expert witness. No former employee of the department of natural resources shall at any time after severing his employment with the department appear, except with the written permission of the department, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the department. [Regulation .08.060, filed 2/7/61.]

WAC 332-08-070 Computation of time. In computing any period of time prescribed or allowed by the department of natural resources rules, by order of the department or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. [Regulation .08.070, filed 2/7/61.]

WAC 332-08-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice at least ten days before the date set for the hearing. The notice shall state the time, place, and issues involved, as required by RCW 34.04.090(1). [Regulation .08.080, filed 2/7/61.]

WAC 332-08-090 Service of process—By whom served. The department of natural resources shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it. [Regulation .08.090, filed 2/7/61.]

WAC 332-08-100 Service of process—Upon whom served. All papers served by either the department of natural resources or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact. [Regulation .08.100, filed 2/7/61.]

WAC 332-08-110 Service of process—Service upon parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record. [Regulation .08.110, filed 2/7/61.]

WAC 332-08-120 Service of process—Method of service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail, or by telegraph. [Regulation .08.120, filed 2/7/61.]

WAC 332-08-130 Service of process—When service complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid. [Regulation .08.130, filed 2/7/61.]

WAC 332-08-140 Service of process—Filing with agency. Papers required to be filed with the department of natural resources shall be deemed filed upon actual receipt by the department accompanied by proof of service upon parties required to be served. [Regulation .08.140, filed 2/7/61.]

WAC 332-08-150 Subpoenas where provided by law—Form. Every subpoena shall be issued in the name of the department of natural resources and shall set forth the title of the proceeding, if any, and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place. [Regulation .08.150, filed 2/7/61.]

WAC 332-08-160 Subpoenas where provided by law—Issuance to parties. Upon application of counsel for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The department of natural resources may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. No subpoena shall be issued except where authorized by statute. [Regulation .08.160, filed 2/7/61.]

WAC 332-08-170 Subpoenas where provided by law—Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law. [Regulation .08.170, filed 2/7/61.]

WAC 332-08-180 Subpoenas where provided by law—Fees. Witnesses summoned before the department of natural resources shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington. [Regulation .08.180, filed 2/7/61.]

WAC 332-08-190 Subpoenas where provided by law—Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the department of natural resources or the

officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the department, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Regulation .08.190, filed 2/7/61.]

WAC 332-08-200 Subpoenas where provided by law—Quashing. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the department of natural resources or its authorized members or officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion just and reasonable conditions. [Regulation .08.200, filed 2/7/61.]

WAC 332-08-210 Subpoenas where provided by law—Enforcement. Upon application and for good cause shown, the department of natural resources will seek judicial enforcement of subpoenas issued to parties and which have not been quashed. [Regulation .08.210, filed 2/7/61.]

WAC 332-08-220 Subpoenas where provided by law—Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing. [Regulation .08.220, filed 2/7/61.]

WAC 332-08-230 Depositions and interrogatories in contested cases—Right to take. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding, except that leave must be obtained if notice of the taking is served by a proponent within ten days after service of original process. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas. [Regulation .08.230, filed 2/7/61.]

WAC 332-08-240 Depositions and interrogatories in contested cases—Scope. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding. [Regulation .08.240, filed 2/7/61.]

WAC 332-08-250 Depositions and interrogatories in contested cases—Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice

consul or consular agent of the United States, or a person designated by the department of natural resources or agreed upon by the parties by stipulation in writing filed with the department. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding. [Regulation .08.250, filed 2/7/61.]

WAC 332-08-260 Depositions and interrogatories in contested cases--Authorization. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the department of natural resources and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions. [Regulation .08.260, filed 2/7/61.]

WAC 332-08-270 Depositions and interrogatories in contested cases--Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the department of natural resources or its designated hearing officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel or that after being sealed, the deposition shall be opened only by order of the department, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the department; or the department may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the department or its designated hearing officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of

the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. [Regulation .08.270, filed 2/7/61.]

WAC 332-08-280 Depositions and interrogatories in contested cases--Oral examination and cross-examination. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim. [Regulation .08.280, filed 2/7/61.]

WAC 332-08-290 Depositions and interrogatories in contested cases--Recordation. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, wire or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived. [Regulation .08.290, filed 2/7/61.]

WAC 332-08-300 Depositions and interrogatories in contested cases--Signing attestation and return. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress the department of natural resources holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of proceeding and marked "Deposition of (here insert name of witness)" and shall promptly

send it by registered or certified mail to the department or its designated hearing officer, for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent. [Regulation .08.300, filed 2/7/61.]

WAC 332-08-310 Depositions and interrogatories in contested cases—Use and effect. Subject to rulings by the hearing officer upon objections a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party. [Regulation .08.310, filed 2/7/61.]

WAC 332-08-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington, which fees shall be paid by the party at whose instance the depositions are taken. [Regulation .08.320, filed 2/7/61.]

WAC 332-08-330 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within 10 days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories. [Regulation .08.330, filed 2/7/61.]

WAC 332-08-340 Depositions upon interrogatories—Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 332-08-250 the officer taking the same after duly swearing the deponent, shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation. [Regulation .08.340, filed 2/7/61.]

WAC 332-08-350 Depositions upon interrogatories—Attestation and return. The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the department, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent. [Regulation .08.350, filed 2/7/61.]

WAC 332-08-360 Depositions upon interrogatories—Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule. [Regulation .08.360, filed 2/7/61.]

WAC 332-08-370 Official notice—Matters of law. The department of natural resources or its hearing officer, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions and administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations;

(4) **Agency organization.** The department of natural resources' organization, administration, officers, personnel, official publications, and practitioners before its bar. [Regulation .08.370, filed 2/7/61.]

WAC 332-08-380 Official notice—Material facts. In the absence of controverting evidence, the department of natural resources and its hearing officers, upon request made before or during a hearing, may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the department;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject

to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the department as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or the department may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the department rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer of the department may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the department or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Regulation .08.380, filed 2/7/61.]

WAC 332-08-390 Presumptions. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the department of natural resources, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage, tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, eligned, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Regulation 08.390, filed 2/7/61.]

WAC 332-08-400 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or the department of natural resources that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Regulation .08.400, filed 2/7/61.]

WAC 332-08-410 Form and content of decisions in contested cases. Every decision and order, whether proposed, initial, or final shall:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;

(6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same. [Regulation .08.410, filed 2/7/61.]

WAC 332-08-420 Definition of issues before hearing. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only. [Regulation .08.420, filed 2/7/61.]

WAC 332-08-430 Prehearing conference rule. In any proceeding the department of natural resources or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity of amendments to the pleadings;
- (3) The possibility of obtaining stipulations, admissions of facts and of documents;
- (4) The limitation of the number of expert witnesses;
- (5) Such other matters as may aid in the disposition of the proceeding. [Regulation .08.430, filed 2/7/61.]

WAC 332-08-440 Prehearing conference rule—Record of. The department of natural resources or its designated hearing officer shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. [Regulation .08.440, filed 2/7/61.]

WAC 332-08-450 Submission of documentary evidence in advance. Where practicable the department of natural resources or its designated hearing officer may require:

- (1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by section (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection. [Regulation .08.450, filed 2/7/61.]

WAC 332-08-460 Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding. [Regulation .08.460, filed 2/7/61.]

WAC 332-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. The hearing examiner or other appropriate officer in all classes of cases where practicable shall make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, shall require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications. [Regulation .08.470, filed 2/7/61.]

WAC 332-08-480 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. The hearing examiner or other appropriate officer, in all classes of cases in which it is practicable and permissible, shall require, and when not so permissible, shall make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him and to the other parties to the proceeding by a date determined by the hearing officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not

be subject to challenge because the testimony is not presented orally. Witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses. [Regulation .08.480, filed 2/7/61.]

WAC 332-08-490 Expert or opinion testimony and testimony based on economic and statistical data--Supporting data. That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 332-08-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record. [Regulation .08.490, filed 2/7/61.]

WAC 332-08-500 Expert or opinion testimony and testimony based on economic and statistical data--Effect of noncompliance with WAC 332-08-470 or 332-08-480. Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of WAC 332-08-470 or 332-08-480, such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements. [Regulation .08.500, filed 2/7/61.]

WAC 332-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the department of natural resources or its designated hearing officer of said desire, stating in detail the reasons why such continuance is necessary. The department or its designated hearing officer, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the department or its designated hearing officer may grant such a continuance and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may in his discretion continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing. [Regulation .08.510, filed 2/7/61.]

WAC 332-08-520 Rules of evidence--Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the

hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington. [Regulation .08.520, filed 2/7/61.]

WAC 332-08-530 Rules of evidence--Tentative admission--Exclusion--Discontinuance--Objections.

When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. [Regulation 08.530, filed 2/7/61.]

WAC 332-08-540 Petitions for rule making, amendment, or repeal--Who may petition. Any interested person may petition the department of natural resources requesting the promulgation, amendment, or repeal of any rule. [Regulation .08.540, filed 2/7/61.]

WAC 332-08-550 Petitions for rule making, amendment, or repeal--Requisites. Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule. [Regulation .08.550, filed 2/7/61.]

WAC 332-08-560 Petitions for rule making, amendment, or repeal--Agency must consider. All petitions shall be considered by the department of natural resources and it may, in its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Regulation .08.560, filed 2/7/61.]

WAC 332-08-570 Petitions for rule making, amendment, or repeal--Notice of disposition. The department of natural resources shall notify the petitioning party within a reasonable time for the disposition, if any, of the petition. [Regulation .08.570, filed 2/7/61.]

WAC 332-08-580 Declaratory rulings. As prescribed by RCW 34.04.080, any interested person may petition the department of natural resources for a declaratory ruling. The department shall consider the petition and within a reasonable time it shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for hearing argument upon the matter, and give reasonable notification

to the person of the time and place for such hearing and of the issues involved.

If a hearing as provided in subsection (3) is conducted, the department shall within a reasonable time:

- (1) Issue a binding declaratory rule; or
- (2) Issue a nonbinding declaratory ruling; or
- (3) Notify the person that no declaratory ruling is to be issued. [Regulation .08.580, filed 2/7/61.]

WAC 332-08-590 Forms. (1) Any interested person petitioning the department of natural resources for a declaratory ruling pursuant to RCW 34.04.080, shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the board of natural resources, (commissioner of public lands, supervisor, as the case may be), department of natural resources, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original and five legible copies shall be filed with the agency. Petitions shall be on white paper, 8 1/2" x 11" in size.

(2) Any interested person petitioning the department of natural resources requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the board of natural resources, department of natural resources, state of Washington." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed

shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and five legible copies of the petition shall be filed with the agency. Petitions shall be on white paper 8 1/2" x 11" in size. [Regulation 08.590, filed 2/7/61.]

Chapter 332-10 WAC

PUBLIC RECORDS--DEPARTMENT OF NATURAL RESOURCES AND BOARD OF NATURAL RESOURCES

WAC

332-10-010	Purpose of rules.
332-10-020	Definition.
332-10-030	Description of central and field organization of department of natural resources.
332-10-035	Description of organization of board of natural resources.
332-10-040	Operations and procedures of the department of natural resources.
332-10-045	Operations and procedures of board of natural resources.
332-10-050	Public records available.
332-10-060	Public records officer for the department of natural resources.
332-10-065	Public records officer for the board of natural resources.
332-10-070	Office hours.
332-10-080	Requests for public records.
332-10-090	Copying.
332-10-100	Exemptions.
332-10-105	Statement of reason for denial of request for records.
332-10-110	Reviews of denials of public records requests.
332-10-120	Protection of public records.
332-10-130	Records index for the department.
332-10-135	Records index for the board.
332-10-140	Address for communication requests.
332-10-170	Fees for performing the following service.
332-10-180	Application fee.
332-10-190	Exceptions.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-10-150	Promulgation. [Statutory Authority: RCW 79.01.088, 80-17-021 (Order 349, Resolution No. 310), § 332-10-150, filed 11/13/80.] Repealed by 83-24-055 (Order 406), filed 12/6/83. Statutory Authority: RCW 79.01.088 and 79.01.720.
332-10-160	Definition. [Statutory Authority: RCW 79.01.088, 80-17-021 (Order 349, Resolution No. 310), § 332-10-160, filed 11/13/80.] Repealed by 83-24-055 (Order 406), filed 12/6/83. Statutory Authority: RCW 79.01.088 and 79.01.720.

WAC 332-10-010 Purpose of rules. The purpose of this chapter shall be to insure compliance by the department of natural resources and the board of natural resources with the provisions of chapter 42.17 RCW, Disclosure—Campaign finances—Lobbying—Records,

and in particular with RCW 42.17.250 through 42.17.340 of that act dealing with public records. [Order 262, § 332-10-010, filed 6/16/76.]

WAC 332-10-020 Definition. The following definitions shall apply in this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics not otherwise confidential by law.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) "Board" means the board of natural resources, a policy setting board whose five members serve in an ex officio capacity.

(4) "Department" means the department of natural resources which is:

(a) A regulatory agency with regard to forestry, outdoor burning and geology activities on state and privately owned land,

(b) A land management agency for state owned and administered land,

(c) A service and information repository agency regarding surveys and maps of the state, farm forestry advice and general geology information.

(5) "Commissioner" means the commissioner of public lands who is an elected official and serves as the administrator of the department. The commissioner, in accordance with the RCW, has delegated to the supervisor of the department the direct supervision of the department activities. [Order 262, § 332-10-020, filed 6/16/76.]

WAC 332-10-030 Description of central and field organization of department of natural resources. (1) The department is a regulatory and land management agency. The administrative office of the department and its staff are located in the Public Lands Building, Olympia, Washington 98504. Field offices of the department are located at:

<u>Area Office</u>	<u>Address</u>
Olympic	Rt. 1, Box 1375, Forks, WA 98331
Northwest	Rt. 4, Box 17, Sedro Woolley, WA 98284
South Puget Sound	28329 SE 448th St., Enumclaw, WA 98022
Central	P.O. Box 1004, Chehalis, WA 98532
Southwest	Box 798, Castle Rock, WA 98611
Southeast	Rt. 3, Box 1, Ellensburg, WA 98926
Northeast	Box 190, Colville, WA 99114

(2) Map.

[Order 262, § 332-10-030, filed 6/16/76.]

WAC 332-10-035 Description of organization of board of natural resources. The board is primarily a policy setting board consisting of five members. The members are: The governor, the superintendent of public instruction, the commissioner of public lands, the dean of the college of forest resources University of Washington, and the director of the institute of agricultural sciences for the Washington State University. The board selects its own chairman and vice chairman among its members. In the absence of the chairman and vice chairman at a meeting of the board, the members select a chairman pro tem. The commissioner of public lands is the secretary of the board. The board meets on every second Tuesday of every month at the capitol in Olympia, Washington. However, the board may hold special meetings when called by the chairman or the majority of the board membership upon written notice to all members of the board. No action may be taken by the board except by the agreement of at least three members. The board maintains its principal office at the Public Lands Building, Olympia, Washington, 98504. [Order 262, § 332-10-035, filed 6/16/76.]

WAC 332-10-040 Operations and procedures of the department of natural resources. (1) The legal authority for the department's activities is provided by:

(a) The State Enabling Act, Section Nos. 10 through 19;

(b) The state Constitution, Article Nos. III, XV, XVI, XVII and Amendment No. 15;

(c) The RCW, Title Nos. 43, 46, 58, 70, 76, 78, 79 and 84;

(d) The WAC chapter No. 332.

(2) The board of natural resources at monthly meetings:

(a) Establishes broad policy for the department;

(b) Approves lease and sale proposals submitted by department regarding state owned grant and forest board lands;

(c) Reviews the department's administration of the Surface Mine Reclamation Act.

(3) In accordance with legal authority, board policy and direction from the commissioner, the supervisor of the department provides direct supervision over the department's activities. Such supervision is applied directly and through deputies:

(a) At the central office staff level through 10 divisions, each responsible for a specific staff specialty;

(b) At the field level through seven area managers, each responsible for managing the department's governmental and proprietary functions within their specific area working through district managers and local managers.

(4) Policy and procedure is developed and discussed at all levels of supervision with recommendations passed through the seven area managers and 10 division supervisors to the department supervisor for decision.

(5) Inquiry for general information regarding department activities may be directed by the public to the central headquarters or any area office.

(6) Applications for regulatory permits and licenses issued by the department may be directed as follows:

(a) To the central headquarters in Olympia for conventional seismic exploration permit, oil and gas drilling permits, geothermal permit, log brand registration, log patrol license;

(b) To the area office (which manages the area where the permit and license will be used) for surface mining permit, forest practices permit, permit for special recreational activity on state land, right to enter state land, easement on state land, state land lease or purchase application, road use permit, woodcutting permit, burning permit, operating permit (logging), all other permits, licenses, or sales.

(7) Permits, licenses, lease or sale documents are issued or denied by the department based on facts and/or judgment of the department of natural resources officer involving part or all of the following:

(a) Inspection of the site,

(b) Compliance with RCW and WAC,

(c) Receipt of compliance or performance bond,

(d) Receipt of fee, rent or purchase payment (if any),

(e) Completion of appraisal packet,

(f) Board of natural resources approval (when required),

(g) Environmental impact statement (if required).

[Order 262, § 332-10-040, filed 6/16/76.]

WAC 332-10-045 Operations and procedures of board of natural resources. The board of natural resources together with an administrator and a supervisor composes the department of natural resources. The board performs all duties relating to appraisal, appeal, approval and hearing functions of the department. The board establishes policies to insure that the acquisition, management and disposition of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the maximum effective development and use of such lands and resources. The board constitutes the board of appraisers and the commission on harbor lines. The board fixes the value of public lands and gives authority to the commissioner to inspect, appraise and offer for sale state lands. The board will hold public hearings on the withdrawal of any state trust lands for recreational purposes and determines the market value of trust lands used for state park purposes. The board administers the Surface Mine Reclamation Act (RCW 78.44.040) by utilizing the services of the department. The board adopts and enforces such rules and regulations as may be deemed necessary and proper for carrying out the powers, duties and functions imposed upon it by law. [Order 262, § 332-10-045, filed 6/16/76.]

WAC 332-10-050 Public records available. All public records of the department and the board, as defined in WAC 332-120-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310, WAC 332-120-100 and other laws. [Order 262, § 332-10-050, filed 6/16/76.]

WAC 332-10-060 Public records officer for the department of natural resources. The public records officer for the department is designated as the office manager located in the department's administrative office. In addition, the operations forester, located in each of the area offices is designated as a records officer. The public records officer shall be in charge of the department's public records and shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW. [Order 262, § 332-10-060, filed 6/16/76.]

WAC 332-10-065 Public records officer for the board of natural resources. The public records officer for the board is designated as the secretary of the commissioner. [Order 262, § 332-10-065, filed 6/16/76.]

WAC 332-10-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the department. For the purpose of this chapter, the customary office hours shall be from 8:00 a.m. until noon and from 1:00 p.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. Such inspection and copying may be postponed if, in the department's opinion, it would interfere with duties related to an emergency at an area office or the fire control division in central headquarters. [Order 262, § 332-10-070, filed 6/16/76.]

WAC 332-10-080 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the department and the board which shall be available at its central and area offices. The form shall be presented to the public records officer, or a designated substitute, if the public records officer is not available, at the central and area offices of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization they represent;

(b) The time of day and calendar date on which the request was made;

(c) A description of the material requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

(3) The department will also honor requests received by mail for identifiable public records unless exempted. [Order 262, § 332-10-080, filed 6/16/76.]

WAC 332-10-090 Copying. No fee shall be charged for the inspection of public records. For printed, typed and written material of a maximum size of 8 1/2" by 14", the department shall charge a reasonable fee determined from time to time by the department for providing copies of public records and for use of the department's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the department for its actual costs incident to such copying. Copies of maps, photos, reports and other nonstandard items shall be furnished at the regular price established by the department. When other special copy work of nonstandard items is requested, the fee charged will reflect the total cost including the time of department personnel. [Order 262, § 332-10-090, filed 6/16/76.]

WAC 332-10-100 Exemptions. (1) The department and the board reserve the right to determine that a public record requested in accordance with the procedures outlined in WAC 332-120-180 is exempt under the provisions of section 31, chapter 1, Laws of 1973. Exemptions shall include, but are not limited to:

(a) *Lists of individuals.* The lists will include the names and/or addresses of individuals. A request for this inspection requested for commercial purposes shall not be made available unless the department or board is specifically authorized or directed by law to do so;

(b) *Personnel files.* The contents of these files include data of a personal nature regarding each individual employee such as: Personal references, performance valuations, promotional evaluations, salary, payroll withholding, disciplinary and warning letters, employment applications, civil service promotional grades;

(c) *Civil service examination data.* These records contain questions used in civil service examinations (written, oral and performance);

(d) *Law enforcement files.* These files contain investigation reports, witness statements, permit or license violations and other data related to enforcement of state law, trespass on state land, theft and vandalism of state property and collection of bills. This information shall remain confidential until court action is completed or the case is formally closed by the department;

(e) *Income reports or credit reports on applicants applying for proprietary interests.* These reports contain confidential data from an individual company which frequently contains income data regarding the entire company operation;

(f) *Material obtained by the state with copyright or contract condition prohibiting further distribution by the department.*

(g) *State land inspection reports and appraisal data.* This data constitutes an appraisal of the value of state land and the products therefrom which we use to determine minimum bid level for purchase or rent. This data

shall remain confidential until after the sale or lease is consummated, but in no event shall disclosure be denied for more than three years after the appraisal;

(h) *Oil and gas exploration reports, drilling logs and core samples.* These files contain confidential information from an individual company regarding an expensive exploration operation. Disclosure would provide an unfair advantage to competitors;

(i) *Confidential surveys.* This information constitutes confidential production data gathered from individuals and companies for statistical purposes to prepare reports reflecting trends and general production statistics. All data except the final report shall remain confidential;

(j) *Data processing discs and tapes.* Contains stored data on magnetic discs and tapes, a large part of which includes confidential data. Since the confidential data cannot be deleted, the discs and tapes shall be exempt from review and copying. Printout reports may be available for review and copying;

(k) 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;

(l) 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;

(m) 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.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42-17 RCW. The public records officer will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the 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.

(5) The department recognizes that the preservation of personal rights is of paramount importance. Accordingly, the department policy shall be to conduct the disclosure of public records in such a manner to preserve the personal privacy of all department personnel. The policy shall extend to companies and individuals from outside the department whose records come into possession of the department.

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 identifiable person or persons.

Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function. [Order 262, § 332-10-100, filed 6/16/76.]

WAC 332-10-105 Statement of reason for denial of request for records. When the department or board refuses, in whole or part, inspections of any public record, it shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [Order 262, § 332-10-105, filed 6/16/76.]

WAC 332-10-110 Reviews of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition 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) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the supervisor of the department. The supervisor or his designee shall immediately consider the matter and either affirm or reverse such denial. 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 department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first. [Order 262, § 332-10-110, filed 6/16/76.]

WAC 332-10-120 Protection of public records. In order to adequately protect the public records in the custody of the department and the board, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the department's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated department employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by a designated employee of the department.

(5) Access to file cabinets, shelves, vaults, etc., is restricted to department personnel or board members. [Order 262, § 332-10-120, filed 6/16/76.]

WAC 332-10-130 Records index for the department. The department does not maintain a records index for its own use, and it would be unduly burdensome to develop an index just for public access to the records. The department does not use a central filing system. Records are maintained in each of the area offices spread throughout the state and in each of the divisions in the central office. Each organizational unit maintains a record system to meet its specific needs. The department and the board can respond to requests for records, by the public describing the type of information they are seeking. General correspondence related to governmental and regulatory activities and internal services can usually be identified by subject and usually in the division responsible for that activity. Regulatory permits and licenses may be identified by legal description or application number. Correspondence and other data related to proprietary activities are identified by application number and can be cross referenced by legal description. [Order 262, § 332-10-130, filed 6/16/76.]

WAC 332-10-135 Records index for the board. The board will maintain a records index. The records index will be kept current by the board's public records officer. [Order 262, § 332-10-135, filed 6/16/76.]

WAC 332-10-140 Address for communication requests. All communications with the department and the board including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973, and these rules, requests for copies of the department's decisions and other matters, shall be addressed as follows: Department of Natural Resources, c/o Public Records Officer, Olympia, Washington 98504. [Order 262, § 332-10-140, filed 6/16/76.]

WAC 332-10-170 Fees for performing the following service. Charges for the following categories of services will be collected and transmitted to the state treasurer for deposit into the resource management cost account:

(1) Twenty-five dollars for the approval of any assignment of contract of sale, assignment of lease, assignment of bill of sale or assignment of right of way.

(2) Twenty-five dollars for the division of contracts or leases pursuant to RCW 79.01.236.

(3) Five dollars for certification of any document.

(4) Fifteen cents per page for copies of documents which do not exceed 8-1/2 x 14 inches in size.

(5) Copies of documents or nonstandard items beyond the size of documents set forth in subsection (4) above (e.g., computer printouts, films, recordings or) maps will be charged on the basis of the cost of reproduction including the time of department personnel as determined by the records officer for the department of natural resources. [Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-170, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-170, filed 11/13/80.]

WAC 332-10-180 Application fee. An applicant to purchase or lease any public land or valuable materials shall pay a twenty-five dollar application fee, except for prospecting leases or mining contracts fees as specified by WAC 332-16-040, and oil and gas leases as specified by WAC 332-12-230. [Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-180, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-180, filed 11/13/80.]

WAC 332-10-190 Exceptions. The following applicants are exempt from paying the fees set forth in WAC 332-10-170 and 332-10-180:

(1) Any agency, political subdivision or municipal corporation of this state, or any agency of the United States;

(2) Any lease or sale of land, valuable materials, minerals, coal, oil or gas, which is initiated by the department;

(3) Applicants for a coal mining option contract who shall instead pay the fees required by RCW 79.01.656.

(4) Assignment transferring contract or leasehold interest by operation of law. [Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-190, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-190, filed 11/13/80.]

Chapter 332-12 WAC OIL AND GAS LEASES

WAC

332-12-150	Lands not under the jurisdiction of the department of natural resources.
332-12-210	Definitions.
332-12-220	Jurisdiction.
332-12-230	Forms.
332-12-240	Applicant.
332-12-250	Lease area.
332-12-260	Term of lease.
332-12-265	Application procedures—Surface rights in other agencies.
332-12-270	Award of lease.
332-12-280	Lease terms.
332-12-290	Reserved rights.
332-12-300	Damages to encumbered lands.
332-12-310	Annual rental or minimum royalty.
332-12-320	Production royalties.
332-12-330	Computation of royalties.
332-12-340	Unit plans.
332-12-350	Performance security.
332-12-360	Plan of operations.
332-12-370	Assignments.
332-12-380	Surrender of leasehold.
332-12-390	Due diligence.
332-12-400	Termination of lease for default.
332-12-410	Condition of premises upon termination of lease.
332-12-420	Reclamation.
332-12-430	Timber.
332-12-440	Use of the premises.
332-12-450	Prevention of waste and environmental protection.
332-12-460	Access road construction and maintenance standards.
332-12-470	Rights of way over state lands.
332-12-480	Field inspections and audits.
332-12-490	Reports.
332-12-500	Compliance with other laws.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-12-010	Application for lease. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-010, filed 11/13/80; Rule (I)(1), filed 8/7/62; Rule (I)(2), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-020	Approval or rejection of applications. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-020, filed 11/13/80; Rule (I)(3), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-030	Land descriptions. [Rule (I)(4), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-040	Application for renewal of productive lease. [Rule (I)(5), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-050	Withdrawal of application. [Rule (I)(6), filed 3/23/60.] Repealed by 80-17-020 (Order 348, Resolution No. 311), Filed 11/13/80. Statutory Authority: RCW 79.01.088.
332-12-060	Offer of oil and gas leases by competitive bidding. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-060, filed 11/13/80; Rule (II), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-070	Issuance of leases. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-070, filed 11/13/80; Rule (III), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-080	Cooperative or unit plans. [Rule (IV), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-090	Right of inspection. [Rule (V), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-100	Surface rights. [Rule (VI), filed 3/23/60.] Repealed by 80-17-020 (Order 348, Resolution No. 311), filed 11/13/80. Statutory Authority: RCW 79.01.088.

WAC 332-12-150 Lands not under the jurisdiction of the department of natural resources. (1) **May be leased by the commissioner.** The commissioner of public lands is authorized to execute oil and gas leases, in accordance with and by authority of chapter 79.14 RCW, upon lands of the state of Washington not under the jurisdiction of the department of natural resources, when requested so to do by the agency of state government having and exercising jurisdiction over such lands.

(2) **Competitive bid requirements.** All oil and gas leases issued under this regulation shall be issued after competitive bidding unless otherwise requested by the agency requesting issuance.

(3) **Form of lease.** Oil and gas leases issued under this regulation shall contain, in addition to the statutory provisions required by chapter 79.14 RCW, such further terms, conditions, covenants, and limitations as the requesting agency may deem desirable.

(4) **Administrative expense.** The commissioner of public lands may enter into necessary agreements with the agency requesting the issuance of oil and gas leases under this regulation to provide for the reimbursement of the department of natural resources for expenses reasonably incurred.

(5) **Revenue from leases.** All revenue derived from oil and gas leases issued under the regulation upon lands of the state of Washington not under the jurisdiction of the department of natural resources shall be paid to the agency requesting the issuance of the lease for distribution as authorized by law. [§ 2 (part), filed 8/7/62.]

WAC 332-12-210 Definitions. The following definitions are, unless the context otherwise requires, applicable to chapter 79.14 RCW and these rules and regulations.

(1) "Aquatic lands" means accreted, tide and submerged lands of the Pacific Ocean and any arm thereof and bed and shorelands of navigable waters.

(2) "Base or primary term" means the first period of time authorized under a lease or the exploration period of the lease.

(3) "Base lease" means the first issued lease on a tract of land prior to any assignments of the lease or renewals.

(4) "Commissioner" means the commissioner of public lands.

(5) "Continuous" as in "production in continuous paying quantities" means extracting oil and gas from the earth without cessation for a period of more than ninety days.

(6) "Department" means the department of natural resources.

(7) "Development" means work which generally occurs after exploration and furthers bringing in production including defining the extent of the oil and gas resource and construction of support facilities.

(8) "Drill pads" means the location and surrounding area necessary to position a drill rig and support equipment.

(9) "Exploration" means the investigation of oil and gas resources by any geological, geophysical, geochemical or other suitable means.

(10) "Good standing" means in full compliance with all terms and conditions of the lease contract.

(11) "Hydrocarbon" means a compound containing only the two elements carbon and hydrogen.

(12) "Improvements" means anything considered a fixture in law placed upon or attached to the lease premises that has changed the value of the land or any changes in the previous conditions of the fixtures that changes the value of the land.

(13) "In situ" means a process of in-place conversion of an energy resource in the ground by a thermal or liquifaction process in order to simplify extraction of the resource.

(14) "Lands" or "land" means both the surface and subsurface components of the lease or contract premises.

(15) "Lease premises" means public land, including lands of retained mineral rights held under an oil and gas lease.

(16) "Lessee" means any person holding an oil and gas lease.

(17) "Logical operating unit" means a contiguous area, independent of ownership, of mineral rights that

can be developed and extracted in an efficient and economical manner with due regard to prevention of waste and environmental protection.

(18) "Oil and gas" means all hydrocarbons and other substances and elements which are present in the earth in a gaseous or liquid form and produced therefrom. It shall not include coal, lignite, oilshale, or similar solid hydrocarbons. Nor shall it include minerals, waters, steam or any geothermal resource.

(19) "Paying quantities" means extraction of oil and gas in a sufficient amount to generate oil and gas production royalties to the state.

(20) "Person" means any natural person, corporation, association, organization, partnership receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind.

(21) "Plug and abandon" means to place permanent seals in well casings or drill holes in the manner as provided by chapter 78.52 RCW and applicable regulations and in a way and at such intervals as are necessary to prevent future contamination; to remove all equipment from the site and rehabilitate the surface to its former state or usage as prescribed by the department.

(22) "Posted field price" means the announced price at which a crude oil or gas purchaser will buy the oil or gas of specified quality from a field.

(23) "Production" means extracting oil and/or gas in paying quantities.

(24) "Public auction" means competitive lease offers either by oral or sealed bidding by qualified bidders or a combination of both.

(25) "Public lands" means lands and areas belonging to or held in trust by the state including tide and submerged lands of the Pacific Ocean or any arm thereof, beds and shorelands of navigable waters, and lands of every kind and nature including mineral rights reserved to the state, the trust or the department.

(26) "Reclamation" means the reasonable protection and rehabilitation of all land subject to disruption from exploration, development, and production of an oil and gas resource.

(27) "Refining" means improving the physical or chemical properties of oil or gas.

(28) "Shut-in" means to adequately cap or seal a well to control the contained oil and/or gas for an interim period.

(29) "String of tools" means a cable or rotary drill rig.

(30) "Surface rights" means full fee ownership of the surface of the property and the resources on and attached thereto, not including the mineral estate.

(31) "Undivided interest" means a total assignment of the lease to one person or an assignment which causes the total lease rights to be held jointly by more than one person including but not limited to joint or common tenancy and community property.

(32) "Waste" means the physical loss of a subsurface resource through damage, escape or inefficient extraction and as defined in WAC 344-12-040(46).

(33) "Well" means any bored, drilled, or redrilled hole for the exploration or production of oil, gas, and

other hydrocarbon substances. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-210, filed 11/16/82.]

WAC 332-12-220 Jurisdiction. These rules are applicable to all public lands of the state for which the commissioner is authorized or permitted to lease for the purpose of prospecting for, developing and producing oil, gas, or other hydrocarbon substances. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-220, filed 11/16/82.]

WAC 332-12-230 Forms. (1) Applications, leases, and related forms shall be on forms prepared and prescribed by the department.

(2) All applications shall be filed with the department. A twenty-five dollar nonrefundable application fee shall be submitted with each application.

(3) Applications for leases on aquatic lands shall describe the area with reference to the abutting upland survey. The description shall conform as nearly as practicable to extensions of the upland subdivisional lines of the United States government survey or survey lines of other recorded plats. Such descriptions shall be subject to the approval of the department. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-230, filed 11/16/82.]

WAC 332-12-240 Applicant. Any person may apply for and hold oil and gas leases on public lands of the state of Washington. Any applicant may acquire, receive and hold more than one lease. The department may deny an application or lease to any person, firm, or corporation for which a lease has been terminated for nonpayment of royalties or for breach of any terms or conditions. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-240, filed 11/16/82.]

WAC 332-12-250 Lease area. Leases shall not exceed the acreage specified in RCW 79.14.020: *Provided*, That an entire government surveyed section may be involved in a single lease. No single lease will be issued including acreage from more than one township of land except that more than one township may be included in a single lease of aquatic lands, if the total lease area does not exceed six hundred forty acres.

If the available land is less than forty acres, the lease will be issued only for the available acreage. On lands which the department manages less than the entire interest in the mineral rights, a lease may be issued by the commissioner covering the state's interest independent of the joinder of the other co-tenant where otherwise permitted. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-250, filed 11/16/82.]

WAC 332-12-260 Term of lease. (1) Oil and gas leases shall be for terms of five years and for so long thereafter as lessee shall produce oil or gas in paying quantities from the leased lands, and as long thereafter as the lessee shall comply with the provisions hereof; or

shall be engaged in drilling, deepening, repairing, or re-drilling any well thereon, or be thereafter excused therefrom but not to exceed a period of twenty years including the initial five-year term.

(2) The lessee shall have a preference right to a new lease covering the leased area for an additional twenty-year period. An application for renewal of the original lease shall be filed with the department at least ninety days, but not more than six months, prior to the expiration of the lease. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-260, filed 11/16/82.]

WAC 332-12-265 Application procedures--Surface rights in other agencies. Prior to offering mineral rights under the jurisdiction of the department of natural resources for oil and gas leasing where the surface rights are either owned or leased by other state agencies, the department will notify the applicable state agency. Such notification shall be within a reasonable time period prior to leasing to permit the other agencies to consult with the department as to the advisability and conditions of lease. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-265, filed 11/16/82.]

WAC 332-12-270 Award of lease. The department shall offer land for oil and gas leasing by the following procedures:

(1) Leases shall be offered at public auction after the approval of an application or initiation by the department. Public auction shall be by sealed or oral bidding or a combination as prescribed in the notice of leasing. Oil and gas leases shall be awarded to the highest cash bonus bidder. If two or more sealed bids tie for the highest bid on an individual tract, the department shall resolve the tie by commencement of oral bidding. If no oral bids are received on such tract the tie shall be resolved by the drawing by lot from the tie bids.

(2) If no bids, sealed or oral, are received on an individual tract, the lease may be awarded to the applicant for the minimum acceptable bid subject to approval by the commissioner.

(3) All awards of leases are subject to the commissioner's authority to withhold any tract or tracts of land from leasing and to reject any or all applications or bids for an oil and gas lease if determined to be in the best interest of the state.

(4) Notice of the offer of land for leasing shall be given by publication in a newspaper of general circulation in Thurston county and in such other manner as the department may authorize. Such notice shall specify the place, date, and hour of the offering, a general description of the lands to be offered for lease, and the minimum acceptable bid.

(5) Competitive bid terms. Sealed bids must be submitted prior to the time set for the auction, and must be accompanied by a certified check equal to one-fifth of the total bonus bid offered. Following award of an oral bid, a successful oral bidder is required to submit payment equal to one-fifth of total bonus bid. Unless all bids are rejected, the commissioner will send to the successful bidder two copies of the lease. The bidder will be

required within thirty days after receipt thereof to execute and return the lease, pay the balance of their bonus bid, the first year's rental of one dollar twenty-five cents per acre, and all applicable taxes and other required payments. Upon failure of the successful bidder to fulfill the above requirements, the money tendered will be forfeited and the application rejected unless the department grants additional time pursuant to a written request made by the successful bidder prior to the expiration of the thirty-day period.

(6) Unsuccessful sealed bidders will be refunded their deposit. Application fees shall be refunded for applications rejected by the department. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-270, filed 11/16/82.]

WAC 332-12-280 Lease terms. (1) Leases issued under the provisions of chapter 79.14 RCW and these rules shall be on forms prepared and prescribed by the department.

(2) Leases shall contain, where applicable, provisions implementing the rules and regulations contained in chapter 332-12 WAC.

(3) Leases shall contain, where applicable, provisions which:

- (a) Protect the environment;
- (b) Provide for security for faithful performance of the lease terms and conditions;
- (c) Require a plan of operations;
- (d) Require reclamation;
- (e) Prevent waste;
- (f) Provide for plugging and abandonment;
- (g) Require compliance with the provisions of the Oil and Gas Conservation Act and its rules and regulations;
- (h) Require the drilling of wells for the purpose of offsetting producing wells on adjoining lands;
- (i) Require the lessee to furnish gas produced from the lease to state lessees for direct use where requested by the department;
- (j) Relate to the surface use and resources.

(4) Leases shall contain such terms as are customary and proper for the protection of the rights of the state, the lessee and the surface owner, and necessary to insure compliance with the applicable laws and regulations. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-280, filed 11/16/82.]

WAC 332-12-290 Reserved rights. The department reserves the right to lease any subsurface resource not covered by an existing oil and gas lease: *Provided*, That such leasing is subject to any existing subsurface lease rights and does not materially interfere with any established lease operations. The department shall require a cooperative work agreement to allow simultaneous or coordinated operations.

The department reserves the right to allow joint or several uses of existing sites, easements, or rights of way under control of the state, upon such terms as the department may determine. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-290, filed 11/16/82.]

WAC 332-12-300 Damages to encumbered lands. The lessee shall have the right to the surface use of the premises to the extent such use is reasonably necessary for operations under the lease as provided in the plan of operations.

(1) Where surface rights have been transferred from state ownership through sale or exchange with mineral rights reserved or are leased by the state, the oil and gas lessee, prior to exercising lease rights, shall:

(a) Secure the consent or waiver of the surface-right owner or lessee regarding oil and gas lease activities; or

(b) Provide full payment for damages to the surface-right owner or lessee; or

(c) Secure the agreement by the surface-right owner or lessee that damages cannot be determined at this time and there shall be the execution of a good and sufficient security acceptable to the department in favor of the surface-right owner or lessee for their use and benefit to secure the payment of such damages, as may be determined and fixed by later agreement or in action brought upon the security or undertaken in a court of law against the oil and gas lessee; or

(d) Institute an action by the oil and gas lessee in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to the surface-right owner or lessee by reason of entry thereon. In the event of any such action, the term of the oil and gas lease shall begin thirty days after the entry of the final judgment and payment therefore in such action provided such action was instituted and processed within a reasonable time; or

(e) Shall furnish to the department a good and sufficient security, acceptable to the department, to cover such compensation until such compensation is determined by agreement, arbitration, or judicial decision or is otherwise authorized to be determined.

(2) Where the surface rights are owned by the state, the oil and gas lessee, prior to exercising its lease rights, shall compensate the state for damages that may occur to the surface rights as determined by the department or by another state agency where it owns both the surface and mineral rights.

The department or such agency may, in the alternative, in lieu of immediate payment, require the furnishing of adequate security for payment of all damages. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-300, filed 11/16/82.]

WAC 332-12-310 Annual rental or minimum royalty. (1) The department shall require payment of not less than one dollar twenty-five cents per acre per year in annual rental. The lessee shall pay the first year's annual rental upon execution of the lease and pay a like rental in advance each year the lease remains in force: *Provided*, That at any time the lease starts production, a minimum royalty of five dollars per acre per year shall replace the annual rental [and shall be credited against production royalties]. Minimum royalties shall be paid at the end of the lease year in which production starts

and annually at the end of the lease year for the remainder of the term. When the required minimum royalty is greater than the production royalties paid during any lease year, the lessee shall pay the difference between the minimum royalty and the [paid] production royalties. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

(2) On lands which the state owns less than entire fee simple mineral rights in common tenancy (undivided interests), the lessee shall pay the department rentals and minimum royalties in the amount as if the state owned in fee simple the entire mineral rights of the leased acreage.

(3) If the annual rental or minimum royalty is not paid as prescribed in the lease, the lease shall be terminated automatically as required by law. [Statutory Authority: RCW 43.30.150(6), 83-07-039 (Order 393, Resolution No. 409), § 332-12-310, filed 3/16/83. Statutory Authority: RCW 79.14.120, 82-23-053 (Order 387), § 332-12-310, filed 11/16/82.]

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 332-12-320 Production royalties. (1) Production royalty payments shall be payable to the department for oil and gas produced from the lease premises, or in the case of gas products from gas produced but not sold, the products manufactured. Royalty rates shall be not less than twelve and one-half percent of the gross value at the point of production as defined in WAC 332-12-330. In the case of production of gas from coal deposits by "in situ" or other newly developed technology for which there is little or no leasing experience, the commissioner may set applicable royalty rates.

(2) The state reserves the right that, in lieu of receiving royalty payment for the market value of the state's royalty share of oil or gas, the department may elect that such royalty share of oil or gas be delivered in kind at the mouth of the well into tanks or pipelines provided by the department.

(3) On lands which the state owns less than the entire fee simple mineral rights in common tenancy (undivided interests), the lessee shall pay production royalties in the proportion which the state's interests bear to the undivided whole or an amount established by agreement between co-tenants.

(4) Payments shall be in an amount to cover all royalties due the state from production. The department may approve the use of payment bonds, savings account assignments, or other security which guarantees payment to the state. Production royalty payments shall be scheduled in the lease and plan of operations. The lessee shall furnish the department a sworn statement showing production for accounting periods required by the department and pay any royalties due.

(5) The lessee shall not sell or deliver any oil and gas or manufactured products to any person who does not agree to file purchase invoices with the department stating the price, quantity, origin of oil and gas purchased

from a state lease and to allow an audit as provided by these rules. The department may require and prescribe any other methods necessary to insure a full accounting of oil and gas produced from the premises. Noncompliance with any accounting requirements may cause suspension of operation or termination as provided in WAC 332-12-400.

(6) Any past due royalty payment shall bear interest at the rate of one percent per month, compounded monthly, on the unpaid balance. [Statutory Authority: RCW 79.14.120, 82-23-053 (Order 387), § 332-12-320, filed 11/16/82.]

WAC 332-12-330 Computation of royalties. Production royalty payments shall be based upon the gross value at the point of production defined as follows:

(1) For oil. The posted field price, or, if no field price is posted, the fair market value prevailing for oil of like kind, character, quality or comparable source at the point of production. All field prices shall be approved by the department.

All royalties, whether in money or in kind, shall be delivered to the state free of cost and deductions.

Quantities of oil produced shall be determined by metering or measuring (by automatic custody transfer meter, tank gauge, or other approved method) at the first point of transfer it is in a condition of pipeline quality which shall be considered the point of production.

(2) For gas or other hydrocarbons. The posted field price or if no field price is posted, the fair market value prevailing for gas of like kind, character or comparable source at the point of production. All field prices shall be approved by the department. These royalties shall be delivered to the state free of costs and deductions.

If gas is not sold but is used by the lessee for the manufacture of gasoline or other products, the fair market price at point of sale shall be used for these products, less reasonable deductions for refining costs, as determined by the department.

(3) All prices shall be approved by the department.

(4) Quantity of gas produced shall be determined by metering or measuring at the point where it is first accurately metered or measured on or near the lease premises from which it is recovered. Where it is considered to be merchantable or pipeline quality shall be considered the point of production, less any quantities reinjected into a reservoir in the same field for purposes of repressuring and conservation. The quantity of gas products shall be determined by metering at the point of delivery for sale by the lessee. [Statutory Authority: RCW 79.14.120, 82-23-053 (Order 387), § 332-12-330, filed 11/16/82.]

WAC 332-12-340 Unit plans. The holder(s) of any oil and gas leases may apply to the department to unite with each other or with other entities, including lands not owned by the state, to collectively adopt and operate under a unit plan.

(2) To implement a plan and protect the state's interest, the commissioner may alter the terms and conditions of the lease(s) so involved with the consent of the

leaseholder(s). Authorization by the department to include state leases in unit plans shall be conditioned on the following requirements:

(a) There shall be submitted to the department a plat showing the area to be unitized, together with geological and other information in support of the delineation of the area.

(b) A preliminary draft of the plan shall be submitted to the department for approval.

(c) If the plan is approved by the department, the proponent of the plan shall deliver one copy to the department when fully executed.

(d) Leases which are only partially covered by unit plans shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(e) The term of any lease that has become the subject of a unit plan as approved by the department shall continue in force until the termination of such plan. In the event that such plan is terminated prior to the expiration of any such leases, the original term of the lease shall continue.

(f) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system and the right of the department to audit such system to protect the interests of the state.

(g) Operations and production under a single unit plan shall be considered the operations and production of all leases included under the plan. Due diligence performed on any part of an area under a unit plan, may be credited by the department toward the requirement for all state leases included in the unit.

(3) Agreements for a cooperative or unit plan of development of an oil and gas pool, field or like area or any part thereof shall comply with the provisions of RCW 78.52.370. All unit or cooperative plans containing lands leased under the provisions of chapter 79.14 RCW require approval and consent by the department. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-340, filed 11/16/82.]

WAC 332-12-350 Performance security. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other security satisfactory to the department in an amount determined by the department to be sufficient to guarantee performance of the terms and conditions of the lease. Such security shall be submitted prior to the beginning of operations or applying for a drilling permit. Such security shall not be less than ten thousand dollars. The lessee shall promptly advise the department of any changes in operation. The department may reduce or increase the amount of the security as a result of operational changes requiring different levels of performance. The department may allow a lessee to file a single security device, acceptable to the state, in an amount set by the department covering all of the lessee's state leases. [Statutory Authority:

RCW 79.14.120. 82-23-053 (Order 387), § 332-12-350, filed 11/16/82.]

WAC 332-12-360 Plan of operations. The lessee shall submit to the department and obtain approval of an acceptable plan of operations prior to applying for a drilling permit. The purpose of the plan of operations is to provide detailed information regarding proposed lease activities in exploration, development, production, reclamation, and all other activities on the lease premises. The plan of operations shall be updated by the lessee prior to making any substantial change in its operations or when requested by the department and submitted for approval to the department. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-360, filed 11/16/82.]

WAC 332-12-370 Assignments. (1) Any lease may be assigned, mortgaged, sublet, or otherwise transferred as to a divided or undivided interest therein to any qualified applicant subject to the approval of the department. The lessee shall execute an assignment approved by the commissioner. A transfer of a separate zone or deposit under any lease or a part of a legal subdivision shall be considered an assignment and is subject to the approval of the department. All approved assignments shall take effect as of the first day of the lease month following the date of approval. A separate assignment fee is required for each separate lease in which an interest is assigned.

(2) Assignments of undivided interests in a lease or changes in controlling lease interest shall not create new leases or new obligations and shall be subject to the approval of the department. The approval of these assignments, a designation of a single agent or a power of attorney executed by all lessees shall be filed with the department and an acceptable agreement adequate to protect the state's interest including a designation of the lessee shall be executed and filed with the department.

(3) Any divided interest or partial assignment of a geographically distinct subdivision of a lease shall segregate the assigned and retained portions thereof and upon approval of such assignment by the commissioner, create a new lease as to the assigned lands. The rights and obligations of the lessees under the retained portion and the assigned portion of the original lease are separate and distinct but are identical as to terms and conditions. Execution of the assignment shall release or discharge the assignor from all obligations thereafter accruing with respect to the assigned lands. Such segregated leases shall continue in full force and effect for the primary term of the original lease.

(4) Owners of cost-free interests such as overriding royalties, where authorized by the department, shall not be considered lessees and shall be subject to the rights of the department against the lessee. All state assignment documents shall contain provisions which subject any cost-free interests created by an assignment to the authority of the commissioner to require the proper parties to suspend or modify such overriding royalties or payments out of production in such a manner as may be reasonable when and during such periods of time as they

may constitute an undue economic burden upon the reasonable development and operations of such lease.

(5) The approval of any assignment shall not waive compliance with any terms and conditions of the original lease. The department may subject the assignment to special requirements or conditions to correct any non-compliance with the original lease. Upon approval of any assignment, the assignee or sublessee shall be bound by the terms of the original lease to the same extent as if such assignee or sublessee were the original lessee. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-370, filed 11/16/82.]

WAC 332-12-380 Surrender of leasehold. (1) Every lessee shall have the option of surrendering their lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all future liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued, physical damage to the premises embraced by the lease which have been occasioned by their operation, physical damages occasioned by right of way passage across other state lands, and the duty to plug and abandon and reclaim the lease premises.

(2) The lessee shall notify the department in writing requesting surrender of leasehold and the department shall acknowledge the receipt of such notice.

(3) If no operations have been conducted under the lease and no surface disturbances or damages have occurred on the land to be surrendered, the lease shall terminate sixty days after the date of the receipt by the department of the notice of surrender, unless the department authorizes an earlier date: *Provided*, That all payments due up to the time of termination are paid.

(4) If operations have been conducted and surface disturbance or damage has occurred on land proposed for surrender, the leasehold shall not terminate until the land has been reclaimed and placed in an acceptable condition and approved by the department, all wells have been properly plugged and abandoned, and all applicable conditions of chapter 78.52 RCW have been complied with. Termination of the lease shall become effective after approval by the department and all payments which may be due up to the time of termination are paid. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-380, filed 11/16/82.]

WAC 332-12-390 Due diligence. Oil and gas leases shall be for a base term of five years and shall continue only after the base term for a period not to exceed twenty years in total if:

(1) The lessee has and is complying with all rules and regulations and the terms and conditions of the lease; and

(2) The lessee shall be producing oil and/or gas in continuous paying quantities; or

(3) The lessee shall be engaged in drilling, deepening, repairing, or re-drilling any production well without a ninety-day cessation of operation; or

(4) The lessee shall be actively exploring with due diligence in which one string of tools is in operation on

the lease premises, allowing not to exceed ninety days between the completion of one well and the start of the next; or

(5) The lessee is proceeding and actively pursuing development in the opinion of the department to efficiently extract oil and/or gas after discovery. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-390, filed 11/16/82.]

WAC 332-12-400 Termination of lease for default.

The department may cancel the lease for noncompliance with the lease agreement, plan of operations, or applicable laws, rules, and regulations. The lessee shall be notified of such noncompliance and the necessary corrective measures by certified mail to the last known address of the lessee. If the lessee shall diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall occur. Otherwise termination or cancellation shall automatically become effective thirty days from the date of mailing the notice of default and shall be final. The lessee may make a written request for an extension of time outlining the circumstances such extension is warranted. The department may, upon receiving a written request prior to the end of the thirty-day period, grant an extension of time in which to comply with the terms and conditions of the lease. Termination shall not relieve the lessee of any obligation incurred under the lease.

Failure to pay required rental and/or royalty within the time prescribed shall automatically and without notice work a forfeiture of such leases and of all rights thereunder. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-400, filed 11/16/82.]

WAC 332-12-410 Condition of premises upon termination of lease. The lessee shall have thirty days from the termination date in which to remove all improvements, except buildings and structures, from the premises except as authorized by the state, leaving all existing development in good order and repair, and without unnecessarily hampering future development and operation of the lease premises. All such improvements remaining on the lease premises after thirty days, including the buildings and structures, shall become the property of the state: *Provided*, That the lessee may upon written request to the department be granted an extension of time where forces beyond the control of the lessee prevent removal of said improvements within thirty days. If the subsurface resource is exhausted, the lessee shall remove all improvements unless otherwise permitted by the department. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-410, filed 11/16/82.]

WAC 332-12-420 Reclamation. The lessee shall restore the lease premises as required by state and federal law and the lease. The lessee shall submit final reclamation plans to the department for its approval prior to:

(1) Submission of such a plan to the oil and gas conservation committee; and

(2) Prior to notification to the department to plug and abandon any well; and

(3) Within ninety days prior to the end of the lease term.

All plans shall be subject to the approval of the department. All reclamation shall be completed within ninety days of the receipt of the final approved plan from the department. The department may, upon receiving a written request prior to the end of the ninety-day period, grant an extension of time for completion of reclamation. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-420, filed 11/16/82.]

WAC 332-12-430 Timber. No forest products owned by the department shall be cut, removed or destroyed unless approved in advance by the department. The lessee shall appropriately mark all forest products proposed to be cut. Unless the department elects to directly dispose of the forest products, the department will appraise the forest products and the lessee shall pay the appraised value of such forest products within thirty days of billing unless there is written extension of time by the department, and in any event, prior to their cutting. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-430, filed 11/16/82.]

WAC 332-12-440 Use of the premises. A lessee may use the lease premises as provided in the lease and the approved plan of operations, subject to existing rights and payments as otherwise provided. Such uses shall be those reasonably necessary for the exploration, operation, and production of oil and gas. All other uses shall require separate leases. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-440, filed 11/16/82.]

WAC 332-12-450 Prevention of waste and environmental protection. (1) The lessee shall conduct all operations in a manner to prevent waste and preserve property and resources. If the lessee fails to do so, the department may enter on the property to repair damages or prevent waste at the lessee's expense, in addition to other authorized actions.

(2) The lessee shall use all proper safeguards to prevent pollution of earth, air, and water. The lessee is responsible for all damage to public and private property caused by the lessee's operation and shall use all reasonable means to recapture escaped pollutants.

(3) The lessee shall explore for oil and gas with the minimum disturbance to the surface of the land. All drill holes shall be securely capped and/or plugged when not in use or abandoned. The lessee shall comply with all of the provisions of law governing surface and groundwater.

(4) Topsoil on lands to be disturbed shall be removed and stockpiled on the site. The lessee shall take all necessary steps to insure the preservation of the stockpiled topsoil, including establishment of a temporary vegetative cover to prevent erosion. Upon the final abandonment or completion of a drilling operation, the lessee shall reclaim the lease premises, including restoration of the surface to acceptable contours, redistribution of the topsoil, and reseeded the land with native grasses and native plants

prescribed by the department in the approved plan of reclamation.

(5) Upon completion of production or exhaustion of an oil and/or gas resource, the lessee shall reclaim the land, and plug and abandon all wells.

(6) The department may, in the plan of operations, require interim measures to reclaim the lease area and protect all resources and property. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-450, filed 11/16/82.]

WAC 332-12-460 Access road construction and maintenance standards. Access roads authorized to be constructed and/or maintained on public lands or easement agreements shall conform to those standards approved and specified by the department. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-460, filed 11/16/82.]

WAC 332-12-470 Rights of way over state lands. Any lessee shall have a right of way over state lands not included in the lease area when authorized by law, when necessary, for the exploration, development and production of oil and gas, provided that a right of way application and a plat showing the location of such right of way shall be filed with the department. Rights of way, when authorized, will be granted to the lessee upon approval of the location by the department or other agency owning in fee the surface rights and payment of charges.

The department retains the right to utilize all rights of way and grant such other rights not inconsistent with the lessee's use of such rights of way. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-470, filed 11/16/82.]

WAC 332-12-480 Field inspections and audits. Any person designated by the department shall have the right at any time to inspect and examine the lease premises and production facilities, and shall have the right during lessee business hours to examine such books, records, tax returns, and accounts of the lessee as are directly connected with the determination of royalties. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-480, filed 11/16/82.]

WAC 332-12-490 Reports. The rules and regulations promulgated under the Oil and Gas Conservation Act, chapter 78.52 RCW require standardized reports of well history or record and well log, production, and methods used in plugging and abandoning a well. These reports shall be made available to the department through the oil and gas conservation committee.

If a lessee discovers any subsurface resource of possible recoverable value, not covered in the oil and gas lease, the discovery shall be reported to the department within ten days of the discovery date. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-490, filed 11/16/82.]

WAC 332-12-500 Compliance with other laws. All development or production activities authorized by the

lease shall be conducted in accordance with all applicable laws, rules and regulations. The lessee(s) shall, before commencing any operations on the leased lands, inform themselves of and then abide by the laws, rules and regulations affecting such operations. Compliance with state and federal laws, rules and regulations shall be the sole responsibility of the lessee and not the responsibility of the department.

The filing of a bond or other security as a lease requirement does not remove the obligation to file bonds required by other laws. [Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-500, filed 11/16/82.]

Chapter 332-16 WAC

MINERAL PROSPECTING LEASES AND MINING CONTRACTS

WAC

332-16-010	General objectives of mineral resource management.
332-16-020	Lands subject to mineral leasing law and chapter 332-16 WAC.
332-16-030	Definitions.
332-16-040	Applications.
332-16-050	Applications—Simultaneous.
332-16-060	Applications—Return of moneys.
332-16-070	Area and term of leases and contracts.
332-16-080	Leases and contracts in effect on June 10, 1965.
332-16-090	Tide and shore land descriptions.
332-16-100	Conversion of leases to contracts.
332-16-110	Conversion of leases to contracts—Failure to convert.
332-16-120	Forms.
332-16-130	Time for return of executed leases and contracts.
332-16-140	Cash or surety bond may be required.
332-16-150	Timber.
332-16-160	Notice of rental or minimum royalty.
332-16-170	Right of entry.
332-16-180	Damages to encumbered lands.
332-16-190	Use of leased premises.
332-16-200	Development work and improvements.
332-16-210	Development work and improvements—Examples, acceptable.
332-16-220	Development work and improvements—Examples, unacceptable.
332-16-230	Development work and improvements—Reports.
332-16-240	Development work and improvements—Additional time.
332-16-250	Advance payment of minimum annual royalty.
332-16-260	Royalties.
332-16-270	Royalties—Computation.
332-16-280	Royalties—Gross income.
332-16-290	Royalties—Production.
332-16-300	Royalties—Audit and verification.
332-16-310	Maps, reports, and assays.
332-16-320	Assignments.
332-16-330	Consolidation of mining contracts.
332-16-340	Administrative Procedure Act.

WAC 332-16-010 General objectives of mineral resource management. The general objective of the department of natural resources in its management of state-owned mineral resources is to provide for the maximum dollar return to the state from those resources consistent with general conservation principles. In implementation of this general objective, the department shall seek to:

(1) Secure the highest dollar return to the state under good management practice.

(2) Achieve the maximum income from the utilization of mineral resources by encouraging exploration, development, and production consistent with accepted standards of good mineral industry practices.

(3) Encourage the mineral utilization of state lands through administrative policy and management practices which conform to the requirements of practical operation.

(4) Encourage the release of technical and scientific information regarding minerals on state lands and secure appropriate engineering records of all mineral exploration and utilization. [Order 3, § 332-16-010, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67; Mineral prospecting lease rules, adopted 6/1/59.]

WAC 332-16-020 Lands subject to mineral leasing law and chapter 332-16 WAC. Lands subject to the provisions of the "Mineral Leasing Law," i.e., chapter 56, Laws of 1965 (RCW 79.01.614-79.01.650), and chapter 332-16 WAC are all lands, or interest therein, under the administration of the department of natural resources. [Order 3, § 332-16-020, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-030 Definitions. The following definitions are, unless the context otherwise required, applicable to chapter 56, Laws of 1965 (RCW 79.01.614-79.01.650), and to these rules and regulations. These definitions shall be used in connection with applications, reports, prospecting leases, mining contracts, and other documents issued in connection therewith:

(1) "Department" shall mean the department of natural resources.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Board" shall mean the board of natural resources, as established by chapter 38, Laws of 1957 (chapter 43.30 RCW).

(4) "Proper office," as used in RCW 79.01.620 and 79.01.636 shall mean the authorized office of the department in Olympia, Washington.

(5) "Mineral Leasing Law" shall mean RCW 79.01.614-79.01.650.

(6) "Leased premises" shall mean public lands held under mineral prospecting lease or mining contract.

(7) "Lessee" shall mean any person holding a prospecting lease or mining contract.

(8) "Valuable minerals and specified materials" may include but are not restricted to peat, dolomite, limestone, pumice, and nonfuel or nonhydrocarbon gases, such as carbon dioxide, helium, nitrogen, and sulfur gas. Such materials as those used for riprap, ballast, fill material, and road material shall not be considered as valuable minerals or specified materials except when they are the by-product of mining operations.

The determination of the department of whether any particular materials are "specified materials" within the meaning of the Mineral Leasing Law shall be based on the best interests of the state.

(9) "Ore" shall mean any material containing "valuable minerals" or "specified materials," the nature and

composition of which, in the judgment of the lessee, justifies either: (a) Mining or removing from place during the term of his lease and either shipping and selling the same or delivering the same to a processing plant for physical or chemical treatment; or (b) leaching and treating in place during the term of the lease.

(10) "Waste" shall mean earth, rock, or material mined or removed from place and/or premises during the term of lease, but which is not ore as defined above.

(11) "Product" shall mean: (a) All ore mined or removed from place in the leased premises during the term of the lease and shipped and sold by the lessee prior to treatment; and (b) all concentrates, precipitates, and mill products produced by or for the lessee from ore mined or removed from place in the premises, or from ore leached in the premises, during the term of the lease.

(12) "Treatment" shall mean beneficiation, concentration, crushing, screening, smelting, refining, leaching, and otherwise treating in any manner, any ore product and material mined and produced from the leased premises and from other lands.

(13) "Stockpiling" shall mean storing on the leased premises any ore or product mined or produced from the leased lands or other lands by the lessee or affiliated companies.

(14) "Commingling" shall mean the mixing of ores or materials or products from the leased premises with the ore, materials, or products from other lands.

(15) "Cross-mining" shall mean the mining or removal of ores and materials from the leased premises through, or by means of, shafts, openings, or pits, which may be in or upon adjoining or nearby property owned or controlled by the lessee. [Order 3, § 332-16-030, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-040 Applications. Applications for prospecting leases or mining contracts will be received during business hours in the proper office of the Department of Natural Resources, Public Lands-Social Security Building, P.O. Box 168, Olympia, Washington 98501. An application fee of \$5.00 and the first year's rental must be submitted with each application. All applications received by any means other than the United States mail shall be stamped by the department with the date and time of receipt in the Olympia office. Applications will be accepted in the order received, and priority of leasing will be established on this basis, except as provided in WAC 332-16-050. Applications received through the United States Mail on any business day shall be considered as having been received as of the close of business on that day. An application may be submitted for a mining contract without first obtaining a prospecting lease. [Order 3, § 332-16-040, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-050 Applications--Simultaneous. In the event more than one application for a prospecting lease and/or mining contract is received for the same land through the mail on the same day and no other applications are received that day, such applications will be

considered to have been filed simultaneously and to be in conflict. Such applicants will be advised by mail of the fact of simultaneous filing and that their applications are in conflict. The conflict will be resolved by the drawing of lots in the Olympia office of the department. [Order 3, § 332-16-050, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-060 Applications--Return of moneys. In the event an application for a prospecting lease or mining contract is rejected by the department, all moneys tendered by the applicant will be refunded. In the event an application is rejected in part, money tendered for rental of such rejected part will be refunded upon completion of processing. An applicant for a prospecting lease or a mining contract may submit to the department, in writing, a request that his application be withdrawn in whole or in part. If the request is received prior to processing of the lease or contract by the department, all moneys tendered for the area withdrawn will be refunded. If the request is received after the lease or contract processing, all moneys tendered shall be forfeited to the state, unless otherwise ordered by the department for good cause.

In the event an application is received for a prospecting lease or mining contract covering land that is encumbered by a prospecting lease or mining contract, all moneys tendered with such application will be refunded.

In the event of simultaneous filings, as defined in WAC 332-16-050, one or more of the applicants may request, in writing, that his application be withdrawn. All moneys tendered by such applicants shall be refunded. In simultaneous filing cases, all moneys tendered by unsuccessful applicants will be refunded.

The department may reject any and all applications for prospecting leases or for mining contracts when the interests of the state shall justify it, and in such case it shall forthwith refund to the applicant all moneys tendered. [Order 3, § 332-16-060, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-070 Area and term of leases and contracts. A person may hold any number of leases or contracts at any time. No lease or contract may exceed the equivalent of one section or be less than the equivalent of one-sixteenth of a section in legal subdivisions, according to the United States government surveys, unless the available land managed by the department is less than one-sixteenth of a section. Scattered tracts may, at the discretion of the department, be included in a single lease or contract, provided such leases or contracts are situated in the same or contiguous sections.

All prospecting leases shall be for a term of two years from the date of the lease unless converted to a mining contract prior to the expiration of the prospecting lease.

All mining contracts shall be for a term of not to exceed 20 years. The holder of a mining contract shall have the option to a new contract. [Order 3, § 332-16-070, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-080 Leases and contracts in effect on June 10, 1965. All prospecting leases or mining contracts in effect June 10, 1965, shall be eligible, upon application, for a new prospecting lease or mining contract, as provided in chapter 56, Laws of 1965 (RCW 79.01.614-79.01.650). [Order 3, § 332-16-080, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-090 Tide and shore land descriptions. Lease or contract descriptions of beds of navigable waters, tidelands, and shorelands may be based on projected sections according to the United States government survey of adjoining lands; however, the bed and shorelands of navigable rivers or lakes, where such descriptions would be impractical, may be described by metes and bounds or as follows:

- (1) "Bed and shorelands, or shorelands of _____ River as it flows through _____ (describe land) _____"; or
- (2) "Bed and shorelands, or shorelands of _____ (river or lake) _____ in front of _____ (describe land) _____." [Order 3, § 332-16-090, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-100 Conversion of leases to contracts. To convert a prospecting lease to a mining contract, the lessee, prior to the expiration of the prospecting lease, must submit an application to the department with the \$5.00 application fee, the first year's rental under the contract, and evidence of development work in an amount of not less than \$1.25 per acre per year or fractional year thereof. Any contract issued upon conversion from a prospecting lease shall have the time already expended on said prospecting lease deducted from the prospecting or exploration period of the contract, but said prospecting lease and contract shall be for a total term not to exceed 20 years. [Order 3, § 332-16-100, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-110 Conversion of leases to contracts--Failure to convert. Any prospecting lease not converted as provided in WAC 332-16-100 shall not be renewable. The holder of an expired prospecting lease or his agents shall not be entitled to a new lease or a contract on the premises covered by the prior lease for one year from the expiration date of the expired prospecting lease. [Order 3, § 332-16-110, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-120 Forms. Application, lease, contract and related forms shall be developed and furnished by the department in accordance with established leasing procedures, statutory requirements, and necessary accountability. All leases and contracts shall contain terms and conditions in conformity with the law and these rules and regulations. [Order 3, § 332-16-120, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-130 Time for return of executed leases and contracts. After processing by the department, leases and contracts will be mailed to the applicant for signature. Applicant will be allowed 30 days in which to sign and return the lease or contract. If the applicant fails to sign and return the lease or contract within 30 days, the lease or contract will be rejected and the application fee and the first year's rental will be forfeited to the state. Additional time in which to sign and return the lease or contract may be granted by the department if the applicant submits a request for such additional time, in writing, prior to the expiration of the 30-day period. [Order 3, § 332-16-130, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-140 Cash or surety bond may be required. The department may, at its option, require the applicant to post a cash bond or an approved surety bond guaranteeing his compliance with the terms and conditions of a prospecting lease or mining contract. Such bonds may be required in those cases in which the applicant and the department cannot agree regarding the payment for damages to land, and in such other cases as the department may, at its discretion, require. [Order 3, § 332-16-140, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-150 Timber. The department is responsible for managing the timber as well as the mineral resources on state lands. The department has the right to sell or otherwise dispose of timber on state lands. It is not obligated to withhold from sale any timber usable for prospecting or mining purposes.

The lessee may cut and use such timber located on the leased premises as is necessary to prospecting or mining operations. No timber may be removed from the leased premises for processing or manufacturing. No charge will be made for timber cut and used on the premises if such timber is necessary to the prospecting or mining operations. Prior to any cutting of timber from the leased premises, the lessee must contact the local district administrator of the department for approval. All timber to be cut must be marked by the lessee or otherwise designated by the department.

Prior approval of the department must also be obtained for the cutting and removing or destruction of forest products which is necessary to the lessees' operations and which will not be used on the premises. The lessee shall submit a request, in writing, and a plat indicating the area from which forest products are to be cut and removed or destroyed to either the department's local district administrator or its Olympia office. All forest products proposed to be cut and removed or destroyed must be appropriately marked by the lessee. The department will then appraise the forest products involved, utilizing its established techniques. Lessee shall, upon being billed, pay the appraised value of such forest products. Payment shall be made within 30 days of billing unless a longer period is approved, in writing, by the department, but in any event, prior to the cutting, removal, or destruction.

In cases where the appraised value of forest products, as provided in the paragraph last above, cannot be readily established in advance due to the nature of the proposed prospecting or mining operations, the lessee may, in lieu of advance payment, post a cash bond or approved surety bond, in an amount sufficient, in the opinion of the department, to cover possible damages.

In the event land clearings are required by the mining operation, the lessee shall so advise the department and, prior to the commencement of such clearing, obtain written approval from the department. The department, whenever possible, will attempt to sell the timber involved within a reasonable time. Should the department elect not to sell or is unable to sell, the lessee will be charged and payment made as provided in the paragraph next above. [Order 3, § 332-16-150, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-160 Notice of rental or minimum royalty. Advance notice of rental or minimum royalty due is ordinarily sent by the department to the last-known address of the lessee approximately 30 days before such rental or minimum royalty is due. Failure to receive such notice shall not act to relieve the lessee from responsibility for making payments. Lessee will be considered in default if payment is not made as provided in the lease or contract. The lease or contract may be terminated upon the failure of the lessee to comply with these rules and regulations and statutes. [Order 3, § 332-16-160, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-170 Right of entry. The state has retained title to mineral rights on public lands sold subsequent to June 11, 1907. The state, as provided in section 8, chapter 56, Laws of 1965 (RCW 79.01.633), transfers its right of entry to such lands to the lessee during the life of the lease or contract. [Order 3, § 332-16-170, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-180 Damages to encumbered lands. When lands described in an application for a prospecting lease or mining contract shall have been previously encumbered for any other purpose than prospecting or mining, the applicant must provide for compensation to the holder of the surface rights for damages which may result from prospecting or mining. The applicant for a prospecting lease or mining contract must submit evidence of having reached agreement with the holder of the surface rights. In the event the applicant and the holder of the surface rights are unable to reach agreement as to compensation for damages, the department will estimate the amount of damages: *Provided*, That in the event an application is received for a prospecting lease or a mining contract on lands which have been withdrawn by the department, or which have been leased by the department to any other governmental entity for a public use, the department will participate in all negotiations between the applicant and the governmental entity concerned regarding the amount of damage that

prospecting or mining will do to the land, giving consideration to the use to which the land is now being, or may reasonably foreseeably be put.

The applicant must post a cash bond or file a surety bond, issued by a bonding company authorized to do business in this state, in an amount sufficient in the opinion of the department to cover such damages, prior to the department issuing a prospecting lease or mining contract. [Order 3, § 332-16-180, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-190 Use of leased premises. Lessee may use the leased premises and any shafts, openings or pits therein for the mining, removal, treatment, and transportation of ores and materials from the leased premises, adjoining property or nearby property, including cross-mining, or for any purpose connected therewith. In the event the leased premises are used for processing, treatment or stockpiling of ores and/or materials and such use does not result in fair rental compensation for the land so used, the department shall have the right to charge reasonable rentals for such use. No comingling shall take place except such ore, materials, or products shall have been sampled, where necessary, and weighed or measured by volumetric survey or other accepted industry practices, in such a manner as will permit computation of the royalty to be paid. The lessee shall, at all times, follow reasonable and accepted conservation practices in all operations on the leased premises. [Order 3, § 332-16-190, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-200 Development work and improvements. Performance of development work or improvements is required on land held under mining contract in an amount of not less than \$2.50 per acre each year after termination of the prospecting or exploration period of a contract or upon commencement of actual mining, recovery, and saving of minerals or materials, whichever is first. Development work or improvements, to be acceptable, must contribute directly to the mining or mineral potential of the property.

Development work or improvements actually accomplished during any one year in excess of the contract requirements may be applied toward the requirements for the next succeeding year only. To be credited against the next succeeding year, the excess work must be reported to the department at the end of the year such work was performed.

When two or more contracts are involved, development work accomplished on one contract, which exceeds the development requirements on said contract, may be credited on the other contracts subject to the approval of the department: *Provided*, That operation of the contracts has been consolidated under the provisions of section 13, chapter 56, Laws of 1965 (RCW 79.01.648). [Order 3, § 332-16-200, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-210 Development work and improvements—Examples, acceptable. The following are examples of acceptable types of development work or improvements. These are examples only, and acceptable development work or improvements are not limited thereto; however, all work, to be acceptable, must be performed on the leased premises and, in the opinion of the department, directly add to the mineral or mining potential of the property.

(1) Mining operations involving excavation of tunnels, shafts, raises, inclines, drilling, clearing, trenching and related operations.

(2) Geophysical, geochemical, and geological surveys are acceptable for the year reported and the next succeeding year: *Provided*, That maps showing sampling or survey stations must be submitted to the department.

(3) Construction of roads, trails, or tramways to the property, or repair of such improvements, if giving direct access to or on the leased premises.

(4) Construction of buildings if used only for mining, such as: ore bunkers, mine equipment storage facilities, and shops.

(5) Dewatering of property, if performed to add to the development of the property.

(6) Moving machinery or materials, if they are used on the property.

(7) Property surveys deemed necessary by, and made to, department standards. [Order 3, § 332-16-210, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-220 Development work and improvements—Examples, unacceptable. The following are examples of unacceptable development work. These are examples only, and unacceptable development work or improvements are not limited thereto.

(1) Travel or living expenses.

(2) Construction of buildings and facilities not strictly for mining, such as: Cookhouses, bunkhouses, and residences of any type.

(3) Milling and smelting.

(4) Legal and attorney fees.

(5) Development work paid for but not performed.

(6) Improvements and development work performed by a prior lessee, except by approved assignment. [Order 3, § 332-16-220, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-230 Development work and improvements—Reports. Reports of development work or improvements performed on the leased premises shall be submitted with the rental or minimum annual royalty when due. Report forms will be furnished the lessee with the rental-due or minimum-annual-royalty-due notice. In the event the dates for reporting development work should be adjusted by reason of weather conditions or the type of operations, the lessee may apply, in writing, to the department for such adjustment.

Development-work reports shall contain sufficient information to indicate the amount and type of work or improvements accomplished on the property. Such report shall specify the length of tunnels, shafts, trenches,

drill holes, roads constructed and related activities, and the costs thereof.

The department shall have the right at all times to enter into or upon the premises during the term of the lease or contract to inspect the work done and to examine all books and records pertaining to development work or improvements. [Order 3, § 332-16-230, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-240 Development work and improvements—Additional time. The holder of a mining contract may be granted an additional period of not to exceed 45 days after notification to complete required development work or improvements if it is determined by the department that actual development work or improvements performed do not meet the requirements of the contract. The lessee may apply, in writing, to the department, 30 days prior to the end of the contract year, for permission to make payment of \$2.50 per acre per year to the state in lieu of performing actual development work or improvements. The lessee may, subject to approval by the department, be granted the right to pay the difference between actual work performed and the work required. [Order 3, § 332-16-240, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-250 Advance payment of minimum annual royalty. The lessee shall pay, in advance, a minimum annual royalty of \$2.50 per acre each year after termination of the prospecting or exploration period of a contract or upon commencement of actual mining, recovery, and saving of minerals or materials, whichever is first. The minimum annual royalty shall become due and payable at the beginning of the next lease or contract year and for each year thereafter, following the commencement of mining.

Credit for minimum annual royalty for any one year shall be allowed against royalties payable from production for that same year.

Delayed credit may be granted the lessee if material is stockpiled and not sold until subsequent years. To qualify for delayed credit, it shall be mandatory for the lessee to notify the department of the amount of material placed in stockpiles during the lease year. Delayed credit will be granted for minimum-annual-royalty payments against the royalty due from material placed in stockpile each year. [Order 3, § 332-16-250, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-260 Royalties. All valuable minerals and specified materials removed by any person from lands subject to the Mineral Leasing Law shall be subject to payment of royalties to the department in accordance with these rules and regulations: *Provided*, That any lessee, during a prospecting lease or the prospecting or exploration period of a contract, may in any one year remove from the premises valuable minerals or specified materials of a value not exceeding \$100 for the purpose of testing and assaying, without the payment of royalties and without being construed as having commenced "actual mining, recovery, and saving of minerals

and specified materials" in accordance with section 6 and section 10, chapter 56, Laws of 1965 (RCW 79.01-.628 and 79.01.636, respectively). In the event that samples for testing and assaying having a value in excess of \$100 are required, the department may, upon application in writing by a lessee, give its consent to such removal for testing and assaying without the payment of royalties. All other valuable minerals and specified materials removed shall be subject to the payment of royalties. [Order 3, § 332-16-260, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-270 Royalties—Computation. Royalties shall be payable to the department for all valuable minerals and specified materials removed from lands subject to the Mineral Leasing Law computed in one of the following ways:

(1) **Established royalty.** The department may, from time to time, without notice, and at any time that no application for lease or contract is on file in regard to a specific tract of land, adopt a schedule of royalties for specific valuable minerals and specified materials to be collected upon production from such tract of land. All such established royalties shall be published from time to time and a current file shall be kept available in the office of the department in Olympia, Washington. Any valuable minerals or specified materials contained in a specific tract of land for which no schedule of royalties has been adopted shall be subject to a royalty established in accordance with subparagraph 2, below.

(2) **Standard royalty.** In the absence of a royalty established in accordance with subparagraph 1, above, and unless a different royalty has been adopted under the provisions of WAC 332-16-270(3), royalties shall be payable to the department upon production from lands held under any lease or mining contract on the basis of 3% of the "gross income from the property from mining," as hereinafter defined in WAC 332-16-280.

(3) **Negotiated royalty.** If either an established royalty or the standard royalty is unacceptable to a prospective lessee, he may, at the time of making application for a lease or mining contract, submit, in writing, a proposal for the basis for the payment of royalties. The department shall, within 45 days after receipt of such application and proposal, accept or reject the proposed royalty schedule. In the event the proposed royalty schedule is rejected by the department, the department shall enter into negotiations with the prospective lessee in an attempt to reach agreement upon a royalty schedule. In the event agreement is not reached within 60 days after the application is filed, the applicant for a lease or mining contract shall have the option of either (a) adopting the established royalty or the standard royalty, whichever royalty is in effect, or (b) withdrawing his application. If the application is withdrawn, the first year's payment, but not the application fee, shall be refunded forthwith. In the establishment of a negotiated royalty, a royalty schedule may be adopted which provides for payment of not less than 3% of the "gross income from the property from mining," or which provides for com-

putation upon the basis of tonnage or quantity rather than of value, or which provides adjustment of royalty payments until after recoupment of agreed-upon exploration and development costs have occurred, or which provides for any other royalty arrangement which may be proposed and agreed upon. [Order 3, § 332-16-270, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-280 Royalties—Gross income. "Gross income from the property from mining" shall mean the gross receipts derived from "mining," as defined and applied in Section 613(C) of the United States Internal Revenue Code of 1954, as the same may now or hereafter be amended, together with the regulation and rulings promulgated by the Internal Revenue Service under Section 613(C). The department shall not be bound by specific rulings of the Internal Revenue Service in the event the department determines such rulings do not result in a fairly representative value of the "gross income from the property from mining." "Mining" shall include the extraction of the valuable minerals and specified materials from the ground, and also the following treatment processes which shall be considered as "mining":

(1) In the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment.

(2) In the case of iron ore, bauxite, ball, and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, pelletizing, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment.

(3) In the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the economic mineral product or products from the ore or mineral or minerals from other material from the mine or other natural deposit.

(4) The pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, and the furnacing of quicksilver ores.

(5) In the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process.

(6) In the case of clay used in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, structural clay products, whiteware or fired ware, and kindred products—crushing, grinding, and separating the mineral from waste, but not including any subsequent process.

(7) Such other treatment processes similar to the foregoing which may be necessary or incidental thereto

and so much of the transportation costs of valuable minerals and specified materials from the point of extraction from the ground to the plants or mills in which ordinary treatment processes are applied thereto as may be allowed by the Internal Revenue Service in the determination of "gross income from the property from mining." [Order 3, § 332-16-280, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-290 Royalties—Production. Production royalties shall accrue upon any production of valuable minerals or specified materials at the time the same are sold, or are removed from the lands held under lease or contract, unless other arrangements are made in writing with the department. Unless a shorter period of accounting is elected by the department, all production royalties shall be payable within 30 days following the close of each calendar quarter, unless an extension is granted by the department, upon all valuable minerals or specified materials sold or removed during the calendar quarter. Adjustments in royalties which have been paid may be made between the department and the lessee within 45 days subsequent to the close of the lessee's fiscal year in the event that the records of the lessee reflect an adjustment is required or warranted. [Order 3, § 332-16-290, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-300 Royalties—Audit and verification. In order to substantiate computation of royalties, the department may require that, upon reasonable notice to the lessee, supporting data, calculations, books, records, and other necessary materials will be made available to the department for audit and verification. The department may require the lessee to submit a copy of his federal and state tax returns, or such portions of them as may be relevant, for further verification. All such information submitted to the department shall be confidential and shall not be disclosed to anyone not an employee of the department without express written consent of the lessee. [Order 3, § 332-16-300, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-310 Maps, reports, and assays. In the interest of further developing the mineral resources of the state of Washington, all lessees shall be required to submit to the department copies of all geologic maps, reports, and assays relating to the property held under lease or contract at the close of each lease year. Such maps, reports, and assays shall be considered as confidential by the department and shall not be made public unless written permission is granted by the lessee or the lease or contract is terminated. [Order 3, § 332-16-310, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-320 Assignments. The assignment of any lease or contract may be made, subject to written approval by the department, upon submitting the assignment in triplicate to the department together with the required assignment fee. The assignee shall be subject to and governed by the terms and conditions of the

lease or contract. The approval of an assignment by the department shall not waive compliance with any terms and conditions of the lease or contract. An assignment shall not be approved by the department if any delinquencies exist on the current lease or contract unless the assignee, in writing, agrees to assume and rectify all such delinquencies. [Order 3, § 332-16-320, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-330 Consolidation of mining contracts. The holders of two or more mining contracts may apply to the department for the consolidation of said contracts under a common management to facilitate proper operation of larger-scale development.

In the event the department, following such examination and investigation as it deems necessary, finds the consolidation applied for to be in the best interests of the state, such consolidation will be approved. [Order 3, § 332-16-330, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

WAC 332-16-340 Administrative Procedure Act. In the event an applicant or lessee is not in agreement with the terms or conditions of the lease or contract or with the decision of any state official administering the same, he may take such action as is provided in the Administrative Procedure Act, chapter 34.04 RCW. [Order 3, § 332-16-340, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.]

Chapter 332-17 WAC

GEOHERMAL DRILLING RULES AND REGULATIONS

WAC

332-17-010	Inspection.
332-17-020	General rules.
332-17-030	Supremacy of special rules and orders.
332-17-100	Application for permit to commence drilling, re-drilling or deepening.
332-17-110	Casing requirements.
332-17-120	Blowout prevention.
332-17-130	Drilling fluid.
332-17-140	Well logging.
332-17-150	Removal of casing.
332-17-160	Drilling bond.
332-17-165	Cancellation of bond.
332-17-200	Transfer of jurisdiction to department of ecology.
332-17-300	Proper completion and abandonment.
332-17-310	Abandonment procedures.
332-17-320	Suspension.
332-17-340	Notice of change of ownership.
332-17-400	Records.
332-17-410	Vertical and directional wells.
332-17-420	Department to witness tests.
332-17-430	Well designation.
332-17-440	Well spacing.
332-17-450	Right of entry.
332-17-460	Pits or sumps.

WAC 332-17-010 Inspection. The department shall inspect all geothermal operations for the purpose of obtaining compliance with the rules, regulations, and orders promulgated by authority of the Geothermal

Resources Act, chapter 43, Laws of 1974 ex. sess. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-010, filed 1/4/79.]

WAC 332-17-020 General rules. General rules shall be state-wide in application unless otherwise specifically stated and shall be applicable to all lands within the jurisdiction of the state of Washington. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-020, filed 1/4/79.]

WAC 332-17-030 Supremacy of special rules and orders. Special rules and orders will be issued as required and shall prevail as against general rules if in conflict therewith. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-030, filed 1/4/79.]

WAC 332-17-100 Application for permit to commence drilling, redrilling or deepening. (1) The owner or operator of any well, or proposed well, before commencing the drilling, redrilling, or deepening of any wells shall file with the department a written application in triplicate of the intention to commence such drilling, redrilling or deepening accompanied by a fee of two hundred dollars as prescribed in RCW 79.76.070, except no fee is required for the drilling of core holes. The application shall be on forms as prescribed by the department and contain the following:

- (a) The name of operator or company and address.
- (b) Description of the lease or property including acres together with the name and address of the owner or owners of surface and mineral rights.
- (c) The proposed location of the well or wells including a typical layout showing the position of mud tanks, reserve pits, cooling towers, pipe racks, etc.
- (d) Existing and planned access and lateral roads.
- (e) Location and source of water supply and road building material.
- (f) Location of supporting facilities.
- (g) Other areas of potential surface disturbances.
- (h) The topographic features of the land, including drainage patterns.
- (i) Methods for disposing of waste materials.
- (j) The proposed drilling and casing plan.
- (k) A surveyed plat showing the surface and expected bottom-hole locations and the distances from the nearest section or tract lines as shown on the official plat of survey or protracted surveys of each well or wells. The scale shall not be less than 1:24,000.
- (l) A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to, the prevention or control of:
 - (i) Fires,
 - (ii) Soil erosion,
 - (iii) Pollution of surface and ground waters,
 - (iv) Damage to fish and wildlife or other natural resources,
 - (v) Air and noise pollution, and

(vi) Hazards to public health and safety during operational activities.

(m) Such other pertinent information or data which the department may require to support the application for the development of geothermal resources and the protection of the environment.

Provisions for monitoring may be required as deemed necessary by the department to ensure compliance with these regulations.

The collection of data concerning existing air and water quality, noise, seismic and land subsidence activities, and the ecological system of the area may be required as deemed necessary by the department.

(2) An application for the drilling of core holes shall contain the following:

- (a) Name and address of the operator or company.
- (b) Name and number, location of the core hole or holes to the nearest quarter-quarter section or lot.
- (c) Proposed depth of each core hole, but not to exceed 750 feet into bedrock.
- (d) A map of sufficient scale to show topography and drainage patterns, access roads, and the proposed core hole locations. A metes and bounds description of each core hole location shall be provided to the department within thirty days of completion of the core hole or the approved core hole program.

(3) Well names and numbers shall not be changed without first obtaining the written approval of the department. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-100, filed 1/4/79.]

WAC 332-17-110 Casing requirements. (1) All wells shall be cased to protect or minimize damage to the environment, surface and ground waters, geothermal resources and health and property. The department shall approve proposed well spacing and well casing programs or prescribe such modifications to the programs as the department determines necessary for proper development, giving consideration to such factors as:

- (a) Topographic characteristics of the area.
- (b) Hydrologic, geologic, or reservoir characteristics of the area.
- (c) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use.
- (d) Protection of correlative rights.
- (e) Minimizing well interference.
- (f) Unreasonable interference with multiple use of lands.
- (g) Protection of the environment.

(2) Casing specifications shall be established on an individual well basis. The following specifications are general, but should be used as guidelines in submitting drilling permit applications.

(a) *Conductor pipe.* Annular space shall be cemented solid from the shoe to surface. An annular blowout preventer, or equivalent, remotely controlled hydraulically operated including a drilling spool with side outlets or equivalent may be required by the department. A kill line and blowdown line with appropriate fittings shall be connected to the drilling spool when same is required.

Conductor casing shall be set to a minimum depth of 15 meters (50 feet).

(b) *Surface casing.* This casing shall be set at a depth equivalent to, or in excess of, ten percent of the proposed depth of the well, provided, however, such depth shall not be less than 60 meters (200 feet) or extend less than 30 meters (100 feet) into bedrock. Surface casing holes shall be logged with an induction electric log, or equivalent, prior to running surface casing.

(c) *Intermediate casing.* This casing shall be required whenever anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncased fresh water aquifers, uncontrollable lost circulation zones, or other drilling hazards are present or occur, and whenever the surface casing has not been cemented through competent rock units. Intermediate casing strings shall be cemented solid if possible from the shoe to surface. If a liner is used as an intermediate string, the lap shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next casing string has been achieved. The liner overlap shall be a minimum of 30 meters (100 feet). The test shall be recorded in the driller's log and may be witnessed by a representative of the department.

(d) *Production casing.* This casing may be set above or through the producing or injection zone and cemented above the objective zones. Production casings shall be cemented to the surface or lapped into the intermediate string. Overlap shall not be less than 30 meters (100 feet) and shall be pressure tested. Lap or casing failure shall require repair, recementing, and successful retesting.

(e) *Cementing of casing.* Conductor and surface casing strings shall be cemented with a quantity of cement sufficient to fill the annular space from the shoe to surface. A high temperature resistant admix shall be used in cementing production casing unless waived by the department, and shall be cemented in a manner necessary to exclude, isolate, or segregate overlying formation fluids from the geothermal resources zone and to prevent the movement of fluids into possible fresh water zones.

A temperature or cement bond log may be required by the department if an unsatisfactory cementing job is indicated.

(f) *Pressure testing.* Prior to drilling out the casing shoe after cementing, all casing strings set to a depth of 152 meters (500 feet) or less except for conductor casing, shall be pressure tested to a minimum pressure of 35 bars (500 psi). Casing strings set to a depth of 152 meters (500 feet) or greater shall be pressure tested to a minimum pressure of 69 bars (1,000 psi) or 0.045 bars/meter (0.2 psi/ft) whichever is greater. Such test shall not exceed the rated working pressure of the casing or the blowout preventor stack assembly, whichever is lesser. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-110, filed 1/4/79.]

WAC 332-17-120 Blowout prevention. Blowout prevention and related control equipment shall be installed, tested immediately thereafter, and properly maintained ready for use until drilling operations are

completed. Certain components, such as packing elements and ram rubbers, shall be of high temperature resistant material as necessary. All kill lines, blowdown lines, manifolds, and fittings shall be steel and have temperature derated minimum working pressure rating equivalent to the maximum anticipated wellhead surface pressure. Unless otherwise specified, blowout prevention equipment shall have manually operated gates and remotely controlled hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically operated equipment and have a minimum pressure of 69 bars (1,000 psi) remaining on the accumulator. Dual control stations shall be installed with a high pressure backup system. One control panel shall be located at the driller's station and one control panel shall be located on the ground at least 15 meters (50 feet) away from the wellhead or rotary table. Blowout prevention assemblies involving the use of air or other gaseous fluid drilling systems may include, but are not limited to, a rotating head, a double ram blowout preventer or equivalent, a banjo-box or an approved substitute therefore and a blind ram blowout preventer or gate valve, respectively. Exceptions to the requirements of this paragraph will be considered by the department for areas of known surface stability and low subsurface formation pressure and temperatures.

(1) **Conductor casing.** One remotely controlled hydraulically operated expansion type preventer or acceptable alternative, including a drilling spool with side outlets or equivalent, may be required before drilling below conductor casing.

(2) **Surface, intermediate and production casing.** Prior to drilling below any of these strings, blowout prevention equipment shall include a minimum of:

(a) One expansion-type preventer and accumulator or a rotating head,

(b) A manual and remotely controlled hydraulically operated double ram blowout preventer or equivalent having a temperature derated minimum working pressure rating which exceeds the maximum anticipated surface pressure at the anticipated reservoir fluid temperature,

(c) A drilling spool with side outlets or equivalent,

(d) A fillup line,

(e) A kill line equipped with at least one valve, and

(f) A blowdown line equipped with at least two valves and securely anchored at all bends and at the end.

(3) **Testing and maintenance.** Ram-type blowout preventers and auxiliary equipment shall be tested to a minimum of 69 bars (1,000 psi) or to the working pressure of the casing or assembly, whichever is the lesser. Expansion-type blowout preventers shall be tested to 70 percent of the above pressure testing requirements.

(a) The blowout prevention equipment shall be pressure tested:

(i) When installed,

(ii) Prior to drilling out plugs and/or casing shoes,

(iii) Not less than once each week, alternating the control stations, and

(iv) Following repairs that require disconnecting a pressure seal in the assembly.

(b) During drilling operations, blowout prevention equipment shall be actuated to test proper functioning as follows:

(i) Once each trip for blind and pipe rams, but not less than once each day for pipe rams, and

(ii) At least once each week on the drill pipe for expansion-type preventers.

All flange bolts shall be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems shall be inspected daily to check the mechanical condition and effectiveness and to ensure personnel acquaintance with the method of operation. Blowout prevention and auxiliary control equipment shall be cleaned, inspected and repaired, if necessary, prior to installation to assure proper functioning. Blowout prevention controls shall be plainly labeled, and all crew members shall be instructed on the function and operation of such equipment. A blowout prevention drill shall be conducted weekly for each drilling crew. All blowout prevention tests and crew drills shall be recorded on the driller's log.

(4) **Related well control equipment.** A full opening drill string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock shall be installed between the kelly and the swivel. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-120, filed 1/4/79.]

WAC 332-17-130 Drilling fluid. The properties, use and testing of drilling fluids and the conduct of related drilling procedures shall be such as are necessary to prevent the blowout of any well. Sufficient drilling fluid materials to ensure well control shall be maintained in the field area readily accessible for use at all times.

(1) **Drilling fluid control.** Before pulling drill pipe, the drilling fluid shall be properly conditioned or displaced. The hole shall be kept reasonably full at all times, however, in no event shall the annular mud level be deeper than 30 meters (100 feet) from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques shall be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning. The conditions contained herein shall not apply when drilling with air or aerated fluids.

(2) **Drilling fluid testing.** Mud testing and treatment consistent with good operating practice shall be performed daily or more frequently as conditions warrant. Mud testing equipment shall be maintained on the drilling rig at all times. The following drilling fluid system monitoring or recording devices shall be installed and operated continuously during drilling operations, with mud, occurring below the shoe of the conductor casing:

(a) High-low level mud pit indicator including a visual and audio-warning device, if applicable,

(b) Degassers if applicable, and desilters and desanders if required for solids control,

(c) A mechanical, electrical, or manual surface drilling fluid temperature monitoring device. The temperature of the drilling fluid going into and coming out of

the hole shall be monitored, read, and recorded on the driller's or mud log for a minimum of every 9 meters (30 feet) of hole drilled below the conductor casing, and

(d) A hydrogen sulfide indicator and alarm shall be installed in areas suspected or known to contain hydrogen sulfide gas which may reach levels considered to be dangerous to the health and safety of personnel in the area.

No exceptions to these requirements will be allowed without the specific prior permission of the department. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-130, filed 1/4/79.]

WAC 332-17-140 Well logging. All wells shall be logged with an induction electric log or equivalent from total depth to the shoe of the conductor casing. The department may grant an exception to this requirement when well conditions make it impractical or impossible to meet the above requirements. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-140, filed 1/4/79.]

WAC 332-17-150 Removal of casing. No person shall remove casing or any portion thereof from any well without first obtaining prior written approval from the department. In the request to remove casing, the applicant must describe the condition of the well, the proposed casing to be removed, all casing in the hole, location of plugs, and perforations. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-150, filed 1/4/79.]

WAC 332-17-160 Drilling bond. The owner or operator who proposes to drill, redrill, or deepen a well for geothermal resources shall file with the department a good and sufficient bond in the sum of fifteen thousand dollars for each well or a fifty thousand dollar blanket bond for one or more wells being drilled, redrilled, or deepened at any time. The bond shall be filed with the department at the time of filing the application to drill, redrill, or deepen a well or wells. Approval of the bond by the department must be obtained prior to the commencement of drilling, redrilling, or deepening. The bond shall be made payable to the state of Washington, conditioned for performance of the duty to properly:

(1) Drill all geothermal wells,

(2) Operate and maintain producing wells, and

(3) Plug each dry or abandoned well in accordance with applicable rules and regulations of the department.

The bond shall be executed by such owner or operator as principal and by a surety company authorized to do business in the state of Washington as surety, conditioned upon the faithful compliance by the principal with the laws, rules, regulations, and orders under the Geothermal Resources Act and shall secure the state against all losses, charges, and expenses incurred by the state in obtaining such compliance by the principal of the bond.

A single core-hole bond shall be in the sum of five thousand dollars and a blanket core-hole bond shall be in the sum of twenty-five thousand dollars. [Statutory

Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-160, filed 1/4/79.]

WAC 332-17-165 Cancellation of bond. Termination and/or cancellation of any bond will not be permitted until the well, or wells, for which the bond has been issued have been properly abandoned or another valid bond for such well or wells has been submitted therefore and approved by the department. A bond may be canceled upon transfer of the jurisdiction of the well to and acceptance of jurisdiction by the department of ecology. No bond shall be released until the department in writing shall have authorized such release. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-165, filed 1/4/79.]

WAC 332-17-200 Transfer of jurisdiction to department of ecology. Transfer of jurisdiction over a well to the department of ecology may be permitted provided it has been established that it is not technologically practical to produce electricity commercially or usable minerals cannot be derived from the well and provided, further, the department of ecology has by affidavit indicated its willingness to assume such responsibility. Transfer of such jurisdiction will relieve the owner or operator of further compliance with the provisions of the Geothermal Resources Act and these rules and regulations, however, the owner or operator shall be subject to applicable laws and regulations relating to wells drilled for appropriation and use of ground waters. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-200, filed 1/4/79.]

WAC 332-17-300 Proper completion and abandonment. Completion and abandonment of any well or wells shall be conditioned upon implementation of adequate procedures to protect the environmental and esthetic qualities of the drill site, access roads, and other areas that were disturbed as a result of drilling or related operations.

(1) **Completion.** For the purposes of the Geothermal Resources Act and these rules and regulations, a well will be considered as properly completed when drilling has been completed and a production head has been installed on the well pending actual utilization in the production of geothermal resources as defined in this act. Suspension of a well after completion and prior to actual production shall not exceed six months duration unless approved in writing by the department.

(2) **Abandonment.** A well shall be properly abandoned for the purposes of this act when:

(a) Drilling, re-drilling, or deepening operations have ceased; or geothermal resources cannot be produced from the well; or the well no longer commercially produces geothermal resources; and proper cement plugs have been placed by the owner or operator and approved by the department; and

(b) The owner or operator has taken all appropriate steps to protect surface and ground waters and prevent the escape of deleterious substances to the surface.

(3) **Site restoration.** Cellars, pads, structures, and other facilities shall be removed. All drilling supplies and scrap shall be removed. The surface shall be graded and revegetated as appropriate to the immediate area or as otherwise specified by the department. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-300, filed 1/4/79.]

WAC 332-17-310 Abandonment procedures. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the department. The owner or operator shall give notice to the department of the intention to abandon the well and the date and time abandonment procedures will commence.

(1) The notice shall specify the condition of the well and the proposed method of abandonment. The owner or operator shall furnish such additional information concerning the well condition and abandonment procedures as may be required by the department.

(2) The owner or operator shall within twenty-four hours after giving notice of intent to abandon provide the department with a written notice setting forth the proposed abandonment procedures and the condition of the well.

(3) All wells to be abandoned shall have cement plugs placed in the well as prescribed herein. Such cement shall consist of a high temperature resistant admix unless waived by the department in accordance with the particular circumstances existing in the well.

(a) *Cased holes.*

(i) A cement plug shall be placed across all perforations in the casing, extending 30 meters (100 feet) below and 30 meters (100 feet) above the perforated interval.

(ii) A cement plug shall be placed across all casing stubs, laps, and liner tops, extending a minimum of 15 meters (50 feet) below and 15 meters (50 feet) above such stub, lap, or liner top.

(iii) Casing shoes shall be straddled by a cement plug with a minimum of 30 meters (100 feet) below and 30 meters (100 feet) above and below the shoe.

(iv) All annular space open to the surface shall be filled with cement to the surface.

(v) All casing exposed to the surface shall be cut off 6 feet below ground surface unless otherwise designated by the department.

(vi) A surface plug shall be placed in the casing extending for a minimum of 10 meters (30 feet) below the approved cut off top of the casing. The casing shall be capped by welding a steel plate on the casing stub.

(b) *Open holes.* Cement plugs shall be placed across fresh water zones, geothermal resource zones, to isolate formations, and to prevent interformational migration or contamination of fluids. Such plugs shall extend a minimum of 30 meters (100 feet) above and below all such zones.

(4) All intervals between plugs shall be filled with drilling mud.

(5) Within thirty days after plugging a well the owner or operator shall file an affidavit with the department setting forth in detail the method used in plugging the

well and restoring the site. The affidavit shall be made on a form supplied by the department. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-310, filed 1/4/79.]

WAC 332-17-320 Suspension. Drilling equipment shall not be removed from any well where drilling operations have been suspended before adequate measures have been taken to close the well and protect the surface and subsurface resources including fresh water aquifers. A suspended well shall be mudded and cemented as set forth in WAC 332-17-310 of these rules and regulations or as otherwise approved by the department except that WAC 332-17-310 (3)(a)(iv) - 332-17-310 (3)(a)(vi) will not be required. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-320, filed 1/4/79.]

WAC 332-17-340 Notice of change of ownership. Every person who acquires the right of ownership or right of operation of a geothermal well or wells shall within ten days notify the department in writing of the newly acquired ownership or right of operation and provide a bond equivalent to the bond supplied by the prior owner or operator. Each notice shall contain the following:

- (1) Name, address, and signature of the person from whom the well or land was acquired;
- (2) Name and location of such well or wells;
- (3) Date of acquisition; and
- (4) Description of the land upon which such well or wells is situated. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-340, filed 1/4/79.]

WAC 332-17-400 Records. The owner or operator of any well or wells shall keep or caused to be kept careful and accurate logs, core records, and history of the drilling of the well. The logs and tour reports shall be kept in the local office of the owner or operator and shall be subject during business hours to inspection by the department except during casing or abandonment operations when appropriate logs will be available at the well site.

Records that shall be filed with the department as set forth in RCW 79.76.210 are:

(1) The drilling log and core record showing the lithologic characteristics and depths of formations encountered, and the depths and temperatures of water-bearing and steam-bearing strata, and the temperature, chemical compositions, and other chemical and physical characteristics of fluids encountered. Core records shall show the depth, lithologic character, and the fluid content of cores obtained.

(2) The well history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, recompletion, and abandonment of the well.

(3) The well summary report shall accompany the drilling logs and well history report. It shall show the

spud date, completion date, abandonment date, casing summary, fresh water zones, producing zones, total depth, well location, tops of formations penetrated and bottom hole temperature.

(4) Production records shall be submitted monthly to the department on or before the 10th of each month for the preceding month on a form approved by the department.

(5) Electric logs, directional logs, physical or chemical logs, tests, water analysis, surveys including temperature surveys, and such other logs or surveys as may be run.

(6) A set of ditch samples if taken at not less than 30 meters (100 feet) intervals. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-400, filed 1/4/79.]

WAC 332-17-410 Vertical and directional wells. Deviation surveys shall be taken on all wells during the normal course of drilling at intervals not to exceed 152 meters (500 feet). The department may require a directional survey giving both inclination and azimuth or a dipmeter to be obtained on all wells. In calculating all surveys, a correction from true north to Lambert-Grid north shall be made after making the magnetic to true north correction. All surveys shall be filed with department as set forth in WAC 332-17-400. Wells are considered to be directional if inclination from vertical exceeds an average of five degrees. In directional wells directional surveys shall be obtained at intervals not to exceed 30 meters (100 feet) prior to, or upon setting any casing string or lines (except conductor casing) and total depth. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-410, filed 1/4/79.]

WAC 332-17-420 Department to witness tests. Sufficient notice shall be given in advance to the department of the date and time when the owner or operator expects to run casing, test casing, conduct a drill stem test, or log a well in order that the department may have a representative on the drill site as a witness. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-420, filed 1/4/79.]

WAC 332-17-430 Well designation. The owner or operator shall place in a conspicuous location near the well site a sign setting forth the name of the owner or operator, lease name, well number, permit number, and the quarter-quarter section or lot, township, and range of the well location. Such well designation shall maintained until the well has been abandoned. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-430, filed 1/4/79.]

WAC 332-17-440 Well spacing. The department will approve proposed well spacing programs or prescribe such modifications to the programs as it determines necessary for proper development, giving consideration to such factors as:

- (1) Topography of the area;
- (2) Geologic conditions of the reservoir;

(3) Minimum number of wells required for adequate development; and

(4) Protection of environment. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-440, filed 1/4/79.]

WAC 332-17-450 Right of entry. Department representatives shall have the right to enter upon any lands and examine such records related to the drilling, re-drilling, deepening, or the completion, or the abandonment of, or production from any geothermal well to ensure compliance with the Geothermal Resources Act and these rules. Any owner or operator who denies the right of entry of a department representative or willfully hinders or delays the enforcement of the provisions of the act and these rules or who otherwise violates, fails, neglects, or refuses to comply with any of the provisions of the act or these rules will be subject to the penalties as set forth in RCW 79.76.260. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-450, filed 1/4/79.]

WAC 332-17-460 Pits or sumps. The owner or operator shall provide pits and/or sumps of adequate capacity and design to retain all fluids and materials necessary to the drilling, production, and related operations on the well. No contents of pits and/or sumps shall be allowed to:

- (1) Contaminate streams, artificial canals, waterways, ground waters, lakes, or rivers;
- (2) Adversely affect the environment, persons, plants, and wildlife; and
- (3) Adversely affect esthetic values of the property or adjacent properties.

When pits and/or sumps are no longer needed, they shall be pumped out and the contents disposed of in approved disposal sites unless otherwise approved by the department. [Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-460, filed 1/4/79.]

Chapter 332-18 WAC

SURFACE MINED LAND RECLAMATION

WAC

332-18-010	Definitions.
332-18-015	Compliance with local regulations.
332-18-020	Provisional permit.
332-18-030	Combined operating permits.
332-18-040	Multiple operations at one site.
332-18-050	Inspections and cancellations of permits.
332-18-060	Confidential material.
332-18-070	Time extensions.
332-18-080	Preplanning.
332-18-090	Revegetation.
332-18-100	Water control.
332-18-110	Water impoundment.
332-18-120	Bonds.

WAC 332-18-010 Definitions. The following definitions shall be applicable to these rules and regulations:

(1) "The act" wherever referred to in these rules and regulations, shall mean the Washington Surface-Mined Land Reclamation Act.

(2) "Stagnant water" shall mean any nonflowing body of water which is, or is likely to become, noxious, odious, or foul.

(3) "Remote area" as contained in section 4(1) of the act, shall mean a rural area on which the operating area of a surface mining site is not visible from any state highway, county road, or any public street or highway, or, if visible, it is more than one mile away from the point on such road from which it is visible.

Other terms used in these rules are defined in the act. [Order 86, § 332-18-010, filed 10/27/70, effective 11/28/70.]

WAC 332-18-015 Compliance with local regulations. A surface mining permit for an operation commencing after the effective date of the act will not be issued until satisfactory evidence has been submitted that the proposed surface mining will not be contrary to local land use ordinances and regulations. [Order 94, § 332-18-015, filed 4/6/71.]

WAC 332-18-020 Provisional permit. A provisional permit shall not be issued if, on the basis of information set forth in the application or from information available to the department and the applicant, the department considers the proposed site to be unsuitable for surface mining. A site shall be considered unsuitable for surface mining if the materials to be disturbed are such that experience with conditions similar to those in the proposed site area has shown that reclamation cannot be accomplished in accordance with the purposes of the act. [Order 86, § 332-18-020, filed 10/27/70, effective 11/28/70.]

WAC 332-18-030 Combined operating permits. An operator conducting more than one surface-mining operation in any one twelve month period may, subject to the approval of the department, submit a single application for a combined operating permit covering all his surface-mining operations.

Any public agency desiring a combined operating permit shall furnish to the department, prior to or with the application, evidence of established policies and procedures within the agency's organization that would show ability and means to comply with the act.

Any operator receiving approval for a combined operating permit shall submit a list of all operating sites subject to the act and shall maintain pertinent data, available for review, inspection, and approval by the department, for all sites operated under such combined operating permit. Such data and evidence shall include, but not be limited to, records supporting annual report requirements of the act and operator's reclamation plans for sites.

The operator may submit a consolidated reclamation program covering all his operations. However, a specific reclamation plan may be required for individual operations as designated by the department. [Order 86, § 332-18-030, filed 10/27/70, effective 11/28/70.]

WAC 332-18-040 Multiple operations at one site.

Any time an operator proposes to surface mine at a site on which an operating permit to another operator is in effect, the subsequent operator shall present to the department the agreement, subject to approval by the department, signed by the first operator and the subsequent operator, providing for:

- (1) Accomplishment of the first operator's reclamation plan, or
- (2) Modification of the first operator's reclamation plan, or
- (3) An entirely new reclamation plan.

The owner or owners of a surface-mining site may request to be designated as an operator so as to provide for continuity of reclamation where multiple operations are to be conducted.

Approval shall be obtained from the department prior to the commencement of any operations by two or more operators on the same site. [Order 86, § 332-18-040, filed 10/27/70, effective 11/28/70.]

WAC 332-18-050 Inspections and cancellations of permits.

The department shall have the right to make inspections of any property at any reasonable time as deemed necessary to determine compliance with the act. Inspections shall be limited to those lands and such of the operator's records as pertain to surface mining and reclamation of such lands. The department shall notify, as deemed necessary, any operator of a proposed inspection. However, lack of such notification shall not be cause for denying the right to inspect. The operator shall have the option of accompanying the inspector.

Periodic inspections shall be made during the permit year by reclamation inspectors to insure compliance with the operating permit, reclamation plan, and the plan of surface mining. Any and all deficiencies shall be immediately brought to the attention of the operator, and written notice specifying deficiencies shall be given to the operator. The operator shall commence action within thirty days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: *Provided*, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws, or shall immediately commence action to rectify deficiencies that involve health, safety, and water pollution if those deficiencies are not regulated by such laws.

The department shall have grounds to terminate and cancel the operating permit if the operator does not commence action to rectify any and all deficiencies as specified above, or as specified in the act. The operator and his surety shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the operator and surety.

The department shall not issue another permit to a deficient operator until any and all deficiencies on a specific site are corrected to the satisfaction of the department: *Provided*, That if the department's determination is under appeal a provisional permit may be issued, but an additional cash bond may be required if the department determines it necessary to assure rectification

of the deficiencies. [Order 86, § 332-18-050, filed 10/27/70, effective 11/28/70.]

WAC 332-18-060 Confidential material. Upon application, the department shall release information acquired through the administration of this act to proper interested persons. For these purposes "proper interested persons" are defined as follows:

(1) As to information relating to specific mining and reclamation costs or to processes of mining unique to the operator or owner thereof, or information that may affect adversely the competitive position of such operator or owner if released to the public or to a competitor, "proper interested persons" are those persons so designated by the operator and his authorized agents.

(2) As to reclamation plans, operator's reports, and all other information (except information specified in section 1 of this rule on confidential material) required through the administration of this act, all members of the public are "proper interested persons." [Order 86, § 332-18-060, filed 10/27/70, effective 11/28/70.]

WAC 332-18-070 Time extensions. An operator unable to comply with the reclamation requirements of the operating permit due to circumstances, such as inclement weather or unusual conditions, clearly beyond the operator's control, may be granted a reasonable time extension in which to complete the required reclamation, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

No time extension shall be granted unless requested in writing by the operator and approved in writing by the department.

When a time extension has been granted by the department, a report of activities during the period of the extension in addition to those reports required in section 14 of the act shall be filed with the department within thirty days after completion of reclamation activities. [Order 86, § 332-18-070, filed 10/27/70, effective 11/28/70.]

WAC 332-18-080 Preplanning. The department recognizes that it is desirable that reclamation be preplanned for surface mining that may extend beyond the area that will be surface mined within any twelve months consecutive period.

Operators may submit plans for the method of operation, for grading and backfilling (including water impoundment) and for reclamation of contiguous areas to be mined. The requirements for such plans (herein called continuing reclamation programs) shall be as specified in section 4(11) and section 10 of the act.

If the department approves a continuing reclamation program and the approved plan remains consistent with the requirements and purposes of this act and regulations adopted pursuant thereto, the operator, without annually submitting additional plans for the method of operation, backfilling and grading, and reclamation, may have his permit amended to include areas that were not included in the original permit.

If the department approves a continuing reclamation program, the operator shall be obligated to conduct all operations in accordance with said continuing reclamation program.

Upon application of the operator, a continuing reclamation program may be modified in accordance with section 11 of the act. All modifications shall require written approval by the department.

Approval of a continuing reclamation program by the department shall not be construed as waiving or altering the payment of annual fees as required by the act. [Order 86, § 332-18-080, filed 10/27/70, effective 11/28/70.]

WAC 332-18-090 Revegetation. Revegetation shall be required only where it is appropriate to the intended subsequent use of the surface-mined site, or where, on a temporary basis, it is needed to provide soil stability, to prevent erosion, or to provide screening.

For the purposes of this act, "revegetation" shall mean the reestablishment of a vegetative cover on land disturbed by surface-mining operations, and may include natural reseeding.

Objectives. The objectives in revegetation are to stabilize the soil cover to minimize erosion, to reclaim, and to screen the areas as quickly as possible after the soil cover has been disturbed.

Procedures. Where erosion and siltation will be a problem, grasses, trees, and plants that will produce a quick protective cover and enrich the soil shall be given priority.

Revegetation shall be accomplished as specified in the reclamation plan and as approved by the department. Modification of the revegetation part of the plan may be approved by the department, providing such modification is practical and within the intent of the act. Revegetation proposals must be compatible with soil conditions and with the objectives of this revegetation rule and be appropriate to the intended subsequent use of the site. All revegetation shall be accomplished within two years after completion or abandonment of surface mining on each segment of the permit area on which mining has been completed or at such other later date as may be authorized by the department.

Planting report. The operator shall file a planting report within the department ten days after planting or seeding has been completed, on a form to be furnished by the department. [Order 86, § 332-18-090, filed 10/27/70, effective 11/28/70.]

WAC 332-18-100 Water control. Water diversion ditches or channels shall be constructed in surface mining areas to control surface water runoff, erosion, and siltation and to remove surface water runoff to a safe outlet, and shall be maintained until surface mining and reclamation have been completed. Diversion ditches or channels shall be designed to carry the peak flow having the probable recurrence frequency of once in ten years or as approved by the department. The grade of such

ditches and channels shall be constructed to limit erosion and siltation to currently accepted standards.

Natural drainage channels or drainways in the area of land affected by the operation shall be kept free of overburden and debris or may be diverted as approved by the department. Such drainways shall be designated on maps or aerial photos submitted with the application. If, in the operation, it is necessary to cross such a drainway, proper drainage structures shall be provided. Such structures shall require the approval of the department and shall be designed to carry the peak flow having a probable recurrence frequency as determined by the department.

Overburden shall be deposited and graded so that surface water runoff does not create erosion problems of the operating permit area or on adjoining lands. [Order 86, § 332-18-100, filed 10/27/70, effective 11/28/70.]

WAC 332-18-110 Water impoundment. The impoundment of water is desirable, providing:

(1) Adequate sources of water are available to maintain the water level of the impoundment. Such sources of water supply for impoundments may be from springs, drainage areas of sufficient size, ground water percolation, a flowing stream, or any combination of these sources.

(2) Proper measures are taken to prevent undesirable seepage.

(3) Adequate spillways or other measures necessary to control overflow are provided.

(4) Stagnant water, as herein defined, is not permitted to develop. [Order 86, § 332-18-110, filed 10/27/70, effective 11/28/70.]

WAC 332-18-120 Bonds. Performance bonds required by Section 13 of the act shall be substantially in the following form, provided however that the department may, in considering any permit require a different form when in their opinion such is desirable or required.

SURFACE MINING RECLAMATION BOND

Permit No.

KNOW ALL MEN BY THESE PRESENTS, That we,

.....,
as Principal, and
a corporation organized and existing under the laws of the State of,
and duly authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto the State of Washington, acting through the Board of Natural Resources, in the sum of
..... (\$.....) DOLLARS, for the payment of which sum, well and truly to be made, we bind ourselves, and each of our legal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has received from the Board of Natural Resources, State of Washington, a permit to conduct surface mining on the following described premises, to-wit: -----

NOW, THEREFORE, The conditions of this obligation are such that if the above bounden Principal shall, in conducting such surface mining operations faithfully perform the requirements of the permit and chapter 64, Laws of 1970 ex. sess., relating to mining and the Rules and Regulations adopted pursuant thereto, then this obligation shall be exonerated and discharged and become null and void; otherwise to remain in full force and effect.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof, and shall not be liable as respects any obligations related to surface mining operations performed after the expiration of thirty days from the date of the mailing by the Surety of a cancellation notice directed to the Principal and the Board of Natural Resources, Olympia, Washington. The bond shall remain in full force and effect as respects obligations related to surface mining operations performed prior to the effective date of such cancellation unless the Principal files a substitute bond, approved by the Board of Natural Resources, or unless the Board of Natural Resources shall otherwise release the Surety.

Signed, sealed and dated this ----- day of -----, 197---

[Order 86, § 332-18-120, filed 10/27/70, effective 11/28/70.]

**Chapter 332-20 WAC
GRAZING LANDS**

WAC

- 332-20-010 Range management objectives.
- 332-20-020 Grazing management.
- 332-20-030 Definitions.
- 332-20-050 Grazing permit—Qualifications.
- 332-20-160 Permit range allotments.
- 332-20-170 Special use grazing permits—Issuance.
- 332-20-180 Preference grazing permits.
- 332-20-191 Grazing permits—Legal effect.
- 332-20-200 Grazing preference permits—Established ranges.
- 332-20-210 Temporary grazing permits.
- 332-20-215 Free use authorization.
- 332-20-220 Grazing permits—Fees—Annual adjustments.
- 332-20-230 Grazing permits—Payment of fees in advance.
- 332-20-250 Grazing permit—Termination.
- 332-20-260 Decision review allowed.
- 332-20-270 Associations and boards.

- 332-20-290 Informal recommendations.
- 332-20-300 Laws and regulations relating to livestock.
- 332-20-320 Grazing permits—Range improvement.
- 332-20-330 Management agreement.
- 332-20-340 Sale of grazing and other low priority lands—Objective.
- 332-20-350 Sale of grazing and other low priority lands—Definitions.
- 332-20-360 Sale of grazing and other low priority lands—Applications to purchase.
- 332-20-370 Sale of grazing and other low priority lands—Protection.
- 332-20-380 Sale of grazing and other low priority lands—Information furnished the board.
- 332-20-390 Sale of grazing and other low priority lands—Written notice.
- 332-20-400 Sale of grazing and other low priority lands—Contracts.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 332-20-040 Regulations for grazing leases and permits. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-060 Grazing leases—Limitation of leased area. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-070 Grazing leases—Assignment of. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-080 Grazing leases—Improvements become property of state upon cancellation of lease. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-090 Grazing leases—Ownership of improvements to be designated. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-100 Grazing leases—Re-lease—Application—Application for lease by a third party. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-110 Grazing leases—Prior lessee informed of third party application. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-120 Grazing leases—Preference to prior lessee. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-130 Grazing leases—Cooperation. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-140 Grazing leases—Rental. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-150 Grazing leases—Terms of leases and rental adjustments. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-190 Grazing permits—Special conditions of preference. [Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-240 Grazing fees—Exceptions to usual fees. [Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.] Repealed by 83-21-018 (Order

- 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-280 Organization and composition of advisory boards. [Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
- 332-20-310 Range management. [Rules (part), filed 12/3/63; Permit Range Regulation § VIII, effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.

WAC 332-20-010 Range management objectives.

The general objectives of the department in its management of state-owned range lands is to provide for the maximum utilization of the range resource consistent with the principles of multiple use and proper land conservation measures. Coincident with these general objectives, the department shall, with equal priority, seek to:

- (1) Secure the highest return to the state under good management practices;
- (2) Perpetuate the natural resources on both state and related lands through wise use, protection, and development;
- (3) Provide the best practical, social, and economic correlation of the use of state lands with adjacent lands; and
- (4) Stabilize that part of the livestock industry which makes use of state land through administrative policy and management practices which conform to the requirements of practical operation. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-010, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations (part), effective 6/1/59.]

WAC 332-20-020 Grazing management. Management of state lands for grazing purposes will be based upon that grazing capacity which permits maximum forage utilization and seeks to maintain or improve to "good" condition range as defined by the soil conservation service. Grazing capacity will be established after consideration of historical stocking rates, forage utilization, range condition, and trend. Pertinent range research findings of Washington State University and the advice of the soil conservation service will be considered in the management of the grazing resources. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-020, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations (part), effective 6/1/59.]

WAC 332-20-030 Definitions. For purposes of this chapter:

- (1) "Carrying capacity" is the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing deterioration of vegetation condition or soil;
- (2) "Range condition" is the relation between current and potential condition of the range site;
- (3) "Animal unit" (AU) is equal to one cow and her nursing calf or their equivalent;

(4) "Sheep unit" is equal to one ewe and her nursing lamb or their equivalent;

(5) "Free use permit" is a permit given in exchange for the use of land that is owned or controlled by a permittee and is within a permit range;

(6) "On and off permit" is a permit issued to an owner of range land within a permit range which authorizes the use of an entire range area but establishes no preference right;

(7) "Bonus bid" is a sum of money offered for a grazing permit on state land in addition to regular annual charges and is to be paid once at the time of the execution of the grazing permit;

(8) "Commissioner" means the commissioner of public lands;

(9) "Department" means the department of natural resources as defined in RCW 43.30.030;

(10) "Board" means the board of natural resources as defined in RCW 43.30.040;

(11) "Area" means the field administration unit of the department of natural resources;

(12) "Person" includes any public or private corporation as well as an individual or partnership;

(13) "Base ranch property" means a place on which to hold and feed the permitted units of livestock prior to and after the grazing season;

(14) "Nonuse" means that no livestock will be turned out on the permit range;

(15) "Demit" means that less than ninety percent of the permitted or allowed animal units are turned out on the permit range;

(16) "Crossing permit" is a temporary permit to allow livestock to utilize forage while crossing state-owned or controlled land;

(17) "Operational permit" is a temporary permit to allow horses or pack animals to be on state-owned or controlled land while operating a commercial enterprise. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-030, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-050 Grazing permit--Qualifications.

No person shall hold a permit on state land until they have attained the age of eighteen. The applicant must have two years of experience in the grazing or handling of livestock or education in range or livestock management and financial resources to carry out the proposed grazing operation. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-050, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-160 Permit range allotments. State lands suitable for grazing may be divided into permit range allotments as may be deemed practical by the department. Allotments may include nonstate lands under special arrangements with the owner. For each allotment the department may:

- (1) Establish the kind and number of livestock to be permitted thereon;
- (2) Establish the period of grazing;
- (3) Regulate the entry of livestock; and

(4) Develop and establish the most practical and efficient methods of stock management, forage utilization, and range improvements. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-160, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § I, effective 6/1/59.]

WAC 332-20-170 Special use grazing permits--Issuance. The department may issue special use grazing permits on range allotments under the following conditions:

(1) Every person must submit an application to the department for a special use grazing permit on state lands or other lands administered in connection therewith;

(2) The department may require permittees to give good and sufficient bond to insure payment of all damages sustained by the state through violation of regulations or terms of the permit;

(3) Special use permits may be issued for a term not to exceed five years;

(4) Special use permits shall be validated each year by letter from the department to the permittee;

(5) Special use permits may be issued for the following purposes:

(a) On and off permits may be issued and requirements imposed to herd or handle the livestock to prevent trespassing on range that is not subject to the permit;

(b) Crossing permits may be issued to those persons wishing to drive livestock across state lands or range allotments;

(c) Operational permits may be issued to persons for livestock actually needed in conducting permitted or commercial operations on state lands or range allotments;

(6) Special use permits may not be assigned or used by any person other than the permittee except by prior written consent of the department. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-170, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § II et seq., effective 6/1/59.]

WAC 332-20-180 Preference grazing permits. A preference establishes eligibility to persons for grazing permits on state range allotments. A permit authorizes the grazing of livestock under specific conditions and expires on a specified date. A preference continues until cancelled or revoked. Preference permits are issued under the following conditions:

(1) A person may acquire such permit by authorized prior use, gift, or by transfer through purchase or inheritance of base ranch property or livestock;

(2) The ownership or control of base ranch property must be maintained;

(3) A permittee must be the owner of the livestock placed on state ranges under his permit. Cattle must carry the brand of the person holding the preference permit;

(4) Preference permits may not be assigned or used by any person other than the permittee except by prior written consent of the department;

(5) No person shall hold a preference permit authorizing grazing in excess of 600 animal units;

(6) Preference permits may be granted to the holders of temporary permits only after such temporary permits have been held for a minimum period of five years;

(7) Nonuse of preference permits not in excess of three years for any seven-year period is permissible, provided approval of the department is first obtained and prescribed nonuse fees are paid; and

(8) Demits may be allowed provided approval of the department is first obtained and demit fees are paid. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-180, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-191 Grazing permits--Legal effect. Grazing permits transfer no right, title, or interest in any lands or resources held by the department except authorized livestock forage. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-191, filed 10/7/83.]

WAC 332-20-200 Grazing preference permits--Established ranges. The department may grant preference permits for use of established livestock ranges upon consideration of the following factors:

(1) Authorized prior use;

(2) Base ranch property;

(3) Capacity of the range; and

(4) Conversion of a temporary permit. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-200, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-210 Temporary grazing permits. Where new permit range allotments are established or where additional area is added to existing allotments, a temporary grazing permit may be issued for a maximum of five years.

A temporary grazing permit will be issued on the basis of the highest cash bonus offer received by sealed or oral public auction bids from qualified applicants. An applicant must qualify in base ranch property and ownership of livestock.

Before a temporary grazing permit is offered for sealed or oral public auction bidding the carrying capacity, permitted units, and grazing season for the range will be determined and advertised. The bidding will be on a cash bonus over and above the annual grazing fee. Temporary grazing permits will be annually validated and may be conditioned or limited by the department based upon range condition and carrying capacity.

When the increased capacity of a range results from range improvement work performed by the expenditures of a holder of a preference permit when such work is done with the department's written approval, the holder

of the preference permit shall have the right to obtain a temporary grazing permit by meeting the highest cash bonus offer made by a qualified applicant at auction. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-210, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-215 Free use authorization. Free use authorization will be for a specific number of animal units and will be incorporated in department permits. Authorization will be given in exchange for grazing use of lands owned or controlled by a permittee and used within a permit range. Such land will be a part of the total permit and will allow other permittees use of the grazing resource. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-215, filed 10/7/83.]

WAC 332-20-220 Grazing permits—Fees—Annual adjustments. A fee will be charged for the grazing of all livestock on state lands. The grazing fee will be determined by use of a formula indicated below. The fees so established shall be adjusted annually by relation to market prices of livestock for the previous year. Further adjustments in the formula may be made by the department as additional information or changing conditions require.

Grazing fee formula:
$$\frac{L \times S \times G \times P + A}{(1 + LHT)} = \text{AUM Fee}$$

$$\text{AUM Fee} \times \text{Unit Equivalent} \times M = \text{AUM Charge}$$

Symbol explanation:

- L – Proportion of average stockman's investment assigned to land.
- S – Landlord's fair share of land income.
- G – Average pound gain in livestock weight for permitted grazing season, cattle and sheep to be separately computed.
- P – Average past year's selling price of livestock per pound from the reports of the Agricultural Marketing Service of the United States Department of Agriculture.
- LHT – The leasehold tax as established by law and administered by the state department of revenue.
- M – Number of months in permitted grazing season.
- A – Permittee's share of assessments on permit range lands.
- AUM Fee – Fee to be charged per animal unit month of grazing.

For purposes of unit equivalent per animal, the following ratios will apply:

Cattle:	Cow and calf	1.0	Animal Unit
	Cow	1.0	
	Bull	1.0	
	Yearling	.66	
	Fall calf	.5	
	Two year old	1.0	
	Horses	1.5	
Sheep:	Ewe and one lamb	1.0	Sheep Unit
	Ewe and twin lambs	1.2	
	Ram	1.0	
	Ewe	1.0	

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-220, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.]

WAC 332-20-230 Grazing permits—Payment of fees in advance. All grazing permit fees will be paid in advance of the opening date of grazing periods or as otherwise authorized by the department. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-230, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.]

WAC 332-20-250 Grazing permit—Termination. The department may cancel or suspend grazing permits or preferences, in whole or in part, for a violation of the terms of the permit or of these regulations. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-250, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § V, effective 6/1/59.]

WAC 332-20-260 Decision review allowed. Any decision by the department on range matters may be reviewed with the area manager of the respective area. If the area manager cannot settle the matter, it will be forwarded to the department supervisor. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-260, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § VI, effective 6/1/59.]

WAC 332-20-270 Associations and boards. In order to obtain a collective expression of views and recommendations of the state grazing permittees concerning the management and administration of state lands, and to encourage maximum participation by permittees in actual management of the range where not provided for by other regulations, the department shall provide for recognition of and cooperation with the various groups of permittees as follows:

- (1) Livestock associations with advisory boards representing the range users of state lands; and
- (2) Advisory boards without associations representing the range users of state land. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-270, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § VII, effective 6/1/59.]

12/3/63; Permit Range Regulations § VII (part), effective 6/1/59.]

WAC 332-20-290 Informal recommendations. The department recognizes the public interest in its management of state lands and the multiple use of these lands. The department is directed to give full consideration to the expressions of the views of any interested person, industry, or organization for the equitable solution of competing public interests. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-290, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.]

WAC 332-20-300 Laws and regulations relating to livestock. The department will cooperate with the state, county, and federal officers in the enforcement of all the laws and regulations relating to livestock health including:

(1) Compliance with livestock quarantine regulations and such other sanitary measures as may appear necessary to prevent nuisances and ensure proper sanitary conditions on state range lands; and

(2) Requiring owners of all livestock which are allowed to cross any state range lands to comply with local livestock laws of the state of Washington and the county where the state land is located. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-300, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.]

WAC 332-20-320 Grazing permits—Range improvement. Agreements must be made with the department in connection with the construction of range improvements on state range lands. Such agreements must address ownership of the improvements and its disposition at the end of the permit term. Grazing permit fees may be adjusted to compensate permittees for the construction of range improvements or performance of range conservation practices where prior written approval has been given by the department. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-320, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § IX, effective 6/1/59.]

WAC 332-20-330 Management agreement. The department may enter into a coordinated resource management plan and other agreements with any person for the protection, preservation, and use of grazing areas in multiple ownership. [Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-330, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-340 Sale of grazing and other low priority lands—Objective. It is the objective of the department of natural resources in the management of public lands used primarily for grazing and similar low priority purposes to:

(1) Obtain the greatest possible monetary return for the trust to which such land is assigned, consistent with good management practices.

(2) Encourage the development of such lands for their highest and best use. [Resolution No. 79, § 1, filed 10/5/67.]

WAC 332-20-350 Sale of grazing and other low priority lands—Definitions. The following definitions are applicable to RCW 79.01.301 and these rules shall be used in connection with applications, reports, leases, and other documents issued in connection therewith:

(1) "Department" shall mean the department of natural resources.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Board" shall mean the board of natural resources as established by chapter 38, Laws of 1957 (chapter 43-30 RCW).

(4) "Proper office" shall mean the authorized office of the department of natural resources in Olympia, Washington.

(5) "Grazing land" shall mean those granted trust lands which at the present are used primarily for grazing.

(6) "Irrigated agricultural lands" shall mean any lands under irrigation which are used for the production of any agricultural commodities.

(7) "Public land" shall mean those lands conveyed to the state of Washington by the federal government and managed in trust by the department for the support of common schools, university purposes, agricultural college purposes, scientific school purposes, state normal school purposes, the erecting of public buildings at the state capitol, and for state charitable, educational, penal and reformatory institution purposes.

(8) "Low priority land" shall mean that grazing or nonirrigated land which may appear to have its highest potential for maximizing returns when used as irrigated agricultural land.

(9) "Public interest" shall mean the interest of the public in obtaining the greatest possible monetary return from granted lands for the purposes set forth in the Enabling Act of the state constitution. [Resolution No. 79, § 2, filed 10/5/67.]

WAC 332-20-360 Sale of grazing and other low priority lands—Applications to purchase. All applications to purchase low priority land for the purpose of development as irrigated agricultural land shall be reviewed by the board.

Applications for the purchase of land for development as irrigated agricultural lands will be received during business hours in the proper office of the department. A deposit of not less than ten dollars per acre must be submitted with the application. Each application shall be accompanied by a complete and general plan of development of the area considered for purchase, including the following:

(1) Anticipated date of commencement of development.

- (2) Anticipated date of completion of development.
- (3) Type of development.
- (4) Source of water and the total estimated cost of water, including the cost of wells or water diversion.
- (5) Access or right of way available to the area.
- (6) Type of proposed cropping.
- (7) Anticipated production.
- (8) Market for production.
- (9) Anticipated gross return.
- (10) Anticipated value per acre when irrigation development is completed and anticipated tax payment per acre based on present millage levies.
- (11) A plat showing the area or areas to be developed for irrigation on the lands under application to purchase.
- (12) Method of financing development.
- (13) Plans for drainage.
- (14) Any further information the board may require. [Resolution No. 79, § 3, filed 10/5/67.]

WAC 332-20-370 Sale of grazing and other low priority lands—Protection. The board shall protect the public interest in the trust in considering applications to purchase. In considering the management of individual tracts of state land, the board shall include in its consideration of the financial benefits that may accrue to the particular beneficiary of such trust land any increased financial benefits that the beneficiary may receive from direct and indirect state and local taxes, including improvement in values resulting from private development and the local taxation benefits therefrom, if the property were to be sold into private ownership. [Resolution No. 79, § 4, filed 10/5/67.]

WAC 332-20-380 Sale of grazing and other low priority lands—Information furnished the board. The department, in addition to the information provided by the applicant, shall also prepare for the board the following information:

- (1) Department plans for development of the tract if retained in state ownership.
- (2) A comparison of anticipated rental returns and appreciation in value and rental income to the trust in comparison with the anticipated economic benefits to the locality in classifying such properties for sale.
- (3) A written recommendation to the board. [Resolution No. 79, § 5, filed 10/5/67.]

WAC 332-20-390 Sale of grazing and other low priority lands—Written notice. Written notice shall be given to the applicant at least thirty days prior to the meeting of the board at which consideration will be given to his application. The applicant may appear at the board meeting in support of his application, but is not required to do so. [Resolution No. 79, § 6, filed 10/5/67.]

WAC 332-20-400 Sale of grazing and other low priority lands—Contracts. When the board determines that a parcel of low priority lands shall be sold into private ownership for conversion to irrigated agricultural

lands, the department shall enter into a contract with the purchaser for the conveyance of the lands to him upon such conditions as the board shall determine to be proper in each case. The conditions fixed by the board shall include the following:

(1) Payment to the department by the purchaser of the full purchase price, plus interest if sold on an installment basis, together with applicable fees.

(2) Completion by the purchaser of an irrigation system in conformity with the plan as set forth with the contract posted with notice of sales. The system must be completed within the time period fixed by the board which shall in no event be longer than five years.

(3) Such other conditions as the board may determine to be appropriate.

In the event the purchaser fails to satisfy any of the conditions fixed by the board, the contract for the conveyance of the lands to him shall be forfeited. The value of any improvements, less damages, made by the defaulting purchaser in partial completion of his irrigation system shall be appraised and fixed by the department. The lands shall be offered at public auction and, if leased or sold within three years to other than the defaulting purchaser, the successful bidder shall pay to the department the value of such improvements for disbursement to the defaulting purchaser. [Resolution No. 79, § 7, filed 10/5/67.]

Chapter 332-22 WAC

STATE LAND LEASING PROGRAM GUIDELINES

WAC

332-22-010	Promulgation.
332-22-020	Definitions.
332-22-030	Applications for lease.
332-22-040	Lease auction procedure.
332-22-050	Lease procedure—Amendment and conversions.
332-22-060	Lease procedure—Rental adjustments.
332-22-070	Lease procedure—Notice.
332-22-080	Rights to re-lease denied.
332-22-090	Notice to lessee of public auction.
332-22-100	Lease negotiation procedure.
332-22-110	Mandatory lease terms.
332-22-120	Assignment.
332-22-130	Residential leases.
332-22-140	Expired leases—Occupancy.
332-22-150	Temporary use permits.

WAC 332-22-010 Promulgation. This chapter is promulgated by the board of natural resources pursuant to the authority granted by RCW 79.01.242 to establish procedures for implementing the department's state land leasing program. The board of natural resources recognizes that in order to obtain a fair market return to the trust, certain of its lands should be retained and managed through leasing. These rules and regulations are designed to establish practical leasing guidelines and achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed by law on such lands. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-010, filed 1/20/81.]

WAC 332-22-020 Definitions. Insofar as these rules and regulations shall apply, these definitions will be utilized. (1) Commissioner shall mean the commissioner of public lands.

(2) Department shall mean the department of natural resources as defined in RCW 43.30.030.

(3) Board shall mean the board of natural resources as defined in RCW 43.30.040.

(4) Fair market rental value shall mean the rental from the lease based on the highest and best use as determined by an analysis of all relevant land use and economic factors.

(5) Fair market value for improvements is as defined in RCW 79.01.136.

(6) Highest and best use shall mean the most profitable legal use that will produce the highest return to the trust over an extended period of time, including interim use.

(7) Interim use shall mean any use of the land for which a rent can be charged before the planned use has been attained.

(8) State lands shall mean those lands defined as state lands in RCW 79.01.004.

(9) Person shall mean a person 18 years of age or older, partnership, firm, corporation, government agency or other entity.

(10) Qualified person shall mean those persons who meet the qualifications set forth in the notice of leasing. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-020, filed 1/20/81.]

WAC 332-22-030 Applications for lease. (1) Application to lease will be considered only for state lands as may be shown to be available in departmental records or under an existing lease which will expire within ninety days or leases which will allow conversion to a higher and better use.

(2) Lands owned by other governmental entities, which are being managed by the department, may be leased only after the owner has made a written request to the department or an agreement to make the same available for leasing pursuant to these rules and regulations.

(3) An application to lease shall be made upon forms prescribed by the department which shall be accompanied by fees prescribed by the board. The fee shall not be refunded unless the state lands applied for are not available for leasing. Applications not accompanied by the proper fees shall not be accepted.

(4) The commissioner may withhold from leasing any state land either before or after an application to lease is made. The commissioner may reject any and all applications to lease.

(5) Any person authorized to do business in the state of Washington shall be qualified to apply for a lease of state lands. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-030, filed 1/20/81.]

WAC 332-22-040 Lease auction procedure. (1) The department will ascertain those parcels of state land which will be offered for public auction from:

(a) Applications received;

(b) Land to be offered for lease; and

(c) Expiring existing leases which are in the best interest of the state to offer at auction for the same or different uses.

(2) The department will establish the minimum requirements for persons qualified to bid at public auction.

(3) Lease auctions will normally be held on the fourth Thursday of a month or on the next business day following where the fourth Thursday falls on a holiday. Special lease auctions may be called on other dates.

(4) Sealed bids will be received up to the time set in the notice of leasing by the auctioneer (RCW 79.01.252). The lease will be awarded to the bidder with the most acceptable proposal which complies with the criteria set forth in the notice of public auction. The commissioner may reject any or all bids, if it is deemed in the best interests of the state or the trust to do so.

(5) In the event the auction is to be oral, it will be conducted by the auctioneer (RCW 79.01.252) at the time and place designated in the notice of leasing and the lease shall be awarded, by the commissioner or his designee, to the highest bidder within ten days, if it is determined that the best interests of the state or the trust would be served by doing so. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-040, filed 1/20/81.]

WAC 332-22-050 Lease procedure—Amendment and conversions. Existing leases may be amended by negotiation between the lessee and the department but any such amendment shall not exceed the specified maximum lease period. The two-year conversion privilege under RCW 79.01.277 only applies to leases in effect September 26, 1979, and which expire after September 26, 1981. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-050, filed 1/20/81.]

WAC 332-22-060 Lease procedure—Rental adjustments. All leases shall provide for periodic rental reevaluation and adjustment. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-060, filed 1/20/81.]

WAC 332-22-070 Lease procedure—Notice. Notice of all existing leases which will be negotiated by the department shall be published in two newspapers of general circulation in the area where the state land is located, one of which shall be located in the county where the land is located. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-070, filed 1/20/81.]

WAC 332-22-080 Rights to re-lease denied. Claimed rights to re-lease or to renew a lease will not be authorized or recognized by the department. [Statutory

Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-080, filed 1/20/81.]

WAC 332-22-090 Notice to lessee of public auction. The current lessee will be notified if the state intends to offer the leased land at public auction. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-090, filed 1/20/81.]

WAC 332-22-100 Lease negotiation procedure. (1) Those leases which will be used generally for the same broad purposes as the current lease may be offered for negotiation.

(2) A notice of intention to negotiate a lease must be published once within thirty days of the date of negotiation of the existing lease. Such notice shall give the legal description, the date of expiration, the intended land use, the office to which application can be made. The final date to file a written request to lease and such other information as deemed necessary. The notice must further state that any qualified person interested in acquiring the lease must notify the designated office of their interest in such lease. A written request to lease must be received in the designated office by close of business on the specified date to be considered and must state the proposed terms and conditions and the contemplated use of the land.

(3) The department shall review all such notices and either award the lease to the prior lessee or offer the land at public auction if the best interest of the state and trust would be served.

(4) The existing lessee will be considered as a qualified person and will be mailed the criteria for leasing concurrent with mailing of the notice of intention to negotiate to the newspaper.

(5) Negotiated lease may not exceed the maximum term authorized by RCW 79.01.096 and must have a term commencing within ninety days of date of starting negotiations. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-100, filed 1/20/81.]

WAC 332-22-110 Mandatory lease terms. Each lease negotiated or placed at public auction pursuant to these regulations shall contain terms and conditions relating to the following subjects:

(1) Every lease shall contain a provision setting out the use or uses to which the land is to be employed. Any lawful use may be authorized for state lands and forest board lands. Adequate provision must be made to protect the department against potential third-party claims by virtue of the uses made of the property by the lessee. Liability insurance may be utilized to satisfy this requirement.

(2) Improvements existing on the land at the time of negotiating a lease or at public auction shall be specifically described and, unless other ownership was authorized shall be considered as a part of the value of the land. Improvements may be required to be constructed as a condition of a lease. All improvements existing or

authorized under the lease must be maintained at the sole cost of the lessee, unless otherwise specifically provided in the lease. All improvements must be protected against casualty loss in a manner satisfactory to the department unless otherwise specified in the lease. Improvements placed upon the land by the lessee, shall become the property of the state at the end of lease term unless specifically provided by the lease or department letter to remain in lessee ownership.

Improvements owned by lessee may, at any time, be acquired by the department at fair market value if it determines it is in the best interest of the state or the trust to do so upon agreement with lessee.

(3) Any lease issued pursuant to these regulations in excess of ten-year term, must contain an approved plan of development with a scheduled completion date for any required activities, improvements, or other actions. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-110, filed 1/20/81.]

WAC 332-22-120 Assignment. All assignments of leases, whether total or partial, must be approved in writing by the department. Departmental approval of assignments may be conditioned upon a number of factors including, but not limited to, rental adjustment; increased insurance coverage; renegotiation of improvement ownership; or changes in authorized land use. The department may require assurance of the performance capability of the proposed assignee by any feasible means, including the filing of a performance bond.

An assignment will not be considered to be a termination of the lease within the meaning of RCW 79.01.092. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-120, filed 1/20/81.]

WAC 332-22-130 Residential leases. A lessee desiring a waiver or modification of a residential lease term, as set forth in RCW 79.01.242(4), may make a written request to the board and to the department setting forth the proposed change and the reasons therefore. The department may make recommendations to the board on the request which shall be considered by the board prior to rendering its decision. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-130, filed 1/20/81.]

WAC 332-22-140 Expired leases—Occupancy. (1) An extension of the expired lease may be authorized by the department for a maximum of one year from date of expiration if it is deemed to be in the best interest of the state or the trust to do so. Such extension shall be issued upon such rent, terms and conditions as the department may prescribe.

(2) If a proposed use for the lands has not been determined, the department may issue a permit to the last lessee for up to a maximum period of five years from date of expiration of the lease for an interim use.

The permit may be issued in the same general form as a lease for a similar use of the land under such terms and conditions as the department may prescribe. Upon expiration or termination of the permit, the land and improvements can only be leased at public auction as set forth in WAC 332-12-030 and 332-12-040. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-140, filed 1/20/81.]

WAC 332-22-150 Temporary use permits. The board authorizes the department to issue temporary use permits of state land not to exceed one year which may not be renewed. This permit will only be issued upon receipt of fair market value for the period of occupancy. [Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-150, filed 1/20/81.]

Chapter 332-24 WAC FOREST PROTECTION

WAC

332-24-001	Invalidity of part of chapter not to affect remainder.
332-24-020	Promulgation.
332-24-025	Definition.
332-24-027	Felling of snags.
332-24-055	Definitions.
332-24-056	Purpose of rules.
332-24-057	Spark emitting equipment regulated.
332-24-058	Substitutions and reduction of requirements.
332-24-059	Penalties for violation—Work stoppage notice.
332-24-060	Definitions.
332-24-063	Written burning permit requirements and exceptions.
332-24-070	General rules—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit.
332-24-090	Requirements—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit.
332-24-095	Recreation and debris disposal fire requirements—Penalty.
332-24-100	Burning permits—Portions of Clark and Skamania counties.
332-24-105	Exemptions from burning permit requirements—Parts of Clark and Wahkiakum counties.
332-24-10501	Exemptions from burning permit requirements—Parts of Wahkiakum County.
332-24-10502	Exemptions from burning permit requirements—Parts of Okanogan County.
332-24-150	Exemptions from burning permit requirements.
332-24-160	Exemptions from burning permit requirements—Parts of Asotin County.
332-24-170	Exemptions from burning permit requirements—Parts of Garfield County.
332-24-180	Exemptions from burning permit requirements—Parts of Columbia County.
332-24-185	Exemptions from burning permit requirements—Parts of Cowlitz County.
332-24-185001	Exhibit A—Map.
332-24-190	Exemptions from burning permit requirements—Parts of Walla Walla County.
332-24-192	Exemptions from burning permit requirements—Parts of Snohomish County.
332-24-194	Exemptions from burning permit requirements—Parts of Snohomish and Skagit counties.
332-24-196	Exemptions from burning permit requirements—Parts of Pacific and Grays Harbor counties.
332-24-197	Burning permits—Extension of burning permit season.
332-24-200	Satisfactory clearance of slash.

332-24-210	Slash abatement west of the summit of the Cascade Mountains.
332-24-220	Slash clearance east of the summit of the Cascade Mountains.
332-24-230	Payment to certificate of clearance fund.
332-24-310	Rules requiring use of approved spark arresters on railroad locomotives.
332-24-320	Definitions.
332-24-330	General rules.
332-24-340	Penalties.
332-24-350	Extension of time for removal of distressed timber.
332-24-360	Promulgation.
332-24-370	Definitions.
332-24-380	Extreme fire hazard requiring abatement.
332-24-385	Extreme fire hazard requiring isolation or reduction.
332-24-387	Responsibility.
332-24-390	Preexisting hazards.
332-24-395	Compliance.
332-24-410	Recovery of costs.
332-24-412	Approved isolation, reduction or abatement.
332-24-415	Dumping mill waste, forest debris.
332-24-418	Definitions.
332-24-420	Creation of fire hazard—Dumping.
332-24-430	Fire hazard dumping permits.
332-24-440	Illegal dumping—Enforcement penalties.
332-24-500	Forest fire protection and special forest fire suppression account minimum assessment refund procedure.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-24-010	Forest patrol rates—1960—Western counties—Notice to assessors. [1960 Notice, filed 3/24/60.] Repealed by Order 128, filed 11/24/71 and by adoption of House Bill 1034 enacted by the 1971 Legislature (1971 ex.s. c 207.)
332-24-030	Forest patrol rates—1960—Eastern counties—Notice to assessors. [1960 Notice, filed 3/24/60.] Repealed by Order 128, filed 11/24/71 and by adoption of House Bill 1034 enacted by the 1971 Legislature (1971 ex.s. c 207.)
332-24-050	Snags—County average per acre. [Rule of 1/15/54.] Repealed by 79-12-015 (Order 336), filed 11/14/79. Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8.
332-24-061	U.S. Forest Service entry rules. [Order 256, § 332-24-061, filed 5/13/76. Formerly WAC 332-48-050.] Repealed by 80-12-018 (Order 347), filed 8/26/80. Statutory Authority: RCW 76.04.020.
332-24-065	No burning permit required—Small outdoor fires. [Order 169, § 332-24-065, filed 8/7/73.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
332-24-080	Burning permits—Recreation and debris fires on state and other lands under the jurisdiction of the department of natural resources. [Order 16, § 332-24-080, filed 2/25/69.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
332-24-250	Permanent closure of extra fire hazard regions—Portions of Clark and Skamania counties. [Docket 242, § 1, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
332-24-260	Permanent closure of extra fire hazard regions—Gates, display of signs. [Docket 242, § 2, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
332-24-270	Permanent closure of extra fire hazard regions—Delegation of authority to issue notices. [Docket 242, § 3, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
332-24-280	Permanent closure of extra fire hazard regions—Procedure for giving notice. [Docket 242, § 4, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed

- 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
- 332-24-290 Permanent closure of extra fire hazard regions—Description of closed region. [Docket 242, § 5, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
- 332-24-300 Permanent closure of extra fire hazard regions—Closed region—Gifford Pinchot National Forest. [Docket 242, § 6, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.
- 332-24-400 Approved abatement. [Order 126, § 332-24-400, filed 12/19/72.] Repealed by Order 274, filed 4/8/77.

WAC 332-24-001 Invalidation of part of chapter not to affect remainder. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [Order 16, § 332-24-001, filed 2/25/69.]

WAC 332-24-020 Promulgation. Pursuant to chapter 8, Laws of 1979 ex. sess., and RCW 76.04.222, the department of natural resources, recognizing the need to assure continued existence of snag dependent wildlife and continued forest growth while minimizing the risk of destruction by conflagration, promulgates the following regulations, WAC 332-24-020 through 332-24-027 defining and regulating the felling of snags which represent a substantial deterrent to effective fire control action in forest areas. [Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-020, filed 11/14/79.]

WAC 332-24-025 Definition. "Snag" shall mean a standing dead conifer tree over twenty-five feet in height and sixteen inches and over in diameter measured at a point four and one-half feet above the average ground level at the base. [Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-025, filed 11/14/79.]

WAC 332-24-027 Felling of snags. (1) Snags within areas of extreme fire hazard requiring abatement, as defined by WAC 332-24-380, shall be felled concurrently with the logging operation, unless:

(a) Such snag contains a visible nest of a species of wildlife designated by the United States Fish and Wildlife Service as threatened or endangered, or

(b) The department, upon written request of the landowner, determines in writing that such snag does not represent a substantial deterrent to effective fire control action.

(2) The department may designate in writing that additional snags be felled concurrently with the logging operation if, in the department's opinion, they represent a substantial deterrent to effective fire control action, unless such snag contains a visible nest of a threatened or endangered species. [Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-027, filed 11/14/79.]

WAC 332-24-055 Definitions. Items defined herein have reference to RCW 76.04.251 and all other provisions relating to fire equipment. (1) "An operation" shall mean the use of equipment tools and supporting activities which are involved in the process of the management of forest land that may cause a forest fire to start. Such activities may include, but are not limited to, any phase of logging, landclearing, road and utility right-of-way clearing. The operating period shall be that time period when the activity is taking place.

(2) "Currently with the logging" and "current with the felling of live timber or with the current logging operation" shall mean during the logging operation on any landing, setting or similar part of the operation unless modified by the department in writing for special requests not to exceed thirty days after completion of the operation pursuant to RCW 76.08.030 and applying to RCW 76.04.222 and 76.04.223.

(3) "Fire extinguisher" shall mean, unless otherwise stated, a chemical fire extinguisher rated by Underwriters' Laboratories or Factory Mutual, appropriately mounted and located so as to be readily accessible to the operator. When two fire extinguishers are required, they are to be appropriately mounted and located so that one is readily accessible to the operator and the other is separate from the operator and readily accessible to other personnel.

(4) "Any tractor or other mobile machine" shall mean any machine that moves under its own power when performing any portion of a logging, landclearing, right-of-way clearing, road construction or road maintenance function, and includes any machine, whether crawler or wheel type, whether such machine be engaged in yarding or loading or in some other function at the time of its inspection by the department.

(5) "Any fixed position machine" shall mean any machine used for any portion of a logging, earth moving, right-of-way clearing, milling, road maintenance and construction, land clearing operation or other operation that performs its primary function from a fixed position even though said machine is capable of moving under its own power to a different fixed position.

(6) "An approved exhaust system" shall mean a well-mounted exhaust system free from leaks and equipped with spark arrester(s) rated and accepted under U.S.D.A., Forest Service current standard.

(a) An exhaust-driven supercharger, such as a turbo-charger, is acceptable in lieu of a spark arrester. The entire exhaust must pass through the turbine.

(b) Passenger vehicles and trucks may be equipped with an adequately baffled muffler of a type approved by the department in lieu of a spark arrester.

(c) Portable power saws purchased after June 30, 1977, and used on forest land must meet the performance levels set forth in the Society of Automotive Engineers "Multipositioned small engine exhaust fire ignition standard, SAE recommended practice J 335B." Requirements to obtain the SAE J 335B specifications are as follows:

(i) The spark arrester shall be designed to retain or destroy 90% of the carbon particles having a major diameter greater than 0.023 inches (0.584 mm).

(ii) The exhaust system shall be designed so that the exposed surface temperature shall not exceed 550°F (288°C) where it may come in direct contact with forest fuels.

(iii) The exhaust system shall be designed so that the exhaust gas temperature shall not exceed 475°F (246°C) where the exhaust flow may strike forest fuels.

(iv) The exhaust system shall be designed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets.

(v) The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as a part of routine maintenance shall have a service life of not less than fifty hours. Cleaning of parts shall not be required more frequently than once for each eight hours of operation. The spark arrester shall be so designed that it may be readily inspected and cleaned.

(vi) Portable power saws will be deemed to be in compliance with the Society of Automotive Engineers J 335 B requirements if they are certified by the United States Department of Agriculture, Forest Service, San Dimas Equipment Development Center.

(d) Portable power saws, which were purchased prior to June 30, 1977, which do not meet the Society of Automotive Engineers Standards must meet the following requirements:

(i) The escape outlet of the spark arrester shall be at an angle of at least 45° from a line parallel to the bar.

(ii) The configuration of the spark arrester shall be such that it will not collect sawdust, no matter in what position the saw is operated.

(iii) Spark arresters shall be designed and made of material that will not allow shell or exhaust temperature to exceed 850°F.

(iv) The arrester shall have a screen with a maximum opening size of 0.023 inch.

(v) The arrester shall be capable of operating, under normal conditions, a minimum of eight hours before cleaning is needed.

(vi) The screen shall carry a manufacturer's warranty of a minimum 50-hour life when installed and maintained in accordance with the manufacturer's recommendation.

(vii) The arrester shall be of good manufacture and made so that the arrester housing and screen are close fitting.

(viii) The arrester shall be at least 90% efficient in the destruction, retention or attrition of carbon particles over 0.023 inch.

(ix) Efficiency to be measured as described in Power Saw Manufacturers Association Standard number S3-65.

(x) Construction of the arrester shall permit easy removal and replacement of the screen for field inspection and cleaning.

(7) "Shovel" shall mean a serviceable long handled or "D" handled round point shovel of at least "0" size with a sharpened, solid and smooth blade, and the handle shall be hung solid, smooth and straight.

(8) "Axe" shall mean a serviceable double bitted swamping axe of single bitted axe of at least a three pound head and thirty-two inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(9) "Pulaski" shall mean a serviceable axe and hoe combination tool with not less than 3-1/2 pound head and thirty-two inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(10) "Adze eye hoe" shall mean a serviceable forest fire fighting hoe with a blade width of at least 5-3/4 inches and a rectangular eye. The blade shall be sharpened, solid and smooth, and the handle shall be hung solid with no more than 3/4 inch nor less than 1/8 inch extending beyond the head, smooth, aligned, and at least thirty-two inches long.

(11) "Fire tool box" shall mean a box or compartment of sound construction, with a waterproof lid, provided with hinges and hasps, and so arranged that the box can be properly sealed. It shall be red in color and marked "FIRE TOOLS" in letters at least one inch high. It shall contain a minimum of:

(a) Two axes or Pulaskis.

(b) Three adze eye hoes. One Pulaski may be substituted for one adze eye hoe.

(c) Three shovels.

(12) "Pump truck or pump trailer" shall mean a serviceable truck or trailer which must be able to perform its functions efficiently, equipped with a water tank of not less than three hundred gallon capacity, filled with water. The complete pump truck or pump trailer shall be kept ready for instant use for suppressing forest fires. If a trailer is used, it shall be equipped with a hitch to facilitate prompt moving, and a serviceable tow vehicle shall be immediately available for attachment to the trailer. The pump truck or pump trailer with its tow vehicle must be available throughout the operating and watchman periods.

The pump may be a portable power pump or a suitable power take-off pump. It shall be plumbed with a bypass or pressure relief valve. The pump shall develop, at pump level, pressure sufficient to discharge a minimum of twenty gallons per minute, using a 1/4 inch nozzle tip, through a fifty foot length of one inch or 1-1/2 inch rubber-lined hose.

The pump truck or trailer shall be equipped with the following:

(a) A minimum of five hundred feet of one or 1-1/2 inch cotton or synthetic jacket hose.

(b) A fire tool box.

The tank shall be plumbed so that water may be withdrawn by one man by gravity feed. This outlet shall

be adapted to accept the hose used and located for easy filling of pump cans.

The pump truck or trailer must be equipped with appropriate tools, fuel, accessories, and fittings to perform its functions for a continuous period of four hours. A recommended list of tools, fittings, and accessories may be obtained from any department office.

(13) "Watchman" shall mean one competent person to be at the site(s) for one hour following the operation of spark emitting equipment on fire action Class III low days and above as defined by the department of natural resources in the use of the national fire danger rating system, in burning permit Zones C and D. The watchman shall be vigilant and so located or positioned to be able to detect within five minutes fires which may originate at the site(s) of the equipment operation and to report a fire to the responsible protection agency within fifteen minutes of detection. [Order 261, § 332-24-055, filed 6/10/76; Order 181, § 332-24-055, filed 3/21/74; Order 16, § 332-24-055, filed 2/25/69.]

WAC 332-24-056 Purpose of rules. This regulation recognizes the many instances of need of an outdoor fire and the general prudence of the people in the safety and use of fire to the extent that no written burning permit is required if certain rules and requirements are followed. [Statutory Authority: RCW 76.04.150, 83-10-036 (Order 396), § 332-24-056, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-056, filed 8/7/73.]

WAC 332-24-057 Spark emitting equipment regulated. It shall be unlawful for anyone to operate during the closed season as defined in RCW 76.04.252, any steam, internal combustion or electric engines or any other spark emitting equipment or devices on any forest land or in any place, where in the opinion of the department, within reason, fire could be communicated to the forest land, without first complying with the requirements for each situation and type of equipment listed as follows:

(1) Any fixed position machine unless equipped with the following:

(a) Two fire extinguishers each of at least a 5 B.C. rating.

(b) An approved exhaust system.

(c) An appropriately mounted shovel.

(2) Any tractor or mobile machine unless equipped with the following:

(a) One fire extinguisher of at least a 5 B.C. rating.

(b) An approved exhaust system.

(c) An appropriately mounted shovel.

(3) Any truck or vehicle used for hauling unless equipped with the following:

(a) One fire extinguisher of at least a 5 B.C. rating.

(b) An approved exhaust system.

(c) An appropriately mounted shovel.

(4) Any portable power saw unless equipped with the following:

(a) A chemical fire extinguisher of at least 8 ounce capacity, fully charged, and in good working order, to be kept in the immediate possession of the operator.

(b) An approved exhaust system.

(c) A shovel, which shall be kept within two minutes round trip of the operator.

Provided, A watchman shall be required on all operations identified in Items (1), (2), and (4) when located in burning permit Zones C and D on the west side of the Cascade Mountains or in other areas of the state as may be designated by the department in writing.

(5) Any passenger vehicle used for industrial or commercial operations unless equipped with the following:

(a) A fire extinguisher of at least a 5 B.C. rating.

(b) An approved exhaust system.

(6) During yarding, loading, milling, land clearing, and right of way clearing there must be kept at each landing, yarding tree, mill or more suitable place designated by the department, two five gallon back pack pump cans filled with water: *Provided*, That such operations in burning permit Zones C and D on the west side of the Cascade Mountains, or in other areas of the state as may be designated by the department in writing, must comply with the following additional requirements:

(a) A pump truck or pump trailer to be kept on the landing or within five minutes round trip of the operation.

(b) A watchman.

(c) Adequate facilities to report a fire to the responsible protection agency within fifteen minutes of detection.

(7) Each helicopter used for yarding, loading or land clearing unless first complying with the following additional requirements:

(a) VHF radio, maintained in operational use, at frequency 122.9.

(b) A portable water bucket of the appropriate following capacities, with necessary cargo hooks and tripping mechanism for dropping water on a fire, will be located at the heliport serving the operation.

External Payload of Helicopter	Minimum Required Bucket Size
780 pounds - & below	50 gallons
781 pounds - 1600 pounds	100 gallons
1601 pounds - 3900 pounds	200 gallons
3901 pounds - & larger	300 gallons

(c) A water source of sufficient capacity readily accessible to allow the bucket to be filled three times without refilling the source. The water source must be located within five minutes round trip flying time of every part of the operation.

(d) The following sized fire tool kit packaged for ready attachment to the cargo hook and located at the heliport serving the operation:

(i) Three axes or Pulaskis.

(ii) Six shovels.

(iii) Six adze eye hoes.

(e) Two fire extinguishers with a total UL or FM rating of at least 20 B.C. rating shall be kept with refueling equipment. They shall be appropriately mounted, suitably marked, and available for immediate use.

(8) Balloon, sky line and other similar long line or aerial logging systems with greater than 1,200 feet maximum distance between the yarder and the tailblock unless first complying with the following additional requirements:

(a) A pump truck(s) or trailer(s) shall be available and equipped in order to supply water to the furthestmost extremity of the operation in a maximum of 10 minutes from the time of detection. A portable water supply may be substituted provided it contains a minimum of three hundred gallons of water, and the complement of accessories and equipment identified in the definition of the pump truck or pump trailer, and a pump capable of delivering twenty gallons per minutes at the end of fifty feet of one inch hose and a nozzle with 1/4 inch aperture. The pump shall be plumbed with a bypass or pressure relief valve. The water supply shall be located and outfitted for immediate use at the landing and so that it may also be readily lifted and transported by using the rigging system or cargo hook. Logging systems which are not capable of lifting the portable water supply in one lift may substitute up to three separate packages to transport it.

(b) The following sized fire tool kit packaged and located for ready attachment to the rigging for delivery to the portable water supply while it is in operation:

- (i) Three axes or Pulaskis.
- (ii) Six shovels.
- (iii) Six adze eye hoes.

(9) Any railroad logging locomotive or common carrier locomotive unless:

(a) Followed by a speeder patrol at such times and in such locations as designated by the department. The speeder patrol shall be equipped with:

- (i) Two shovels.
- (ii) One Pulaski.
- (iii) One adze eye hoe.
- (iv) Two five gallon back pack pump cans filled with water.

(v) An approved exhaust system.

(vi) Communications between the speeder and the dispatcher for reporting fires to the responsible protection agency.

(vii) One fire extinguisher of at least 5 B.C. rating.

(b) Equipped with an approved exhaust system.

(c) Equipped with communications between the train and dispatcher for reporting fires to the responsible protection agency.

(10)(a) Prior to beginning operations, all snags, stubs and dead trees over fifteen feet in height shall be cut within fifty feet of each fixed position machine which will operate for two consecutive days or more in one position.

(b) The ground shall be initially cleared of all flammable debris under four inches in diameter beneath and within ten feet of each fixed position machine which will operate for two consecutive days or more in one position.

(11) The area around the tail, corner, and haul back blocks, must be kept clear of all flammable debris under four inches in diameter for a distance of six feet in all directions. Suitable flame resistant blanket devices may

be substituted for the clearing requirements. Each block must be equipped with one five gallon back pump can filled with water, one shovel and one Pulaski. Operations with multiple blocks must have this complement of tools and water within one hundred feet of each block.

(12) Any spark emitting engine used for purposes not specifically mentioned herein, which in the opinion of the department may cause a forest fire to start unless equipped with:

(a) An approved exhaust system.

(b) One fire extinguisher of at least a 5 B.C. rating.

(13) The department may designate certain areas which are known to have rapid fluctuations of extreme fire weather and/or concentrations of additional hazards. Operators in such areas may be required to monitor the humidity and/or the wind speed and maintain a daily log of such readings. Relative humidity readings and wind speed must be determined and recorded by instruments and methods approved by the department.

The department may further request operators in such areas to restrict operations when, in the opinion of the department, the recorded readings or current conditions are such that if a fire starts in that area it would probably spread to conflagration proportions regardless of men and equipment available for initial fire suppression purposes. [Order 272, § 332-24-057, filed 1/24/77; Order 255, § 332-24-057, filed 5/13/76; Order 181, § 332-24-057, filed 3/21/74.]

WAC 332-24-058 Substitutions and reduction of requirements. The department may accept serviceable equivalents to any of the requirements in these regulations. Such substitutions must be made in writing by the supervisor or his agent.

The department may by written permission reduce the requirements set forth herein whenever in its judgment the operation is of such type or location and/or weather is such that all the requirements herein are not needed for the protection of life and property. [Order 181, § 332-24-058, filed 3/21/74.]

WAC 332-24-059 Penalties for violation—Work stoppage notice. Any person, firm or corporation who willfully violates these regulations shall by authority of RCW 76.04.120 be guilty of a misdemeanor, and by authority of RCW 76.04.270 shall cease operations upon written notification until the provisions have been complied with and be subject to, upon conviction, a fine of not less than twenty-five dollars and more than five hundred dollars. [Order 181, § 332-24-059, filed 3/21/74.]

WAC 332-24-060 Definitions. The following definitions are applicable to this resolution:

(1) "Outdoor fire" shall mean the combustion of material in the open or in a container with no provisions for the control of such combustion or the control of the emissions from the combustion products.

(2) "Debris disposal fire" shall mean an outdoor fire for the prevention of a fire hazard and/or for the purpose of cleanup of natural vegetation, such as yard and

garden refuse and residue of a natural character such as leaves, clippings, prunings, trees, stumps, brush, shrubbery and wood so long as it has not been treated by an application of prohibited material or substances in a pile no larger than ten feet in diameter.

(3) "Recreational fire" shall mean an outdoor fire for the purpose of sport, pastime, or refreshment, such as camp fires, bonfires, cooking fires, etc. in a hand-built pile no larger than four feet in diameter.

(4) "Fire hazard" shall mean the accumulation of combustible materials in such a condition as to be readily ignited and in such a quantity as to create a hazard from fire to nearby structures, forest areas, life and property.

(5) "Forest slash" shall mean an accumulation of forest debris resulting from the commercial growing, harvesting, or processing of timber.

(6) "Department" means the department of natural resources or its authorized representatives. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-060, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-060, filed 8/7/73; Order 126, § 332-24-060, filed 11/17/71; Order 59, § 332-24-060, filed 7/29/70; Order 16, § 332-24-060, filed 2/25/69.]

WAC 332-24-063 Written burning permit requirements and exceptions. Under authority granted in RCW 76.04.020 and 76.04.150, the following regulation is hereby promulgated:

(1) The commissioner of public lands and the department are responsible by law for the granting of burning permits for certain types of outdoor fire.

(2) The department aids in the protection of air quality under its smoke management plan.

(3) Pursuant to its authority and responsibility, the department has studied and determined the effects of such burning on life, property and air quality to be of year-round effect.

(4) IT IS THEREFORE DETERMINED that throughout the year, outdoor fire is prohibited within any department forest protection assessment area unless a written burning permit is obtained from the department and signed by the permittee and afterwards having the permit in possession while burning and complying with the terms of such permit.

EXCEPT a written burning permit for an outdoor fire is not required from the department under the following conditions:

(a) In certain geographical areas designated by the department.

(b) Outdoor fire contained in an approved camp stove or burning barrel in a safe location.

(c) General rules and requirements specified in WAC 332-24-070 and 332-24-090 for protection of life, property and air quality are met. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-063, filed 4/29/83, effective 6/1/83; Order 181, § 332-24-063, filed 3/21/74.]

WAC 332-24-070 General rules—Outdoor fire for recreational or debris disposal purposes not requiring a

written burning permit. (1) The department reserves the right to restrict, regulate, refuse, revoke, or postpone outdoor fires under RCW 76.04.150, 76.04.170, 76.04.180, and chapter 70.94 RCW due to adverse fire weather or to prevent restriction of visibility, excessive air pollution or a nuisance.

(2) The Yacolt Burn Area, located in portions of Clark and Skamania counties, is exempt from these rules, and that area requires a written burning permit throughout the year.

(3) These rules do not apply within incorporated city limits or where the department has contracted protection areas to the fire district except where such fire districts have incorporated these rules into their regulations, or in fire districts which have their own fire permit requirements on improved land, or where air pollution authorities have prohibited fires that fall under these regulations. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-070, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-070, filed 8/7/73; Order 126, § 332-24-070, filed 11/17/71; Order 16, § 332-24-070, filed 2/25/69.]

WAC 332-24-090 Requirements—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit. (1) The fire must not include rubber products, plastics, asphalt, garbage, dead animals, petroleum products, paints or any similar materials that emit dense smoke or create offensive odors when burned pursuant to RCW 70.94.775(1).

(2) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(3) No recreational or debris disposal fires are to be within fifty feet of structures.

(4) A recreational fire shall be in a hand-built pile no larger than four feet in diameter. A serviceable shovel must be within the immediate vicinity of the fire.

(5) A debris disposal pile shall be no larger than ten feet in diameter. A serviceable shovel and a minimum of five gallons of water must be within the immediate vicinity of the fire. A bucket is acceptable, if the outdoor fire is adjacent to an accessible body of water. A charged garden hose line or other adequate water supply may be substituted for the five gallon water requirement.

(6) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(7) No outdoor fire is permitted in or within five hundred feet of forest slash without a written burning permit.

(8) The material to be burned must be placed on bare soil, gravel, bars, beaches, green fields, or other similar areas free of flammable material for a sufficient distance adequate to prevent the escape of the fire.

(9) Burning must be done during periods of calm to very light winds. Burning when the wind will scatter loose flammable materials, such as dry leaves and clippings, is prohibited.

(10) If the fire creates a nuisance from smoke or fly ash, it must be extinguished.

(11) A landowner or his designated representative's written permission must be obtained before building an outdoor fire on the property of another.

(12) Persons not able to meet the requirements of subsections (1) through (10) of this section must apply for a written burning permit through the department. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-090, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-090, filed 8/7/73; Order 126, § 332-24-090, filed 11/17/71 and 3/8/72; Order 16, § 332-24-090, filed 2/25/69.]

WAC 332-24-095 Recreation and debris disposal fire requirements—Penalty. Failure to comply with the general rules in WAC 332-24-070 and requirements in WAC 332-24-090 voids permission to burn, and the person burning is in violation of RCW 76.04.150 and subject to the penalties therein. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-095, filed 4/29/83, effective 6/1/83.]

WAC 332-24-100 Burning permits—Portions of Clark and Skamania counties. Under authority granted in RCW 76.04.150 and 76.04.020, the following regulation is hereby promulgated. Past experience has indicated that even during the period of October 15 to March 15 weather conditions periodically occur of such nature and duration that unregulated burning within the portions of Clark and Skamania counties lying within and immediately adjacent to the area known as the Yacolt Burn presents a very real and serious threat of forest fire within the Yacolt Burn. Therefore, the supervisor of forestry will require any individual, person, firm, or corporation wishing to burn inflammable material within this area specifically designated below, to first obtain permission in writing from the supervisor or a warden or ranger and thereafter comply with the terms of said permit unless said fire is contained in a suitable device sufficient in the opinion of the supervisor to prevent the fire from spreading. All of the rules and regulations applicable to the issuance of burning permits during the regular permit season of March 15 to October 15 shall be applicable. This promulgation shall be in effect for each year hereafter until such time as the supervisor deems it is no longer necessary.

The area encompassed within the boundaries of the Yacolt Burn for purposes of this promulgation are as follows:

Starting at the East quarter corner of Section 12, Twp. 5 North, Range 4 East, that point lying on the boundary of the Gifford Pinchot National Forest; thence west 1 mile; north 1/2 mile; west 2 miles, south 2 miles; west 1 mile; north 1 mile; west 1 mile; south 1 mile, west 2 miles to the southwest corner of Section 13, Twp. 5 North, Range 3 East; thence south 3 miles; east approximately 1/4 mile to the north quarter corner of Section 1, Twp. 4 North, Rge. 3 East; thence south 2 1/4 miles; westerly along the county road 1 1/2 miles; south 1/4 mile; to the east quarter corner of Section 15, Twp. 4 North, Range 3 East. Thence west 1 mile;

south 2 1/2 miles; east 1 1/2 miles; south 6 miles; to the south quarter corner of Section 26, Twp. 3 North, Range 3 East, that point lying on the north boundary of the Camp Bonneville – U.S. Military Reservation. Thence east 1/2 mile; south 1 mile; east 1 mile; south 2 miles; east approximately 1 1/2 miles to the Little Washougal River; thence southwesterly approximately 2 1/4 miles along the Little Washougal River thence east along the Bonneville Power Line 5 miles; thence northeasterly along the county road to the northeast corner of Section 24, Twp. 2 North, Range 4 East. Thence north 1/2 mile to a Bonneville Power Line; thence east 1 mile to the West Fork of the Washougal River; thence southeasterly along said river to the East–West center line of Section 20, Twp. 2 North, Range 5 East and east along said center line to the East Quarter corner of said Section 20; thence south 1/2 mile to a Bonneville Power Line; east 9 1/2 miles; thence south to the Evergreen Highway in the approximate center of Section 25, Twp. 2 North, Range 6 East and along said highway in a northeasterly direction approximately 3 miles to the northwest city limits of North Bonneville; thence north to the Bonneville Power Line and northeasterly along it approximately 4 miles to where it intersects the north–south center line of Section 35, Twp. 3 North, Range 7 East; thence north approximately 2 3/4 miles to the center of Section 23, Twp. 3 North, Range 7 East; east 1 1/2 miles; south approximately 1/3 mile to the southwest corner of Section 24, Twp. 3 North, Range 7 1/2 East; thence east 1 mile; south 1 mile to the Bonneville Power Line; northeasterly along said power line to the east section line of Section 30, Twp. 3 North, Range 8 East, thence northerly to the northeast corner of Section 18, Twp. 3 North, Range 8 East; thence west 2 1/4 miles to the road running up from Carson Creek and westerly along said road through Section 12 along the south side of Sections 2 and 3, Twp. 3 North, Range 7 East. Thence southwesterly across Section 9 to the southwest corner of Section 9, Twp. 3 North, Range 7 East; thence west approximately 10 miles to the northwest corner of Section 14, Twp. 3 North, Range 5 East; south 1 mile; west 4 miles; north 13 1/2 miles to the point of beginning.

[Burning Permit Rule, effective 10/16/53.]

WAC 332-24-105 Exemptions from burning permit requirements—Parts of Clark and Wahkiakum counties. (1) Pursuant to the authority of RCW 76.04.150 as amended by section 1, chapter 82, Laws of 1965, the parts of Clark and Wahkiakum counties described in subsections (2) and (3) below are exempted from the requirements of RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural

fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Clark County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

All lands lying within the following described line:

(a) All lands west of Fire District No. 6 and the Vancouver city limits, and

(b) All lands west of the Burlington Northern Railroad main line from its intersection with N.W. 179th Street north to the Lewis River.

(3) The following described part of Wahkiakum County, Washington, is exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

Puget Island, which lies south and west of the town of Cathlamet.

[Order 169, § 332-24-105, filed 8/7/73.]

WAC 332-24-10501 Exemptions from burning permit requirements--Parts of Wahkiakum County. (1) Pursuant to the authority of RCW 76.04.150 as amended by section 1, chapter 82, Laws of 1965, the parts of Wahkiakum County described below are exempted from the requirements of RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall effect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Wahkiakum County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

The area between the cities of Skamokawa and Cathlamet south and west of State Highway No. 4 to the Columbia River, including Price and Hunting islands.

[Order 234, § 332-24-10501, filed 8/12/75.]

WAC 332-24-10502 Exemptions from burning permit requirements--Parts of Okanogan County. (1) Pursuant to the authority of RCW 76.04.150 as amended by section 1, chapter 82, Laws of 1965, the parts of Okanogan County described below are exempted from the requirements of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall effect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Okanogan County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

All lands lying within the following described line:

[Title 332 WAC—p 52]

Highlands (North Okanogan Valley)

Starting at the junction of the Canada-United States boundary and the north end of the Boundary Point Road thence southerly along the Boundary Point Road to U.S. Highway 97, southerly along U.S. 97 to the Tom Dull Road, southerly along the Tom Dull Road to 23rd Avenue, then west approximately 500 feet to the Oroville Tonasket reclamation district irrigation ditch, southerly along the ditch to the siphon across the Similkameen River, thence southerly along the siphon and/or ditch to the Gunsolley Road (Ellemehan Mt. Road), thence northeasterly along the Gunsolley Road to the Golden Road, then southerly along the Golden Road to the Janis Oroville westside road, then southerly along the Janis Oroville westside road to a point west of the south end of the Janis bridge on U.S. 97, then northerly along U.S. 97 to the McLoughlin Canyon Road, easterly along the McLoughlin Canyon Road to the State Frontage Road, then northerly along the State Frontage Road to the Clarkston Mill Road, then northerly along the Clarkston Mill Road to the Longnecker Road, thence northwesterly along the Longnecker Road to U.S. 97, then northerly along U.S. 97 to the city limits of Tonasket, then along the south, east and north boundary of the town of Tonasket to U.S. 97, then northerly along U.S. 97 to the O'Neil Road, then northerly along the O'Neil Road to U.S. 97, then northerly along U.S. 97 to the Eastside Oroville Road, then northerly along the Eastside Oroville Road to the northeast end of the Thorndike Loop Road, then west to the east shore of Osoyoos Lake, then northerly along the east shore of Osoyoos Lake to the Canadian-United States boundary, then west along the Canadian-United States boundary to the point of origin.

South Okanogan County

Beginning at the intersection of U.S. Highway 97 and State Highway 16, in the town of Peteros, thence proceeding northerly along U.S. Highway 97 to the junction of Paradise Hill Road, within the town of Brewster, thence northerly along the Paradise Hill Road to the junction of the Paradise Hill Road and North Star-Paradise Hill Cutoff Road, located within the S-1/2 Section 35, T 31 N, R 24 East; thence northeast along the North Star-Paradise Hill Cutoff Road to the intersection at the North Star Road, thence south and east along the North Star Road until it intersects with Old Highway 97; thence northerly along Old Highway 97 to the junction with the Malott Road within the town of Malott; thence north and east along the Malott Road to the junction of State Highway 20; thence southeasterly along State Highway 20 to the junction of the Old Loop Loop Highway, thence east along the Old Loop Loop Highway into the town of Okanogan to the Junction of the Conconully Highway; thence north along Conconully Highway to the junction of Ross Canyon Road, thence east

along Ross Canyon Road to the Junction of Johnson Creek Road, thence north along Johnson Creek Road to the junction of BIDE-A-WEE Road: Thence east along BIDE-A-WEE Road to the junction of Old Highway 97; thence north along Old Highway 97 to the junction with the Pharr Road, within the town of Riverside, thence northerly along the Pharr Road to a point on the north Line of Section 6, Township 35 North, Range 27 East; thence east along that section line, across the Okanogan River to the Keystone Road, thence southerly along the Keystone Road to the Tunk Valley Road, thence southerly along the Tunk Valley Road into the town of Riverside at a point where the Tunk Valley Road and the west bank of the Okanogan River intersect; thence south along the west bank of the Okanogan River to the Columbia River, thence southwesterly along the west bank of the Columbia River to the point of origin.

[Order 235, § 332-24-10502, filed 8/12/75.]

WAC 332-24-150 Exemptions from burning permit requirements. Pursuant to the authority of RCW 76.04.150, as amended by section 1, chapter 82, Laws of 1965, the parts of Asotin, Garfield, Columbia, and Walla Walla counties described in sections 2, 3, 4, and 5, below, are exempted from the requirements of the said RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated. [Order 157, § 332-24-150, filed 4/2/73; Rule of 4/29/66.]

WAC 332-24-160 Exemptions from burning permit requirements--Parts of Asotin County. All parts of Asotin County, lying north of Township 9 North, or east of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at a point on the border between the states of Washington and Oregon where the Grande Ronde River crosses said border in Section 13, Township 6 North, Range 43 East, W.M.; thence northeasterly along said river to the west line of Section 36, Township 7 North, Range 44 East, W.M.; thence north to the southwest corner of Section 25, Township 7 North, Range 44 East, W.M.; thence east 1 mile, north 1 mile, east 3 miles, north 1 1/2 miles to the east quarter corner of Section 16, Township 7 North, Range 45 East, W.M., at Fields Spring State Park; thence east 2 miles, north 1/2 mile, west 1/2 mile, north 2 1/2 miles, to the center of Section 35, Township 8 North, Range 45 East, W.M.; thence west 1/2 mile, north 1/2 mile, west 1 mile, north 1/2 mile, west 1 mile, north 2 1/2 miles, west 4 miles to the southeast corner of

Section 10, Township 8 North, Range 44 East, W.M.; thence north 1 mile, west 2 miles, north 7 miles, west 5 miles, to the northwest corner of Section 3, Township 9 North, Range 43 East, W.M. which is a point on the Garfield-Asotin county line.

[Rule of 4/29/66.]

WAC 332-24-170 Exemptions from burning permit requirements--Parts of Garfield County. All parts of Garfield County lying north of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at the northeast corner of Section 4, Township 9 North, Range 43 East, W.M., which is a point on the Garfield-Asotin county line, thence west 2 miles, north 3 1/2 miles, west 4 miles, south 1/2 mile, west 2 miles, north 1/2 mile, west 1 mile, south 1/2 mile, to the northwest corner of Section 19, Township 10 North, Range 42 East, W.M., which is a point on the Garfield-Columbia county line.

[Rule of 4/29/66.]

WAC 332-24-180 Exemptions from burning permit requirements--Parts of Columbia County. All parts of Columbia County lying north of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at the northeast corner of Section 24, Township 10 North, Range 41 East, W.M., which is a point on the Columbia-Garfield county line; thence west 1 mile, south 1/2 mile, west 1/2 mile, north 1 mile, west 3 miles, south 1 1/2 miles, to the north quarter corner of Section 29, Township 10 North, Range 41 East, W.M.; thence west 6 1/2 miles, south 1 mile, east 1/2 mile, south 1/2 mile, east 1/2 mile, south 1 mile, west 2 miles, to the west quarter corner of Section 6, Township 9 North, Range 40 East, W.M.; thence south 3 1/2 miles, west 4 miles, south 1 mile, west 1 mile, south 1 mile, west 1 mile, to the northeast corner of Township 8 North, Range 38 East, W.M., which is a point on the Walla Walla-Columbia county line.

[Rule of 4/29/66.]

WAC 332-24-185 Exemptions from burning permit requirements--Parts of Cowlitz County. (1) Pursuant to the authority of RCW 76.04.150, as amended by section 1, chapter 82, Laws of 1965, the parts of Cowlitz County described in section 2 are exempted from the requirements of RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

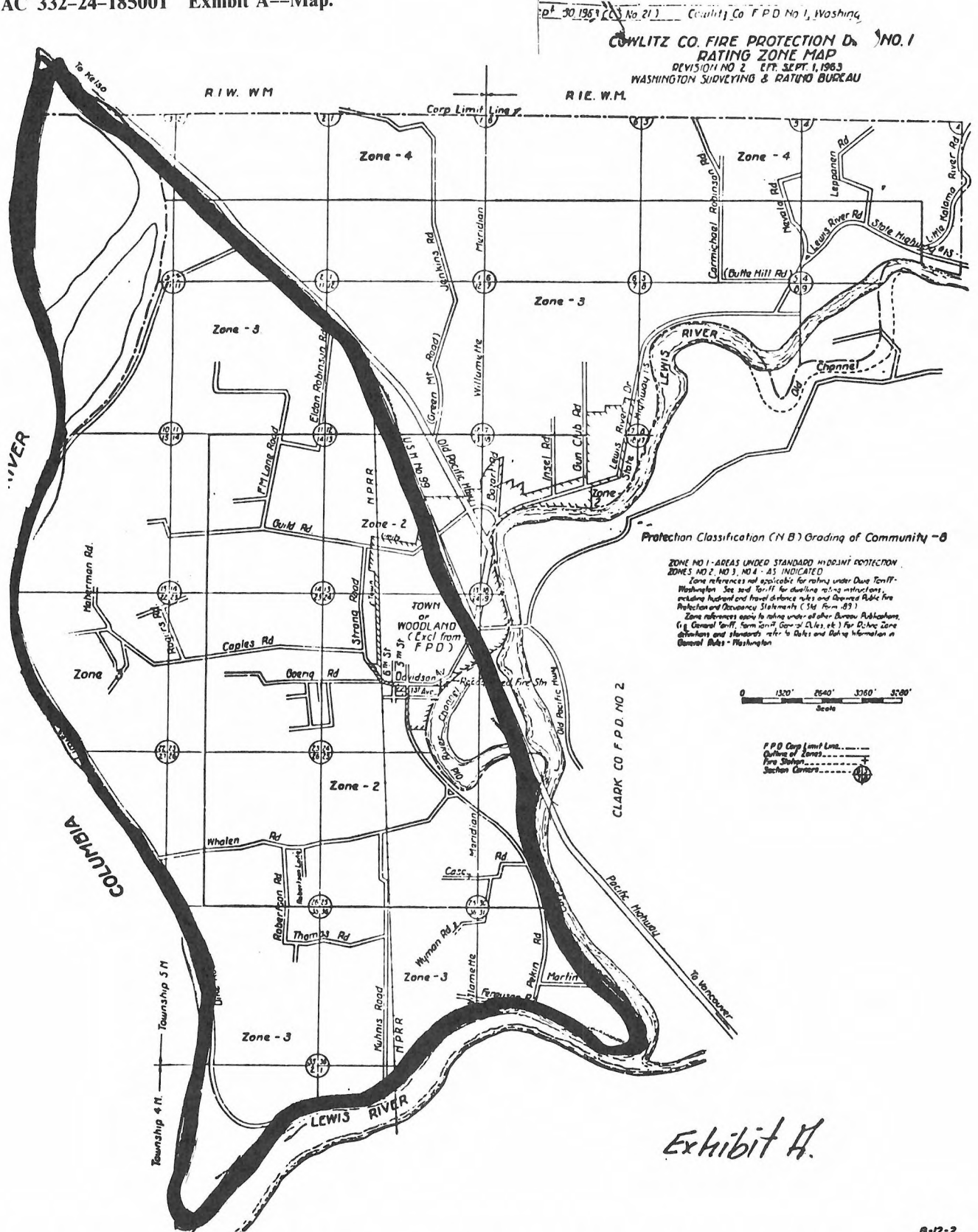
(2) The following described parts of Cowlitz County are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with as WAC 332-24-200(1) (codified as WAC 332-24-185):

An area consisting of all shorelands and uplands lying within the following described boundaries: Beginning at a point where interstate highway 5 intersects with the west line of section 34, township 6 north, range 1 west, W.M.; thence southeasterly along the west boundary of said interstate highway 5 to its junction with the Lewis River; thence southwesterly along the north bank of the Lewis

River to its confluence with the Columbia River; thence northerly along the east bank of the Columbia River to the south tip of Burke Island; thence northerly along the west boundary of Burke Island to the southern tip of Martins Island; thence northerly along the west boundary of Martins Island to the north end thereof; thence northerly to the point of beginning.

[Order 157, § 332-24-185, filed 4/2/73; Order 16, § 332-24-200 (codified as WAC 332-24-185), filed 2/25/69.]

WAC 332-24-185001 Exhibit A—Map.



0-12-2.

[Order 16, § 332-24-185 (part), (codified as WAC 332-24-185001), Exhibit A—Map, filed 2/25/69.]

WAC 332-24-190 Exemptions from burning permit requirements—Parts of Walla Walla County. All parts of Walla Walla County lying north and west of the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with WAC 332-24-150:

Beginning at the northeast corner of Township 8 North, Range 38 East, W.M., which is a point on the Columbia-Walla Walla county line; thence west 1 mile, south 2 miles, west 2 miles, south 3 miles, west 1 mile, south 1 mile, to the southwest corner of Section 33, Township 8 North, Range 38 East, W.M.; thence south 1 1/2 miles, west 1 mile, south 2 1/2 miles, west 1/2 mile, south 1/4 mile, west 1/2 mile, south 1 3/4 miles, west 1 mile, south 1/4 mile, west 1 mile, south 3/4 miles, west 1 mile, south 1 1/2 miles to a point on the Washington-Oregon state boundary.

[Rule of 4/29/66.]

WAC 332-24-192 Exemptions from burning permit requirements—Parts of Snohomish County. (1) Pursuant to the authority of RCW 76.04.150, as amended by section 1, chapter 82, Laws of 1965, the parts of Snohomish County described in subsection (2), below, are exempted from the requirements of said RCW 76.04.150, as amended, and permits for the burning of inflammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) All parts of Snohomish County lying within the following described line are exempt from the burning permit requirements of RCW 76.04.150, as amended, in accordance with subsection (1), above:

Beginning at the point on the east boundary of the City of Everett, Snohomish County, Washington, at which the Hewitt Avenue Bridge intersects the east boundary, thence southerly along said east boundary to Lowell-Larimer's Corner Road (Bluff Road); thence southeasterly along said road to its point of intersection with the north line of section 36, township 28 north, range 5 east, W.M.; thence easterly along the said north line and along the north line of sections 31 and 32, township 28 north, range 6 east, W.M., to the point said north line intersects 127th Avenue (Lord's Hill Road), thence northerly one-half mile along said avenue to the Snohomish-Monroe Road; thence southeasterly along said road to 164th Street; thence easterly along said street to Primary State Highway No. 522; thence southwesterly along said highway to the Snoqualmie-King County Road; thence southeasterly along said road to the point of its intersection with the Snohomish-King County Line; thence easterly along said county line to the point of its intersection with Secondary State Highway No. 203 (Monroe-Duvall Highway);

thence northerly along said highway to the boundary of the City of Monroe; thence northerly along said boundary to United States Highway No. 2; thence northwesterly along said highway to Roosevelt Road; thence northerly along said road to 159th Avenue (Zuber Road); thence northerly along said avenue to 100th Street (Westwick Road); thence westerly along said street to the southwest corner of section 15, township 28 north, range 6 east, W.M., and 147th Avenue (Jauntz and Nelson Road); thence northerly along said avenue to 68th Street (Three Lakes Road); thence westerly along said street to the east bank of the Pilchuck River; thence northerly along said east bank to a point due east of 52nd Street (Foss Road); thence westerly across said river and continuing westerly along said street to 87th Avenue (Fobes Cutoff Road); thence northerly along said avenue to its point of intersection with the north line of section 36, township 29 north, range 5 east, W.M.; thence westerly along the said north line and continuing along the north line of section 35, township 29 north, range 5 east, W.M., to its point of intersection with United States Highway No. 2; thence northwesterly along said highway to Hewitt Avenue East (Calaveros Corner); thence westerly along said avenue to the point of beginning.

[Statutory Authority: RCW 76.04.020 and 76.04.190. 79-09-120 (Order 331), § 332-24-192, filed 9/4/79; Order 157, § 332-24-192, filed 4/2/73; Docket 236, filed 7/20/66.]

WAC 332-24-194 Exemptions from burning permit requirements—Parts of Snohomish and Skagit counties.

(1) Pursuant to the authority of RCW 76.04.150 the parts of Snohomish and Skagit counties, Washington, described in subsections (2) and (3) below, are exempted from the requirements of the said RCW 76.04.150, and permits, issued by the state department of natural resources, for the burning of flammable material will not, from the effective date of this rule be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Snohomish County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1), above:

All lands lying within the following described line:

Beginning at the intersection of Secondary State Highway 1-E (Sign Route 530) with the Snohomish-Skagit county line, thence southerly along said Secondary State Highway 1-E to the point of intersection with 102nd Avenue Northwest, thence southerly along 102nd Avenue Northwest to

the point of intersection with Lund Road, thence southeasterly along Lund Road to the Point of intersection with said Secondary State Highway 1-E, thence southeasterly on said Secondary State Highway 1-E to the point of its intersection with the Stillaguamish River, thence westerly along the south bank of the Stillaguamish River to the point of its intersection with Hat Slough and continuing westerly along the south bank of Hat Slough to the point of its intersection with the Stanwood Road, thence southerly along the Stanwood Road to the south line of Section 6, Township 31 North, Range 4 East, W.M., thence west along the south line of said Section 6 and of Section 1, same township and range, to its intersection with the line of ordinary high tide in Port Susan Bay, thence northerly along the line of ordinary high tide of Port Susan Bay, Davis Slough, and Skagit Bay, to the Skagit-Snohomish line, thence east along the county line to the point of beginning.

(3) The following described parts of Skagit County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1), above:

All lands enclosed within the following described line:

Beginning at a point on the Skagit-Snohomish county line, at its intersection with the Conway-Stanwood Highway (old U.S. Highway Alternate 99) thence northerly along the said Conway-Stanwood Highway to the old English Lumber Company railroad grade, thence east along said old railroad grade to the Hill Slough, thence northeasterly along the Hill Slough to the Hill Ditch, thence northerly along the Hill Ditch to Carpenter Creek, thence northerly along Carpenter Creek to the intersection of Hickox Road and Bacon Road, thence west along Hickox Road to the Blodgett Road, thence northerly along Blodgett Road to the Anderson Road, thence northeasterly through the Anderson Gully to the southeastern city limits of the city of Mount Vernon, thence easterly and northerly along the said city limits to the intersection of Francis Road, thence north along the west line of Section 9 and Section 4, Township 34 North, Range 4 East, W.M., to the north bank of the Skagit River, thence easterly along the north bank of the Skagit River to Township Street, thence north along Township Street to the city limits of the city of Sedro-Woolley, thence west and north along the said city limits of the city of Sedro-Woolley to the F and S Grade Road, thence northwesterly along the Grade Road to the Kelleher Road, thence westerly along the Kelleher Road to the Burlington-Alger Road (old U.S. Highway 99) thence due west to the Samish River, thence southwesterly along the south bank of the Samish River to the Great Northern Railroad right-of-way, thence northwesterly along the west boundary of the right-of-way of the Great Northern Railway to

Samish Bay, thence southerly and westerly along the line of ordinary high tide of Samish Bay (excluding Samish Island) and Padilla Bay to the juncture of Padilla Bay and the north bank of the Joe Leary Slough, thence easterly up the north bank of the Joe Leary Slough to the Avon-Allen Road, thence southerly along the Avon-Allen Road to the Anacortes Branch Line of the Great Northern Railway, thence southwesterly along the northerly border of the Great Northern Railway right-of-way to Fredonia, thence northwesterly to the west quarter corner of Section 9, Township 34 North, Range 3 East, W.M., thence north one-quarter mile, thence west one-half mile to the North Fork of Indian Slough, thence northwesterly along the northerly bank of Indian Slough to Padilla Bay, thence southwesterly along the line of ordinary high tide of Padilla Bay to the juncture of Swinomish Slough, thence southerly along the east bank of the Swinomish Slough to Skagit Bay, thence southeasterly along the line of ordinary high tide of Skagit Bay to the Skagit-Snohomish county line, thence east along the county line to the point of beginning at the Conway-Stanwood Road: EXCEPT, the following described parcel of lands within the foregoing described parcel of lands is not exempt from the burning permit requirements of the said RCW 76.04.150:

Beginning at a point on the north bank of the North Fork of the Skagit River where said bank is intersected by the west line of Section 8, Township 33 North, Range 3 East, W.M., thence easterly along the north bank of the said North Fork of the Skagit River to the point of intersection with the east line of Section 9, Township 33 North, Range 3 East, W.M., thence northwesterly along the westerly edge of the county road to the west quarter corner of Section 33, Township 34 North, Range 3 East, W.M., thence west one-quarter mile, thence south one and one-half miles, thence west three-quarter mile, thence south along the west line of Section 8, Township 33 North, Range 3 East, W.M., to the point of beginning.

[Order 157, § 332-24-194, filed 4/2/73; Docket 275, filed 5/29/67.]

WAC 332-24-196 Exemptions from burning permit requirements--Parts of Pacific and Grays Harbor counties. (1) Pursuant to the authority of RCW 76.04.150 the parts of Pacific and Grays Harbor counties, Washington, described in subsections (2) and (3) below, are exempted from the requirements of the said RCW 76.04.150, and permits, issued by the state department of natural resources, for the burning of flammable material will not, from the effective date of this rule, be required in such exempt parts: *Provided*, That nothing herein shall affect the operation and effectiveness of the rules of the rural fire protection district and/or local air pollution control authority in which said lands are situated.

(2) The following described parts of Grays Harbor County, Washington, are exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1) above:

(a) A coastal strip of tidelands lying below and twenty feet seaward of the line of ordinary high tide as marked on the ground by the driftwood accumulation beginning at the south boundary of the Quinault Indian Reservation and running southerly to the south bank of the Copalis River.

(b) A coastal strip of uplands and tidelands lying to the west of Secondary State Highway 9C (Sign Route 109) as said public road is now located and constructed beginning at the south bank of the Copalis River and running southerly to the junction of the said highway with the Grays Harbor County road to Oyhut.

(c) A coastal strip of uplands and tidelands lying to the west of the Grays Harbor County road to Oyhut as said public road is now located and constructed beginning at the junction of the said road with Secondary State Highway 9C (Sign Route 109) and running southerly to the north boundary of Grays Harbor County rural fire protection district No. 13, as said boundary is now located.

(d) All uplands and tidelands of the Oyhut Peninsula lying to the south of the said north boundary to Grays Harbor County rural fire protection district No. 13.

(e) All uplands and tidelands of the Westport Peninsula lying north of the south boundary of Grays Harbor County rural fire protection district No. 3, as said boundary is now located.

(f) A coastal strip of uplands and tidelands lying to the west of Secondary State Highway 13A (Sign Route 105) as said public road is now located and constructed beginning at the said south boundary of Grays Harbor County rural fire protection district No. 3 and running southerly to Grays Harbor-Pacific County line.

(3) The following described part of Pacific County, Washington, is exempt from the burning permit requirements of RCW 76.04.150 in accordance with subsection (1), above:

A coastal strip of tidelands lying below and seaward of the line of ordinary high tide as marked on the ground by the line of vegetation or the line of driftwood accumulation, whichever is at any point the lower, beginning at the Grays Harbor County-Pacific County line and running southerly and easterly to the west boundary of the Showwalter Indian Reservation.

[Order 157, § 332-24-196, filed 4/2/73; Docket 256, filed 10/28/66, 3/30/67.]

WAC 332-24-197 Burning permits—Extension of burning permit season. (1) Written burning permits will be required for the period October 15 to April 15 in Eastern Washington and the period October 15 to

March 15 in Western Washington for fires set under any of the following conditions:

(a) Broadcast burning of logged areas, or
 (b) Burning of logging landings, or
 (c) Burning of debris resulting from the scarification of forest lands, or

(d) Burning of waste forest material resulting from the clearing of utility or public road rights-of-way that run through or adjacent to forested land, or

(e) Burning of mill waste from forest products or any other material which has been transported to and dumped in concentrations on forested land.

(2) All outdoor fires within the department of natural resources protection areas which are not herewith required to have a written burning permit shall not:

(a) Include rubber products, plastics, asphalt, garbage, dead animals, or any similar materials that emit dense smoke or create offensive odors when burned, or

(b) Cause visibility to be obscured on public roads and highways by the smoke from such fires, or

(c) Endanger life or property. [Order 130, § 332-24-197, filed 1/19/72, effective 2/23/72.]

WAC 332-24-200 Satisfactory clearance of slash. Unless a certificate of clearance evidencing satisfactory abatement of slash and forest debris resulting from logging or clearing operations has been issued at an earlier date by the department of natural resources in accordance with RCW 76.04.230, the department will, after January 1, 1967, consider slash and forest debris to have been satisfactorily abated under the conditions described in the following three sections. When such conditions have been met, the records of the department will so reflect and no certificate of clearance will be issued. [Order 4, § 332-24-200, filed 3/1/68.]

WAC 332-24-210 Slash abatement west of the summit of the Cascade Mountains. In that portion of the state of Washington lying west of the summit of the Cascade Mountains and in that portion of Klickitat County lying west of the line between ranges 11 and 12 east of the Willamette Meridian, slash and forest debris will be considered to have been satisfactorily abated on October 1 of the 12th year following completion of the operation creating the slash and forest debris on any particular parcel of land unless the department has prior to that October 1, as to any particular parcel, issued a notice to the responsible parties that the provisions of this rule do not apply to this particular parcel and setting a new date for termination of slash responsibility, or unless the slash and forest debris was generated from a stand of trees consisting of fifty percent, or more, cedar by number of trees harvested or destroyed. [Order 4, § 332-24-210, filed 3/1/68.]

WAC 332-24-220 Slash clearance east of the summit of the Cascade Mountains. In that portion of the state of Washington lying east of the summit of the Cascade Mountains, excepting therefrom that portion of Klickitat County lying west of the line between ranges 11 and 12 east of the Willamette Meridian, slash and

forest debris will be considered to have been satisfactorily abated on October 1 of the 7th year following completion of the operation creating the slash and forest debris on any particular parcel of land unless the department has, prior to that October 1, as to any particular parcel, issued a notice to the responsible parties that the provisions of this rule do not apply to this particular parcel and setting a new date for termination of slash responsibility, or unless the slash and forest debris was generated from a stand of trees consisting of fifty percent, or more, cedar by number of trees harvested or destroyed. [Order 4, § 332-24-220, filed 3/1/68.]

WAC 332-24-230 Payment to certificate of clearance fund. Payment by owners or operators into the certificate of clearance fund shall be calculated on the basis of satisfactory abatement as appropriate for the area in which the slash and forest debris was generated. [Order 4, § 332-24-230, filed 3/1/68.]

WAC 332-24-310 Rules requiring use of approved spark arresters on railroad locomotives. Increasing incidents of fires on forest lands, many of which are ignited by particles from the exhaust systems of railroad locomotives, necessitates the promulgation of the following rules and regulations pertaining to the use of approved spark arresters on railroad locomotives. [Order 30, § 332-24-310, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-320 Definitions. The following definitions are applicable to section 1, chapter 172, Laws of 1929, (RCW 9.40.040); section 6, chapter 125, Laws of 1911, (RCW 76.04.070); section 15, chapter 125, Laws of 1911, (RCW 76.04.280); and to these rules and regulations.

(1) "Railroad" shall mean any common carrier railroad or logging railroad.

(2) "Spark arrester" shall mean a device constructed of nonflammable material specifically designed for the purpose of removing and retaining at least 80 percent of the carbon and other flammable particles greater than 0.0232 of an inch in diameter from the exhaust flow of an internal combustion railroad locomotive engine.

(3) "Forest land" shall mean any land which has enough timber, standing or down, or inflammable material, to constitute a fire menace to life or property, including but not limited to grass and sagebrush when adjacent to or intermingled with areas supporting tree growth or other inflammable material.

(4) "Director" shall mean the commissioner of public lands. [Order 30, § 332-24-320, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-330 General rules. (1) Every company or corporation shall install and maintain, on all railroad equipment using internal combustion engines as a source of power, a spark arrester approved by the director, when such equipment is operating through forest land or lands over which fire may spread to forest lands from April 15 - October 15 of each year, unless the period is extended by the supervisor.

(2) This rule does not apply to a locomotive with a properly functioning turbocharger.

(3) The commissioner may allow substitutions or modifications by written permission whenever in his judgment such are warranted. [Order 30, § 332-24-330, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-340 Penalties. Each violation of these rules and regulations shall constitute a misdemeanor. Where violations occur in more than one county, violations in each county shall constitute a separate offense. Further, each day of operation shall constitute a separate offense. [Order 30, § 332-24-340, filed 8/7/70, 8/11/70, 8/19/70.]

WAC 332-24-350 Extension of time for removal of distressed timber. The commissioner of public lands may grant an extension of time for removal of all timber, fallen timber, or other valuable material, for all existing timber sales where the applicant requires such extension because he is engaged in the removal of distressed timber or fallen timber in timber areas declared officially distressed because of the extensive area of damage by order of the commissioner of public lands, whether such purchases or contracts to remove such distressed timber or fallen timber are on state, federal, or private lands: *Provided, however,* The commissioner of public lands finds extension is necessary to preserve the value of and to protect state owned timber.

The commissioner of public lands may on all timber purchases made prior to August 11, 1969, grant such an extension of time on payment of the amount of \$1.00 per acre per annum, not to be less than \$10.00 per annum for the extension.

The commissioner of public lands may on all timber purchases or sales made after August 11, 1969, grant such extensions upon payment of the amount of \$50.00 per annum and may further dispense with the requirement of interest on the unpaid portion of the state contract if the commissioner determines it is necessary to protect and preserve the value of state owned timber. [Order 70, § 332-24-350, filed 10/21/70.]

WAC 332-24-360 Promulgation. Pursuant to chapter 207, Laws of 1971, RCW 76.04.370, the department of natural resources promulgates the following rules and regulations, WAC 332-24-360 through 332-24-412, regulating and defining areas of extreme fire hazard requiring measures for abatement, isolation or reduction. [Order 274, § 332-24-360, filed 4/8/77; Order 126, § 332-24-360, filed 12/19/72.]

WAC 332-24-370 Definitions. The definitions contained in RCW 76.04.010 shall apply to WAC 332-24-360 through 332-24-412, except where stated to the contrary or where the context clearly requires a different meaning. The following additional definitions will also apply:

(1) **Contiguous area** shall mean those areas of additional fire hazard which are not (1) separated one from the other by a natural barrier or constructed barrier as

provided in the definition of isolation, or (2) separated one from the other by areas not comprising an additional fire hazard of a width at the narrowest point of at least 300 feet.

(2) **Isolation** shall mean the division or separation of an additional fire hazard into compartments by natural barriers, such as streams or ridge tops and/or a constructed barrier, but in no instance shall the fire barrier be less than 100 feet in width at its narrowest point and must be free and clear of forest debris as defined in RCW 76.04.010. As an alternative, the owner(s) and/or person(s) responsible, may implement a plan of increased protection, which has received prior written approval of the department for the specific location.

(3) **Reduction** shall mean the elimination of that amount of additional fire hazard necessary to produce a remaining average volume of forest debris no greater than 9 tons per acre of material 3 inches in diameter and less.

(4) **Abatement** shall mean the elimination of additional fire hazard by burning, physical removal, or other means. [Order 274, § 332-24-370, filed 4/8/77; Order 126, § 332-24-370, filed 12/19/72.]

WAC 332-24-380 Extreme fire hazard requiring abatement. An extreme fire hazard requiring abatement shall exist under the following conditions:

(1) An additional fire hazard within a distance of 100 feet from the closest edge of the running surface of any state or federal highway, county road or railroad.

(2) An additional fire hazard within a distance of 100 feet from the closest edge of the running surface of any other road, as hereinafter defined, that is generally open to and frequently used by the public during periods of fire danger. For the purpose of these rules and regulations, the term "other road" shall be defined as those roads owned or controlled by private individuals, partnerships, or corporations, or by public agencies, including without limitation the department or the United States Forest Service, and which provide the principal access during periods of fire danger (Class 111 days or higher as measured by the National Fire Danger Rating System) where normal use is 75 vehicles or more per week to geographic features of significant public interest and use such as lakes, streams, established viewpoints, lava tubes, ice caves, features of unique geological interest, recreational parks and developments or other facilities intended for frequent public use.

(3) An additional fire hazard within a distance of 200 feet and up to a maximum of 500 feet, if required in writing by the department, which is adjacent to public campgrounds, school grounds, other areas of frequent concentrated public use, buildings in use as residences (furnished and being occupied or available for immediate occupancy), and other buildings or structures valued at \$1,000.00 or more, which are not owned by the owner of the land upon which such additional fire hazard exists.

(4) The department may identify other specific areas of additional fire hazard, of comparable high risk of ignition, and/or a threat to life and property, and upon

written notification, require abatement. [Order 274, § 332-24-380, filed 4/8/77; Order 126, § 332-24-380, filed 12/19/72.]

WAC 332-24-385 Extreme fire hazard requiring isolation or reduction. Extreme fire hazard requiring isolation or reduction shall exist when there are contiguous areas of additional fire hazard having an origin of less than five years and so arranged that their unisolated compartments comprise 800 acres or more regardless of ownership or logging pattern and its composition comprises an average tonnage greater than nine tons per acre of material three inches or less in diameter with the following exceptions:

(1) When the material is 50% or more Douglas fir by volume, the time of origin considered shall be less than eight years.

(2) When the material is 50% or more cedar by volume, the time of origin considered shall be less than twenty years.

The department may identify areas comprising 800 acres or more of additional fire hazard extending beyond these limitations of time, with comparable high hazard and/or a threat to life or property and upon written notification, require isolation or reduction. [Order 274, § 332-24-385, filed 4/8/77.]

WAC 332-24-387 Responsibility. The owner(s) and/or person(s) responsible for the existence of an extreme fire hazard requiring abatement as defined in WAC 332-24-380, shall abate the extreme fire hazard. The owner(s) and/or person(s) responsible for the existence of an extreme fire hazard, as defined in WAC 332-24-385, shall isolate and/or reduce the extreme fire hazard, so that it no longer constitutes an extreme fire hazard. The obligation to abate, isolate and/or reduce extreme fire hazards defined in WAC 332-24-380 and 332-24-385 shall extend equally to all acreages of the extreme fire hazard regardless of the number of owner(s) and/or person(s) responsible for its existence. Isolation, when used, must be maintained for a period of 8 years from creation of the additional fire hazard unless the extreme fire hazard is otherwise eliminated prior to that time. At the option of the owner(s) and/or person(s) responsible, isolation and/or reduction may be performed in any manner consistent with existing statutes, these regulations, or as approved in writing by the department. [Order 274, § 332-24-387, filed 4/8/77.]

WAC 332-24-390 Preexisting hazards. For the purpose of these rules and regulations, the term "additional fire hazard" shall be limited to such hazards created subsequent to January 1, 1969: *Provided*, That preexisting hazards, resulting from operations in stands which contained by gross volume, 50% or more of cedar shall have a 20-year limitation as to time. With respect to any such preexisting hazards, the owner(s) and/or person(s) responsible may request, and the department may approve of alternatives to abating, isolating or reducing such hazard in lieu of the requirements set forth in WAC 332-24-380, 332-24-387. The effective date of

these rules will be July 1, 1977. [Order 274, § 332-24-390, filed 4/8/77; Order 126, § 332-24-390, filed 12/19/72.]

WAC 332-24-395 Compliance. When, in the opinion of the department, the owner(s) and/or person(s) responsible have refused, neglected, or failed to abate the extreme fire hazard, as required in WAC 332-24-380, or to isolate or reduce an extreme fire hazard as required in WAC 332-24-385, the department shall notify in writing the affected owner(s) and/or person(s) responsible that the condition exists. This notice will contain one or more suggested methods of abatement, isolation or reduction and the estimated cost thereof. The owner(s) and/or person(s) responsible, upon receipt of such notice, may arrange for a meeting with the department to occur within 30 days to discuss conditions and procedures to abate, isolate or reduce the area of additional fire hazard to a condition where it will no longer constitute an extreme fire hazard. [Order 274, § 332-24-395, filed 4/8/77.]

WAC 332-24-410 Recovery of costs. If the owner(s) and/or person(s) responsible for the extreme fire hazard fails, for any reason, to arrange for the meeting, or refuses, neglects, or fails to abate, isolate or reduce the extreme fire hazard within the time-frame recommended by the department at the meeting, the department may, following 10 days' notice to the owner(s) and/or person(s) responsible, summarily cause it to be abated, isolated or reduced, except that broadcast burning shall not be used by the department as an abatement procedure without prior written consent of all the owner(s) and/or person(s) responsible. This summary action may be taken 10 days after notice as required by RCW 76.04.370. Obligations for recovery of costs incurred by the department shall be in accordance with RCW 76.04.370 and shall be prorated by the department to the owner(s) and/or person(s) responsible for the extreme fire hazard on the ratio of their acres of involvement to the total acres involved. [Order 274, § 332-24-410, filed 4/8/77; Order 126, § 332-24-410, filed 12/19/72.]

WAC 332-24-412 Approved isolation, reduction or abatement. The owner(s) and/or person(s) responsible for an extreme fire hazard may identify, in writing, the procedures, or the natural or other processes which were taken to abate, isolate, or reduce the extreme fire hazard, and request the department to declare, in writing, whether the area does or does not constitute an extreme hazard. Absence of such a request on the part of the owner(s) and/or person(s) responsible for an extreme fire hazard will not prejudice his defense in the event of a fire. [Order 274, § 332-24-412, filed 4/8/77.]

WAC 332-24-415 Dumping mill waste, forest debris. Purpose. The purpose of these rules is to set forth when dumping of mill waste from forest products or forest debris of any kind in such amounts or locations will constitute a forest fire hazard requiring a permit under

chapter 134, Laws of 1971 ex. sess., RCW 76.04.242; to promulgate a permit system and to provide for issuance of permits on certain terms and conditions protecting forest lands from fire. The permit system outlines terms and conditions for the purpose of eliminating a forest fire hazard caused by dumping. [Order 169, § 332-24-400, codified as § 332-24-415, filed 8/7/73.]

WAC 332-24-418 Definitions. The following definitions are applicable to this resolution:

(1) "Person" shall mean any person, firm corporation, private or governmental agency or entity.

(2) "Dump" shall include, without limitation, dumping, depositing or placing.

(3) "Forest lands" shall mean forest lands as defined in RCW 76.04.010.

(4) "Forest debris" shall mean forest slashings, choppings and any other vegetative residue from activities on forest lands.

(5) "Mill waste" shall mean waste of all kinds from forest products, including, but not limited to, sawdust, bark, chips, slabs, and cuttings from lumber or timber. [Order 169, § 332-24-410, codified as § 332-24-418, filed 8/7/73.]

WAC 332-24-420 Creation of fire hazard—Dumping. Forest debris or mill waste when dumped in the following manner on or near forest lands shall constitute a forest fire hazard and require a dumping permit.

(1) Piles of fifty cubic yards or more, or

(2) Two or more piles totalling fifty cubic yards or more, less than three hundred feet apart, or

(3) A pile less than three hundred feet from a pile placed by another where such piles would total fifty cubic yards or more, or

(4) When dumped adjacent to piles of fifty cubic yards or more which were in existence before August 9, 1971, or

(5) When dumped in smaller quantities or greater distances than above when such dumpings are likely to support, intensify or further the spread of fire, thereby threatening forest lands and endangering life or property:

Provided, That forest debris accumulated on forest lands from logging or silvicultural activities on the land on which such activities took place, or activities regulated by RCW 76.04.310, shall not be subject to the permit requirements of these rules except when forest debris accumulated on land clearing or right-of-way projects regulated by RCW 76.04.310 is taken from such areas and dumped. [Order 169, § 332-24-420, filed 8/7/73.]

WAC 332-24-430 Fire hazard dumping permits. No person shall dump or cause to be dumped a forest fire hazard on or threatening forest lands without first obtaining a written permit from the department of natural resources, except that in the case of (5) above, the department of natural resources may notify the appropriate persons, and such person or persons shall be required to obtain a permit for the continued existence of the

dumping of such fire hazard. This permit is required to insure that such dumping does not create a forest fire hazard and outlines required terms and conditions to eliminate or abate any forest fire hazard that may be created by dumping.

Anyone desiring to dump mill waste from forest products or forest debris may make application to the department of natural resources or authorized employees thereof for a permit to do so. The application shall state the location, approximate quantity and description of material to be dumped and a map illustrating the proposed dump site and by whom the dumping is to be done.

Upon receipt of an application, the department of natural resources will inspect the area described in the application. The department in issuing a permit may impose reasonable terms and conditions in such permits to prevent the creation of a forest fire hazard.

A permit shall be effective only under the conditions and for the period stated therein. Compliance with the terms of the permit shall create a presumption of due care with respect to dumping. [Order 169, § 332-24-430, filed 8/7/73.]

WAC 332-24-440 Illegal dumping—Enforcement penalties. (a) "This permit valid only if permittee has legal authority to dump on described property. Dumping material requiring a permit under RCW 76.04.242 without a permit, or in violation of the permit, shall be a gross misdemeanor. Permittee must obtain any and all other permits required by law."

(b) The department shall have the authority to rescind this permit upon failure to comply with any of its terms. [Order 169, § 332-24-440, filed 8/7/73.]

WAC 332-24-500 Forest fire protection and special forest fire suppression account minimum assessment refund procedure. This section implements the provisions of chapter 299, Laws of 1983, which provides that an owner of forest land owning two or more parcels, each containing less than thirty acres in a county, may obtain a refund of the assessments paid on all such parcels over one as provided in RCW 76.04.360 and 76.04.515.

(1) The forest landowner must:

(a) Obtain a forest fire protection assessment refund form from any department of natural resources office.

(b) Complete refund form per instructions on form.

(c) Pay taxes and assessments to county treasurer and obtain treasurer's signature on refund form to verify assessments have been paid in full.

(d) Mail refund form before December 31st of the year the assessments are due to: Department of Natural Resources, Division of Fire Control, Olympia, WA 98504.

(2) The department of natural resources, division of fire control will compute the refund due the landowner, prepare a refund voucher and process for payment through the department of natural resources, division of financial services. The division of financial services will prepare the refund check and send the check and a copy

of the refund voucher to the landowner. [Statutory Authority: RCW 76.04.020. 83-23-105 (Order 405), § 332-24-500, filed 11/23/83; 83-01-099 (Order 388), § 332-24-500, filed 12/20/82.]

Chapter 332-26 WAC EMERGENCY AND SHORT TERM RULES

Reviser's note: The department of natural resources frequently promulgates regulations of a temporary or emergency nature relating to forest closures due to fire conditions, insect infestation control districts and other special matters concerning the industry. Such regulations are filed and may be inspected at the Office of the Code Reviser, Legislative Building, Olympia, but because of their transitory nature they are (on authority of RCW 34.04.050(3)) omitted from this code. Copies thereof may be procured from the Director of Natural Resources, Public Lands Building, Olympia.

Chapter 332-28 WAC HARBOR LINE COMMISSION

WAC

332-28-010 Meydenbauer Bay—Harbor area—Line of navigability.

WAC 332-28-010 Meydenbauer Bay—Harbor area—Line of navigability. (1) This resolution has application to that portion of Meydenbauer Bay on Lake Washington lying southeasterly of a line formed by the extension southwesterly of the southeasterly line of S. E. Bellevue Place, Bellevue, Washington, and the extension northeasterly of the northwesterly line of Lot 39, Shorelands, according to plat recorded in volume 330 of plats at page 8, records of King County, Washington.

(2) That portion of Meydenbauer Bay above described lies within, in front of or within one mile of the corporate limits of the city of Bellevue, Washington, but the commission finds that there presently exists no necessity to reserve any part thereof for landings, wharves, streets and other conveniences of navigation and commerce, and for this reason declines to establish harbor area therein.

(3) The following described line lying within the above described portion of Meydenbauer Bay, to wit:

Commencing at the east quarter section corner of Section 31, Township 25 North, Range 5 East, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 referred to the Washington coordinate system, North Zone, and running thence on an azimuth of 78°51'17" a distance of 963.76 feet to a point whose "X" coordinate is 1,660,575.00 and whose "Y" coordinate is 225,475.00 referred to said coordinate system; thence on an azimuth of 312°06'17" a distance of 420.00 feet to a point hereinafter referred to as Point "A"; thence on an azimuth of 2°21'10" to an intersection with the southwesterly extension of the southeasterly margin of S.E. Bellevue Place, said intersection being the true point of beginning of this line description.

Thence continuing on an azimuth of 2°21'10" to a point 167.66 feet distance from said Point "A"; thence on an azimuth of 312°06'17" a distance of 415.00 feet,

thence on an azimuth of 37°24'19" a distance of 125.00 feet and thence on an azimuth of 127°24'19" to an intersection with the Northeasterly extension of the Northwesterly line of Lot 39, Shorelands as recorded in vol. 33 of plats, page 8, records of King County, Washington, said point of intersection being the terminus of this line description, has been established by the superior court for King County in Cause No. 513081, entitled *Grill v. Meydenbauer Bay Yacht Club*, to be the boundary line between privately owned shorelands and the publicly owned lake bed. The commission confirms, approves, ratifies and adopts the line so located and established, or as it may be changed and relocated by decree of the supreme court of this state in appeal of the above cause, as the line of navigability in said portion of Meydenbauer Bay. In the event said supreme court shall decree in said appeal that the courts of this state have no jurisdiction to locate and establish the line of navigability, then the above described line shall be and is hereby adopted as the line of navigability in said portion of Meydenbauer Bay.

(4) In the event that the establishment of harbor area within the above described portion of Meydenbauer Bay should become necessary at some time in the future, such harbor area shall be restricted exclusively to lands publicly owned and no part thereof shall be established upon privately owned shorelands. [Resolution 1, filed 8/16/60.]

Chapter 332-30 WAC AQUATIC LAND MANAGEMENT

WAC	
332-30-100	Background.
332-30-103	Purpose and applicability.
332-30-106	Definitions.
332-30-107	Management plans.
332-30-109	Harbor area.
332-30-112	Establishment of new areas for navigation and commerce outside of harbor areas.
332-30-115	Harbor area use classes.
332-30-116	Harbor line relocation.
332-30-118	Tidelands, shorelands and beds of navigable waters.
332-30-119	Sale of second class shorelands.
332-30-121	Aquatic land use classes (excluding harbor areas).
332-30-124	Aquatic land use authorization.
332-30-125	Aquatic land use rental rates.
332-30-127	Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471).
332-30-130	Public use.
332-30-133	Environmental concerns.
332-30-136	Houseboats.
332-30-139	Marinas and moorages.
332-30-142	Piers.
332-30-145	Booming, rafting and storage of logs.
332-30-148	Swim rafts and mooring buoys.
332-30-151	Reserves (RCW 79.68.060).
332-30-154	Marine aquatic plant removal (RCW 79.68.080).
332-30-157	Commercial clam harvesting.
332-30-160	Renewable resources (RCW 79.68.080).
332-30-163	River management.
332-30-166	Open water disposal sites.
332-30-169	Artificial reefs (RCW 79.68.080).

WAC 332-30-100 Background. (1) Introduction. The department manages 1,300 miles of tidelands, 6,700

acres of constitutionally established harbor areas and all of the submerged land below extreme low tide which amounts to some 2,000 square miles of marine beds of navigable waters and an undetermined amount of fresh water shoreland and bed. These lands are managed as a public trust and provide a rich land base for a variety of recreational, economic and natural process activities. As the manager of these public lands, it is important to introduce sound management concepts, philosophies and programs which are consistent with public trust and multiple use. These lands are managed to maximize the benefit to all citizens of the state. These benefits are realized when:

(a) Navigational needs are met which are of benefit to the general public;

(b) Space is provided for a variety of aquatic recreational and economic activities;

(c) When environmental standards required by enforcement agencies are adhered to;

(d) When the productivity and environmental quality of the aquatic lands are maintained while continuing to provide for the needs of the public; and

(e) The public is compensated for withdrawal of lands by private and public activities which reduce the use options of the general public.

All of these benefits are of importance, unlike department managed uplands where revenue production is the primary benefit.

The department exercises its control over land use of state-owned lands through leases, use easements, permits and deeds. Conveyance of public rights to private parties on these public lands by gift without adequate compensation is unconstitutional. State law requires that the public be compensated whenever public land is withdrawn from open public use.

Other governmental agencies, local, state and federal, administer laws and regulations which also govern activities on aquatic lands. In order to benefit from the expertise and experience of these agencies, the commissioner of public lands seeks the advice of the marine resources advisory committee. This is an ad hoc committee composed of state, federal and local government units.

The department of ecology and local units of government have been directed by the legislature through the Shoreline Management Act of 1971 (chapter 90.58 RCW) to develop comprehensive shoreline master programs for the shorelines and aquatic lands of the state. City and county programs have been approved and adopted as state regulations to control development on aquatic lands. The department will insure that its allocations, leases, uses and activities are consistent with local programs.

(2) Public trust concept. The concept of public trust is that state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in all land. The department has the responsibility to manage these lands in the best interest of the general public.

Embodied in the concept of compensating the public for private use, is the recognition that our natural resources are not free and aquatic lands are as valuable or more valuable than other lands. Under competitive economic climates, fair market values placed on these lands will result in better land use decisions.

In addition, various uses of the aquatic lands have different impacts on the public's use of the water column and surface. Therefore monetary return to the public by way of leases for uses that occupy and impede the water surface and column is greater than where a lessee uses the aquatic lands but does not occupy the water surface and column. However impediments which are associated with public use may pay lower lease fees.

Equally important is the use of supplemental assessments charged to the lessee for land use impacts that withdraw from use existing natural biological resources.

The funds derived from monetary compensation to the public for uses that withdraw the aquatic land base and impact natural biological resources can be used to reduce the general tax burden, expand public use facilities and improve the productivity and quality of aquatic lands and waters. This approach requires a management plan for the use of these dollars that establishes priorities and schedules for such programs as public beach marking, underwater habitat improvement, seaweed and shellfish research and enhancement, and inventory of and planning for the use of these lands.

(3) Multiple use management. Since the aquatic lands of Washington are a limited and finite resource, it is necessary that management of these lands allow for multiple use by compatible activities to the greatest extent feasible. The management program is designed to provide for the best combination of aquatic uses that are compatible, yet minimize adverse environmental impacts. Under careful planning and multiple use management a variety of uses and activities, such as navigation; public use; production of food; energy; minerals and chemicals; and improvement of aquatic plant and animal habitat, can occur simultaneously or seasonally on department of natural resources managed land suited for those purposes. This concept has incorporated in it, the avoidance of permanent single purpose uses on aquatic lands that have multiple use potential (except for reserves, harbor areas, and public places). In most cases, the concept includes the identification of the primary use of the land, but provides for compatible secondary uses.

Management of the aquatic land base outside a harbor area is designed to provide for most of the area to remain free of surface structures that obstruct use of the water column and surface, however, certain primary uses that do obstruct surface navigation may be authorized under RCW 79.16.530. Lease provisions allow for periodic consideration of renewal and for reevaluation of compensation to the public for uses that withdraw the surface area.

Another aspect of multiple use management, whether considering planned single uses or simultaneous uses, is protection and maintenance of marine plants and animals. This is accomplished through lease restrictions and consultation with other resource and regulatory agencies.

See also RCW 79.68.020. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-100, filed 7/3/80.]

WAC 332-30-103 Purpose and applicability. (1) These regulations implement existing policies and guidelines adopted by the board of natural resources as authorized under RCW 43.30.150. They apply to all department of natural resources managed tidelands, shorelands, harbor areas and beds of navigable waters and equally to all persons and public entities. These regulations apply only to department of natural resources managed activities on aquatic lands, but not to activities carried out on lands conveyed to other agencies for public purposes or on activities on private lands. They do not supersede laws and regulations administered by other governmental agencies covering activities falling under their jurisdiction on these same lands.

(2) These regulations represent performance standards as well as operational procedures to be used in lease management, land use allocation and development actions by the department.

(3) These regulations represent the departments expression of state-wide interest on those lands managed by the department. As such they may be of value to local government in their administration of the Shoreline Management Act (chapter 90.58 RCW). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-103, filed 7/3/80.]

WAC 332-30-106 Definitions. For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(4) "Aquatic land" means department of natural resources managed tidelands, shorelands, harbor areas, bedlands, bar islands, avulsively abandoned river beds and channels of all navigable river areas of the state. Aquatic land is also known as public lands (RCW 79.01.004). Such lands may be leased.

(5) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. See WAC 332-30-121.

(6) "Aquatic resources advisory committee" means an ad hoc committee which provides advice on aquatic land management problems to the commissioner of public

lands. The committee is composed of representatives from the Washington departments of ecology, fisheries, planning and community affairs, game, office of fiscal management, social and health services (shellfish protection group), and parks and recreation commission; Association of Washington Counties, Association of Washington Cities, Washington Public Ports Association, Association of Washington Business; Federal Corps of Engineers, Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, and Coast Guard; Division of Marine Resources of the University of Washington; Oceanographic Commission of Washington; Pacific Northwest River Basins Commission.

(7) "Avulsion" means a sudden and perceptible change in the channel of a body of water. Generally no change in boundary lines occurs.

(8) "Beds of navigable waters" means those submerged lands lying below the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, bedlands is synonymous with beds of navigable waters.

(9) "Commerce" means the exchange or buying and selling of commodities involving transportation from place to place. As it applies to aquatic land, commerce to be successful requires the land/water interface.

(10) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(11) "Department" means the department of natural resources.

(12) "Dredging" means enlarging or cleaning out a river channel, harbor, etc., for navigation purposes.

(13) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(14) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(15) "Environmental reserves" means areas of key environmental importance which are threatened with degradation, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest which are threatened with degradation by over-use and require special protective management.

(16) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

(17) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan de Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

(18) "First class shorelands" means lands bordering on the shores of a navigable river or lake not subject to

tidal flow, between the line of ordinary high water and the line of navigability and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW 79.01.028).

(19) "First class tidelands" means the lands lying within, or in front of, the corporate limits of any city or within one mile thereof, upon either side and between the line of ordinary high tide and the inner harbor line where harbor lines have been established and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW 79.01.020).

(20) "Harbor area" means a constitutionally defined area of normally navigable waters between the inner and outer harbor lines where established in front of and within one mile of the corporate limits of an incorporated city or town by the board of natural resources acting as the state harbor lines commission in accordance with the provisions of section 1 of Article 15 of the state Constitution (RCW 79.01.012). The purpose of the harbor area is to provide for navigation and commerce.

(21) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

(22) "Harbor line" means either or both: (a) A line (outer harbor line) located and established in navigable waters as provided for in section 1 of Article 15 of the state Constitution. (b) A line (inner harbor line) located and established in navigable waters between the line of ordinary high tide and the outer harbor line and constituting the inner boundary of the harbor area (RCW 79.01.008 and 79.01.016).

(23) "Houseboat" means a floating structure normally incapable of self propulsion and usually permanently moored that serves as a place of residence or business. Otherwise called a floating home.

(24) "Interim nonconforming uses" means an activity which is not authorized by the state Constitution in harbor areas. However because of short term need it is permitted to occur for a period of time less than that for a constitutional use of the harbor area.

(25) "Inventory" means both a compilation of existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the "Washington Marine Atlas."

(26) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

(27) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(28) "Management area" means tidelands, shorelands, harbor areas and beds of navigable waters managed by the department of natural resources, except those areas withdrawn to other governmental agencies.

(29) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

(30) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

(31) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

(32) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

(33) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

(34) "Navigation" means the movement of vessels to and from piers and wharves.

(35) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

(36) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the state-wide resource base as modified by any relevant economic, social or ecological factor.

(37) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

(38) "Public benefit, public interest and state-wide interest" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; food, fiber, energy and mineral production; revenue; promotion of navigation and commerce; and public recreation and education. All of which are of equal importance.

(39) "Public place" means a part of a harbor area set aside for public access through the harbor area to the bed of navigable waters.

(40) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

(41) "Public trust" means that certain state owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

(42) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

(43) "Public use beach-general" means a state-owned beach identified for public use generally associated with some upland development.

(44) "Public use beach-wilderness" means a state-owned beach not associated with upland development or if there is any development there is a significant physical barrier between the beach and that development.

(45) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

(46) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

(47) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tidewater.

(48) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

(49) "Second class shorelands" means lands bordering on the shores of a navigable river or lake not subject to tidal flow, between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city or town (RCW 79.01.032).

(50) "Second class tidelands" means the area outside of and more than two miles from the corporate limits of an incorporated city or town extending from the ordinary high tide line to the line of extreme low tide (RCW 79.01.024).

(51) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

(52) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or storm water run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(53) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

(54) "Waterways" means an area platted across harbor areas providing for access to open water.

(55) "Water dependent" means all uses that cannot logically exist in any other location but on the water. See WAC 332-30-115 (1), (3), and 332-130-121 (1)(a).

(56) "Water oriented" means all uses for which a location on or near the water front facilitates their operation. However it is possible for these activities with existing technology to locate away from the waterfront. See WAC 332-30-115(2) and 332-30-121 (1)(b).

(57) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time. [Statutory Authority:

RCW 43.30.150. 80-09-005 (Order 343), § 332-30-106, filed 7/3/80.]

WAC 332-30-107 Management plans. Beginning immediately management plans will be developed for certain human activities to coordinate department action toward achieving its goal for aquatic lands. The following procedure will be used:

(1) A list of specific human activities which will be managed under these plans will be compiled.

(2) An inventory of natural processes and environmental parameters which may be impacted by human activities as well as those which prevent or hinder human activities will be compiled.

(3) An inventory of existing human activities and plans as well as a discussion of management issues will be prepared.

(4) The department assisted by the aquatic resources advisory committee shall evaluate the background data and prepare a management plan with appropriate implementation measures.

(5) The draft allocation plans shall be submitted to each affected local government for their review.

(6) After final review the plans will be submitted to public hearings and then to the board of natural resources as proposed regulations for its approval. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-107, filed 7/3/80.]

WAC 332-30-109 Harbor area. (1) Harbor areas shall be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(2) Water dependent commerce shall be given preference over other uses of harbor areas.

(3) Every consideration shall be given to meeting the expanding need for navigation and water dependent commerce in existing harbor areas.

(4) Several industries using the same harbor area facility shall be given preference over single industry use.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses, in areas requiring extensive maintenance dredging.

(6) Harbor lines may be adjusted, when authorized by the legislature, to provide reasonable opportunity to meet the present and future needs of commerce and navigation.

(7) In harbor areas where no current constitutional use (navigation and commerce) is called for or practical and other uses are in demand, interim uses may be authorized by the board of natural resources if in the public interest.

(8) The department will, where in the public interest, promote the conversion of existing nonconforming uses to conforming uses by assisting if possible, such users in resiting their operations and by withdrawing renewal options on affected state harbor area leases.

(9) The department will promote full development of all existing suitable harbor areas for use by water dependent commerce.

(10) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from harbor areas by the owner of the structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.

(11) Houseboats are not permitted in harbor areas.

(12) Resource management cost account portion of the revenue from leasing of harbor areas shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(13) Harbor areas will be managed to produce revenue for the public unless withdrawn as a public place.

(14) Harbor area lease renewal applications must be returned to the department within sixty days of expiration of prior lease term. If not timely returned, the harbor area involved will be put up for public auction.

(15) The department will encourage local government, state and federal agencies to cooperate in planning for the following state-wide harbor management needs:

(a) Reserve adequate and appropriate space within the jurisdiction to serve foreseeable navigation and commerce development needs.

(b) Coordinate plans for aquatic land and upland development so that areas reserved for navigation and commerce will be usable in the future.

(c) Identify areas where interim uses may be allowed.

(d) Identify needed changes in harbor lines.

(e) Minimize the environmental impacts of navigation and commerce development.

(f) Prevent existing and future interim uses in harbor areas from lowering the suitability of harbor areas for navigation and commerce development. [Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-109, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-109, filed 7/3/80.]

WAC 332-30-112 Establishment of new areas for navigation and commerce outside of harbor areas. (1)

Harbor areas have been established to meet the needs of commerce and navigation. Therefore establishment of facilities for commerce on aquatic lands outside of existing harbor areas must be justified on the basis of a lack of suitable space in existing harbor areas.

(2) Additional space for commerce may be considered by the department if it meets all of the following criteria.

(a) The industry must be water dependent or water oriented.

(b) The industry must establish that its needs cannot be met by available services or developed in existing harbor areas or industrial areas.

(c) The industry must have prior approval and all necessary permits for installation of facilities and activities from all concerned governmental agencies. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-112, filed 7/3/80.]

WAC 332-30-115 Harbor area use classes. These classes are based on the degree to which the use conforms to the intent of the constitution that designated

harbor areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(1) Water dependent commerce are all uses that cannot logically exist in any other location but on the water and are aids to navigation and commerce. These are preferred harbor area uses. Leases may be granted up to the maximum period allowed by the Constitution and may be renewed. Typical uses are:

(a) Public or private vessel terminal and transfer facilities which handle general commerce including the cargo handling facilities necessary for water oriented uses.

(b) Ferry terminals.

(c) Watercraft construction, repair, maintenance, servicing and dismantling.

(d) Marinas and mooring areas.

(e) Tug and barge companies facilities.

(f) Log booming.

(2) Water oriented commerce are commercial uses which do not service others but do require water transport, usually of raw materials. It is possible with existing technology for these activities to be located on uplands rather than in the harbor area. Existing water oriented uses may be asked to yield to water dependent commercial uses when the lease expires. New water oriented commercial uses will be considered as interim uses. Typical uses are:

(a) Pulp and paper mills.

(b) Lumber and plywood mills.

(c) Fish processing plants.

(d) Sand and gravel companies.

(e) Petroleum handling and processing plants.

(f) Log storage.

(3) Facilities for public access are lower priority uses which do not make an important contribution to navigation and commerce for which harbor areas are reserved, but which can be permitted providing that the harbor area involved is not needed, or is not suitable for water dependent commerce. Leases may be issued for periods up to thirty years with possible renewals. Typical uses are:

(a) Public fishing piers.

(b) Public waterfront parks.

(c) Public use beaches.

(d) Aquariums available to the public.

(e) Underwater parks and reefs.

(f) Public viewing areas and walkways.

(4) Residential uses include apartments, condominiums, single and multifamily housing, motels, boatels and hotels. Residential uses do not require harbor area locations and are frequently incompatible with water dependent commerce. New residential uses will not be permitted to locate in harbor areas. This restriction on new leases differentiates residential uses from interim uses. Existing residential uses may be asked to yield to other uses when the lease expires. Proposed renewals of residential leases will require the same analysis as specified for interim uses.

(5) Interim uses are all uses other than water dependent commerce, existing water oriented commerce, public access facilities, and residential uses. Interim uses do

not require waterfront locations in order to properly function. Leases may be issued for those locations for which no need has been expressed by preferred users.

The department will give public notice of sites proposed for interim uses. Local shoreline and upland land use plans should be guides for evaluating interim uses. Renewal of interim use leases shall be subject to the same analysis as new interim use proposals. Multiple use will be a guiding principle to ensure physical and/or visual access by the public to these areas. Each interim use lease proposal will be analyzed to determine whether the site is surplus to the needs of water dependent commerce. Lease terms will depend on the scope and forecast period of the analysis. Proposals will be evaluated in terms of the following:

(a) Future demands by water dependent commerce.

(b) The effect on the usefulness of adjacent harbor area for water dependent commerce.

(c) The probability they will attract similar uses.

(d) Their ability to subsidize a marginally economic water dependent harbor use.

(e) Their water dependency.

(6) Areas withdrawn are harbor areas which are so located as to be currently unusable. These areas are temporarily withdrawn pending future demand for constitutional uses. No leases are issued. [Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-115, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-115, filed 7/3/80.]

WAC 332-30-116 Harbor line relocation. Harbor areas are established to meet the needs of navigation and commerce. Harbor line relocations must be consistent with this purpose.

(1) Harbor line relocations should:

(a) Maintain or enhance the type and amount of harbor area needed to meet long-term needs of water dependent commerce; and

(b) Maintain adequate space for navigation beyond the outer harbor line.

(2) When in agreement with the above guidelines, consideration of harbor line relocations should include:

(a) Plans and development guidelines of public ports, counties, cities, and other local, state, and federal agencies;

(b) Economic and environmental impacts;

(c) Public access to the waterfront;

(d) Indian treaty rights;

(e) Cumulative impacts of similar relocations on water dependent commerce; and

(f) The precedent setting effect on other harbor areas.

(3) Procedure.

(a) Upon receipt of a completed harbor line relocation proposal form and SEPA checklist (if necessary), department of natural resources staff shall arrange for a public hearing.

(b) Notice of the hearing shall be mailed at least thirty days in advance to the concerned city, county, port district, interest groups, adjacent tide, shore or upland owners and others who indicate interest; and shall

be published at least twenty days in advance in a local newspaper of general circulation.

(c) The hearing, conducted by a hearings officer, shall be held in the county in which the relocation is proposed. Department staff shall present the proposal and preliminary recommendations. The hearing shall be recorded.

(d) Comments may be submitted at the hearing or mailed to the department. Written comments must be postmarked no later than fourteen days after the hearing.

(e) Department of natural resources staff will finalize SEPA compliance (if necessary) and prepare a final report of recommendations to the harbor line commission.

(f) No later than sixty days after the date of the public hearing, the harbor line commission shall consider the staff report and public comments, then approve, modify or deny the relocation. A copy of the commission's resolution shall be sent within ten days to the proponent, the city, county, port district and other parties who have requested it. [Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-116, filed 10/6/83.]

WAC 332-30-118 Tidelands, shorelands and beds of navigable waters. (1) These aquatic lands, unless withdrawn by the commissioner of public lands, will be managed for the public benefit.

(2) Resource management cost account revenue from leasing of these aquatic lands shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(3) Water dependent uses shall be given preference over other uses of these aquatic lands.

(4) Development of additional sites for waterborne commerce and terminal and transfer facilities will generally not be authorized on second class tidelands and shorelands if existing first class tidelands, shorelands and harbor areas can meet the need.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses in areas requiring extensive maintenance dredging except the Columbia River.

(6) Multiple use of existing pier and wharf facilities will be encouraged, to reduce the need for adding new facilities.

(7) Renewable resource utilization is a high priority use of aquatic lands.

(8) Whenever structures are used for aquaculture on the beds of navigable waters, they shall be located in such a way as to minimize the interference with navigation and fishing and strive to reduce adverse visual impacts.

(9) Open water disposal sites shall be provided on beds of navigable waters for certain materials that are approved for such disposal by regulatory agencies and have no beneficial value.

(10) Nonrenewable resource utilization may be allowed when not in conflict with renewable resource production and utilization, public use, or chapter 90.58 RCW.

(11) Certain lands may be modified in order to improve their productivity by adding structures such as artificial reefs or materials and by establishment of biological habitats such as eel grass and kelp beds as well as marsh areas.

(12) Insofar as possible uses of these aquatic lands shall have a minimum interference with surface navigation.

(13) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from these aquatic lands by the owner of the structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.

(14) State-owned second class tidelands and shorelands will be maintained free of bulkheads and residences except when in the public interest.

(15) The use of beach material from tidelands or shorelands for backfill of bulkheads and seawalls, landfill and as aggregate will not be allowed except when in the public interest.

(16) Filling on second class tidelands or shorelands will not be permitted except when in the public interest.

(17) When permitted, any fill on these aquatic lands must be stabilized to prevent washout into the marine environment.

(18) Material from aquatic lands will not be used for stream bank stabilization and revetments except when in the public interest.

(19) Bedlands abutting upland parks will be considered for underwater parks.

(20) Anchorage areas on the beds of navigable waters may be designated by the department for mooring boats.

(21) Houseboats are considered to be a low priority use of aquatic land.

(22) Motorized vehicular travel shall not be permitted on public use tidelands and shorelands except under limited circumstances such as a boat launch ramp.

(23) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-118, filed 7/3/80.]

WAC 332-30-119 Sale of second class shorelands.

(1) Under RCW 79.01.474 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of 100 feet or ten per cent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,

$$FMV = (V2/V1) \times (S1)$$

FMV = Current fair market value of shorelands

S1 = Value of shorelands at time of last equivalent sale

V1 = Value of abutting upland at time of last equivalent shoreland sale

V2 = Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly-owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time. [Statutory Authority: RCW 43.30.150 and 79.01.474. 80-08-071 (Order 342), § 332-30-119, filed 7/1/80.]

WAC 332-30-121 Aquatic land use classes (excluding harbor areas). (1) There is a finite amount of frontage area of publicly owned aquatic land along the waterways and coastline of the state of Washington and excessive demands for its use. Thus a scarcity of this resource requires that certain uses be rated above others. This priority of uses outside of designated harbor areas

will be based on the following categories (note: the examples are not prioritized):

(a) Water dependent uses are all uses that cannot logically exist in any other location but on the water. This is the preferred use of aquatic areas.

(i) Examples of water dependent commercial and industrial uses.

(A) Waterborne commerce – general cargo, bulk, petroleum, bulk foods, other liquid bulk, timber and forest products, and mineral transport.

(B) Terminal and transfer facilities for commerce or industry.

(C) Ferry and passenger terminals.

(D) Watercraft construction, repair, maintenance, servicing and dismantling.

(E) Moorage areas.

(F) Aquaculture.

(G) Fishing.

(H) Renewable resource utilization.

(ii) Examples of water dependent public and natural systems use.

(A) Waterfront parks.

(B) Boat launch ramps.

(C) Aquatic reserves.

(D) Beaches allocated for public use.

(E) Underwater parks.

(F) Public fishing piers.

(b) Water oriented uses are those uses for which a location on or near the waterfront facilitates their operation. It is possible for these activities with existing technology to locate away from the waterfront. There are two categories of water oriented uses:

(i) Water using industry which requires a large volume of water for cooling, processing of materials or production of food, fiber or chemicals. Examples are:

(A) Nuclear reactor power plants.

(B) Other power plants.

(C) Desalination plants.

(D) Sewer treatment plants.

(E) Petroleum refining.

(F) Paper and allied products.

(G) Steel mills.

(H) Aquariums.

(ii) Water linked industry supply or use products of water dependent industries and therefore seek locations near them. Examples are:

(A) Warehouse and storage areas for bulk products such as petroleum and wood.

(B) Sand, gravel and quarry rock companies.

(C) Fish processing plants – canning and frozen.

(D) Plywood plants.

(E) Lumber and wood products manufacture.

(c) Nonwater oriented uses are all other uses that can operate in other than waterfront locations.

(i) Examples of nonwater oriented commercial uses:

(A) Convention centers.

(B) Hotels.

(C) Restaurants.

(D) Specialty retail shops.

(ii) Examples of nonwater oriented residential uses:

(A) Residences.

- (B) Apartment houses and condominiums.
- (iii) Examples of other nonwater oriented uses:
 - (A) Industries not involved in bulk cargo transportation or extensive water consumption.
 - (B) Retail outlets, i.e., grocery stores, apparel stores, etc.
 - (C) Warehouses.
 - (D) Solid waste disposal and storage.
- (2) Lease terms and renewal provisions vary with laws pertaining to use. Water dependent uses will be given preferential merit special consideration in lease terms and renewal provisions. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-121, filed 7/3/80.]

WAC 332-30-124 Aquatic land use authorization.

(1) In addition to other requirements under the law aquatic land activities that interfere with the use by the general public of an area will require authorization from the department by way of agreement, lease, permit or other instrument. Determination of the minimum area required in any lease or easement shall be made by the department based on the impact to the public use and subsequent management of (potentially) remaining unencumbered public land.

(a) Generally, the area required to be under lease for fixed structures shall be the length of the structure(s) on public land (plus normal moorage usage) times the maximum width of the structure(s) on public land (plus normal moorage) except where limitations of private property ownership exist. Fairways and open water areas bounded by structures or necessary for the use of the lessee shall be part of the lease area.

(b) Generally, the area required to be under lease for individual mooring buoys shall be a circle with a radius equal to the expected swing of the vessel moored.

(2) Leases shall be required for all structures or activities in harbor areas except for those federal structures serving the needs of navigation.

(3) When proposed uses of marine lands requiring a lease (other than in harbor areas) have an identifiable but acceptable adverse impact on department managed land, both within and outside the leased area, the value of that loss or impact shall be charged to the lessee in addition to normal rental (resource withdrawal fee – see WAC 332-30-125(7)).

(4) Unauthorized use of aquatic land shall not be permitted and the department may exercise any and all criminal and civil remedies available to it to rectify the situation.

(5) When proposing to lease harbor areas to someone other than the abutting property owner, that owner shall be notified of the intention to lease the area and a reasonable effort made to accommodate the abutting owner's water access needs.

(6) The tideland or shoreland owner or lessee may lease the bed of navigable waters fronting thereto for the period of ownership or lease (within the constraints of RCW 79.16.530). This preference lease right may not

extend beyond the -3 fathom contour or 200 feet waterward of the line of extreme low tide or line of navigability (whichever is closer to shore). However the distance from shore may be less in locations where it is necessary to protect the navigational rights of the public.

(7) All necessary federal, state and local permits for activities or structures on aquatic lands shall be acquired by those proposing the activity or structure. Documentation of permit acquisition shall be provided to the department before leases are issued. In those limited instances where evidence of interest in aquatic land is necessary for application for a permit, a lease may be issued prior to permit approval but conditioned on receiving the permit.

(8) Advance rental payments for two or more years is collected in those situations where annual lease rental payments are less than minimum lease preparation costs.

(9) Leases shall be written so as to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted so as to minimize environmental degradation or the interruption of natural biological or geological processes.

(10) Easements or leases for the installation of underwater pipelines, outfalls and cables may be granted when proper provisions are included to insure against substantial or irreversible damage to the environment and there is no practical upland alternative.

(11) Water dependent uses which cause adverse environmental impacts may be authorized on aquatic lands and if granted shall include proper provisions to insure against substantial or irreversible damage to the environment. Leases and permits may not be issued to non-water dependent uses which have significant adverse environmental impacts.

(12) Whenever practical, leases of first class tidelands and shorelands will provide for public access to the water.

(13) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

(14) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or the lessee without a lease fee being charged.

(15) Second class tidelands and shorelands not suitable for public use (refer WAC 332-30-130(1)) may be made available for lease to the abutting upland owner without providing for public access.

(16) Shorelands and freshwater bedlands, determined to be state owned and having the character of upland, but occupied for private use through accident, may by mutual agreement be either leased or exchanged for other private land on an equal value basis. Pending exchange or lease a use occupancy fee may be assessed.

(17) Shorelands, and if present, department managed uplands may be leased with appropriate provision so that minimum changes occur within channel areas. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-124, filed 7/3/80.]

WAC 332-30-125 Aquatic land use rental rates. (1) The value of department managed tidelands, shorelands, harbor areas, and beds of navigable waters withdrawn from general public use for limited public or private use shall be recognized by charging lessees the full fair market rental. The fair market rental is based on (a) comparable non-DNR market rents or if not available (b) on the full market value (same as true and fair value) multiplied by the use rate percentage as approved by the commissioner of public lands. In addition to fair market rental fee for the land utilized, a charge (royalty) may be made for units of resource removed and/or a resource withdrawal fee (see WAC 332-30-125(7)).

(2) Use rate percentage.

(a) The percentage rate will be based on nondepartmental market rental rates for comparable aquatic properties in the locality, or when such do not exist;

(b) The percentage rate shall be equivalent to the average rate charged by lending institutions in the area for long term (or term equivalent to the length of the lease) mortgages for comparable uses of the property.

(3) Appraisals: The determination of fair market value of aquatic lands shall be based on the indications of value resulting from the application of as many of the following techniques as are appropriate for the use to be authorized:

(a) Shore contributions, utilizing differences in value between waterfront properties and comparable nonwaterfront properties; – *generally* best for related land-water uses which are independent of each other e.g. recreational docks.

(b) Comparable upland use (substitution), utilizing capacity, development, operation, and maintenance ratios between a use on upland and similar use on aquatic land with such ratios being applied to upland value to provide indication of aquatic land value for such use; – *generally* best for aquatic land uses totally independent of adjacent upland yet may also occur on upland totally independent of direct contact with water, e.g. log storage.

(c) Extension, utilizing adjacent upland value necessary for total use as the value of aquatic lands needed for use on a unit for unit basis; – *generally* best for aquatic land uses integrated with and inseparable from adjacent upland use, e.g. industrial shipping pier.

(d) Market data, utilizing verified transactions between knowledgeable buyers and sellers of comparable properties; – *generally* best for tidelands or shorelands where data exists between knowledgeable buyers and sellers.

(e) Income, utilizing residual net income of a commercial venture as the indication of investment return to the aquatic land; – *generally* best for income producing uses where it can be shown that owner or manager of operation is motivated to produce profit while recognizing the need to obtain returns and all factors of production.

(f) Such other techniques or procedures as may be needed to equitably address the uniqueness of a particular site or use so long as such techniques or procedures are based on valuation principles described in accredited

appraisal textbooks, or conform to techniques or procedures used by the state board of tax appeals, or as negotiated as result of a significant difference in value as demonstrated by user's appraiser.

(4) Fair market rental on tidelands, shorelands and beds may be reduced depending on the amount of area which the public may be allowed to use. Total withdrawal for private use requires full fair market rental value.

(5) Rental adjustments.

(a) Rentals of leases shall be subject to adjustment at the end of every fourth year (or as presently stated in existing leases) of the lease term. Such adjustment shall use the same change in total assessed land values, during the four-year period (newly issued leases) of the tax area code(s) in which the lease area occurs, as reported by the county assessor's office, to adjust the lease area value. Adjustment of the rental shall be the adjusted lease area value times the aquatic land lease percentage rate (WAC 332-30-125(2)) in effect at the time of adjustment. Rentals shall be adjusted every twelfth year (newly issued leases) based on an appraisal of the fair market value of the lease area at the time of adjustment.

(b) If the adjusted rental exceeds an increase of fifty percent over the previous rental, the annual rental shall be stair-stepped in increments of fifty percent over the each preceding year's rental until the full adjusted rental is achieved. In the event that the full adjusted rental is not achieved prior to the next adjustment date, the annual rental (under a four-year adjustment) shall be thirty percent of the adjusted rental for the first year, forty-five percent for the second year, sixty-seven percent for the third year, and one hundred percent of the adjusted rental for the fourth year.

(6) Rental of public access and use areas.

(a) Reduction in rental shall be allowed for the actual area within the lease that meets public access and use requirements.

(b) The amount of reduction shall be the percentage of the public access and use area to the total leased area.

(7) Resource withdrawal.

(a) Where federal, state, and local regulatory agencies grant permit approval to persons or corporations to install and operate waste outfalls or other activities or structures on aquatic lands, the department, if in agreement, will require a lease for use of the lands involved.

(b) The annual rental will be based upon the fair market value of the land used plus the actual values of quantifiable public resource elements being withdrawn. The size of the area withdrawn will vary with the type and volume of waste, type of treatment, type of outfall installation, or size and impact to other activity or structure and local conditions and extent of impacted natural resources. The value of resource withdrawn will depend on the size of the area and the number and identifiable economic value of natural resources affected.

(c) Future changes in volume of waste discharged and type of treatment or alteration in the structure or activity will be reflected in adjustment of annual rental.

(8) Leases for experimental production of renewable resources or energy on second class tidelands, shorelands

or beds may be issued at rates of no less than fifty percent of fair market rental for no more than five years. At that time or earlier when the department determines the activity is economically viable, full fair market rental and if appropriate royalties will be charged. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-125, filed 7/3/80.]

WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471). (1) Aquatic lands determined to be state owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-127, filed 7/3/80.]

WAC 332-30-130 Public use. (1) Selected tideland and shoreland tracts of 1,000 contiguous feet or more or smaller areas of special recreational quality, which have not been withdrawn for governmental or aquacultural uses, shall be managed for public use.

(2) Tidelands and shorelands designated for public use, shall be identified as public use, properly advertised, marked and maintained.

(3) Where the state owns the abutting uplands, priority shall be given to joint development of the uplands and second class tidelands or shorelands for public use,

consistent with the department's trust responsibilities, if any, in managing the uplands.

(4) Public recreational use of submerged aquatic lands shall be encouraged in appropriate locations through habitat enhancement, such as artificial reefs.

(5) In recognition of the increasing impact of the recreating public on the aquatic lands, public education programs will be developed and implemented on stewardship of state aquatic resources.

(6) In those cases where tidelands or shorelands are managed for public use, the rights of private upland owners abutting public use tidelands or shorelands shall be recognized by suitable marking of the intervening property lines and properly posting the tract or otherwise identifying the boundaries for the public.

(7) Recreational clam and/or oyster gathering will be enhanced on public use beaches whenever possible by planting of seed or improvement of seed retention and survival.

(8) Selected tidelands may be set aside for development of self-guiding marine nature walks.

(9) For the purpose of granting free use of aquatic land through a public use agreement the following criteria must be met:

(a) The land must be available daily to the public on a first-come, first-served basis and may not be leased to private parties on any more than a day-use basis.

(b) If the general public is charged a use fee (when authorized) in connection with use of the property, the fee cannot exceed the direct operating cost of the facility including reasonable depreciation.

(c) Auditable records must be kept so that the facility manager can adjust the fees accordingly and so the state can effectively inspect the operation for compliance with the agreement.

(d) Availability of free public use must be prominently advertised on the premises as well as in the media.

(e) The managing entity must own or lease the abutting uplands where the use is interdependent with the uplands.

(f) Such use will not interfere with other projected uses.

(g) Harbor areas.

(i) If a harbor area is not to be encumbered by any structures, but is to remain in an open water condition and available for public use on a daily first-come, first-served basis, a no-fee interagency agreement (cancelable on constitutional need) will be required.

(ii) If structures are to be placed in the harbor areas, or if public use is otherwise restricted or if a concessionaire or administering agency produces a profit, a lease will be required and the rental based on the fair market value. The annual rental for private recreational use may be reduced if some public use is provided. Otherwise the annual rental for total withdrawal will be charged.

(10) Free use of aquatic land may be granted for renewable resource enhancement that benefits the general public. A use agreement will be necessary from the department. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-130, filed 7/3/80.]

WAC 332-30-133 Environmental concerns. (1) Provisions shall be made to insure that commercial and sport fishing areas are protected from competing uses that create obstructions or otherwise restrict use of the resources except in harbor areas.

(2) Specific spawning, milling and rearing areas, which are so designated by the departments of fisheries and game, will be protected from conflicting uses.

(3) Provisions for leasing tidelands, shorelands, and beds shall include compensation for resource withdrawal as appropriate (see WAC 332-30-125(7)).

(4) Structures and uses on aquatic lands shall be designed, located and operated so as to provide for safe passage of migrating animals and not significantly interfere with the utilization of these lands and associated habitats by commercial and recreational species. The use of floating breakwaters shall be encouraged as protective structures rather than using permanent earth and rock fills.

(5) Leases shall be written so as to insure that structures and activities on aquatic land are properly designed, maintained and conducted so as to minimize environmental degradation or the unnecessary interruption of natural biological or geological processes.

(6) Limited areas of special educational or scientific interest or limited areas of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(7) Development of such structures as floating docks and breakwaters, will be encouraged so as to provide alternatives for increasing capacity for waterborne commerce without imposing environmental costs of establishing new harbor areas and their associated dredging and maintenance.

(8) Lessees must adhere to all applicable federal, state and local environmental laws and regulations and secure all necessary permits. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-133, filed 7/3/80.]

WAC 332-30-136 Houseboats. (1) Houseboats are considered to be a low priority use of aquatic lands.

(2) No additional aquatic land will be made available for moorage of houseboats. Space will be allocated for this use on those sites where the practice has been legally established over a long period of time.

(3) Houseboat moorage leases will not be written for periods longer than ten years.

(4) Houseboat moorage will only be leased or re-leased with full compliance with department of ecology and local health department requirements.

(5) Assurance must be provided that sewage discharge to state waters will not occur during periods of power outage.

(6) Annual lease rates will be based upon current full market value of the land involved. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-136, filed 7/3/80.]

[Title 332 WAC—p 74]

WAC 332-30-139 Marinas and moorages. (1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(i) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(ii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for both residential and transient use will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence at a marina or other location.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for marina development, properly distributed to meet projected public need for the period 1980 to 2010. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-139, filed 7/3/80.]

WAC 332-30-142 Piers. (1) Piers within harbor areas will be authorized as needed to serve the needs of commerce and navigation but may not extend beyond the outer harbor line.

(2) No piers or other fixed structures are permitted within waterways established under RCW 79.01.428.

(3) Multiple use of pier and wharf facilities will be encouraged, rather than the addition of new facilities.

(4) Piers on first class tidelands and shorelands will be permitted as needed for commercial and residential purposes without any restriction as to frequency; however,

the length will be restricted as needed so as not to unduly interfere with navigation. The type of structure may be restricted so as to minimize impact on environment and other users.

(5) Public and common use residential piers may be considered on public use – general beaches so designated on selected second class tideland and shoreland tracts.

(6) No piers or structures of any kind are permitted on public use – wilderness beaches so designated on selected second class tideland and shoreland tracts.

(7) Piers may be approved for installation on second class tideland and shoreland tracts not designated as public use beaches. They must follow the pier spacing and length standards.

(8) Pier spacing and length standards:

(a) New piers intended for resort and recreational use on second class tidelands and shorelands extending beyond the line of extreme low tide or line of navigability may be authorized if more than five times the pier length from any other pier on either side.

(b) Leases covering such installations may require that the owner of the pier allow the adjacent shoreline owners to utilize the pier for loading and unloading purposes.

(c) Unauthorized existing piers will be considered as new piers and offered leases which may provide for joint use.

(d) New piers should not extend seaward further than immediately adjacent similar structures except in harbor areas where harbor lines control pier lengths.

(9) Pier design criteria:

(a) Floating piers minimize visual impact and should be used where scenic values are high. However, floating piers constitute an absolute impediment to boat traffic or shoreline trolling and should not be used in areas where such activities are important and occur within the area of the proposed pier. Floating piers provide excellent protection for swimmers from high-speed small craft and may be desirable for such protection.

Floating piers interrupt littoral drift and tend to starve down current beaches. This effect should be considered before approval.

(b) Pile piers have a greater visual impact than do floating piers, and their use should be minimized in areas where scenic values are high. Pile piers cause less interference with littoral drift and do provide a diverse habitat for marine life. In areas where near-shore trolling is important, pile piers should be used with bents spaced 16 feet apart and with a minimum of 5 feet clearance above extreme high tide. Single pile bents are preferred where possible. [Statutory Authority: RCW 43.30.150. 83-02-055 (Order 389, Resolution No. 403), § 332-30-142, filed 1/4/83; 80-09-005 (Order 343), § 332-30-142, filed 7/3/80.]

WAC 332-30-145 Booming, rafting and storage of logs. (1) Unless specifically exempted in writing, all log dumps located on aquatic lands, or operated in direct association with booming grounds on aquatic land, must

provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.

(2) Provision must be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. Lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.

(3) Unless permitted in writing, aquatic land leased for booming and rafting shall not be used for holding flat rafts except:

(a) Loads of logs averaging over 24" diameter.

(b) Raft assembly, disassembly and log sort areas.

(4) Unless permitted in writing, grounding of logs or rafts is not allowed on tidelands leased for booming and rafting. However, tidelands which were leased for booming and rafting prior to January 1, 1980, are exempt from this provision.

(5) No log raft shall remain on aquatic land for more than one year, unless specifically authorized in writing.

(6) For leases granted to serve the general needs of an area such as an island, the leased area shall be made available to others for booming and rafting and at a reasonable charge. [Statutory Authority: RCW 43.30-150. 80-09-005 (Order 343), § 332-30-145, filed 7/3/80.]

WAC 332-30-148 Swim rafts and mooring buoys.

(1) Swim rafts or mooring buoys will not be authorized where such structures will interfere with heavily traveled routes for watercraft, commercial fishing areas or on designated public use – wilderness beaches.

(2) Swim rafts or mooring buoys may be authorized on aquatic lands shoreward of the -3 fathom contour or within 200 feet of extreme low water or line of navigability whichever is appropriate. The placement of rafts and buoys beyond the -3 fathom contour or 200 feet will be evaluated on a case by case basis.

(3) No more than one structure may be installed for each ownership beyond extreme low water or line of navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis.

(4) Swim rafts or buoys must float at least 12" above the water and be a light or bright color.

(5) Mooring buoys may be authorized beyond the limits described above on land designated by the department for anchorages. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-148, filed 7/3/80.]

WAC 332-30-151 Reserves (RCW 79.68.060). (1) Types of reserves: Educational, environmental, scientific – see definitions (WAC 332-30-106).

(2) Aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(3) The department or other governmental entity or institution may nominate specific areas for consideration for reserve status.

(4) Such nominations will be reviewed and accepted or rejected by the commissioner of public lands based upon the following criteria:

(a) The site will accomplish the purpose as stated for each reserve type.

(b) The site will not conflict with other current or projected uses of the area. If it does, then a determination must be made by the commissioner of public lands as to which use best serves the public benefit.

(c) Management of the reserve can be effectively accomplished by either the department's management program or by assignment to another governmental agency or institution.

(5) The department's reserves management program consists of prevention of conflicting land use activities in or near the reserve through lease actions. In those cases where physical protection of the area may be necessary the management of the area may be assigned to another agency.

(6) When DNR retains the management of reserve areas the extent of the management will consist of a critical review of lease applications in the reserve area to insure proposed activities or structures will not conflict with the basis for reserve designation. This review will consist of at least the following:

(a) An environmental assessment.

(b) Request of agencies or institutions previously identified as having a special interest in the area for their concerns with regard to the project.

(7) Proposed leases for structures or activities immediately adjacent to any reserve area will be subjected to the same critical review as for leases within the area if the structures and/or activities have the potential of:

- (a) Degrading water quality,
- (b) Altering local currents,
- (c) Damaging marine life, or
- (d) Increasing vessel traffic.

(8) All management costs are to be borne by the administering agency. Generally, no lease fee is required. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-151, filed 7/3/80.]

WAC 332-30-154 Marine aquatic plant removal (RCW 79.68.080).

(1) Any species of aquatic plant may be collected from aquatic land for educational, scientific and personal purposes up to 50 pounds wet weight per year, except that no annual species can be collected in excess of fifty percent of its population's total wet weight in any 1 acre area or any perennial in excess of seventy-five percent of its population's total wet weight in any 1 acre area.

(2) Aquatic plants listed on the commercial species list may be collected without a permit from aquatic land for commercial purposes up to the limits noted on the list, except that no annual species can be collected in excess of fifty percent of its population's total wet weight in any 1 acre area or any perennial in excess of seventy-

five percent of its population's total wet weight in any 1 acre.

(3) Aquatic plants may be collected from aquatic land for educational, scientific or personal purposes beyond the weight limitations stated in subsection (1) only through benefit of an aquatic plant removal permit from the department. Payment of a royalty dependent on species, volume and use shall be a condition of the permit.

(4) Aquatic plants as listed on the commercial species list may be collected from aquatic land for commercial purposes beyond the weight limitations stated in subsection (2) only through benefit of an aquatic plant removal permit from the department. Payment of a royalty dependent on species, volume and use shall be a condition of the permit.

(5) Aquatic plants may not be removed from the San Juan Marine Reserve except as provided for in RCW 28B.20.320 and from other areas where prohibited.

(6) Removal of perennial plants must be in such a manner as to maintain their regeneration capability at the site from which they have been collected.

(7) Species may be deleted or added to the commercial species list through petition to the department.

(8) Species not on the commercial species list may be collected for purposes of market testing, product development, or personal use through either written authorization from the department or through an aquatic plant removal permit depending on the amount of plant material required.

(9) Commercial species list.

Species Name	Maximum Free Collection Weight
<i>Alaria marginata</i>	
Post. et Rupr.	50 pounds wet weight
<i>Cymathere triplicata</i>	
(Post. et Rupr) J.Ag.	50 pounds wet weight
<i>Gracilaria sjoestedtii</i>	
Kylin	10 pounds wet weight
<i>Gracilaria verrucosa</i>	
(Huds) Papenf.	10 pounds wet weight
<i>Iridaea cordata</i>	
(Turner) Bory	50 pounds wet weight
<i>Laminaria dentigera</i>	
(Kjellm.) (<i>L. setchellii</i> Silva) . . .	50 pounds wet weight
<i>Laminaria groenlandica</i>	
Rosenvinge	50 pounds wet weight
<i>Laminaria saccharina</i>	
(L.) Lamouroux	100 pounds wet weight
<i>Macrocystis integrifolia</i> Bory . .	100 pounds wet weight
<i>Monostroma</i> spp.	20 pounds wet weight
<i>Neogardhiella baileyi</i>	
(Harvey et Kutzing)	
Wynne et Taylor	30 pounds wet weight
<i>Porphyra</i> spp.	10 pounds wet weight
<i>Ulva</i> spp.	20 pounds wet weight

(10) Harvesting of fishery resources adhering to marine aquatic plants, such as fish eggs, must be according

to the law and as specified by the department of fisheries. A permit may also be required according to WAC 332-30-154(4). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-154, filed 7/3/80.]

WAC 332-30-157 Commercial clam harvesting. (1) Commercial clam beds on aquatic lands shall be managed to produce an optimum yield.

(2) The boundaries of clam tracts offered for lease shall be established and identified to avoid detrimental impacts upon significant beds of aquatic vegetation or areas of critical biological significance as well as prevent unauthorized harvesting.

(3) The methods of harvest may only be those as established by law and certified by the department of fisheries.

(4) Surveillance methods will be employed to insure that trespass as well as off-tract harvesting is prevented.

(5) Harvesters must comply with all lease provisions. Noncompliance may result in lease suspension or cancellation upon notification.

(6) Harvesters must comply with all applicable federal, state and local rules and regulations. Noncompliance may result in lease suspension or cancellation upon notification.

(7) If appropriate, the department may secure all necessary permits prior to leasing. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-157, filed 7/3/80.]

WAC 332-30-160 Renewable resources (RCW 79-68.080). (1) Utilization of renewable resources is a preferred use of aquatic lands.

(2) The department will foster renewable resource utilization through research and development work, public education, land use allocation and resource inventory.

(3) Depending on the activity involved and the stage of commercial development, all necessary permits may be secured by the department for specific sites and activities before the sites are offered for lease.

(4) The department may undertake research and development work to determine the feasibility of and develop energy production from renewable resources in the marine environment such as tidal currents.

(5) Tidelands, shorelands and beds of navigable waters, especially valuable now and in the foreseeable future for renewable resource activities (such as aquaculture, natural resource harvesting or electrical energy production), shall be so designated and protected from conflicting human uses which would limit their utility for this purpose.

(6) Commercial aquacultural activities shall be encouraged to increase their utilization of aquatic lands through expansion of operations into new areas and increasing the number of cultured species.

(7) Commercial harvesting of wild stocks of shellfish shall be encouraged on aquatic lands. Harvesting must be conducted in such a manner as to provide an optimum yield of the crop within the harvestable resource base, to minimize insofar as possible conflicts with other

users of the water area and to have insofar as possible a minimal impact upon the environment.

(8) Seaweed aquaculture shall be investigated and if found feasible implemented as a commercial venture on aquatic lands.

(9) Harvest of wild stocks of seaweed from aquatic lands shall be regulated through the lease process so as to minimize or prevent significant impacts upon the resource and the environment and reimburse the public for valuable materials removed.

(10) Enhanced productivity of commercially and recreationally important species of aquatic life shall be encouraged on aquatic lands.

(11) The department will work with other agencies through development and implementation of management plans to insure that commercial shellfish beds are kept free of pollution and that as much as possible of the resource base is available for harvesting. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-160, filed 7/3/80.]

WAC 332-30-163 River management. (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

(2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.

(3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.

(4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.

(5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game

hydraulics permit (RCW 75.20.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-163, filed 7/3/80.]

WAC 332-30-166 Open water disposal sites. (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the Interagency Open Water Disposal Site Evaluation Committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior

to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(5) Pipeline disposal of material to an established disposal site will require special consideration.

(6) A lease fee will be charged at a rate sufficient to cover all departmental costs associated with management of the sites. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site.

(7) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

(1) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(8) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-166, filed 7/3/80.]

WAC 332-30-169 Artificial reefs (RCW 79.68.080). Artificial reefs constructed of a variety of materials is an accepted method of increasing habitat for rock dwelling

fish and invertebrates. In areas devoid of natural reefs, artificial reefs serve to increase the recreational potential of the area.

(1) Artificial reefs may be installed on aquatic lands by public groups or government agencies. However the sponsoring group or agency proposing such installation must submit their plan for review and approval to the reef siting committee prior to applying for permits. The artificial reef siting committee is a technical committee of the aquatic resources advisory committee and is composed of representatives of the departments of fisheries, ecology, environmental protection agency, national marine fisheries service and fish and wildlife service. The department chairs the committee. All permits must be acquired by the sponsoring group or agency prior to installation. The department may assist in and/or undertake reef design, construction, location, permit application and site inspection.

(2) Artificial reefs may be installed on aquatic lands under the following guidelines.

(a) Large reefs built by community groups rather than smaller reefs built by individuals are encouraged.

(b) Artificial reefs shall have a marking buoy meeting coast guard regulations and shall be marked on authorized navigation charts.

(c) Leasing of bedlands is not required for artificial reefs established for public use, however, a public use agreement (see WAC 332-30-130(9)) must be issued. A public reef in harbor areas requires a lease. Private reefs are not permitted.

(d) Artificial reefs should be located so that public upland access to the water is available, i.e., county or city parks, road frontage or endings adjacent to public aquatic lands. Due to the predominance of private shorelands, tidelands and uplands, public access may be restricted to boats only. The department does not promote or condone trespass on private property.

(e) A proposed artificial reef shall not conflict with existing natural rocky fish habitats.

(f) In selecting an artificial reef site shipping lanes, designated harbor areas and areas of marine traffic concentration shall be avoided. A thousand feet of horizontal clearance is recommended.

(g) Artificial reefs shall be of sufficient depth to allow unimpeded surface navigation. A general rule of thumb is that clearance be equivalent to the greatest draft of ships or barges using the area, plus ten feet as measured from mean lower low water.

(h) Artificial reefs shall not conflict with commercial or recreational fishing, shellfish harvesting areas or with known or potential aquaculture areas.

(i) Artificial reef design shall optimize "edge effect". Reef materials should not be scattered but clumped with small open spaces between clumps.

(j) Artificial reefs shall be constructed of long-lasting, nonpolluting materials.

(i) Tires used as construction material shall be tied together to form sub units. The ties must not deteriorate in the marine environment and should consist of such material as polypropylene rope, stainless steel or plastic

strapping. Tires must be cut or drilled to allow easy escapement of trapped air. Tires must be weighted in areas where currents or wave action may move them.

(ii) Cement pipe may be used as construction material. The pipe should be transported and positioned on the bottom so as to minimize breakage.

(iii) Rock or concrete chunks may be used as construction material.

(iv) Vessels may be used as an artificial reef. Size and type of vessels will be considered on a case by case basis.

(k) Artificial reefs shall normally be located seaward of the minus 18 foot contour as measured from mean lower low water.

(l) If a reef is for the exclusive use of either line fishermen or divers, it shall be so identified at the site. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-169, filed 7/3/80.]

**Chapter 332-32 WAC
INSECT AND WORM CONTROL**

WAC

- 332-32-010 Spruce budworm—Klickitat and Yakima counties.
- 332-32-020 Hemlock looper—Pacific and Wahkiakum counties.
- 332-32-030 European pine shoot moth—Walla Walla County.

WAC 332-32-010 Spruce budworm—Klickitat and Yakima counties. Be it resolved by the board of natural resources, department of natural resources, state of Washington: . . . (1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of said insect in Klickitat and Yakima counties, to be known as Simcoe Butte Infestation Control District No. 3, and shall include lands within the following boundary:

Those portions of Township 6 North, Range 14 East, W.M., Townships 5, 6, and 7 North, Range 15 East, W.M., and Townships 5 and 6 North, Ranges 16 and 17 East, W.M., included in a tract described as follows:

Beginning at the northeast corner of Section 25, Township 7 North, Range 15 East, W.M., and running thence westerly along the north lines of Sections 25, 26, 27, 28, and 29, Township 7 North, Range 15 East, W.M., to the northwest corner of said Section 29, thence southerly along the west lines of Sections 29 and 32, Township 7 North, Range 15 East, W.M., to the north line of Section 6, Township 6 North, Range 15 East, W.M., thence easterly along said north line to the northeast corner of said Section 6, thence southerly along the east line of said Section 6 to the southeast corner thereof, thence westerly along the south line of said Section 6 and the north line of Section 12, Township 6 North, Range 14 East, W.M., to the northwest corner of said Section 12, thence southerly along the west line of said Section 12 to the southwest corner thereof, thence westerly along the north lines of Sections 14 and 15, Township 6 North, Range 14 East, W.M., to the northwest corner of said Section 15, thence southerly along the west lines of Sections 15, 22, 27, and 34, Township 6 North, Range 14 East, W.M., to the southwest corner of said Section 34, thence easterly along the

south lines of Sections 34, 35, and 36, Township 6 North, Range 14 East, W.M., to the southeast corner of said Section 36, thence continue easterly along the south lines of Sections 31 and 32, Township 6 North, Range 15 East, W.M., to the northwest corner of Section 4, Township 5 North, Range 15 East, W.M., thence southerly along the west lines of Sections 4 and 9, Township 5 North, Range 15 East, W.M., to the southwest corner of said Section 9, thence easterly along the south line of said Section 9 to the southeast corner thereof, thence southerly along the west lines of Sections 15 and 22, Township 5 North, Range 15 East, W.M., to the southwest corner of said Section 22, thence easterly along the south lines of Sections 22, 23, and 24, Township 5 North, Range 15 East, W.M., to the southeast corner of said Section 24, thence continue easterly along the south lines of Sections 19, 20, 21, 22, 23, and 24, Township 5 North, Range 16 East, W.M., to the southeast corner of said Section 24, thence continue easterly along the south line of Section 19, Township 5 North, Range 17 East, W.M., to the southeast corner of said Section 19, thence northerly along the east lines of Sections 19, 18, 7, and 6, to the northeast corner of said Section 6, thence continue northerly along the east lines of Sections 31, 30, and 19, Township 6 North, Range 17 East, W.M., to the northeast corner of said Section 19, thence westerly along the north line of said Section 19 to the northwest corner thereof, thence continue westerly along the north lines of Sections 24, 23, 22, 21, and 20, Township 6 North, Range 16 East, W.M., to the northwest corner of said Section 20, thence northerly along the east line of Section 18, Township 6 North, Range 16 East, W.M., to the northeast corner thereof, thence westerly along the north line of said Section 18 to the northwest corner thereof, thence along the east lines of Sections 12 and 1, Township 6 North, Range 15 East, W.M., to the northeast corner of said Section 1, and thence continue northerly along the east lines of Sections 36 and 25, Township 7 North, Range 15 East, W.M., to the northeast corner of said Section 25 and the point of beginning, containing an area of 81,272.49 acres according to the government surveys thereof.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy and eradicate the spruce budworm (*choristoneura fumiferana*) by spraying DDT insecticide on the forests infested or threatened with infection by this insect pest.

(3) If within 30 days after notice has been given as prescribed in subsection 2 of this resolution, an owner or agent shall fail, refuse, neglect or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed with the control, eradication, and destruction of the spruce budworm (*choristoneura fumiferana*), with or without the cooperation of the owner, by aerial spraying with DDT the forests infected or threatened with infection by this insect pest.

(4) The Simcoe Butte infestation control district shall remain in effect until the board of natural resources has

determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district. [Resolution No. 29, filed 1/12/62.]

WAC 332-32-020 Hemlock looper—Pacific and Wahkiakum counties. Be it resolved by the board of natural resources, department of natural resources, state of Washington: . . . (1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of said insect in Pacific and Wahkiakum Counties, to be known as Willapa infestation control district No. 4, and shall include lands within the following boundary:

Those portions of Townships 9 North in Ranges 7, 8, 9, and 10 West, W.M., lying north of the Columbia River; All of Townships 10 North, in Ranges 7, 8, 9, and 10 West, W.M.; Sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, Township 10 North, Range 11 West, W.M.; All of Townships 11 North in Ranges 7, 8, 9, and 10 West, W.M.; Those portions of Township 11 North, Range 11 West, W.M., located on Long Island In Willapa Bay; All of Townships 12 North in Ranges 8, 9, and 10 West, W.M.; Those portions of Township 12 North, Range 11 West, W.M., located on Long Island; and All of Townships 13 North in Ranges 8, 9, and 10 West, W.M.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy, and eradicate the hemlock looper (*lambda fiscellaria lugubrosa hultst*) by spraying DDT or other insecticides approved by the administrator of the department of natural resources on the forests infested or threatened with infection by this insect pest.

(3) If within 30 days after notice has been given as prescribed in subsection 2 of this resolution, an owner or agent shall fail, refuse, neglect, or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed, as prescribed, with the control, eradication, and destruction of the hemlock looper (*lambda fiscellaria lugubrosa hultst*), with or without the cooperation of the owner.

(4) The Willapa infestation control district No. 4 shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district. [Resolution No. 37, filed 3/6/63.]

WAC 332-32-030 European pine shoot moth—Walla Walla County. (1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of European Pine Shoot Moth (*Rhyacionia buoliana* (Schiff.)) in Walla Walla County, to be known as the Walla Walla Infestation Control District, and shall include all the lands within said county.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy, and eradicate the European Pine Shoot Moth by fumigating or by destroying each infested tree or shrub.

(3) If within thirty days after notice has been given as prescribed in subsection (2) of this section, an owner or agent shall fail, refuse, neglect, or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed, as prescribed, with the control, eradication, and destruction of the European Pine Shoot Moth, with or without the cooperation of the owner.

(4) The Walla Walla infestation control district shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district. [Order 5, § 332-32-030, filed 3/8/68.]

with the sale of timber or other valuable material located on the lands under the jurisdiction of the department of natural resources, shall be designated and included as a part of state land management roads under the jurisdiction and control of the department of natural resources.

(4) Whenever the department of natural resources finds that the use of any roads which make up a part of the said state land management roads by parties other than the department of natural resources will not unreasonably interfere with the department's needs, the department shall upon request by said parties authorize use of the roads described in subsections (1), (2), and (3) of this resolution. Said land management roads shall be under the jurisdiction and control of the department of natural resources, and any use thereof as hereinbefore authorized, shall be subject to the rules and regulations as prescribed by said agency.

(5) The department of natural resources is directed to accomplish all requirements necessary to carry out the policy contained in this resolution. [Resolution 35, filed 10/16/62.]

Chapter 332-36 WAC

ROAD RULES ON STATE OWNED LANDS

WAC

332-36-010 State land management roads.

WAC 332-36-010 State land management roads. Be it resolved (1) All roads now existing on lands owned by the state of Washington under the jurisdiction of the department of natural resources, which roads are not presently under the jurisdiction or control of any individual, public or private corporation, the United States, or the state or agency or subdivision thereof other than the department of natural resources, or which roads are not presently the subject of an application to the department of natural resources for a right of way under RCW 79.01.332 or 79.36.290, made prior in time to an application made by the department of natural resources, by an individual, public or private corporation, the United States, or the state or an agency or subdivision thereof other than the department of natural resources, are designated, and included, as a part of state land management roads, under the jurisdiction and control of the department of natural resources.

(2) All roads now existing or hereinafter constructed on lands owned by the state of Washington under the jurisdiction of the department of natural resources, which roads are presently or hereinafter shall come under the jurisdiction or control of any individual, public or private corporation, the United States, or state or agency or subdivision thereof other than the department of natural resources, and which roads are thereafter conveyed to, abandoned, forfeited, or otherwise returned to the jurisdiction of or received by the department of natural resources, shall be designated and included as a part of state land management roads under the jurisdiction and control of the department of natural resources.

(3) All roads hereinafter constructed by the department of natural resources, or constructed in conjunction

Chapter 332-40 WAC

GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

WAC

332-40-010	Authority.
332-40-020	Purpose.
332-40-025	Scope and coverage of this chapter.
332-40-030	Integration of SEPA procedures with other department operations.
332-40-035	Statute of limitations.
332-40-037	SEPA public information center.
332-40-040	Definitions.
332-40-045	Responsible official.
332-40-050	Use of the environmental checklist form.
332-40-055	Timing of the EIS process.
332-40-060	Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation.
332-40-100	Summary of information which may be required of a private applicant.
332-40-160	No presumption of significance for nonexempt actions.
332-40-170	Categorical exemptions.
332-40-175	Exemptions and nonexemptions applicable to specific state agencies.
332-40-177	Environmentally sensitive areas.
332-40-180	Exemption for emergency actions.
332-40-190	Use and effect of categorical exemptions.
332-40-200	Lead agency—Responsibilities.
332-40-203	Determination of lead agency—Procedures.
332-40-205	Lead agency designation—Department proposals.
332-40-210	Lead agency designation—Proposals involving both private and public construction activity.
332-40-215	Lead agency designation—Private projects for which the department is the only agency with jurisdiction.
332-40-220	Lead agency designation—Private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
332-40-225	Lead agency designation—Private projects requiring licenses from more than one state agency.
332-40-230	Lead agency designation—Specific proposals.
332-40-240	Agreements as to lead agency status.

332-40-245 Agreements between agencies as to division of lead agency duties.

332-40-260 Dispute as to lead agency determination—Resolution by CEP.

332-40-300 Threshold determination requirement.

332-40-305 Designation of responsible official.

332-40-310 Threshold determination procedures—Environmental checklist.

332-40-315 Actions requiring a threshold determination.

332-40-320 Threshold determination procedures—Initial review of environmental checklist.

332-40-330 Threshold determination procedures—Information in addition to checklist.

332-40-340 Threshold determination procedures—Negative declarations.

332-40-345 Assumption of lead agency status by the department when it is an agency with jurisdiction over a proposal—Prerequisites, effect and form of notice.

332-40-350 Affirmative threshold determination.

332-40-355 Form of declaration of significance/nonsignificance.

332-40-360 Threshold determination criteria—Application of environmental checklist.

332-40-365 Environmental checklist.

332-40-370 Withdrawal of affirmative threshold determination.

332-40-375 Withdrawal of negative threshold determination.

332-40-400 Duty to begin preparation of a draft EIS.

332-40-405 Purpose and function of a draft EIS.

332-40-410 Predraft consultation procedures.

332-40-420 Preparation of EIS by persons outside the department.

332-40-425 Organization and style of a draft EIS.

332-40-440 Contents of a draft EIS.

332-40-442 Special considerations regarding contents of an EIS on a nonproject action.

332-40-444 List of elements of the environment.

332-40-446 Draft EIS—Optional additional elements—Limitation.

332-40-450 Public awareness of availability of draft EIS.

332-40-455 Circulation of the draft EIS—Review period.

332-40-460 Specific agencies to which draft EIS shall be sent.

332-40-465 Agencies possessing environmental expertise.

332-40-470 Cost to the public for reproduction of environmental documents.

332-40-480 Public hearing on a proposal—When required.

332-40-485 Notice of public hearing on environmental impact of the proposal.

332-40-490 Public hearing on the proposal—Use of environmental documents.

332-40-495 Preparation of amended or new draft EIS.

332-40-500 Department responsibilities when consulted as an agency with jurisdiction.

332-40-520 Department responsibilities when consulted as an agency with environmental expertise.

332-40-530 Responsibilities of the department—When predraft consultation has occurred.

332-40-535 Cost of performance of consulted agency responsibilities.

332-40-540 Limitations on responses to consultation.

332-40-545 Effect of no written comment.

332-40-570 Preparation of the final EIS—Contents—When no critical comments received on the draft EIS.

332-40-580 Preparation of the final EIS—Contents—When critical comments received on the draft EIS.

332-40-600 Circulation of the final EIS.

332-40-650 Effect of an adequate final EIS prepared pursuant to NEPA.

332-40-652 Supplementation by the department of an inadequate final NEPA EIS.

332-40-660 Use of previously prepared EIS for a different proposed action.

332-40-690 Use of another lead agency's EIS by the department for the same proposal.

332-40-695 Draft and final supplements to a revised EIS.

332-40-700 EIS combined with existing planning and review processes.

332-40-710 No action for seven days after publication of the final EIS.

332-40-800 Amendments to this chapter.

332-40-830 SEPA public information center.

332-40-840 Application of agency guidelines to ongoing actions.

332-40-910 Severability.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-40-835 Regional SEPA public information centers. [Order 259, § 332-40-835, filed 6/10/76; Order 257, § 332-40-835, filed 5/21/76.] Repealed by 78-05-015 (Order 292), filed 4/11/78. Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810.

WAC 332-40-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 43.21C.110 and chapter 197-10 WAC. [Order 259, § 332-40-010, filed 6/10/76; Order 257, § 332-40-010, filed 5/21/76.]

WAC 332-40-020 Purpose. (1) The purpose of this chapter is to establish the department of natural resources rules interpreting and implementing the State Environmental Policy Act of 1971 (SEPA) and the SEPA guidelines chapter 197-10 WAC.

(2) These guidelines were developed to establish methods and means of implementing SEPA "in a manner which reduces duplicative and wasteful practices, establishes effective and uniform procedures, encourages public involvement, and promotes certainty with respect to the requirements of the act."

(3) These guidelines do not govern department compliance with the National Environmental Policy Act of 1969 (NEPA). When the department is required to perform some element of compliance with NEPA, such compliance will be governed by the applicable federal statute and regulations and not by these guidelines. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-020, filed 4/11/78; Order 259, § 332-40-020, filed 6/10/76; Order 257, § 332-40-020, filed 5/21/76.]

WAC 332-40-025 Scope and coverage of this chapter. (1) It is the intent of the department that compliance with the guidelines of this chapter shall constitute complete procedural compliance with SEPA for any "action" as defined in WAC 332-40-040(2). [Order 259, § 332-40-025, filed 6/10/76; Order 257, § 332-40-025, filed 5/21/76.]

WAC 332-40-030 Integration of SEPA procedures with other department operations. (1) The department policy is to fully consider the potential environmental significance of proposed actions during the decision making process.

(2) To the fullest extent possible, the procedures required by these rules shall be integrated with existing planning and licensing procedures utilized by the department. The department will attempt to utilize these procedures early in the decision-making process and will use these procedures in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort. [Order 259, § 332-40-

030, filed 6/10/76; Order 257, § 332-40-030, filed 5/21/76.]

WAC 332-40-035 Statute of limitations. The responsible official or the applicant may utilize the procedures of RCW 43.21C.080, 43.21C.085, 43.21C.087, for any governmental action, thus limiting the time period in which the department can be challenged for noncompliance with SEPA. [Order 259, § 332-40-035, filed 6/10/76; Order 257, § 332-40-035, filed 5/21/76.]

WAC 332-40-037 SEPA public information center. (1) The department's SEPA public information center will be located in the Supervisor's Office, Room 202, Second Floor of the Public Lands Building in Olympia, Washington.

(2) The department shall transmit the following documents to the department of ecology headquarters office in Olympia:

(a) All draft and final EISs. (See WAC 332-40-460 and 332-40-600)

(b) All final declarations of nonsignificance for which a proposed declaration of nonsignificance has been circulated. (See WAC 332-40-340(7).) [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-037, filed 4/11/78; Order 259, § 332-40-037, filed 6/10/76; Order 257, § 332-40-037, filed 5/21/76.]

WAC 332-40-040 Definitions. The following words and terms have the following meanings for the purposes of this chapter, unless the context indicates otherwise:

(1) Acting agency means an agency with jurisdiction which has received an application for a license, or which is proposing an action.

(2) Action means an activity potentially subject to the environmental impact statement requirements of RCW 43.21C.030 (2)(c) and (2)(d). (See WAC 332-40-170, 332-40-175 and 332-40-180 for activities that are exempted from the threshold determination and environmental impact statement requirements of SEPA and these guidelines.) All actions fall within one of the following subcategories:

(a) Governmental licensing of activities involving modification of the physical environment.

(b) Governmental action of a project nature. This includes and is limited to:

(i) The decision by an agency to undertake any activity which will directly modify the physical environment, whether such activity will be undertaken directly by the agency or through contract with another, and

(ii) The decision to purchase, sell, lease, transfer or exchange natural resources, including publicly owned land, whether or not the environment is directly modified.

(c) Governmental action of a nonproject nature. This includes and is limited to:

(i) The adoption or amendment of legislation, ordinances, rules or regulations which contain standards controlling use or modification of the physical environment;

(ii) The adoption or amendment of comprehensive land use plans or zoning ordinances;

(iii) The adoption of any policy, plan or program which will govern the development of a series of functionally related major actions, but not including any policy, plan or program for which approval must be obtained from any federal agency prior to implementation;

(iv) Creation of, or annexations to, any city, town or district;

(v) Adoptions or approvals of utility, transportation and solid waste disposal rates;

(vi) Capital budgets; and

(vii) Road, street and highway plans.

(3) Agency with expertise means an agency listed in WAC 332-40-465, unless it is also an agency with jurisdiction.

(4) Agency with jurisdiction means an agency from which a nonexempt license is required for a proposal or any part thereof, which will act upon an application for a grant or loan for a proposal, or which proposes or initiates any governmental action of a project or nonproject nature. The term does not include an agency authorized to adopt rules or standards of general applicability which govern the proposal in question, when no license or approval is required for a specific proposal. The term also does not include an agency involved in approving a grant or loan which serves only as a conduit between the primary administering agency and the recipient of the grant or loan. Federal agencies with jurisdiction are agencies of the federal government from which a license is required, or which will receive an application for a grant or loan for a proposal.

(5) Agency or agencies means all state agencies and local agencies as defined in this section. The term does not include any agency or division of the federal government. Whenever a specific agency has been named in these guidelines and the functions of that agency have been transferred to another agency, then the term shall mean the successor agency.

(6) Area manager – Area manager means the individual responsible for the administration of a geographical field unit, as designated by the organization plan of DNR.

(7) CEP means the council on environmental policy. As directed by the legislature, the council on environmental policy ceased to exist on July 1, 1976, and its duties were transferred to the department of ecology (DOE). All reference to CEP in these guidelines should now be read to mean department of ecology.

(8) Chief deputy supervisor means the principle assistant to the supervisor of the department.

(9) Commissioner means the commissioner of public lands who is the administrator of the department of natural resources as established by chapter 43.30 RCW.

(10) Consulted agency means any agency with jurisdiction or with expertise which is requested by the lead agency to provide information during a threshold determination or predraft consultation or which receives a draft environmental impact statement. An agency shall

not be considered to be a consulted agency merely because it receives a proposed declaration of nonsignificance.

(11) County/city means a county, city or town. In this chapter, duties and powers are assigned to a county, city or town as a unit. The delegation of responsibilities among the various departments of a county, city or town is left to the legislative or charter authority of the individual counties, cities or towns.

(12) Declaration of nonsignificance means the written decision by the responsible official of the lead agency that a proposal will not have a significant adverse environmental impact and that therefore no environmental impact statement is required. A form substantially consistent with that in WAC 332-40-355 shall be used for this declaration.

(13) Declaration of significance means the written decision by the responsible official of the lead agency that a proposal will or could have a significant adverse environmental impact and that therefore an environmental impact statement is required. A form substantially consistent with that in WAC 332-40-355 shall be used for this declaration.

(14) Department means the department of natural resources.

(15) Deputy supervisor means one of three individuals subordinate to the supervisor and chief deputy supervisor and responsible for a specific functional part of the department activities, i.e., governmental, proprietary and services.

(16) Division supervisor means the supervisor responsible for a specific functional staff unit, located in Olympia.

(17) Draft EIS means an environmental impact statement prepared prior to the final detailed statement.

(18) EIS means the detailed statement required by RCW 43.21C.030 (2)(c). This term may refer to either a draft or final environmental impact statement, or both, depending upon context.

(19) Environment means, and is limited to, those areas listed in WAC 332-40-444.

(20) Environmental checklist means the department's form number RES 30-1802 (REV) (5-76).

(21) Environmental coordinator means the supervisor's designee responsible for coordinating the department's duties and functions under the State Environmental Policy Act and chapter 197-10 WAC.

(22) Environmental document means every written public document prepared or utilized as a result of the requirements of this chapter.

(23) Environmentally sensitive area means an area designated and mapped by a county/city pursuant to WAC 332-40-177. Certain categorical exemptions do not apply within environmentally sensitive areas.

(24) Final EIS means an environmental impact statement prepared to reflect comments to the draft EIS. It may be a new document, or the draft EIS supplemented by material prepared pursuant to WAC 332-40-570, 332-40-580 or 332-40-695.

(25) Lands covered by water means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, marshes and swamps. Certain categorical exemptions do not apply to lands covered by water.

(26) Lead agency means the agency designated by WAC 332-40-200 through 332-40-270 or 332-40-345. The lead agency is responsible for making the threshold determination and preparing or supervising preparation of the draft and final environmental impact statements.

(27) License means any form of written permission given to any person, organization or agency to engage in any activity, as required by law or agency rule. A license includes all or part of any agency permit, certificate, approval, registration, charter, or plat approvals or rezones to facilitate a particular project. The term does not include a license required solely for revenue purposes.

(28) Licensing means the agency process in granting, renewing or modifying a license.

(29) List of elements of the environment means the list in WAC 332-40-444 which must be attached to every environmental impact statement.

(30) Local agency means any political subdivision, regional governmental unit, district, municipal or public corporation including cities, towns and counties. The term does not include the departments of a city or county.

(31) Major action means any "action" as defined in this section which is not exempted by WAC 332-40-170, 332-40-175 and 332-40-180.

(32) Nonexempt license means any license not exempt from the threshold determination requirements.

(33) Nonproject EIS means an environmental impact statement prepared for a proposal for any governmental action of a nonproject nature as defined under "action" in this section.

(34) Physical environment means, and is limited to, those elements of the environment listed under "physical environment" in WAC 332-40-444(2).

(35) Private applicant means any person or entity, other than an agency as defined in this section, applying for a license from an agency.

(36) Private project means any proposal primarily initiated or sponsored by an individual or entity other than an "agency" as defined in this section.

(37) Proposal means a specific request to undertake any activity submitted to, and seriously considered by, an agency or a decision-maker within an agency, as well as any action or activity which may result from approval of any such request. The scope of a proposal for the purposes of lead agency determination, the threshold determination, and impact statement preparation is further defined in WAC 332-40-060.

(38) Responsible official means that officer or officers, committee, department or section of the lead agency designated by the lead agency's guidelines to undertake its responsibilities as lead agency (see WAC 332-40-045 and 332-40-305).

(39) SEPA means the State Environmental Policy Act of 1971 chapter 43.21C RCW, as amended.

(40) Supervisor means supervisor of the department of natural resources as defined by RCW 43.30.060.

(41) State agency means any state board, commission or department except those in the legislative or judicial branches. The term includes the office of the governor and the various divisions thereof, state universities, colleges and community colleges.

(42) Threshold determination means the decision by a lead agency whether or not an environmental impact statement is required for a proposal. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-040, filed 4/11/78; Order 259, § 332-40-040, filed 6/10/76; Order 257, § 332-40-040, filed 5/21/76.]

WAC 332-40-045 Responsible official. The responsible official for the department shall be designated according to the procedures outlined in WAC 332-40-305; provided, when the natural resources board reviews the decisions of the commissioner or supervisor or their staff, the natural resources board shall also review the applicable checklist and threshold determination prepared by the responsible official.

Moreover, the natural resources board shall be considered the responsible official for any action taken by the harbor line commission or for any other major action initiated by the natural resources board. [Order 259, § 332-40-045, filed 6/10/76; Order 257, § 332-40-045, filed 5/21/76.]

WAC 332-40-050 Use of the environmental checklist form. The environmental checklist available at the department's SEPA information center will be completed for all major actions as a part of the threshold determination procedure and lead agency identification. However, where there is an agreement between the proponent of a non-exempt action (whether a private applicant or an agency which is not the lead agency) and the lead agency that an EIS is required, the completion of the environmental checklist is unnecessary. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-050, filed 4/11/78; Order 259, § 332-40-050, filed 6/10/76; Order 257, § 332-40-050, filed 5/21/76.]

WAC 332-40-055 Timing of the EIS process. (1) The department shall integrate SEPA into its normal processes in such a way that no undue delays are caused by SEPA compliance. The purposes of SEPA are best served by consideration of environmental factors early in the preplanning stages.

(2) The primary purpose of the EIS process is to provide environmental information to governmental decision makers to be considered prior to making their decision. The process should thus be completed before the decisions of an agency commit it to a particular course of action. The actual decision to proceed with many actions may involve a series of individual approvals or decisions. The threshold determination and the EIS, if required,

should ideally be completed at the beginning of this process. In many cases, however, preliminary decisions must be made upon a proposal before the proposal is sufficiently definite to permit meaningful environmental analysis. The department should require completion of the threshold determination and EIS, if required, at the earliest point in the planning and decision making process when the principal features of a proposal and its impacts upon the environment can be reliably identified.

(3) At a minimum, the threshold determination and any required EIS shall be completed prior to undertaking any proposed major action.

(4) The maximum time limits contained in these guidelines for the threshold determination and EIS process do not apply to a proposal for a governmental action when the proponent of the action is also the lead agency.

(5) The environmental checklist should normally be completed when an application is found to be non-exempt. In order to conserve time and avoid misunderstandings, the department's contact person should make the "action" and "exemption" determinations and assist the applicant in completing the checklist. If exempt status is questionable, a checklist should be completed and the environmental coordinator consulted.

(6) In most cases the time required to complete a threshold determination should not exceed fifteen days. The initial review of a completed environmental checklist can usually be completed in a matter of hours. If further information is required to make the threshold determination, the time required will vary, depending upon the nature of the proposal and the information required. When a threshold determination is expected to require more than fifteen days to complete and a private applicant requests notification of the date when a threshold determination will be made, the responsible official shall transmit to the private applicant a written statement as to the expected date of decision.

(7) The department, when it is a consulted agency, shall have a maximum of thirty-five days from the date of listing of the proposal in the "EIS available register" in which to review the draft and forward its comments and information with respect thereto to the lead agency. If the department is a consulted agency with jurisdiction and requires additional time to develop and complete new data on the proposal, a fifteen day extension may be granted by the lead agency. Extensions may not be granted for any other purpose.

(8) There shall be allowed a period of thirty-five days from the date of the listing of the proposal in the "EIS available register" for the public to forward to the department any comments upon or substantive information related to the proposal and the draft EIS.

(9) The department shall prepare a final EIS within seventy-five days of the listing of the proposal in the "EIS available register." The department may extend the time period whenever the proposal is unusually large in scope, or the environmental impact associated with the proposal is unusually complex.

(10) The department shall not take any final action on a project for which an EIS has been required, prior to seven days from the issuance of the final EIS and its

listing in the "EIS available register" maintained at the department's SEPA information center. When appropriate, the responsible official may actively attempt to solicit opinions on the final EIS from citizens and agencies prior to the first major decision. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-055, filed 4/11/78; Order 259, § 332-40-055, filed 6/10/76; Order 257, § 332-40-055, filed 5/21/76.]

WAC 332-40-060 Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation. (1) The proposal considered by the department during the lead agency determination procedure, and by the department during the threshold determination and EIS preparation, shall be the total proposal including its direct and indirect impacts. Whenever the word "proposal" or the term "proposed action" is used in this chapter, the discussion in subsection (2) of this section applies. In considering the environmental impacts of a proposal during the threshold determination and EIS preparation, the discussion in subsection (3) of this section applies.

(2) The total proposal is the proposed action, together with all proposed activity functionally related to it. Future activities are functionally related to the present proposal if:

(a) The future activity is an expansion of the present proposal, facilitates or is necessary to operation of the present proposal; or

(b) The present proposal facilitates or is a necessary prerequisite to future activities.

The scope of the proposal is not limited by the jurisdiction of the department. The fact that future parts of a proposal will require future governmental approvals shall not be a bar to their present consideration, so long as the plans for those future parts are specific enough to allow some evaluation of their potential environmental impacts. The department should be alert to the possibility that a proposal may involve other agencies with jurisdiction which may not be taking any action until sometime in the future.

(3) The impacts of a proposal include its direct impacts as well as its reasonably anticipated indirect impacts. Indirect impacts are those which result from any activity which is induced by a proposal. These include, but are not limited to, impacts resulting from growth induced by the proposal, or the likelihood that the present action will serve as a precedent for future actions. Contemporaneous or subsequent development of a similar nature, however, need not be considered in the threshold determination unless there will be some causal connection between this development and one or more of the governmental decisions necessary for the proposal in question.

(4) The department may divide proposals involving extensive future actions into segments with an EIS prepared for each segment. In such event, the earlier EIS shall describe the later segments of the proposal and note that future environmental analysis will be required for these future segments. The segmentation allowed by

this subsection shall not be used at the threshold determination stage to determine that any segment of a more extensive significant proposal is insignificant; nor shall segmentation be applied to require significant duplication of analysis contained in an earlier EIS.

(5) For proposed projects, such as highways, streets, pipelines or utility lines or systems where the proposed action is related to a large existing or planned network, the department may at its option treat the present proposal as the total proposal, or select only some of the future elements for present consideration in the threshold determination and EIS. These categorizations shall be logical with relation to the design of the total system or network, and shall not be made merely to divide a larger system into exempted fragments. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-060, filed 4/11/78; Order 259, § 332-40-060, filed 6/10/76; Order 257, § 332-40-060, filed 5/21/76.]

WAC 332-40-100 Summary of information which may be required of a private applicant. (1) There are three areas of these guidelines where the department may require information from a private applicant. These are:

- (a) Environmental checklist;
- (b) Threshold determination; and,
- (c) Draft and final EIS.

Further information may be required if the responsible official determines that the information initially supplied was not reasonably adequate to fulfill the purpose for which it was required. An applicant may voluntarily submit, at any time, information beyond that which may be required under these guidelines.

(2) **Environmental checklist.** A private applicant is required to complete an environmental checklist, available at the department's SEPA information center either concurrently with or after filing the application. Explanations for each "yes" and "maybe" answer indicated thereon are required. The department will not require a complete assessment or "mini-EIS" at this stage. (See WAC 332-40-310.)

(3) **Threshold determination.** When the department is the lead agency, it shall make an initial review of a completed checklist without requiring more information from a private applicant. After completing this initial review, the department may require further information from the applicant, including explanation of "no" answers on the checklist. This information shall be limited to those elements on the environmental checklist for which, as determined by the department, information accessible to the department is not reasonably sufficient to evaluate the environmental impacts of the proposal. Field investigations or research by the applicant reasonably related to determining the environmental impacts of the proposal may be required. (See WAC 332-40-330.)

(4) **Draft and final EIS preparation.** The responsible official may at his/her option, require a private applicant to prepare an EIS under the department's direction, at the applicant's expense. Alternatively, the responsible official may require a private applicant to provide data

and information which is not in the possession of the lead agency relevant to any or all areas to be covered by an EIS. A private applicant shall not be required to provide information which is the subject of a predraft consultation request until the consulted agency has responded, or the forty-five days allowed for response by the consulted agency has expired, whichever is earlier. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810, 78-05-015 (Order 292), § 332-40-100, filed 4/11/78; Order 259, § 332-40-100, filed 6/10/76; Order 257, § 332-40-100, filed 5/21/76.]

WAC 332-40-160 No presumption of significance for nonexempt actions. No presumption as to the significance of the impacts upon the environment shall be given to any proposed action merely because it was not exempted. [Order 259, § 332-40-160, filed 6/10/76; Order 257, § 332-40-160, filed 5/21/76.]

WAC 332-40-170 Categorical exemptions. Governmental activities or approvals of activities of the types listed herein are not major actions, and proposals for such activities are exempted from the threshold determination and EIS requirements of SEPA and these guidelines:

(1) **Minor new construction.** The following types of construction shall be exempt except when undertaken wholly or in part on lands covered by water; the exemptions provided by this subsection apply to all licenses required to undertake the construction in question, except when a rezone or any license governing emissions to the air or water is required:

(a) The construction or location of any residential structure of four dwelling units or less.

(b) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering less than 10,000 square feet and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feedlots.

(c) The construction of an office, school, commercial, recreational, service or storage building with less than 4,000 square feet of total floor area, and with associated parking facilities designed for twenty automobiles or less.

(d) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

(e) The construction and/or installation of commercial on-premise signs, and public signs and signals.

(f) The construction or installation of minor road and street improvements such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade separated crossings), grooving, glare screen, safety barriers, energy attenuators, transportation corridor landscaping (including the application of Washington state department of agriculture approved herbicides by licensed personnel for right of way weed

control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660), temporary traffic controls and detours, correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required, adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required, channelization and elimination of sight restrictions at intersections, street lighting, guard-rail and barricade installation, installation of catch basins and culverts, and reconstruction of existing road bed (existing curb to curb in urban locations), including adding or widening of shoulders, addition of bicycle lanes, but not including additional automobile lanes.

(g) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(h) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(i) The construction of a parking lot designed for twenty automobiles or less.

(j) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II, III and IV forest practice under RCW 76.09.050, or regulations promulgated thereunder, except those Class IV forest practices designated by the forest practices board as being special forest practices and therefore subject to SEPA evaluation.

(k) The repair, maintenance or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing.

(l) Grading, excavating, filling, septic tank installation, and landscaping necessary for any building or facility exempted by this subsection, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(m) Additions or modifications to or replacement of any building or facility exempted by this subsection when such addition, modification or replacement will not change the character of the building or facility in a way which would remove it from an exempt class.

(n) The demolition of any structure or facility, the construction of which would be exempted by this subsection, except for structures or facilities with recognized historical significance.

(2) **Water rights.** The following appropriations of water shall be exempt, the exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pump-house reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation:

(a) Appropriations of fifty cubic feet per second or less of surface water for irrigation purposes, when done without a government subsidy.

(b) Appropriations of one cubic foot per second or less of surface water, or of ten cubic feet per second or less of ground water, for any purpose.

(3) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal, or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(4) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire department and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(5) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities, included but not limited to cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities, including but not limited to peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services, including but not limited to detective agencies, merchant and/or

residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities, including but not limited to taxicabs, ambulances, and tow trucks: *Provided*, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution, including but not limited to restaurants, liquor, and meat.

(h) All animal control licenses, including but not limited to pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(6) **Activities of the legislature.** All actions of the state legislature are hereby exempted: *Provided*, That this subsection shall not be construed to exempt the proposing of legislation by any agency.

(7) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized, or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: *Provided*, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs: *Provided*, That construction or real property transactions or the adoption of any policy plan or program for such construction or real property transaction shall not be considered exempt under this subsection.

(8) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(9) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to an authorized public use.

(c) The lease of real property when the use of the property for the term of the lease will remain essentially the same as the existing use, or when the use under the lease is otherwise exempted by this chapter.

(10) **Minor land use decisions.** The following land use decisions shall be exempt:

(a) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, but not including further short subdivision or short platting within a plat or subdivision previously exempted under this subsection.

(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, slope, topography, location or surroundings and not resulting in any change in land use or density.

(c) Classification of land for current use taxation pursuant to chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(11) **Procedural actions.** The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt.

(12) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(13) **Variances under Clean Air Act.** The granting of variances pursuant to RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(14) **Open burning.** Open burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(15) **Water quality certifications.** The granting or denial of water quality certifications pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 USC § 1341) shall be exempt.

(16) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project.

(17) **Information collection and research.** Proposals for basic data collection, research, resource evaluation and the conceptual planning of proposed actions shall be exempt. These may be for strictly information-gathering purposes, or as part of a study leading to a proposal

which has not yet been approved, adopted or funded. This exemption does not include any agency action which commits the agency to proceed with the proposal.

(18) **Utilities.** The utility-related actions listed below shall be exempt: *Provided*, That installation, construction or alteration on lands covered by water shall not be exempt for actions listed below. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration which does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including microwave towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines eight inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; and the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (more than 55,000 volts); and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station or well: *Provided*, That additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds which are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of franchises by agencies to utilities.

(h) All disposals of rights of way by utilities.

(i) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(19) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) All Class I, II, III and IV forest practices as defined by RCW 76.09.050, or regulations promulgated thereunder, except those Class IV forest practices designated by the forest practices board as being special forest practices and therefore subject to SEPA evaluation.

(b) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land which had been subject to a grazing lease within the previous ten years.

(c) Licenses or approvals to remove firewood.

(d) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(e) Issuance of leases for Christmas tree harvesting or brush picking.

(f) Issuance of leases for school sites.

(g) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(h) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(i) Periodic use of chemical or mechanical means to maintain public park and recreational land: *Provided*, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds which are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(j) Issuance of rights of way, easements and use permits to use existing public roads in nonresidential areas.

(20) **Local improvement districts.** The formation of local improvement districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 332-40-170 and 332-40-180.

(21) **Nonactions.** Proposals for activities which are not "actions" as defined in WAC 332-40-040(2) are not subject to the threshold determination and EIS requirements of this chapter.

(22) **Building codes.** The adoption by ordinance of all codes as required by the state building code act (RCW 19.27.030).

(23) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology pursuant to chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (and thus requires approval of the department of ecology pursuant to RCW 70.107.060(4)), SEPA compliance may be limited to those items which differ from state regulations. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-170, filed 4/11/78; Order 259, § 332-40-170, filed 6/10/76; Order 257, § 332-40-170, filed 5/21/76.]

WAC 332-40-175 Exemptions and nonexemptions applicable to specific state agencies. (1) The exemptions in this section relate only to the specific activities identified within the department. The exemptions of this section are in addition to the general exemptions of WAC 332-40-170 and 332-40-180 which apply to the department, unless the general exemptions are specifically made inapplicable by this section.

(2) **Department of natural resources.** The following actions and licenses of the department of natural resources are exempted:

(a) Forest closures, shutdowns and permit suspensions due to extreme or unusual fire hazards.

(b) Operating permits to use power equipment on forest land.

(c) Permits to use fuse on forest land.

(d) Log patrol licenses.

(e) Permits for drilling for which no public hearing is required pursuant to RCW 79.76.070 (geothermal test drilling).

(f) Permits for the dumping of forest debris and wood waste in forested areas.

(g) All timber sales.

(h) Leases for mineral prospecting pursuant to RCW 79.01.616 or RCW 79.01.652, but not including issuance of subsequent contracts for mining. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-175, filed 4/11/78; Order 268, § 332-40-175, filed 7/21/76; Order 259, § 332-40-175, filed 6/10/76; Order 257, § 332-40-175, filed 5/21/76.]

WAC 332-40-177 Environmentally sensitive areas.

(1) The department shall adhere to established environmentally sensitive areas adopted and mapped by the counties and cities as required by WAC 197-10-177.

(2) In these environmentally sensitive areas, certain categorical exemptions may not apply. The selection of exemptions that will not apply may be made from the following list: WAC 332-40-170 (1)(a) through (f) and (i) through (n); (5)(c), (9)(a) through (c); (10)(a); (18)(a) through (d), (f) and (i); and, (19)(d), (f), (h), and (i). All other categorical exemptions apply whether or not the proposal will be located within an environmentally sensitive area. Exemptions selected by an agency which do not apply within the various environmentally sensitive areas must be listed within the SEPA guidelines of any county/city adopting such areas.

(3) Major actions which will be located within environmentally sensitive areas are to be treated no differently than other major actions under this chapter. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in an environmentally sensitive area.

(4) Certain categorical exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-177, filed 4/11/78; Order 259, § 332-40-177, filed 6/10/76; Order 257, § 332-40-177, filed 5/21/76.]

WAC 332-40-180 Exemption for emergency actions. Actions which must be undertaken immediately, or within a time too short to allow full compliance with chapter 197-10 WAC, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-180, filed 4/11/78; Order 259, § 332-40-180, filed 6/10/76; Order 257, § 332-40-180, filed 5/21/76.]

WAC 332-40-190 Use and effect of categorical exemptions. (1) Those activities excluded from the definition of "action" in WAC 332-40-040(2), or categorically exempted by WAC 332-40-170, 332-40-175, and 332-40-180, are exempt from the threshold determination (including completion of the environmental checklist) and EIS requirements of these guidelines and RCW 43.21C.030 (2)(c) and 43.21C.030 (2)(d). No exemption is allowed for the sole reason that actions are considered to be of a "ministerial" nature or of an environmentally regulatory or beneficial nature.

(2) If a department proposal includes a series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not, the proposal is not exempt.

(3) For proposals in (2) above, exempt activities or actions may be undertaken prior to the threshold determination, subject to the timing considerations in WAC 332-40-055. For each such proposal a lead agency shall be determined, and a threshold determination shall be made prior to any major action with respect to the proposal, and prior to any decision by the lead agency irreversibly committing itself to adopt or approve the proposal.

(4) If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have a significant environmental impact, the proposal is not exempt. The determination that a proposal is not exempt because of this subsection shall be made only by the lead agency for that proposal. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-190, filed 4/11/78; Order 259, § 332-40-190, filed 6/10/76; Order 257, § 332-40-190, filed 5/21/76.]

WAC 332-40-200 Lead agency—Responsibilities. When the department is the lead agency, it shall be the only agency responsible for complying with the threshold determination procedures of WAC 332-40-300 through 332-40-390; and the department shall be responsible for the supervision, or actual preparation, of draft EISs pursuant to WAC 332-40-400 through 332-40-495, including the circulation of such statements, and the conduct of any public hearings required by this chapter. The department shall also prepare or supervise preparation of any required final EIS pursuant to WAC 332-40-550 through 332-40-695. [Order 259, § 332-40-200, filed 6/10/76; Order 257, § 332-40-200, filed 5/21/76.]

WAC 332-40-203 Determination of lead agency—Procedures. (1) When the department is the first agency receiving or initiating a proposal for a major action, or for any part of a proposal when the total proposal involves a major action, the department shall determine the lead agency for that proposal. The department shall determine the lead agency for all proposals for a major action it receives, unless the lead agency has been previously determined or the department as the receiver of the proposal is aware that another agency is determining

the lead agency. The lead agency shall be determined by using the criteria in WAC 332-40-205 through 332-40-245.

(2) If the department determines that another agency is the lead agency, it shall mail to such lead agency a copy of the application it received, together with its determination of lead agency and explanation thereof. If the agency receiving this determination agrees that it is the lead agency, it shall so notify the other agencies with jurisdiction. If it does not agree, and the dispute cannot be resolved by agreement, the agencies shall immediately petition CEP for a lead agency determination pursuant to WAC 332-40-260.

(3) If the department determines that it is the lead agency, it shall immediately mail a copy of its determination and explanation thereof to all other agencies with jurisdiction over the proposal. The department shall then proceed, as the lead agency, to the threshold determination procedure of WAC 332-40-300 through 332-40-390. If another agency with jurisdiction objects to the lead agency determination, and the dispute cannot be resolved by agreement, the agencies shall immediately petition CEP for a lead agency determination pursuant to WAC 332-40-260.

(4) When the department receives a lead agency determination to which it objects it shall either resolve the dispute, withdraw its objection, or petition to CEP for a lead agency determination within fifteen days of receiving the determination.

(5) To make the lead agency determination, the department must determine to the best of its ability the other agencies with jurisdiction over the proposal. This can be done by requesting the information from a private applicant, or through consultation with the information centers established pursuant to RCW 90.62.120, within the Environmental Coordination Procedures Act of 1973 (ECPA). [Statutory Authority: RCW 43.21C-.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-203, filed 4/11/78; Order 259, § 332-40-203, filed 6/10/76; Order 257, § 332-40-203, filed 5/21/76.]

WAC 332-40-205 Lead agency designation—Department proposals. For all proposals initiated by the department, the department shall be the lead agency. In the event that two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will be the lead agency. For the purposes of this section, a proposal by the department does not include proposals to license private activity. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-205, filed 4/11/78; Order 259, § 332-40-205, filed 6/10/76; Order 257, § 332-40-205, filed 5/21/76.]

WAC 332-40-210 Lead agency designation—Proposals involving both private and public construction activity. When the total proposal will involve both private and public construction activity, it shall be characterized as either a private or a public project for the purposes of lead agency designation, depending upon whether the

primary sponsor or initiator of the project is an agency or from the private sector. Any project in which department and private interests are too intertwined to make this characterization shall be considered a public project. The lead agency for all public projects shall be determined pursuant to WAC 332-40-205. [Order 259, § 332-40-210, filed 6/10/76; Order 257, § 332-40-210, filed 5/21/76.]

WAC 332-40-215 Lead agency designation—Private projects for which the department is the only agency with jurisdiction. For proposed private projects for which the department is the only agency with jurisdiction, the lead agency shall be the department. [Order 259, § 332-40-215, filed 6/10/76; Order 257, § 332-40-215, filed 5/21/76.]

WAC 332-40-220 Lead agency designation—Private projects requiring licenses from more than one agency, when one of the agencies is a county/city. For proposals for private projects which require nonexempt licenses from more than one agency when at least one of the agencies requiring such a license is a county/city, the lead agency shall be the nonexempt county/city within whose jurisdiction is located the greatest portion of the proposed project area, as measured in square feet. For the purposes of this section, the jurisdiction of a county shall not include the areas within the limits of cities or towns within such county. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-220, filed 4/11/78; Order 259, § 332-40-220, filed 6/10/76; Order 257, § 332-40-220, filed 5/21/76.]

WAC 332-40-225 Lead agency designation—Private projects requiring licenses from more than one state agency. (1) For private projects which require licenses from more than one state agency, but require no license from a county/city, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

- (a) Department of ecology.
- (b) Department of social and health services.
- (c) Department of natural resources.
- (d) Department of fisheries.
- (e) Department of game.
- (f) Utilities and transportation commission.
- (g) Department of motor vehicles.
- (h) Department of labor and industries.

(2) When, due to the provision of subsection (1) of this section, an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program. [Order 259, § 332-40-225, filed 6/10/76; Order 257, § 332-40-225, filed 5/21/76.]

WAC 332-40-230 Lead agency designation—Specific proposals. (1) Notwithstanding the lead agency

designation criteria contained in WAC 332-40-205 through 332-40-225, the department shall be the lead agency for governmental actions initiated by the department including but not limited to such actions as:

- (a) Timber sales.
- (b) Forest land management activities.
- (c) Granting of rights of way.
- (d) Capital projects.
- (e) Recreation site development.

(f) Sale or lease of state-owned lands except when the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters is incidental to a large project for which one or more licenses from other state or local agencies is required. If DNR shares in the implementation of a proposal with one or more agencies, the agencies shall by agreement determine which agency will be the lead agency.

(2) For all private projects relating to the utilization of geothermal resources subject to chapter 79.76 RCW, the lead agency shall be the department.

(3) For all private projects requiring a license or other approval from the oil and gas conservation committee pursuant to chapter 78.52 RCW, the lead agency shall be the department, except that for projects subject to RCW 78.52.125, the EIS shall be prepared in accordance with that section.

(4) For all private activity requiring a license or approval under the Forest Practices Act of 1974, chapter 76.04 RCW, the lead agency shall be the department: *Provided*, That for any proposal which will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the lead agency shall be the county/city requiring the license.

(5) For all private projects requiring a license or lease to use or affect state lands, managed by the department, the lead agency shall be the department: *Provided*, That this subsection shall not apply to the sale or lease of state-owned tidelands, harbor areas or beds of navigable waters, when such sale or lease is incidental to a larger project for which one or more licenses from other state or local agencies is required. [Order 259, § 332-40-230, filed 6/10/76; Order 257, § 332-40-230, filed 5/21/76.]

WAC 332-40-240 Agreements as to lead agency status. Any agency may assume lead agency if all agencies with jurisdiction agree. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-240, filed 4/11/78; Order 259, § 332-40-240, filed 6/10/76; Order 257, § 332-40-240, filed 5/21/76.]

WAC 332-40-245 Agreements between agencies as to division of lead agency duties. The department may by agreement share or divide the responsibilities of lead agency with one or more other agencies through any arrangement mutually agreed upon. In such event, however, the agencies involved shall designate one of them as the nominal lead agency, which shall be responsible for complying with the duties of the lead agency under these guidelines. Other agencies with jurisdiction shall

be notified of the agreement and determination of the nominal lead agency. [Order 259, § 332-40-245, filed 6/10/76; Order 257, § 332-40-245, filed 5/21/76.]

WAC 332-40-260 Dispute as to lead agency determination—Resolution by CEP. In the event that the department is an agency with jurisdiction along with one or more other agencies and is unable to determine which agency is the lead agency under these guidelines, any agency with jurisdiction may petition CEP for a determination. The petition shall clearly describe the proposal in question, and include a list of all licenses and approvals required for the proposal. The petition shall be filed with CEP within fifteen days after receipt by the petitioning agency of the determination to which it objects. Copies of the petition shall be mailed to any private applicant involved, as well as to all other agencies with jurisdiction over the proposal. The applicant and agencies with jurisdiction may file with CEP a written response to the petition within ten days of the date of the initial filing. The CEP shall make its determination in accordance with WAC 197-10-260. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-260, filed 4/11/78; Order 259, § 332-40-260, filed 6/10/76; Order 257, § 332-40-260, filed 5/21/76.]

WAC 332-40-300 Threshold determination requirement. (1) Except as provided in subsection (2) hereof, a threshold determination shall be made for every proposal for a major action. The responsible official designated by the department shall be responsible for making the threshold determination.

(2) The threshold determination requirement may be omitted when:

(a) Both the responsible official and the sponsor (public or private) of a proposal agree that an EIS is required, or

(b) The sponsor of the proposal and the department are the same entity and decides that an EIS is required.

(3) When the threshold determination is omitted, no environmental checklist is required unless a private applicant requests predraft consultation pursuant to WAC 197-10-410 and 332-40-410. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-300, filed 4/11/78; Order 259, § 332-40-300, filed 6/10/76; Order 257, § 332-40-300, filed 5/21/76.]

WAC 332-40-305 Designation of responsible official. (1) Each division supervisor or division supervisor's designee shall review the environmental checklists which cover the division's authority and determine if the department is the lead agency. For actions when the department is not the lead agency, the environmental checklist shall be forwarded to the environmental coordinator for processing according to procedures set forth in the SEPA guidelines. When the department is the lead agency the responsible division supervisor or division supervisor's designee will review the environmental checklists and determine if each proposed action: (a)

Has a nonsignificant effect on the environment, (b) may have a significant adverse effect, or (c) requires additional information before a threshold determination can be made.

(2) If the division supervisor's threshold determination reveals that a proposed action has a nonsignificant effect, a proposed or final declaration of nonsignificance shall be prepared according to the procedures in WAC 332-40-340. The proposed or final declaration of nonsignificance is placed in the file jacket and a copy forwarded to the environmental coordinator.

(3) If the division supervisor determines that the proposed action may have a significant adverse environmental effect, the checklist and determination together with any supporting data is forwarded to the respective deputy supervisor.

(4) The deputy supervisor examines the checklist and determination and sends any comments and recommendations to the chief deputy supervisor.

(5) The chief deputy supervisor examines the checklist, determination and recommendation and sends any comments and recommendations to the supervisor.

(6) The supervisor examines the checklist, determination and recommendations and decides whether or not an environmental impact statement is needed.

(7) If the decision by the supervisor is affirmative, (a declaration of sig) the preparation of a draft environmental impact statement begins and the environmental coordinator enters this in the environmental impact statement preparation register at the DNR-SEPA public information center.

(8) If the decision by the supervisor is negative, the process for a declaration of nonsignificance is initiated.

(9) When the natural resources board reviews decisions of the commissioner-supervisor or department staff, the natural resources board shall also review the respective environmental checklist and threshold determination. [Order 259, § 332-40-305, filed 6/10/76; Order 257, § 332-40-305, filed 5/21/76.]

WAC 332-40-310 Threshold determination procedures—Environmental checklist. (1) An environmental checklist substantially in the form provided by the department shall be completed for any proposed major action before making the threshold determination. Every "yes" and "maybe" answer on the checklist shall be explained. Persons completing the checklist may provide explanations of "no" answers. Persons filling out an environmental checklist may make reference to studies or reports which are available to the department. For department administered licenses, the applicant shall be required to complete the environmental checklist and the checklist attached to the application. For department initiated actions, the checklist will be completed by the area manager or the area manager's designee unless a division has retained the option of completing the environmental checklist at the division level.

(2) No environmental checklist or threshold determination is required for proposals that are exempted by WAC 332-40-170, 332-40-175 and 332-40-180. [Statutory Authority: RCW 43.21C.120, WAC 197-10-

800 and 197-10-810. 78-05-015 (Order 292), § 332-40-310, filed 4/11/78; Order 259, § 332-40-310, filed 6/10/76; Order 257, § 332-40-310, filed 5/21/76.]

WAC 332-40-315 Actions requiring a threshold determination. The following list of actions requires the completion of an environmental checklist by the designated entity for compliance with the threshold determination requirements of the SEPA guidelines chapter 197-10 WAC.

(1) Geology and earth resources

Surface mining permits (by applicant).

Oil and gas drilling permits (by the applicant).

Geothermal drilling permits (by the applicant). Except when drilling a core hole for the purpose of gathering geothermal data.

(2) Forest land management

Class IV-Special forest practices on state lands (by the area manager).

(3) Timber sales

Timber sales and forest product sales designated by the forest practices board as being class IV special forest practices (by the area manager).

Road rights of way across state land requiring new construction when not associated with a forest practice (by the area manager).

Utility rights of way for transmission but not distribution (by the area manager).

Exchanges (by the area manager).

(4) Lands

Land sales.

New grazing leases covering more than one section (by the area manager).

New share crop leases covering more than 160 acres (by the area manager).

New agricultural leases covering more than 160 acres (by the area manager).

New commercial leases (by the area manager).

New communication site leases (by the area manager).

New leases for private recreation sites when designed specifically for ATV's or containing more than 12 campsites (by the area manager).

(5) Marine land management

New general purpose leases (by the division supervisor).

New sewer outfall leases (by the division supervisor).

New mining contracts (by the division supervisor).

New booming leases (by the division supervisor).

New dredge spoil disposal sites (by the division supervisor).

New oyster leases (by the division supervisor).

New clam leases (by the division supervisor).

New oil and gas leases (by the division supervisor).

New harbor area leases (by the division supervisor).

(6) Recreation

Recreation sites constructed specifically for ATV's (by the area manager).

All trail construction.

Snowmobile site construction.

(7) Forest practices

Class IV-Special forest practices on private land subject to department approval (by the applicant).

See WAC 197-10-230(4).

(8) Engineering

Capital projects (by the area manager initiating the project).

Road construction when not associated with a forest practice (by the area manager).

(9) Action by the harbor line commission. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-315, filed 4/11/78; Order 259, § 332-40-315, filed 6/10/76; Order 257, § 332-40-315, filed 5/21/76.]

WAC 332-40-320 Threshold determination procedures--Initial review of environmental checklist. The department when it is the lead agency shall conduct an initial review of the environmental checklist for the proposal together with any supporting documentation. This initial review shall be made without requiring further information from the applicant. In making this initial review, the department shall independently evaluate each item on the checklist and indicate the results of this evaluation. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-320, filed 4/11/78; Order 259, § 332-40-320, filed 6/10/76; Order 257, § 332-40-320, filed 5/21/76.]

WAC 332-40-330 Threshold determination procedures--Information in addition to checklist. (1) The threshold determination by the department must be based upon information reasonably sufficient to determine the environmental impact of a proposal. If, after its initial review of the environmental checklist, the department determines the information available to it is not reasonably sufficient to make this determination, one or more of the following may be initiated:

(a) For private projects, the applicant may be required to furnish further information. This additional information shall be limited to the subjects on the environmental checklist. An applicant may be required to provide explanations of any "no" answers to questions on the checklist.

(b) The department may initiate an environmental analysis, using department specialists to conduct physical investigations on the subject property to provide additional information.

(i) When an area manager or division supervisor determines that the available information concerning a proposed action is not adequate to make a threshold determination, an environmental analysis may be requested.

(ii) Environmental analysis is prepared by department staff environmental specialists. An analysis consists of an on site inspection for actions of a project nature and the preparation of a written report identifying possible adverse environmental impacts and the measures necessary for their mitigation or elimination.

(iii) The division supervisor or area manager must have approval, for the environmental analysis, from the

deputy supervisor whose area of accountability covers the proposed action necessitating the environmental analysis.

(c) The department may consult with other agencies with jurisdiction over the proposal, requesting substantive information as to potential environmental impacts of the proposal which lie within the area of expertise of the particular agency so consulted. Agencies so consulted shall respond in accordance with the requirements of WAC 332-40-500 through 332-40-540.

(2) When the lead agency obtains information reasonably sufficient to assess the adverse environmental impacts of the proposal, it shall immediately make the threshold determination. In the event that the further investigations authorized by this section do not provide information reasonably sufficient to assess any potential adverse environmental impacts of the proposal, an EIS shall be prepared. [Statutory Authority: RCW 43.21C-.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-330, filed 4/11/78; Order 259, § 332-40-330, filed 6/10/76; Order 257, § 332-40-330, filed 5/21/76.]

WAC 332-40-340 Threshold determination procedures—Negative declarations. (1) In the event the department determines a proposal will not have a significant adverse impact on the quality of the environment, it shall prepare a proposed or final declaration of nonsignificance, as appropriate, substantially in the form provided in WAC 332-40-355.

(2) The department shall prepare a final declaration of nonsignificance for all proposals except for those listed in subsection (3) below.

(3) A department making a threshold determination of nonsignificance for any of the following proposals shall prepare a proposed declaration of nonsignificance, and comply with the requirements of subsection (4) through (7) below prior to taking any further action on the proposal:

(a) Proposals for which there is another agency with jurisdiction.

(b) Proposals involving demolition of any structure or facility not exempted by WAC 332-40-170 (1)(n) or 332-40-180.

(c) Proposals involving issuance of clearing or grading permits not exempted by WAC 332-40-170, 332-40-175 or 332-40-180.

(4) The department shall issue all proposed declarations of nonsignificance by sending the proposed declaration and environmental checklist to other agencies with jurisdiction and to the SEPA public information center of the department.

(5) Any person or agency may submit written comments on the proposed declaration of nonsignificance to the department within fifteen days from the date of its issuance. The department shall take no further action on the proposal which is the subject of the proposed declaration of nonsignificance for fifteen days from the date of its issuance. If comments are received, the department shall reconsider its proposed declaration; however, the

department is not required to modify its proposed declaration of nonsignificance to reflect the comments received.

(6) After the fifteen day time period, and after considering any comments, the department shall adopt its proposed declaration as a "final declaration of nonsignificance," determine that the proposal is significant, or utilize the additional information gathering mechanisms of WAC 332-40-330(1).

(7) When a final declaration of nonsignificance results from a proposed declaration of nonsignificance, that final declaration of nonsignificance shall be sent to the department of ecology headquarters office in Olympia. The department of ecology will list it on the "SEPA register" as specified in WAC 197-10-831. This subsection shall not apply to proposed declarations of nonsignificance, to final declarations of nonsignificance issued in accordance with WAC 197-10-340(2) or to final declarations of nonsignificance made under the "agreement with other agency" provision of WAC 197-10-340 (3)(a). Checklists need not be sent.

(8) Issuance of proposed and final declarations of nonsignificance completes the procedural requirements of these guidelines unless another agency with jurisdiction assumes lead agency duties and responsibilities pursuant to WAC 332-40-345. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-340, filed 4/11/78; Order 259, § 332-40-340, filed 6/10/76; Order 257, § 332-40-340, filed 5/21/76.]

WAC 332-40-345 Assumption of lead agency status by the department when it is an agency with jurisdiction over a proposal—Prerequisites, effect and form of notice.

(1) When the department is an agency with jurisdiction over a proposal, upon review of a proposed declaration of nonsignificance, it may transmit to the initial lead agency a completed "notice of assumption of lead agency status." This notice shall be substantially similar to that described in subsection (4) below. Assumption of lead agency status, shall take place only within fifteen days of issuance of the proposed declaration of nonsignificance as provided for in WAC 332-40-340.

(2) The affirmative threshold determination by the department shall be based only upon information contained in the environmental checklist attached to the proposed declaration of nonsignificance transmitted by the first lead agency and any other information possessed by the department relative to the matters contained in the environmental checklist.

(3) As a result of transmitting a completed form of the notice contained in subsection (4) below and attached declaration of significance, the department shall become the "new" lead agency and shall expeditiously prepare a draft and a final EIS. In addition, all other responsibilities and authority of a lead agency under this chapter shall be transferred to the department.

(4) The form of "notice of assumption of lead agency status" is as follows:

FORM OF NOTICE OF ASSUMPTION OF LEAD AGENCY STATUS

Description of Proposal
Proponent
Location of Proposal
Initial Lead Agency
New Lead Agency

This proposal was determined by the initial lead agency to have no significant adverse impact upon the environment, according to the proposed declaration of nonsignificance dated ... A review of the information relative to the environmental checklist has been made by the department of natural resources and in its opinion an EIS is required for the proposal.

Responsible Official
Position/Title
Address/Phone
Date Signature

(5) A completed form of notice, together with a declaration of significance, shall be transmitted to the initial lead agency, any other agencies with jurisdiction and the proponent of the proposal.

(6) The department may still comment critically upon a proposed declaration of nonsignificance without assuming lead agency status. The department has not assumed lead agency status unless a notice substantially in the form of subsection (4) hereof is completed and transmitted by that agency.

WAC 332-40-350 Affirmative threshold determination. (1) In the event the department determines that the proposal will have a significant adverse effect upon the quality of the environment, it shall prepare a declaration of significance using the form in WAC 332-40-355.

(2) If the additional information gathering mechanisms of WAC 332-40-330 have been utilized, and the department reasonably believes that the proposal could have a significant adverse impact, the affirmative threshold shall be made.

43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-350, filed 4/11/78; Order 259, § 332-40-350, filed 6/10/76; Order 257, § 332-40-350, filed 5/21/76.]

WAC 332-40-355 Form of declaration of significance/nonsignificance. (1) A declaration substantially in the form set forth in subsection (2) of this section shall be used for all declarations of significance and proposed and final declarations of nonsignificance.

(2) The form is as follows:

FORM FOR (PROPOSED/FINAL) DECLARATION OF (SIGNIFICANCE/NONSIGNIFICANCE)

Description of Proposal
Proponent
Location of Proposal
Lead Agency

This proposal has been determined to (have/not have) a significant adverse impact upon the environment. An EIS (is/is not) required under RCW 43.21C.030 (2)(c). This decision was made after review by the department of natural resources of a completed environmental checklist and other information on file with the department.

Responsible Official
Position/Title
Date Signature

(3) If the form is for a declaration of environmental significance, the department may add to the information contained in subsection (2) of this section a listing of those environmental impacts which led to the declaration, together with a brief explanation of what measures, if any, could be taken to prevent or mitigate the environmental impacts of the proposal to such an extent that the department would withdraw its declaration and issue a (proposed/final) declaration of nonsignificance.

WAC 332-40-360 Threshold determination criteria--Application of environmental checklist. (1) The department shall apply the questions in the environmental checklist to the total proposal, including its indirect effects (see WAC 332-40-060), to determine whether the proposal will result in a significant adverse impact upon the quality of the environment.

(2) The questions in the environmental checklist are not weighted. While some "yes" answers to several of these questions are likely, the proposal may still not have a significant adverse impact. However, depending upon the nature of the impact and location of the proposal, a single affirmative answer could indicate a significant adverse impact. The nature of the existing environment is an important factor. The same project may have a significant adverse impact in one location, but not in another location. The absolute quantitative effects of the proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment. The department shall also be alert to the possibility that several marginal impacts when taken together will result in a significant adverse environmental impact. For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted. If, after the department has utilized the additional information gathering mechanisms of WAC 332-40-330, the impacts of the proposal are still in doubt, and there exists a reasonable belief by the department that the proposal could have a significant adverse impact, an EIS is required.

(3) It should also be remembered that proposals designed to improve the environment (such as sewage treatment plants or pollution control requirements) may also have adverse environmental impacts. The question at the threshold determination level is not whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather if the proposal involves any significant adverse impacts upon the quality of the environment. If it does, an EIS is required. No test of balance shall be applied at the threshold determination level.

(4) Additional research or field investigations by either the department or by the private applicant is required when the information available to the department is not sufficient for it to make a determination of the potential adverse environmental impacts (see WAC 332-40-330). It is expected, however, that many proposals can be evaluated entirely through an office review (see WAC 332-40-320) of the environmental checklist, and that for other proposals, the majority of the questions in the environmental checklist may be answered in the same manner. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-360, filed 4/11/78; Order 259, § 332-40-360, filed 6/10/76; Order 257, § 332-40-360, filed 5/21/76.]

WAC 332-40-365 Environmental checklist. The department shall use an environmental checklist, form number RES 30-1802 (REV) (5-76). The questions appearing in the environmental checklist are exclusive, and considerations which do not appear in it or in WAC 332-40-360 shall not be used in making a threshold determination. This checklist does not supersede or void application forms required under any other federal or state statute or local ordinance, but rather is supplemental. [Statutory Authority: RCW 43.21C.120, WAC

197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-365, filed 4/11/78; Order 259, § 332-40-365, filed 6/10/76; Order 257, § 332-40-365, filed 5/21/76.]

WAC 332-40-370 Withdrawal of affirmative threshold determination. If at any time after the issuance of a declaration of significance, the proponent modifies the proposal so that, in the judgment of the department, all significant adverse environmental impacts which might result are eliminated, the declaration of significance shall be withdrawn and a declaration of nonsignificance issued instead. If the proponent of a proposal is a private applicant, the proposal shall not be considered modified until all license applications for the proposal are revised to reflect the modification or other binding commitment is made by the applicant. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-370, filed 4/11/78; Order 259, § 332-40-370, filed 6/10/76; Order 257, § 332-40-370, filed 5/21/76.]

WAC 332-40-375 Withdrawal of negative threshold determination. (1) Except after a nonexempt license has been issued for a private project, the department may withdraw any proposed or final declaration of nonsignificance when new information becomes available to it indicating that the proposal may have significant adverse environmental impacts.

(2) The department may withdraw any proposed or final declaration of nonsignificance at any time when:

(a) The proposal has been modified after the threshold determination, and such modification may cause the proposed action to have significant adverse environmental impacts, or

(b) The negative threshold determination was procured by misrepresentation or lack of full disclosure by the proponent of the proposal.

(3) Whenever a negative threshold determination is withdrawn pursuant to this section, the department shall immediately reevaluate the proposal and make a revised threshold determination pursuant to WAC 332-40-300 through 332-40-360.

(4) Whenever a final declaration of nonsignificance has been withdrawn for one of the reasons in subsection (2) hereof, and the department upon reevaluation determines that the proposal will have significant adverse environmental impacts, the department will transmit a declaration of significance to the agencies with jurisdiction. [Order 259, § 332-40-375, filed 6/10/76; Order 257, § 332-40-375, filed 5/21/76.]

WAC 332-40-400 Duty to begin preparation of a draft EIS. After compliance with WAC 332-40-350, relating to preparation of a declaration of significance and the listing of the proposal in the "EIS in preparation register," the department shall prepare the draft and final EIS in compliance with WAC 332-40-410 through 332-40-695. [Order 259, § 332-40-400, filed 6/10/76; Order 257, § 332-40-400, filed 5/21/76.]

WAC 332-40-405 Purpose and function of a draft EIS. (1) The principal purpose of the draft EIS document is to transmit information concerning a proposed governmental action and the alternatives to that action to public officials, project sponsors, and interested citizens. While the contents of a draft EIS may span a wide spectrum of issues, the focus of the document is upon the following:

(a) The assessment of the adverse impacts upon the environment which may result from the proposed action or its alternatives, and

(b) An analysis of measures which may be taken to mitigate or eliminate those adverse impacts.

(2) Another principal function to be served by the draft EIS process is to facilitate the transmittal to the department from other governmental agencies and interested citizens substantive information concerning the adverse impacts upon the environment discussed inadequately or erroneously in the draft EIS. The draft EIS process also provides an opportunity for reviewers of the document to bring to the attention of the department any issue of potential environmental concern which should be explored by the department prior to the issuance of a final EIS.

(3) The purpose of an EIS is better served by short, concise documents containing summaries of, or reference to, technical data and avoiding unnecessarily detailed information. The volume of an EIS does not bear on its adequacy. Larger documents may even hinder the decision-making process. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-405, filed 4/11/78; Order 259, § 332-40-405, filed 6/10/76; Order 257, § 332-40-405, filed 5/21/76.]

WAC 332-40-410 Predraft consultation procedures.

(1) Predraft consultation occurs when the department consults with another agency with jurisdiction or expertise prior to completion of the draft EIS. Predraft consultation with another agency on proposals for private projects shall only be initiated by the department when requested by a private applicant participating in the preparation of the draft EIS. Predraft consultation with another agency on public proposals may be initiated at the option of the department.

(2) Predraft consultation is begun when the department sends to the consulted agency a packet of the following material related to the proposal:

(a) Any application for licenses for the proposal possessed by the department.

(b) A copy of the environmental checklist required by WAC 332-40-310, as reviewed pursuant to WAC 332-40-320.

(c) Any information in addition to the checklist resulting from application of WAC 332-40-330.

(d) Any other information deemed relevant to the proposal by the department such as:

(i) Prior EISs;

(ii) Portions of applicable plans or ordinances; or,

(iii) Prior scientific studies applicable to the site.

(3) Agencies so consulted will have forty-five days from receipt of the packet to respond in writing to the department. The required contents of the consulted agency response are governed by WAC 332-40-500 through 332-40-540.

(4) The department shall incorporate the relevant information received from other agencies during the predraft consultation stage into the draft EIS, by either summarizing the major findings which are contained in each of the consulted agency's responses or utilizing all of the data received. In the event the department disagrees with any conclusion expressed in the information received from the consulted agency, the conclusion shall be set forth together with the position of the department. The information required by this subsection may be placed wherever in the draft EIS the department deems most appropriate. There is no requirement that either the draft or final EIS include responses to predraft consultation in a separate "response" section. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-410, filed 4/11/78; Order 259, § 332-40-410, filed 6/10/76; Order 257, § 332-40-410, filed 5/21/76.]

WAC 332-40-420 Preparation of EIS by persons outside the department.

(1) Preparation of the EIS is the responsibility of the department, by or under the direction of its responsible official. No matter who participates in the preparation of the EIS, it is nevertheless the EIS of the responsible official of the department. The responsible official, prior to distributing the draft EIS, shall be satisfied that it complies with these guidelines and the guidelines of the department.

(2) An EIS may be prepared by a private applicant or his agent, or by an outside consultant retained by either a private applicant or the department. The responsible official within the department shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document. The use of consultants must have advance approval of the supervisor.

(3) If a person other than the department is preparing the EIS, the responsible official will coordinate any predraft consultation procedures so that the individual preparing the EIS immediately receives all substantive information submitted by consulted agencies. The responsible official shall also attempt to obtain any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any private party preparing an EIS access to all public records of the department which relate to the subject matter of the EIS, pursuant to chapter 42.17 RCW (Public Disclosure and Public Records Law; Initiative 276, 1973).

(4) Unless funds are appropriated by the legislature specifically for EIS preparation, all EIS required for projects shall be prepared at the applicant's expense.

(5) The provisions of this section apply to both the draft and final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-420, filed 4/11/78; Order 259, § 332-40-420, filed 6/10/76; Order 257, § 332-40-420, filed 5/21/76.]

WAC 332-40-425 Organization and style of a draft EIS. (1) The required contents of a draft EIS for proposals of both a project and nonproject nature are set forth in WAC 332-40-440. The contents of a draft EIS prepared pursuant to that section shall be organized as set forth in subsections (2) and (3) of this section.

(2) Each draft EIS shall begin with an introduction, table of contents, distribution list, summary, and a description of the proposed action. The information contained in each section shall conform to the applicable requirements set forth in WAC 332-40-440(1) through 332-40-440(6). Organization variation is not permitted for these portions of the draft EIS.

(3) The organization and style of the remaining content of the EIS may be varied, at the option of the department, from the format set forth in WAC 332-40-440(7) through 332-40-440(14): *Provided*, That all of the subject matters required by WAC 332-40-440 shall be contained somewhere within the draft EIS.

(4) When the department that prepares a draft EIS it should keep in mind that the purpose of a draft EIS is to aid decision-makers in considering the significant environmental impacts of their decisions. This purpose is not served by EISs which are excessively detailed and overly technical. Clarity and conciseness of presentation are of crucial importance in ensuring that EISs prepared under these guidelines are considered and actually utilized in decision-making processes. [Order 259, § 332-40-425, filed 6/10/76; Order 257, § 332-40-425, filed 5/21/76.]

WAC 332-40-440 Contents of a draft EIS. (1) The following subsections set forth the required contents of a draft EIS: *Provided*, That where the department is preparing a draft EIS in order to satisfy the requirements of NEPA, as well as SEPA, and the regulations of the applicable federal agency require items in addition to that set forth below, then the contents of the draft EIS may be modified as necessary to meet the requirements of that federal agency.

(2) **Introduction.** The following information shall be briefly given at the beginning of the draft EIS:

(a) Action sponsor, and a brief (one or two sentence) description of the nature of the proposal and its location (street address, or nearest crossroads or cross-streets).

(b) Lead agency, responsible official, and the name and address of a contact person to whom comments, information and questions may be sent.

(c) Authors and principal contributors to the draft EIS and the nature or subject area of their contribution.

(d) List of all licenses which the proposal is known to require. The responsible official shall attempt to make this list as complete and specific as possible. Licenses shall be listed by name and agency.

(e) Location of EIS background data.

(f) Cost to the public for a copy of the EIS pursuant to chapter 42.17 RCW.

(g) Date of issue of the draft EIS.

(h) Dates by which consulted agency and public comments must be received to be incorporated into the final EIS.

(3) **Table of contents.**

(4) **Distribution list.** The draft EIS shall include a list of the names of all agencies, federal agencies, organizations and persons to whom the draft EIS will be sent upon publication (see WAC 332-40-460).

(5) **Summary of the contents of the draft EIS.** Each draft EIS shall contain a summary of its contents as an aid to the agency decision-makers. The lead agency is to bear in mind that agencies other than the lead agency may be utilizing the EIS as an aid in decision-making. Therefore, care should be taken to ensure that the scope of the summary and the EIS is sufficiently broad to be useful to those other agencies being requested to license or approve a proposal. The summary shall contain only a short restatement of the main points discussed in the EIS for each of the subjects covered. In the event impacts cannot be predicted with certainty, the reason for uncertainty together with the more likely possibilities should be concisely stated. The summary shall include a brief description of the following:

(a) The proposal, including the purpose or objectives which are sought to be achieved by the sponsor.

(b) The direct and indirect impacts upon the environment which may result from the proposal.

(c) The alternatives considered, together with any variation in impacts which may result from each alternative.

(d) Measures which may be effected by the applicant, lead agency, or other agency with jurisdiction to mitigate or eliminate adverse impacts which may result from the proposal.

(e) Any remaining adverse impacts which cannot or will not be mitigated.

(6) **Description of the proposal.** The draft EIS shall include a description of the total proposal, including, but not limited to, the following:

(a) The name of the proposal and sponsors.

(b) The location of the project, or area affected by a nonproject action, including an address, if any, and a legal description: *Provided*, That where the legal description is by metes and bounds, or is excessively lengthy, a map, in lieu of a legal description, shall be included which enables a lay person to precisely understand the location of the proposal.

(c) Reference to the file numbers, if known, of any other agencies involved so the proposal's location may be identified with precision by the consulted agency.

(d) If the proposal involves phased construction, the timing of each phase should be identified. If later phases of the proposal are expected to require future environmental analyses, these should be identified.

(e) A description of the major physical and engineering aspects of the proposal. This description should be

tailored to the environmental impacts, with those physical aspects of the proposal causing the greater impacts being given the more detailed description. Inclusion of detailed engineering drawings and technical data should normally be avoided. Material of this nature should be retained in agency files and supplied to consulted agencies upon request.

(f) A brief description of existing comprehensive land use plans and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.

(g) Within the general guidelines of this subsection, the lead agency has discretion to determine the content and level of detail appropriate to adequately describe the proposal.

(7) **Existing environmental conditions.** This section shall include the following:

(a) A general assessment of the existing environment, covering those areas of the environment listed in WAC 332-40-444.

(i) The level of detail used in presenting the existing environment should be proportionate to the impacts the proposal will have if approved.

(ii) Areas of the environment which are not relevant to the identified impacts need only be mentioned generally, or not at all.

(iii) Inventories of the species of flora and fauna present on the site should be avoided. Those species and habitats which may be significantly affected should be emphasized.

(iv) This subsection shall be brief, nontechnical, and easily understandable by lay persons, and provide the necessary background for understanding the proposal's impacts.

(b) Specific reference shall be made to those inventories and data studies which provided the informational source for part or all of the contents of this subsection.

(8) **The impact of the proposal on the environment.** The following items shall be included in this subsection:

(a) The known impacts resulting from the proposal within any element of the environment listed in WAC 332-40-444, the effects of which are either known to be, or which may be significant (whether beneficial or adverse), shall be discussed in detail; impacts which are potential, but not certain to occur, shall be discussed within reason.

(b) Elements of the environment which will not be significantly affected shall be marked "N/A" (not applicable) as set forth in WAC 332-40-444(1).

(c) Direct and indirect impacts of the total proposal, as described in WAC 332-40-440 (8)(a) shall be examined and discussed (for example, cumulative and growth-inducing impacts).

(d) The possibility that effects upon different elements of the environment will interrelate to form significant impacts shall be considered.

(9) **The relationship between local short-term uses of man's environment and maintenance and enhancement of long-term productivity.** The following items shall be included in this subsection:

(a) An identification of the extent to which the proposal involves trade-offs between short-term gains at the expense of long-term environmental losses.

(i) The phrases "short-term" and "long-term" do not refer to any fixed time periods, but rather are to be viewed in terms of the significant environmental impacts of the proposal.

(ii) Impacts which will narrow the range and degree of beneficial uses of the environment or pose long-term risks to human health shall be given special attention.

(b) A discussion of the benefits and disadvantages of reserving for some future time the implementation of the proposal, as opposed to possible approval of the proposal at this time.

(i) The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations.

(ii) Particular attention should be given to the possibility of foreclosing future options or alternatives by implementation of the proposal.

(10) **Irreversible or ir retrievable commitments of resources.** The following items shall be included in this subsection:

(a) An identification of all substantial quantities of natural resources, including sources of energy and non-renewable materials, which will be committed by the proposal on a permanent or long-term basis. Commitment of natural resources also includes the lost opportunities to make other uses of the resources in question.

(b) This subsection may be integrated with subsection (9) above in order to more usefully present the information required by both sections.

(11) **Adverse environmental impacts which may be mitigated.** The following items shall be included in this subsection:

(a) A description of reasonable changes to the proposal which may avoid, mitigate or reduce the risk of any adverse environmental impacts.

(b) Energy conservation measures, including more efficient use of conventional techniques (e.g., insulation) as well as newer methods.

(c) Each alternative discussed in (a) and (b) above shall be evaluated in terms of its effect upon the environment, its technical feasibility, and its economic practicability.

(12) **Alternatives to the proposal.** This subsection shall include the following items:

(a) A description and objective evaluation of any reasonable alternative action which could feasibly attain the objective of the proposal.

(i) Reasonable alternatives shall include any action which might approximate the proposal's objective, but at a lower environmental cost or decreased level of environmental degradation.

(ii) Reasonable alternatives may be those which are capable of being effected by either the lead agency or other agency having jurisdiction.

(b) The "no-action" alternative shall be evaluated and compared to the other alternatives.

(c) The adverse environmental effects of each alternative shall be identified.

(d) The analysis of alternatives should be sufficiently detailed to permit a comparative evaluation of each alternative and the proposal as described in subsection (6) of this section.

(e) When the proposal is for a private project on a specific site, the alternatives considered shall be limited to the "no-action" alternative plus other reasonable alternative means of achieving the objective of the proposal on the same site or other sites owned or controlled by the same proponent (which may include only alterations for mitigation under subsection (11) of this section). This limitation shall not apply when the project proponent is applying for a rezone or contract rezone.

(f) Subsection (12) may be integrated with subsection (11) of this section in order to more usefully present the information required by both subsections.

(g) The use of the term "reasonable" is intended to limit both the number and range of alternatives that shall be described and evaluated in this subsection, as well as the amount or level of detail which the EIS shall employ for each alternative that is discussed and evaluated.

(13) **Unavoidable adverse impacts.** This subsection shall include the following items:

(a) A listing of those impacts included in subsection (8) of this section which are adverse but cannot, or will not, be mitigated or avoided.

(b) For any impact discussed in subsection (8) of this section which is determined to be nonadverse, the rationale for such determination shall be clearly stated.

(c) (Optional) A discussion of the relationship between the costs of the unavoidable adverse environmental impacts and the expected beneficial environmental impacts which will result from the implementation of the proposed action. [Statutory Authority: RCW 43.21C-.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-440, filed 4/11/78; Order 259, § 332-40-440, filed 6/10/76; Order 257, § 332-40-440, filed 5/21/76.]

WAC 332-40-442 Special considerations regarding contents of an EIS on a nonproject action. (1) WAC 332-40-440 applies to the contents of a draft EIS for a nonproject action. The department, however, has greater flexibility in its approach to achieving compliance with the requirements of WAC 332-40-440 in writing an EIS for nonproject actions, because normally less specific details are known about the proposal and any implementing projects, as well as the anticipated impacts on the environment.

(2) The department should be aware that typically in developing and reviewing proposals for nonproject actions the range of alternatives is broader than in developing a proposal for a project action (which is often narrowed to a specific location and design). The proposal should be described in a manner which encourages consideration of a number of alternative methods of accomplishing its objective. For example, an objective of an agency's proposal should be stated as "the facilitation

of the movement of people from point A to point B" rather than "the widening of an urban arterial in order to accommodate additional privately-owned passenger vehicles." [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-442, filed 4/11/78; Order 259, § 332-40-442, filed 6/10/76; Order 257, § 332-40-442, filed 5/21/76.]

WAC 332-40-444 List of elements of the environment. (1) Every EIS shall have appended to it a list of the elements of the environment in subsection (2), (3) and (4) of this section. The department shall place "N/A" ("not applicable") next to an item when the proposal, including its indirect impacts, will not significantly affect the area (or subarea) of the environment in question. Items marked "N/A" need not be mentioned in the body of the EIS. Subsections (2) and (3) of this section correspond in subject matter to the questions contained in the environmental checklist used for threshold determination, and the questions in the checklist may be used to interpret this outline listing. (Provided, this list of elements need not be appended to an EIS being prepared to satisfy both the National Environmental Policy Act and SEPA.)

(2) ELEMENTS OF THE PHYSICAL ENVIRONMENT.

(a) **Earth.**

- (i) Geology.
- (ii) Soils.
- (iii) Topography.
- (iv) Unique physical features.
- (v) Erosion.
- (vi) Accretion/avulsion.

(b) **Air.**

- (i) Air quality.
- (ii) Odor.
- (iii) Climate.

(c) **Water.**

- (i) Surface water movement.
- (ii) Runoff/absorption.
- (iii) Floods.
- (iv) Surface water quantity.
- (v) Surface water quality.
- (vi) Ground water movement.
- (vii) Ground water quantity.
- (viii) Ground water quality.
- (ix) Public water supplies.

(d) **Flora.**

- (i) Numbers or diversity of species.
- (ii) Unique species.
- (iii) Barriers and/or corridors.
- (iv) Agricultural crops.

(e) **Fauna.**

- (i) Numbers or diversity of species.
- (ii) Unique species.
- (iii) Barriers and/or corridors.
- (iv) Fish or wildlife habitat.

(f) **Noise.**

(g) **Light and glare.**

- (h) **Land use.**
- (i) **Natural resources.**
 - (i) Rate of use.
 - (ii) Nonrenewable resources.
- (j) **Risk of explosion or hazardous emissions.**
- (3) **ELEMENTS OF THE HUMAN ENVIRONMENT**
- (a) **Population.**
- (b) **Housing.**
- (c) **Transportation/circulation.**
 - (i) Vehicular transportation generated.
 - (ii) Parking facilities.
 - (iii) Transportation systems.
 - (iv) Movement/circulation of people or goods.
 - (v) Waterborne, rail and air traffic.
 - (vi) Traffic hazards.
- (d) **Public services.**
 - (i) Fire.
 - (ii) Police.
 - (iii) Schools.
 - (iv) Parks or other recreational facilities.
 - (v) Maintenance.
 - (vi) Other governmental services.
- (e) **Energy.**
 - (i) Amount required.
 - (ii) Source/availability.
- (f) **Utilities.**
 - (i) Energy.
 - (ii) Communications.
 - (iii) Water.
 - (iv) Sewer.
 - (v) Storm water.
 - (vi) Solid waste.
- (g) **Human health** (including mental health).
- (h) **Aesthetics.**
- (i) **Recreation.**
- (j) **Archeological/historical.**

(4) The following additional element shall be covered in all EISs, either by being discussed or marked "N/A," but shall not be considered part of the environment for other purposes:

- (a) **Additional population characteristics.**
 - (i) Distribution by age, sex and ethnic characteristics of the residents in the geographical area affected by the environmental impacts of the proposal.

[Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-444, filed 4/11/78; Order 259, § 332-40-444, filed 6/10/76; Order 257, § 332-40-444, filed 5/21/76.]

WAC 332-40-446 Draft EIS--Optional additional elements--Limitation. The guidelines of the department, as lead agency, shall control the content of the EIS, even though other agencies with jurisdiction are involved in the proposal. No agency shall prescribe additional material for an EIS beyond that which is required or optionally allowed by WAC 332-40-440 and 332-40-444.

[Order 259, § 332-40-446, filed 6/10/76; Order 257, § 332-40-446, filed 5/21/76.]

WAC 332-40-450 Public awareness of availability of draft EIS. Upon publication of the draft EIS, the responsible official shall list the proposal in the department "EIS available register" maintained at the department's SEPA public information center. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-450, filed 4/11/78; Order 259, § 332-40-450, filed 6/10/76; Order 257, § 332-40-450, filed 5/21/76.]

WAC 332-40-455 Circulation of the draft EIS--Review period. (1) A consulted agency shall have thirty-five days from the date of issuance in which to review the draft and forward its comments and information to the department. If a consulted agency with jurisdiction requires additional time to develop and complete new data on the proposal, a fifteen day extension may be granted by the department. Extensions may not be granted for any other purpose.

(2) There shall be allowed a period of thirty-five days from the date of issuance for the public to forward to the department any comments upon or substantive information related to the proposal and the draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-455, filed 4/11/78.]

WAC 332-40-460 Specific agencies to which draft EIS shall be sent. (1) The draft EIS shall be issued by sending copies to the following:

- (a) The department of ecology.
- (b) Each federal agency having jurisdiction by law over a proposed action.
- (c) Each agency having jurisdiction by law over, or environmental expertise pertaining to a proposed action, as defined by WAC 332-40-040 and 332-40-465 (required by RCW 43.21C.030 (2)(d)).
- (d) Each city/county in which adverse environmental effects identified in the draft EIS may occur if the proposed action is implemented. (This subsection does not apply to draft EISs for non-project actions.)

(e) Each local agency or political subdivision which will be required to furnish additional public services as a result of implementation of the proposed action.

(f) The applicable regional planning commission, regional clearinghouse, statewide clearinghouse, or area-wide council of government which has been designated to review and coordinate local governmental planning under the A-95 review process and other federal regulations and programs (see RCW 36.64.080, 35.63.070 and 36.70.070).

(g) The department's SEPA public information center.

(h) Any person, organization or governmental agency that has expressed an interest in the proposal, is known by the department to have an interest in the type of proposal being considered, or receives governmental

documents (e.g., local and regional libraries) may be sent a copy of the draft EIS.

(2) An agency that receives a copy of the draft EIS does not become a "consulted agency" under these guidelines due to that factor alone. (See WAC 332-40-040, 332-40-465, 332-40-510 and 332-40-520 for those provisions that define a consulted agency.) [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-460, filed 4/11/78; Order 259, § 332-40-460, filed 6/10/76; Order 257, § 332-40-460, filed 5/21/76.]

WAC 332-40-465 Agencies possessing environmental expertise. The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

(1) Air quality.

- (a) Department of ecology.
- (b) Department of natural resources (only for burning in forest areas).
- (c) Department of social and health services.
- (d) Regional air pollution control authority or agency.

(2) Water resources and water quality.

- (a) Department of game.
- (b) Department of ecology.
- (c) Department of natural resources (state-owned tidelands, harbor areas or beds of navigable waters).
- (d) Department of social and health services (public water supplies, sewer systems, shellfish habitats).
- (e) Department of fisheries.
- (f) Oceanographic commission (marine waters).

(3) Fish and wildlife.

- (a) Department of game.
- (b) Department of fisheries.
- (c) Oceanographic commission (marine waters).

(4) Solid waste.

- (a) Department of ecology.
- (b) Department of fisheries (dredge spoils).
- (c) Department of social and health services.

(5) Noise.

- (a) Department of ecology.
- (b) Department of social and health services.

(6) Hazardous substances (including radiation).

- (a) Department of ecology.
- (b) Department of social and health services.
- (c) Department of agriculture (foods or pesticides).
- (d) Department of fisheries (introduction into waters).
- (e) Oceanographic commission (introduction into marine waters).

(7) Natural resources development.

- (a) Department of commerce and economic development.
- (b) Department of ecology.
- (c) Department of natural resources.
- (d) Department of fisheries.
- (e) Department of game.
- (f) Oceanographic commission (related to marine waters).

(8) Energy production, transmission and consumption.

- (a) Department of commerce and economic development (office of nuclear energy development—nuclear).
- (b) Department of ecology.
- (c) Department of natural resources (geothermal, coal, uranium).
- (d) State energy office.
- (e) Thermal power plant site evaluation council (thermal power plants).
- (f) Utilities and transportation commission.

(9) Land use and management.

- (a) Department of commerce and economic development.
- (b) Department of ecology.
- (c) Department of fisheries (affecting surface or marine waters).
- (d) Department of natural resources (tidelands or state-owned or -managed lands).
- (e) Office of community development.

(10) Transportation.

- (a) Department of highways.
- (b) Utilities and transportation commission.
- (c) Oceanographic commission (water borne).

(11) Recreation.

- (a) Department of commerce and economic development.
- (b) Department of game.
- (c) Department of fisheries.
- (d) Parks and recreation commission.
- (e) Department of natural resources.

(12) Archaeological/historical.

- (a) Office of archaeology and historic preservation.
- (b) Washington State University at Pullman (Washington archaeological research center).

[Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-465, filed 4/11/78; Order 259, § 332-40-465, filed 6/10/76; Order 257, § 332-40-465, filed 5/21/76.]

WAC 332-40-470 Cost to the public for reproduction of environmental documents. The department shall provide a copy of any environmental document, in accordance with chapter 42.17 RCW, charging only those costs allowed therein and mailing costs. However, no charge shall be levied for circulation of documents to

other agencies as required by these guidelines. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-470, filed 4/11/78; Order 259, § 332-40-470, filed 6/10/76; Order 257, § 332-40-470, filed 5/21/76.]

WAC 332-40-480 Public hearing on a proposal—When required. (1) If a public hearing on the proposal is held pursuant to some other requirement of law, such hearing shall be open to consideration of the environmental impact of the proposal, together with any available environmental document.

(2) In all other cases a public hearing on the environmental impact of a proposal shall be held whenever one or more of the following situations occur:

(a) The department determines, in its sole discretion, that a public hearing would assist the department in meeting its responsibility to implement the purposes and goals of SEPA and these guidelines; or,

(b) When fifty or more persons residing within the jurisdiction of the department, or who would be adversely affected by the environmental impact of the proposal, make written request to the department within thirty-five days of issuance of the draft EIS; or,

(c) When two or more agencies with jurisdiction over a proposal make written request to the department within thirty-five days of the issuance of the draft EIS.

(3) Whenever a public hearing is held under subsection (2) of this section, it shall occur no later than fifty-one days from the issuance of the draft EIS and no earlier than fifteen days from such date of issuance. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-480, filed 4/11/78; Order 259, § 332-40-480, filed 6/10/76; Order 257, § 332-40-480, filed 5/21/76.]

WAC 332-40-485 Notice of public hearing on environmental impact of the proposal. (1) Notice of all public hearings to be held pursuant to WAC 332-40-480(2) shall be published in a newspaper of general circulation in the area where the project will be implemented. For nonproject actions the notice shall be published in the general area where the department has its principal office. The notice shall be published no later than five days preceding the hearing. For nonproject proposals having regional or state-wide applicability, copies of the notice shall be transmitted to the Olympia bureaus of the associated press and united press international.

(2) A notation of the hearing date and location shall be entered in the "EIS available register" maintained at the department's SEPA public information center. [Order 259, § 332-40-485, filed 6/10/76; Order 257, § 332-40-485, filed 5/21/76.]

WAC 332-40-490 Public hearing on the proposal—Use of environmental documents. Whenever a public hearing is held on the environmental impact of a proposal, it shall be open to discussion of all environmental documents and any written comments which have been received by the department prior to the hearing. A copy

of the draft EIS shall be made available for public inspection at the public hearing. [Order 259, § 332-40-490, filed 6/10/76; Order 257, § 332-40-490, filed 5/21/76.]

WAC 332-40-495 Preparation of amended or new draft EIS. (1) The department shall prepare an amended or new draft EIS whenever it determines:

(a) That substantial changes have been made in the proposal, or significant new information concerning anticipated environmental impacts has become available subsequent to circulation of the initial draft EIS, and

(b) That circulation of a new draft EIS is necessary to provide further input and review on the proposal.

(2) In such event, the department shall follow the provisions of WAC 332-40-450 through 332-40-490 for the amended or new draft EIS. [Order 259, § 332-40-495, filed 6/10/76; Order 257, § 332-40-495, filed 5/21/76.]

WAC 332-40-500 Department responsibilities when consulted as an agency with jurisdiction. The department, when responding to a consultation request prior to a threshold determination, participating in predraft consultation, or reviewing a draft EIS, shall immediately begin the research and, if necessary, field investigations which it would normally conduct in conjunction with whatever license it requires for a proposal. In the event no license is involved the department shall investigate the impacts of the activity it will undertake which gives it jurisdiction over a portion of the proposal. The end result of these investigations should be that the department will be able to transmit to the lead agency substantive information on those environmental impacts of the proposal which are within the scope of the license or activity of the department. The department, in its response to the lead agency, should also indicate which of the impacts it has discovered may be mitigated or avoided and how this might be accomplished, and describe those areas of environmental risk which remain after it has conducted the investigations that may have been required. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-500, filed 4/11/78; Order 259, § 332-40-500, filed 6/10/76; Order 257, § 332-40-500, filed 5/21/76.]

WAC 332-40-520 Department responsibilities when consulted as an agency with environmental expertise. (1) The department as an agency possessing environmental expertise pertaining to the impacts associated with a proposal [see WAC 332-40-465], when requested by the lead agency, shall provide to the lead agency that substantive data, information, test results or other material relevant to the proposal which the consulted agency then possesses relating to its area of special expertise. [Order 259, § 332-40-520, filed 6/10/76; Order 257, § 332-40-520, filed 5/21/76.]

WAC 332-40-530 Responsibilities of the department—When predraft consultation has occurred. When

the department has engaged in the predraft consultation procedures set forth in WAC 332-40-410, the scope and depth of its required review and comment upon the draft EIS is limited to those appropriate and relevant matters which were not contained in its previous response (such as when significant new information becomes available which was not available to the consulted agency during the predraft consultation stage). [Order 259, § 332-40-530, filed 6/10/76; Order 257, § 332-40-530, filed 5/21/76.]

WAC 332-40-535 Cost of performance of consulted agency responsibilities. The department shall not charge the lead agency for any costs incurred in complying with WAC 332-40-500 through 332-40-540, including, but not limited to, providing relevant data to the lead agency and the reproduction of various documents that are transmitted to the lead agency. This section shall not prohibit the department from charging those costs allowed by chapter 42.17 RCW, for the reproduction of any environmental document when the request for a copy of the document is from an agency other than the lead agency, or from an individual or private organization. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-535, filed 4/11/78; Order 259, § 332-40-535, filed 6/10/76; Order 257, § 332-40-535, filed 5/21/76.]

WAC 332-40-540 Limitations on responses to consultation. If part or all of the relevant data possessed by the department is voluminous in nature, extremely bulky or otherwise incapable of ready transmittal to the lead agency, or consists of a report or document published by another agency, or represents a standard text or other work obtainable at a public library, such data or information may be clearly identified or cited by the department in its comments to the lead agency and the data itself need not be transmitted. When the department identifies material pursuant to this section, it shall describe briefly the nature of such information and clearly indicate its relevance to the environmental analysis of the proposed action in question. If the details of the proposal supplied with the consultation request are not sufficient to allow a complete response, the department shall be required to transmit only that information it is capable of developing from the material sent to it with the consultation request. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-540, filed 4/11/78; Order 259, § 332-40-540, filed 6/10/76; Order 257, § 332-40-540, filed 5/21/76.]

WAC 332-40-545 Effect of no written comment. If a consulted agency does not respond with written comments within thirty-five days of the date of issuance of draft EIS or within a fifteen-day extension period granted by the lead agency, the department may assume that the consulted agency has no information relating to the potential impact of the proposal upon the subject

area of the consulted agency's jurisdiction or special expertise. Any consulted agency which fails to submit substantive information to the department in response to a draft EIS is thereafter barred from alleging any defects in the department's compliance with WAC 332-40-400 through 332-40-495, or with the contents of the final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-545, filed 4/11/78; Order 259, § 332-40-545, filed 6/10/76; Order 257, § 332-40-545, filed 5/21/76.]

WAC 332-40-570 Preparation of the final EIS--Contents--When no critical comments received on the draft EIS. (1) If the department does not receive any comments critical of the scope or content of the draft EIS, the department may prepare a statement to that effect and circulate that statement in the manner prescribed in WAC 332-40-600.

(2) The statement prepared and circulated pursuant to subsection (1) above, together with the draft EIS (which is not recirculated with the statement), shall constitute the "final EIS" for the proposal: *Provided*, That when the draft EIS was not circulated to the office of the governor or the ecological commission, then the draft EIS shall be attached only to the statement sent to these agencies. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-570, filed 4/11/78; Order 259, § 332-40-570, filed 6/10/76; Order 257, § 332-40-570, filed 5/21/76.]

WAC 332-40-580 Preparation of the final EIS--Contents--When critical comments received on the draft EIS. (1) When the department receives any comments critical of the scope or content of the draft EIS, whether made in writing or made orally at any public hearing on the environmental impact of the proposal, it shall comply with either subsection (2) or (3) below.

(2) The department may determine that no changes or only minor changes are required in either the draft EIS or the proposal, despite the critical comments that were received during the commenting period. The department must prepare a document containing a general response to the comments that were received, any minor changes to the EIS or proposal, the text or summary of written comments, and a summary of the oral comments made by the public at any hearing held on the proposal or its environmental impacts. The department shall then circulate the document in the manner prescribed in WAC 332-40-600: *Provided*, That when the draft EIS was not circulated to the office of the governor or the ecological commission, then the draft EIS shall be attached only to the statement sent to these agencies.

(3) The department may determine that it is necessary and appropriate to rewrite the contents of the draft EIS in order to respond to critical comments received during the commenting period. In such instances, the department shall circulate the rewritten EIS in the manner specified in WAC 332-40-600. The department

shall ensure that the rewritten EIS evidences an affirmative response by the department to the critical comments, or alternatively, contains a summary of those critical comments with which it does not agree.

(4) A document prepared and circulated pursuant to subsection (2) or (3) above shall constitute the "final EIS" for the proposal. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-580, filed 4/11/78; Order 259, § 332-40-580, filed 6/10/76; Order 257, § 332-40-580, filed 5/21/76.]

WAC 332-40-600 Circulation of the final EIS. The final EIS shall be issued by circulating to the department of ecology, office of the governor or the governor's designee, the ecological commission, the department's SEPA public information center, agencies with jurisdiction, and federal agencies with jurisdiction which received the draft EIS. It shall be made available to the public in the same manner and cost as the draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-600, filed 4/11/78; Order 259, § 332-40-600, filed 6/10/76; Order 257, § 332-40-600, filed 5/21/76.]

WAC 332-40-650 Effect of an adequate final EIS prepared pursuant to NEPA. (1) The requirements of this chapter relating to the preparation of an EIS shall not apply when an adequate final EIS has been prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), in which event such EIS may be utilized in lieu of a final EIS separately prepared under SEPA.

(2) The final EIS of a federal agency shall be adequate unless:

(a) A court rules that it is inadequate; or,

(b) The administrator of the United States Environmental Protection Agency issues a written comment pursuant to the Federal Clean Air Act, 42 U.S.C. § 1857, which determines it to be inadequate; or,

(c) The environmental elements of WAC 332-40-444, when applied locally, are not adequately treated in it.

(3) If, after review thereof, the department determines that the federal EIS is adequate, it shall be listed in the "EIS available register" in the SEPA public information center. A notice to this effect shall be circulated as in WAC 332-40-600.

(4) If a hearing open to public comment upon the adequacy of the federal EIS has not previously been held within the jurisdiction of the SEPA lead agency, a public hearing on the sole issue of the adequacy of the content of a federal EIS shall be held if, within thirty-five days of the notice in (3) above, at least fifty persons who reside within the jurisdiction of the department, or are adversely affected by the environmental impact of the proposal, make written request. The department shall reconsider its determination of adequacy in view of comments received at any such public hearing. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-650, filed 4/11/78; Order 259, § 332-40-650, filed 6/10/76; Order 257, § 332-40-650, filed 5/21/76.]

WAC 332-40-652 Supplementation by the department of an inadequate final NEPA EIS. When a final EIS prepared pursuant to NEPA is inadequate under the criteria set forth in WAC 332-40-650(2), then the department shall either:

(1) Prepare a draft EIS independent of the final NEPA EIS or

(2) Modify or supplement the final NEPA EIS as necessary to prepare an adequate draft EIS. [Order 259, § 332-40-652, filed 6/10/76; Order 257, § 332-40-652, filed 5/21/76.]

WAC 332-40-660 Use of previously prepared EIS for a different proposed action. (1) The department may adopt and utilize a previously prepared EIS, or portion thereof, to satisfy certain of the EIS requirements applicable to a different proposed action, as set forth in (2) and (3) below. In such event, two requirements shall be met:

(a) The previous EIS or portion thereof, together with any supplement to it, shall meet the requirements of these guidelines applicable to an EIS for the new proposed action, and

(b) Where any intervening change in conditions would make the previous EIS misleading when applied to the new proposed action a previous EIS shall not be used without an explanatory supplement.

(2) When the new proposed action will have an impact on the environment that was not adequately analyzed in the previously prepared EIS, the department shall prepare a draft supplemental EIS and comply with the provisions of WAC 332-40-400 through 332-40-695. The contents of the draft and final supplemental EIS shall be limited to those impacts of the proposed action which were not adequately analyzed in the earlier EIS.

(3) When the new proposed action will not have an impact on the environment that is substantially different than the impacts of the earlier proposed action, the department may prepare a written statement setting forth its determination under this subsection and list the proposal in the "EIS available register." The department shall not be required to prepare a new or supplemental draft or final EIS on the new proposed action when this subsection is determined to apply. However, the provisions of WAC 332-40-480 through 332-40-490, relating to a public hearing on the environmental impact of a proposal shall apply. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-660, filed 4/11/78; Order 259, § 332-40-660, filed 6/10/76; Order 257, § 332-40-660, filed 5/21/76.]

WAC 332-40-690 Use of another lead agency's EIS by the department for the same proposal. (1) When the department is considering an action which is part of a proposal covered by a final EIS of a another lead agency, and the department was consulted as an agency with jurisdiction during the consultation process on the previous EIS because of the action it is now considering, the department must utilize the previous EIS unchanged

when it is considering its present action except under the conditions of subsection (2).

(2) The department shall review and consider supplementing an EIS prepared by the lead agency only if:

(a) The proposal has been significantly modified since the lead agency prepared the EIS; or,

(b) The action now being considered was identified in the lead agency's EIS as one which would require further environmental evaluation; or,

(c) The level of design or planning for the proposal has become more detailed, revealing inadequately analyzed impacts; or,

(d) Technical data has become available which indicates the presence of a significant adverse environmental impact.

In such cases, the department shall prepare a supplement to the lead agency's EIS if it determines that significant adverse environmental impacts have been inadequately analyzed in the lead agency's EIS.

(3) If the department is not listed as a licensing agency in the draft EIS pursuant to WAC 332-40-440 (2)(d) and did not receive a copy of the draft EIS, the department shall not be limited by the contents of the earlier EIS in preparing its statement. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-690, filed 4/11/78; Order 259, § 332-40-690, filed 6/10/76; Order 257, § 332-40-690, filed 5/21/76.]

WAC 332-40-695 Draft and final supplements to a revised EIS. (1) In any case where the department is preparing a supplement to an earlier EIS or to an EIS prepared pursuant to NEPA, it shall prepare a draft supplemental EIS and comply with WAC 332-40-450 through 332-40-470. Copies of the prior EIS, as well as the supplement, shall be transmitted to the consulted agencies which had not previously received it.

(2) Upon preparation of the draft supplemental EIS, the department shall comply with WAC 332-40-550 through 332-40-580 and the final supplemental EIS, together with the prior EIS, shall be regarded as a final EIS for all purposes of these guidelines. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-695, filed 4/11/78; Order 259, § 332-40-695, filed 6/10/76; Order 257, § 332-40-695, filed 5/21/76.]

WAC 332-40-700 EIS combined with existing planning and review processes. The EIS process shall be combined with the existing planning, review and project approval processes being used by the department when it has jurisdiction by law over a proposal. When required to be prepared, the EIS, the declaration of nonsignificance, or the previously circulated EIS being utilized pursuant to WAC 332-40-660, shall accompany a proposal through the existing review processes. [Order 259, § 332-40-700, filed 6/10/76; Order 257, § 332-40-700, filed 5/21/76.]

WAC 332-40-710 No action for seven days after publication of the final EIS. No agency shall take any

major action (as defined in WAC 332-40-040(31)) on a proposal for which an EIS has been required, prior to seven days from the issuance of the final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-710, filed 4/11/78.]

WAC 332-40-800 Amendments to this chapter. In the event that CEP or its successor agency adopts amendments to this chapter, the department shall adopt amendments to these guidelines within one hundred twenty days to bring these guidelines into conformance with SEPA guidelines as amended. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-800, filed 4/11/78; Order 259, § 332-40-800, filed 6/10/76; Order 257, § 332-40-800, filed 5/21/76.]

WAC 332-40-830 SEPA public information center. (1) The following documents shall be maintained at the department's SEPA public information center:

(a) Copies of all declarations of nonsignificance filed by the department, for a period of one year.

(b) Copies of all EISs prepared by the department, for a period of three years. Draft EISs which have been superseded by a final EIS need not be maintained at the center.

(3) In addition, the department shall maintain the following registers at its information center, each register including for each proposal its location, a brief (one sentence or phrase) description of the nature of the proposal, the date first listed on the register, and a contact person or office from which further information may be obtained:

(a) A "Proposed Declaration of Nonsignificance Register" which shall contain a listing of all current proposed declarations of nonsignificance.

(b) An "EIS in preparation register" which shall contain a listing of all proposals for which the department is currently preparing an EIS, and the date by which the EIS is expected to be available.

(c) An "EIS available register" which shall contain a listing of all draft and final EISs prepared by the department during the previous six months, including thereon the date by which comments must be received on draft EISs, and the date for any public hearing scheduled for the proposal.

(4) Each of the registers required by subsection (3) hereof shall be kept current and maintained at the information center for public inspection. In addition, the registers, or updates thereof containing new entries added since the last mailing, shall be mailed once every two weeks to those organizations and individuals who make written request therefor, unless no new proposals are placed on the register, in which event a copy of the register or update shall be mailed when a new proposal is added. The department may charge a periodic fee for the service of mailing the registers or updates, which shall be reasonably related to the costs of reproduction and mailing.

(5) The documents required to be maintained at the information center shall be available for public inspection, and copies thereof shall be provided upon written request. The department may charge for copies in the manner provided by chapter 42.17 RCW, and for the cost of mailing. [Order 259, § 332-40-830, filed 6/10/76; Order 257, § 332-40-830, filed 5/21/76.]

WAC 332-40-840 Application of agency guidelines to ongoing actions. (1) The department's guidelines shall apply to any proposed action when initiated subsequent to the effective date of the guidelines of the department when it is the lead agency or the department when it is proposing the action.

(2) For proposals made prior to the effective date of the guidelines of the department, the department's guidelines shall apply to those elements of SEPA compliance remaining to be undertaken subsequent to the effective date of such guidelines. The department's guidelines adopted pursuant to RCW 43.21C.120 and the requirements of this chapter shall not be applied to invalidate or require modification of any threshold determination, EIS or other element of SEPA compliance undertaken or completed prior to the effective date of the guidelines of the department. [Order 259, § 332-40-840, filed 6/10/76; Order 257, § 332-40-840, filed 5/21/76.]

WAC 332-40-910 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. [Order 259, § 332-40-910, filed 6/10/76; Order 257, § 332-40-910, filed 5/21/76.]

Chapter 332-44 WAC STRAY LOGS

WAC

332-44-010	Stray logs—Possession marks.
332-44-020	Log patrol—Activity in Everett harbor.
332-44-030	Closed portion of Everett harbor.
332-44-040	Closed portion of Everett harbor—Exception.
332-44-050	Closed portion of Everett harbor—Licensed log patrolmen—Duties.
332-44-060	Closed portion of Everett harbor—Opening closed area—Notice.
332-44-070	Closed portion of Everett harbor—Violations—Penalty.
332-44-080	Closed portion of Everett harbor—Supersession of prior agreements.
332-44-090	Severability.

WAC 332-44-010 Stray logs—Possession marks. (1) It is the purpose of this resolution to provide licensed log patrolmen with a means whereby they can mark stray logs that they have recovered under the provisions of chapter 76.40 RCW, so that identification of their recovery may be made in the event of theft or the commingling with stray logs recovered by other licensed log patrolmen. It is also the purpose of this resolution to

provide protection to log owners by establishing a new method of marking the stray logs to indicate recovery rights. This will permit enforcement of RCW 76.36.090, regarding the proper usage of catch brands, and prevent catch brands from being used for the purpose of identifying possession, when, in fact, no change of ownership has occurred or is intended.

(2) Definitions:

(a) "Waters of this state" means the same as defined in RCW 76.40.010(5).

(b) "Log patrol" means the same as defined in RCW 76.40.010(1).

(c) "Stray logs" means the same as defined in RCW 76.40.010(2).

(d) "Possession mark" means an identifying mark registered and assigned to licensed log patrolmen to be impressed upon stray logs recovered by that log patrolman.

(3) Every log patrolman who recovers or puts into any of the waters of this state any stray logs may have a possession mark, previously registered in the manner hereinafter provided, plainly impressed or cut in a conspicuous place on each stray log so recovered or put into any of such waters.

(4) A separate and exclusive possession mark shall be established, assigned and registered to each existing log patrolman within a reasonable time after the passage of this resolution. Newly licensed log patrolmen shall be assigned a possession mark, and registered, upon the issuance of their license. There shall be no fees for the registration of these possession marks.

(5) The possession mark shall be registered by the supervisor, of the department of natural resources, or his deputy, in a segregated portion of the "forest products brand register" provided for in RCW 76.36.030 entitled "Log patrolman marks," by entering therein the name of the owner, character of the mark, date of registration, and such other details as he may see fit to enter therein.

(6) Every log patrolman wishing to use a possession mark may be informed of the character of the mark assigned and registered to him upon application to the office of the Law Enforcement and Log Patrol Section of the Department of Natural Resources, P.O. Box 168, Olympia, Washington.

(7) No possession marks registered under this resolution shall be assignable, and shall be considered to be attached to and a part of the log patrol license as issued under RCW 76.40.030.

(8) All stray logs having impressed thereon a registered possession mark shall be presumed to have been recovered by the log patrol appearing in the possession mark registry. A possession mark shall not indicate or be presumed to indicate ownership of the stray log. The possession mark shall not be necessary when the stray log is, in fact, owned by the log patrolman, or has been conveyed to him as indicated by the proper usage of a catch brand. [Resolution No. 1, filed 1/27/65.]

WAC 332-44-020 Log patrol—Activity in Everett harbor. Pursuant to the provisions of chapter 76.40 RCW that portion of Everett harbor, Snohomish

County, Washington, which is more particularly described in WAC 308-44-030, below, is, except as herein provided, closed to activities of the log patrol. [Docket 255, § 1, filed 10/28/66.]

WAC 332-44-030 Closed portion of Everett harbor. That portion of Everett harbor closed to activities of the log patrol is described as follows:

Those parts of Townships 29 and 30 North, Range 5 East, W.M., lying easterly of a line beginning at the Stone House on Priest Point, running thence southeasterly to that point on the north end of the jetty known as the Hole in the Wall, thence southerly along the jetty to the south end thereof, thence southwesterly to the south bank of Pigeon Creek at the point it enters Everett harbor, being the point of termination of this line description. [Docket 255, § 2, filed 10/28/66.]

WAC 332-44-040 Closed portion of Everett harbor--Exception. Nothing herein shall preclude use by the log patrol of log storage areas now, or hereafter approved by the department of natural resources and which are easterly of the line described in WAC 332-44-030, above, in connection with the otherwise lawful activities of the log patrol. [Docket 255, § 3, filed 10/28/66.]

WAC 332-44-050 Closed portion of Everett harbor--Licensed log patrolmen--Duties. Upon request to a licensed log patrolman by the United States Coast Guard Station, Everett, by the office of the Snohomish county sheriff, or by the department of natural resources, said log patrolman shall enter the closed area and remove therefrom such log or logs as have been referred to him by one of the above agencies as being a danger to property or a hazard to navigation. Licensed log patrolmen shall respond and enter the closed area only at the request of one of the above agencies. A list of currently licensed log patrolmen operating in the Everett area will be furnished, from time to time, to the United States Coast Guard Station, Everett, and to the office of the Snohomish county sheriff by the department of natural resources. Each agency will keep a record of all references to licensed log patrolmen concerning the removal of logs from the closed area in Everett harbor. [Docket 255, § 4, filed 10/28/66.]

WAC 332-44-060 Closed portion of Everett harbor--Opening closed area--Notice. When in the judgment of the department of natural resources such quantity of stray logs has accumulated within a closed area of Everett harbor as to justify or require the removal thereof, the closed area will be opened to the activities of the log patrol for such period as is considered necessary to remove the stray logs. Notice of such opening, and the period thereof shall be given by mail to each licensed log patrolman operating in the Everett harbor and by mailing to such others as request such notice. [Docket 255, § 5, filed 10/28/66.]

WAC 332-44-070 Closed portion of Everett harbor--Violations--Penalty. Any violation in the provisions of WAC 332-44-020 through 332-44-090 shall be punishable as a misdemeanor and may, in addition, constitute grounds for the suspension or revocation of the license of a log patrolman. [Docket 255, § 6, filed 10/28/66.]

WAC 332-44-080 Closed portion of Everett harbor--Supersession of prior agreements. This WAC 332-44-020 through 332-44-090 supersedes any prior agreement concerning log patrol activities in the Everett harbor. [Docket 255, § 7, filed 10/28/66.]

WAC 332-44-090 Severability. If any section or provision of WAC 332-44-020 through 332-44-090 is held to be, for any reason, ineffectual or unconstitutional, such holding shall not affect the validity or enforceability of the remainder. [Docket 255, § 8, filed 10/28/66.]

Chapter 332-48 WAC FIRE AND GAME DAMAGE

WAC	
332-48-010	Electrical fence controllers.
332-48-020	Unauthorized use of Colockum airstrip.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-48-050	Fire rules. [Resolution 21, filed 6/6/61.] Repealed by Order 256, filed 5/13/76. Later promulgation, see WAC 332-24-061.
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WAC 332-48-010 Electrical fence controllers. (1) Purpose. The purpose of this resolution is to protect the health and safety of the people of Washington from the danger of electrically caused fires, and to protect property situated in Washington from the hazards of electrically caused fires.

(2) Definitions.

(a) "Persons" include individuals, corporations, associations, firms, partnerships, joint stock companies, municipal corporations, state agencies, and any political subdivision thereof.

(b) "Electrical fence controller" includes any controller, equipment, appliance, device, or apparatus used as an electrical fence, controller, energizer, or pulsator which uses or conveys an electrical current.

(c) "Certified electrical fence controller" means an electrical fence controller listed in the published list of Underwriters Laboratories entitled "Electrical Appliance and Utilization Equipment List," dated May, 1963, and the supplements thereto, as an approved electrical product, and which has not been decertified.

(d) "Uncertified electrical fence controller" includes all electrical fence controllers which are not listed in the Underwriters Laboratories Electrical Appliance and Utilization Equipment List dated May, 1963, and the supplements thereto.

(e) "Forest land" means any land which has enough slashing, chopping, woodland, brushland, timber, standing or down, grass and sagebrush when adjacent to or intermingled with areas supporting tree growth, or other inflammable material to constitute a fire menace to life or property.

(f) "Label" means a card furnished by the department of natural resources to all those parties dealing with the sale or other transfers of electrical fence controllers, indicating to all interested persons that the usage of such fence controllers is limited. The form of such labels shall be substantially as follows:

NOTICE

This fence controller is not approved by Underwriters Laboratories as free from fire hazard. It is unlawful to use this fence controller on forest land or land over which fire may spread to forest land at any time other than the months of November, December, January, February, and March.

(3) **Underwriters Laboratories, Inc., as Standard.** On or before the 2nd day of June, 1964, the division of fire control, department of natural resources, shall obtain an authentic copy of the Underwriters Laboratories Electrical Appliance and Utilization and Equipment List, May, 1963, and supplements thereto, and shall annually thereafter obtain new sets of such lists. These lists shall be kept on file in the office of the division of fire control, department of natural resources.

(4) **Regulations.**

(a) No person shall use or energize any uncertified electrical fence controller on any forest land in the state of Washington except during the months of November, December, January, February, and March; *Provided*, That this section shall not be construed to mean that the person may not have, establish, install, or erect such an uncertified electrical fence controller which does not contain a current of electricity during the prohibited months.

(b) No person shall sell, offer for sale, or dispose of by gift or otherwise to any consumer or user in the state of Washington, any uncertified electrical fence controller that is not labeled. It is the responsibility of those persons selling or otherwise disposing of these fences to attach the label. Labels shall be issued upon request and without charge by the Division of Fire Control, Department of Natural Resources, P.O. Box 110, Olympia, Washington, to those persons responsible for their attachment.

(c) Certified electrical fence controllers may be maintained, used, sold, offered for sale, disposed of by gift or otherwise under this resolution without restriction.

(5) **Administration.**

(a) The department of natural resources, division of fire control, shall inspect all electrical fence controllers for which a label is required by subsection (4)(b) above. The division of fire control shall also inspect the installation to which such fence controllers are being used for violation of subsection (4) above. The responsibility of presenting sufficient evidence of certification such as the

Underwriters Laboratories label, brand name, model number, etc., for these inspections, shall be upon the user.

(b) Failure to present sufficient evidence of certification such as Underwriters Laboratories label, brand name, model number, etc., at an inspection of the usage of electrical fence controllers during the months prohibited by subsection (4) above shall be prima facie evidence of noncompliance with the provisions of this resolution.

(6) **Violations.** Any person who wilfully violates these rules and regulations made by the board of natural resources shall by authority of RCW 76.04.120 be guilty of a misdemeanor. [Resolution No. 54, filed 6/3/64.]

WAC 332-48-020 Unauthorized use of Colockum airstrip. (1) The Colockum airstrip located in Section 15, Township 20 North, Range 20 East, W.M., is necessary to the public welfare for the use in forest protection and game management.

(2) Unauthorized usage of the airstrip is detrimental to the game of that area and increases the risks of forest fires. The unauthorized usage of this airstrip by persons in their private, sporting, or recreational activities is hereby prohibited. Vehicular traffic is also prohibited except upon the extreme west edge of the airstrip. Any person knowingly violating this regulation, except in the case of airborne emergency, shall by authority of RCW 76.04.120, be guilty of a misdemeanor. [Resolution No. 44, filed 11/5/63.]

Chapter 332-52 WAC

MANAGED LANDS AND ROADS--USE OF

WAC

332-52-010	Definitions.
332-52-020	Applicability and scope.
332-52-030	General rules.
332-52-040	Public behavior—Recreation sites.
332-52-050	Vehicles.
332-52-055	Capital forest—Organized events—Prohibited without prior written approval.
332-52-060	Use of fire.
332-52-070	Penalties.
332-52-080	Enforcement.
332-52-090	Effective dates.

WAC 332-52-010 Definitions. The following definitions shall apply to all of the listed regulations:

(1) The term "developed recreation sites" means all improved observation, swimming, boating, camping and picnic sites.

(2) The term "camping equipment" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

(3) The term "department" shall mean the department of natural resources.

(4) The term "vehicle" shall mean any motorized device capable of being moved upon a road and in, upon, or by which any persons or property is or may be transported or drawn upon a road. It shall include, but not be

limited to automobiles, trucks, motorcycles, motor bikes, motor-scooters and snowmobiles, whether or not they can legally be operated on the public highways.

(5) The term "organized event" shall mean any event involving more than fifty participants which is advertised in advance, sponsored by any recognized club(s), and conducted at a predetermined time and place. [Statutory Authority: RCW 46.09.180 and chapter 77.68 RCW. 79-06-039 (Order 313), § 332-52-010, filed 5/18/79; Order 29, § 332-52-010, filed 4/17/70, effective 5/20/70.]

WAC 332-52-020 Applicability and scope. The following public use rules are aimed at protecting recreational, economic and industrial activities on land and roads under the jurisdiction of the department of natural resources of the state of Washington. These rules are designed to allow Washington's trust lands to fulfill their historic roles of revenue production. The rules cover public use activities on developed recreation sites and all other lands under the jurisdiction of the department of natural resources. They cover the public use of roads and trails under the jurisdiction of the department of natural resources and the recreational use of fire. These public use rules are not applicable to persons, or their assignees or representatives, engaged in industrial harvest, commercial leases or agriculture or grazing activities carried on under sale, lease or permit from the department on lands under its jurisdiction if such application is incompatible with state contracts or agreements. Nor shall these rules, except the provisions of WAC 332-52-060, apply on lands under department's jurisdiction that are withdrawn or leased by a public agency having rules governing public use on the lands withdrawn or leased, provided that these rules may apply upon request of the applicable public agency. Public notices of these rules shall be posted by the department of natural resources in such locations as will reasonably bring them to the attention of the public. The department will also set forth conditions with respect to any areas on which special restrictions are imposed and post in same manner. A copy of the rules shall be made available to the public in the office of the commissioner of public lands, Olympia, and in offices of local district administrators. [Order 29, § 332-52-020, filed 4/17/70, effective 5/20/70.]

WAC 332-52-030 General rules. The following acts or omissions are prohibited on any lands under the jurisdiction of the department of natural resources:

(1) Sanitation

(a) Disposal of all garbage, including paper, cans, bottles, waste materials and rubbish except by removal from the area, or disposal at designated disposal areas.

(b) Draining or dumping refuse or waste from any trailer, car or other vehicle except in designated disposal areas.

(c) Cleaning fish or food, or washing clothing or articles for household use in any drinking water source.

(d) Polluting or contaminating water through failure to use due and reasonable care with regard to activities involving lakes, streams or other sources of water.

(e) Depositing, except into receptacles provided for that purpose, any body waste in or on any portion of any comfort station or any public structure, or upon the ground, or depositing any bottles, cans, cloths, rags, metal, wood, stone or any other damaging substance in any of the fixtures in such stations or structures.

(f) Using refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought as such from private property.

(2) Public behavior

(a) Inciting or participating in riots, or indulging in abusive, threatening or indecent conduct or indulging in conduct that destroys the normal recreational experience of other users. Persons violating this rule may be evicted from lands under the jurisdiction of the department of natural resources.

(b) Destroying, injuring, defacing, removing or disturbing in any manner any public building, sign, equipment, marker or other structure or property.

(c) Selling or offering for sale any merchandise without the written consent of the department of natural resources.

(d) Posting, placing or erecting any bills, notices, papers or advertising devices or matter of any kind without the written consent of the department of natural resources.

(e) Erecting or using unauthorized buildings. Persons violating this rule may be evicted from lands under the jurisdiction of the department of natural resources.

(f) Exploding or igniting firecrackers, rockets or fireworks of any kind.

(3) Audible devices

(a) Operating or using any audible devices, including radio, television and musical instruments and other noise producing devices, such as electrical generating plants and equipment driven by motors or engines, in such a manner and at such times so as to unreasonably disturb other persons.

(b) Operating or using portable public address system, whether fixed, portable, or vehicle mounted, except when such use or operation has been approved by the department in writing.

(4) Vehicles and road use

It is the policy of the department of natural resources to encourage public use of all roads and trails, land and water under its jurisdiction consistent with its trust responsibilities, conservation of soil and water, timber and grass and the natural environment, while maintaining a reasonable balance between the proper needs of conflicting user groups. Therefore, the following rules shall pertain to all lands under the jurisdiction of the department of natural resources and to all access roads across private lands through which the department has obtained the right of public use. Rules and regulations bearing upon recreational access to department managed lands and roads may be waived (in writing) by the department for special situations provided that the events are consistent with the above department policy.

(a) Vehicles may travel over all roads adequate for conventional 2-wheel drive passenger automobiles unless posted against such use.

(b) Roads, abandoned railway grades, skid roads, and similar routes inadequate for conventional 2-wheel drive automobiles and all trails are closed to vehicular use unless designated or posted as open for such use.

(c) Vehicular travel off-road or off-trails is prohibited except in areas designated or posted by the department as open for vehicular travel.

(d) Snowmobiles may travel over roads and trails on department managed lands except where posted against such use.

(e) Snowmobiles are prohibited from off-roads and off-trails travel except in areas designated or posted as open by the department.

(f) All regulations having to do with safety, noise abatement, speed and fire precautions which apply to other motorized vehicles in developed recreation sites or on other lands managed by the department shall apply to snowmobiles provided that: One headlight in working order shall be deemed sufficient lighting system for snowmobiles.

(g) Operating a motor vehicle at any time without a muffler in good working order or operating a vehicle in such a manner as to create excessive or unusual noise or annoying smoke or using a muffler, cutoff, bypass or similar device or operating a motor vehicle with an exhaust system that has been modified so that the noise emitted by the engine of such vehicle is amplified or increased above that emitted by the muffler originally equipped on the vehicle is prohibited.

(h) Every motor vehicle during the "closed season" as defined in RCW 76.04.252 shall be equipped with a spark arresting muffler approved by the supervisor of the department of natural resources whenever such vehicle shall traverse over any state lands other than on roads from which the inflammable vegetation has been cleared of sufficient width to pass a four-wheel vehicle and such road is surfaced with a noninflammable material.

(i) Driving in a careless or negligent manner or driving while under the influence of intoxicating liquors or under the influence of narcotic or hallucinogenic drugs is prohibited.

(j) Headlights must be turned on whenever the visibility is reduced to 200 feet or less due to darkness, dust, smoke, fog or other weather or atmospheric conditions.

(k) Speed limits—The driver shall operate his vehicle at a safe speed at all times and not in excess of any posted speed.

(l) Right-of-way—The driver of any vehicle, other than an emergency vehicle, shall yield the right of way to log hauling or gravel trucks, except as otherwise provided:

(i) The driver of a vehicle approaching an intersection, not otherwise posted, shall look out for and yield the right of way to any vehicle on his right simultaneously approaching the intersection regardless of which vehicle first reaches and enters the intersection.

(ii) The driver of a vehicle intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction.

(iii) The driver of a vehicle shall yield the right of way to animal-drawn vehicles and persons riding animals and shall make reasonable effort to avoid frightening or startling such animals.

(m) Following—A vehicle whose driver does not intend to pass shall not follow another vehicle closer than 150 feet provided that vehicles driven by a single organized group may follow one another at a lesser but reasonable following distance.

(n) Pedestrians' rights and duties—Every driver of a vehicle shall yield the right of way to pedestrians. Pedestrians should clear traffic lanes as soon as practicable.

(o) Animals—Every person in control of an animal or animal-drawn vehicle shall remove same from the roads to allow vehicles to pass as soon as practicable.

Whenever the driver of a vehicle encounters a herd of livestock which is in control of any person, he shall not move through the herd until directed to do so by the person in control of the herd. The person in charge of the herd shall remove the herd from the road or trail as soon as possible.

(p) Drive to avoid damage—No person shall operate any vehicle in such a way as to cause damage to the roads, bridges, cattleguards, gates or other structures or appurtenances which form a part of the road.

(q) Parking—No person shall stop, part or leave standing any vehicle or obstacle upon the main-traveled part of the road; any vehicles otherwise parked must leave sufficient room for the passage of at least normal traffic, provided, that this does not apply to the driver of: (i) A disabled vehicle, (ii) an emergency vehicle, (iii) a fire vehicle.

(r) Engine noise—Excessively accelerating the engine of any type of vehicle when such vehicle is not moving or is starting from a stopping place is prohibited. [Order 29, § 332-52-030, filed 4/17/70, effective 5/20/70.]

WAC 332-52-040 Public behavior—Recreation sites. The following acts or omissions are further prohibited at department of natural resources developed recreation sites:

(1) Destroying, defacing or removing any natural feature or vegetation.

(2) Discharging firearms. No person shall discharge across, in, or into any portion of the developed recreation site a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private property except where the department has authorized otherwise.

(3) Occupying a site for other than primarily recreational purposes.

(4) Entering or using a site or a portion of a site posted closed to public use.

Notices establishing closure shall be posted in such locations as will reasonably bring them to the attention of the public.

(5) Building a fire outside of stoves, grills, fireplaces or outside of fire rings provided for such purposes.

(6) Camping overnight in places restricted to day use only.

(7) Failure to clean their rubbish from the place occupied by the person or persons before departure.

(8) Pitching tents or parking trailers or other camping equipment except in places provided for such purposes.

(9) Camping within a campground for a longer period of time than that established by the department of natural resources. Notices establishing limitations on the period of time persons may camp within a campground shall be posted in such locations as will reasonably bring them to the attention of the public. There may be different time limits in the various recreation sites depending upon conditions, time of the year, or available facilities.

(10) Failing to maintain quiet in campground between the hours of 10 p.m. and 6 a.m. All persons shall maintain reasonable quiet, and adults accompanied by children or pets shall be responsible to insure that children and/or pets maintain a reasonable quiet.

(11) Bringing saddle, pack or draft animals into the site unless it has been developed to accommodate them and is posted accordingly.

(12) Bringing pets or other animals into campground unless under physical restrictive control at all times.

(13) Leaving a camp unit unoccupied during the first night after camping equipment has been set up or leaving unattended camping equipment for more than 24 hours. Such unattended camping equipment which is not removed is subject to removal. [Order 29, § 332-52-040, filed 4/17/70, effective 5/20/70.]

WAC 332-52-050 Vehicles. The following acts or omissions are further prohibited at department of natural resources developed recreation sites:

(1) Driving or parking any vehicle or trailer except in places designed for this purpose.

(2) Driving any vehicle at a speed or in a manner likely to endanger any person or property.

(3) Driving bicycles, motorbikes and motorcycles on trails unless such trails are posted for vehicular traffic.

(4) Driving motorbikes, motorcycles, or other motor vehicles on roads in developed recreation sites for any purpose other than access into, or egress out of, the site unless authorized and posted by the department of natural resources. [Order 29, § 332-52-050, filed 4/17/70, effective 5/20/70.]

WAC 332-52-055 Capital forest--Organized events--Prohibited without prior written approval. (1) Organized events are prohibited in the capital forest without the prior written approval of the department. Any group or organization desiring to utilize department lands or recreational facilities within the capital forest for an organized event shall make written request at least thirty days in advance of such event to the department's central area office in Chehalis on a form designated by the department for this purpose.

(2) All requests for an organized event in the capital forest shall include the following information:

(a) The name of the group;

(b) The name, address, and telephone number of the designated group representative;

(c) A general description of the organized event;

(d) The location and description of the land and facilities to be used;

(e) The date and time of the organized event;

(f) A legible map clearly delineating the facility and routes to be used and the direction of travel;

(g) The kind of markers, if any, to be used.

(3) The department's central area office shall make a determination regarding the organized event within ten calendar days of receiving a written request by approving, disapproving or conditionally approving the same. The department's determination will be based upon the nature of the proposed use, seasonal factors and other environmental conditions, other known uses of affected areas, and other requests for organized events in the affected vicinity. The department's determination on the request shall be in writing and will explain the basis for any disapproval or conditional approval.

(4) The sponsoring group, in carrying out any organized event, shall, unless specifically waived in writing by the department:

(a) Limit participants to the maximum number specified by the department;

(b) Identify all route markers with the sponsor's name and the date of the use;

(c) Post and maintain signs clearly warning participants and others of any hazardous conditions and all road and trail intersections throughout the entire route;

(d) Post signs to warn nonparticipants of the organized event and the flow of traffic;

(e) Remove all route markers and posted signs within forty-eight hours after completion of the organized event. [Statutory Authority: RCW 46.09.180 and chapter 77.68 RCW. 79-06-039 (Order 313), § 332-52-055, filed 5/18/79.]

WAC 332-52-060 Use of fire. Chapter 76.04 RCW and all rules and regulations duly promulgated thereunder apply to recreational fires on lands under the jurisdiction of the department of natural resources other than developed recreation sites. The written permission required under WAC 332-24-080 may be waived for recreational fires by the local district administrator in designated areas within his jurisdiction. [Order 29, § 332-52-060, filed 4/17/70, effective 5/20/70.]

WAC 332-52-070 Penalties. Failure to comply with any of the rules set forth in the preceding sections subjects the party or parties to the penalties provided by chapter 160, Laws of 1969 ex. sess., and the loss of access to and exercise of privileges on state-owned lands under the jurisdiction of the department of natural resources for such period of time as the duly authorized representative of the department of natural resources determines. [Order 29, § 332-52-070, filed 4/17/70, effective 5/20/70.]

WAC 332-52-080 Enforcement. These rules and regulations will be enforced by the commissioner of public lands and such of his employees as he may designate.

(1) Provisions of the above rules and regulations may be waived by written permission by the department of natural resources except for those activities controlled by statute or ordinance. Waivers may be granted when they are determined by the department to be in the best public interest and will result in minimal damage to department managed land or resources.

(2) No rule or regulation adopted for the public use of the department of natural resources managed lands and roads shall interfere with operations conducted for the purpose of the saving of life or property when such operations are directed by the proper authority.

(3) All rules and regulations listed above are adopted by the department of natural resources pursuant to chapter 43.30 RCW. [Order 29, § 332-52-080, filed 4/17/70, effective 5/20/70.]

WAC 332-52-090 Effective dates. These rules and regulations shall become effective upon the expiration of thirty days after said rules and regulations are filed with the code reviser, except WAC 332-52-030 (4)(a), (b), (c), (d), and (e), which shall become effective August 1, 1970. [Order 29, § 332-52-090, filed 4/17/70, effective 5/20/70.]

Chapter 332-60 WAC

NATURAL AREAS—NATURAL AREA PRESERVES

WAC

332-60-010	Authority.
332-60-020	Purpose.
332-60-030	Invalidity of part of chapter not to affect remainder.
332-60-040	Cooperation with government agencies or private entities.
332-60-050	Definitions.

NATURAL AREAS—REGISTRATION

332-60-060	Site criteria for registration.
332-60-070	Procedures for registration of natural areas.
332-60-080	Removal of a natural area from the register.

NATURAL AREA PRESERVE—DEDICATION

332-60-090	Natural area preserve by instrument of dedication.
332-60-100	Instrument of dedication—Form.
332-60-110	Instrument of dedication—Interest conveyed.
332-60-120	Effective date of dedication.
332-60-130	Termination of dedication.

NATURAL AREA PRESERVE—COOPERATIVE AGREEMENT

332-60-140	Natural area preserve by cooperative agreement.
332-60-150	Cooperative agreement.
332-60-160	Termination of natural area preserve by cooperative agreement.

WAC 332-60-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 79.70.030 and 79.70.090. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-010, filed 12/7/83.]

WAC 332-60-020 Purpose. The purpose of this chapter is to establish rules for implementing a statewide

system of registration of natural areas and creation of natural area preserves. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-020, filed 12/7/83.]

WAC 332-60-030 Invalidity of part of chapter not to affect remainder. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-030, filed 12/7/83.]

WAC 332-60-040 Cooperation with government agencies or private entities. The department may cooperate or contract with any federal, state or local government agency, private organization, or individual, in carrying out the purpose of this chapter. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-040, filed 12/7/83.]

WAC 332-60-050 Definitions. (1) "Department" means the department of natural resources.

(2) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(3) "Plan" means the state of Washington natural heritage plan as established under RCW 79.70.030.

(4) "Natural heritage resource" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the plan.

(5) "Natural area" means a unit of land or water or both which contains a natural heritage resource, and which has been registered by the landowner and may be considered for dedication or commitment as a natural area preserve.

(6) "Natural area preserve" means a natural area which has been:

(a) Dedicated under the provisions of RCW 79.70.090; or

(b) Formally committed to protection by a cooperative agreement between a government landholder and the department.

(7) "Registration" means a voluntary commitment by the landowner for protection of a specific natural heritage resource located on the landowner's land. No real property interest is transferred. Registration is memorialized by a certificate of registration issued by the department.

(8) "Dedication" means the formal recognition and protection of a natural area for natural heritage conservation purposes accomplished by the voluntary transfer by a landowner to the department of an interest in real property less than fee simple.

(9) "Register" means the Washington Register of Natural Area Preserves which lists the sites which have been formally registered, dedicated or formally protected by cooperative agreement, for natural area purposes.

(10) "Instrument of dedication" means a written document intended to convey an interest in real property, pursuant to chapter 64.04 RCW.

(11) "Landowner" means any individual, partnership, private, public, nonprofit, or municipal corporation, city, county, state agency, agency of the United States or any other governmental agency or entity, which exercises control over a natural heritage resource whether such control is based on legal or equitable title, or which manages or holds in trust land in Washington state.

(12) "Government landholder" means any city, municipal corporation, county, state agency, agency of the United States, or any other government agency which manages, owns, holds in trust or otherwise has jurisdiction over land in Washington state. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-050, filed 12/7/83.]

NATURAL AREAS--REGISTRATION

WAC 332-60-060 Site criteria for registration. The criteria for identification for registration are set forth in the plan. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-060, filed 12/7/83.]

WAC 332-60-070 Procedures for registration of natural areas. (1) After a site has been identified, the department or its designee shall notify the landowner, in writing, of the site's natural heritage resource and the site's eligibility for the register.

(2) The department or its designee must obtain from the landowner written permission to proceed with the site evaluation process.

(3) Once permission is granted by the landowner to proceed with the site evaluation process, the department nominates the site to the council.

(4) The council shall review each site nomination and approve or reject registration of the site.

(5) The department shall notify the landowner of the council's determination and, for an approved site, offer the landowner the opportunity to voluntarily place the site on the register.

(6) If the landowner agrees to register the site, the department shall place the site on the register and provide the landowner with a certificate of registration.

(7) The department may offer voluntary management guidelines and may enter into a management agreement with the landowner of a registered natural area. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-070, filed 12/7/83.]

WAC 332-60-080 Removal of a natural area from the register. (1) The department shall remove natural areas from the register at any time:

(i) Upon written request by the landowner to the department; or

(ii) If the council determines that the site is no longer managed for the natural heritage resources present, or the site no longer meets the original criteria for selection.

(2) Landowners are to be notified in writing of removal of a natural area from the register. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-080, filed 12/7/83.]

NATURAL AREA PRESERVE--DEDICATION

WAC 332-60-090 Natural area preserve by instrument of dedication. Upon such terms as the department and landowner agree, a registered natural area may be dedicated as a natural area preserve through the execution of an instrument of dedication in a form approved by the council. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-090, filed 12/7/83.]

WAC 332-60-100 Instrument of dedication--Form. The instrument of dedication shall be in accordance with the requirements of RCW 64.04.130. The instrument of dedication shall be substantially in the form required by law for the conveyance of any land or other real property. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-100, filed 12/7/83.]

WAC 332-60-110 Instrument of dedication--Interest conveyed. The instrument of dedication shall transfer a real property interest for the purpose of providing protection to a natural heritage resource. Interests which may be transferred include, but are not limited to: Water, timber, grazing, development rights, rights to hunt, fish, drain or fill, access easements, or rights of way. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-110, filed 12/7/83.]

WAC 332-60-120 Effective date of dedication. Dedication shall be effective upon the recording of the instrument of dedication in the real property records of the county or counties in which the natural area is located. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-120, filed 12/7/83.]

WAC 332-60-130 Termination of dedication. A dedication shall not be terminable except as provided by the instrument of dedication. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-130, filed 12/7/83.]

NATURAL AREA PRESERVE--COOPERATIVE AGREEMENT

WAC 332-60-140 Natural area preserve by cooperative agreement. A government landholder of a registered natural area may commit the area as a natural area preserve by executing with the department a cooperative agreement in a form approved by the council and upon such terms as the department and government landholder agree. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-140, filed 12/7/83.]

WAC 332-60-150 Cooperative agreement. The cooperative agreement must include a description of the legal or administrative commitment by the government landholder to manage the land for the protection of a natural heritage resource. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-150, filed 12/7/83.]

WAC 332-60-160 Termination of natural area preserve by cooperative agreement. The site may be removed from a natural area preserve status as provided by the cooperative agreement. [Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-160, filed 12/7/83.]

Chapter 332-100 WAC LEASES, SALES, RIGHTS OF WAY, ETC.

WAC

332-100-020	Leasing—Priority to public school districts.
332-100-030	[Rate of interest for sales] [Interest rates on deferred payments].
332-100-040	Deduction determination.
332-100-050	Rate of interest for contracts.
332-100-060	Rate of interest for repayment.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-100-010	Percentage of proceeds to management account. [Resolution 16, filed 4/5/61.] Repealed by 78-10-039 (Order 308, Resolution 241), filed 9/18/78. Statutory Authority: RCW 79.64.040.
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WAC 332-100-020 Leasing—Priority to public school districts. Acting under the authority as hereinbefore set forth and RCW 79.01.096, the board of natural resources declares it to be the policy of the department of natural resources to grant priority to public school districts in the leasing of common school lands under the jurisdiction of the department of natural resources: *Provided, however,* That the needs of such lands for public school purposes is clearly demonstrated and the request is not in excess of actual or reasonably foreseeable needs. [Resolution 32, filed 4/3/62.]

WAC 332-100-030 [Rate of interest for sales] [Interest rates on deferred payments]. The interest rate to be charged on all sales requiring the same pursuant to RCW 79.01.132 shall be the average prime interest rate as quoted by Seattle First National Bank, National Bank of Washington, Rainier National Bank, and Peoples' National Bank on the first day of the last full quarter preceding approval of a sale by the board of natural resources. Said rate shall not be less than six percent per annum. [Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution 304), § 332-100-030, filed 8/11/80; Order 27, § 332-100-030, filed 11/19/69.]

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 332-100-040 Deduction determination. (1) The board of natural resources hereby determines that a deduction from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department of natural resources and affecting public lands as provided for in subsection (2) hereof is necessary in order to achieve the purposes of chapter 79.64 RCW.

(2) The department of natural resources shall deduct the maximum percentages as provided for in RCW 79.64.040 and related statutes except that deductions from the gross proceeds of harbor area leases shall be at twenty percent. Except for transactions involving aquatic lands, harbor areas and trust land categories that have a deficit revenue/expenditure status, the deductions may be temporarily discontinued by a resolution of the board of natural resources at such times as the balance in the resource management cost account exceeds an amount equal to twelve months operating expenses for the department of natural resources or when the board determines such discontinuation is in the best interest of the trust beneficiaries. The board shall specify the trust lands subject to such discontinuation. The duration of such orders shall be for a specified time period calculated to allow a reduction of the resource management cost account balance to an amount approximately equal to three months operating expenses for the department. Operating expense needs will be determined by the board based on pro rata increments of biennial legislative appropriations. All sums so deducted shall be paid into the resource management cost account in the state general fund created by chapter 79.64 RCW. [Statutory Authority: RCW 79.64.040. 83-11-008 (Order 398, Resolution No. 419), § 332-100-040, filed 5/6/83, effective 6/30/83; 78-10-039 (Order 308, Resolution 241), § 332-100-040, filed 9/18/78.]

WAC 332-100-050 Rate of interest for contracts. The interest rate to be charged on all contracts requiring the same pursuant to RCW 79.01.216 shall be the average rate of interest charged in the general area of the property to be sold by the six largest lending institutions in such area for conventional mortgages on the first day of the last full quarter preceding approval of a contract by the board of natural resources. Said rate shall not be less than six percent. [Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution 304), § 332-100-050, filed 8/11/80.]

WAC 332-100-060 Rate of interest for repayment. The interest rate to be charged for repayment of expenditures to the resource management cost account pursuant to RCW 79.64.030 shall be the average interest obtainable by the state finance committee on investments of state funds for investments of not greater than fifteen years for the ten preceding years. Such interest rate shall be determined on January 1 of each year and be applicable to all required repayments for the ensuing year. [Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution 304), § 332-100-060, filed 8/11/80.]

Chapter 332-110 WAC
LEASES OF STATE OWNED LAND

WAC
332-110-010 Commissioner's authority.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-110-001 Certificate of filing. [Filed 3/2/66.] Decodified 12/31/77.

WAC 332-110-010 Commissioner's authority. It was moved by Governor Rosellini, seconded by Dean Marckworth, and passed, that the commissioner be authorized to administer all leases of state owned lands under the department's direction on the same principle as school grant lands, subject to periodic review and power of intervention by the board. [Motion No. 78, minutes of April 1, 1958, meeting of board of natural resources (codified as WAC 332-110-010), filed 3/2/66.]

Reviser's note: The above section is an excerpt from the minutes of the April 1, 1958, meeting of the board of natural resources, which were filed in their entirety in order that motion number 78 may be given effect as a rule under the Administrative Procedure Act.

Chapter 332-120 WAC
SURVEY MONUMENTS--REMOVAL OR DESTRUCTION

WAC
332-120-010 Definition.
332-120-020 Application.
332-120-030 Permit.
332-120-040 Standards.
332-120-050 Report.

WAC 332-120-010 Definition. Monument: Any physical object or structure of record which marks or accurately references a corner or other survey point established by or under the supervision of a qualified party, including any corner or natural monument established by the general land office and its successor, the bureau of land management; section subdivision corners down to and including one-sixteenth corners and any permanently monumented boundary, rights of way alignment, horizontal and vertical control points established by any governmental agency or private surveyor including street intersections but excluding dependent interior lot corner points. [Order 131, § 332-120-010, filed 3/1/72, effective 4/7/72.]

WAC 332-120-020 Application. All persons desiring to temporarily remove or destroy a section corner or any other land boundary mark or monument shall submit an application in substantially the following form to the commissioner of public lands, giving all pertinent information regarding existing conditions at the monument, necessity for its temporary removal or destruction,

and methods proposed for referencing or witnessing the monument to preserve its position. The application form shall be signed by a registered professional engineer or land surveyor and shall bear his seal and license number.

State of Washington
Department of Natural Resources

APPLICATION FOR PERMIT TO TEMPORARILY REMOVE OR DESTROY SECTION CORNER, OR OTHER LAND BOUNDARY MARK OR MONUMENT

To the Commissioner of Public Lands:

Pursuant to the provisions of Paragraph 6, section 25, chapter 271, Laws of 1969 ex. sess., the undersigned

(name) acting in and for (person, firm, corporation, or association) hereby applies for permit to

(temporarily remove) (destroy)
(strike out one)

the following described survey monument in Section
, Township North, Range
in County.

EXISTING CONDITIONS AT MONUMENT

Type of Monument: Sect. Cor. (), Triangulation Sta. (), Bench Mark (), Other

Established By: GLO(), Federal (), State (), Other

Marked By: Pipe (), Rock (), Tree (), Conc. Mon. (), Brass Cap (), Other

Original and/or Supporting Evidence Found:

Coordinates: State (Lambert) (), Zone, Other (specify)
Y (N) X (E)

Source of Coordinates:

Accuracy of Coordinates:

SKETCH (Indicate Meridian)

NECESSITY FOR TEMPORARY REMOVAL OR DESTRUCTION OF MONUMENT

(Blank lines for text entry)

PROPOSED METHOD OF REFERENCING and/or
REESTABLISHING MONUMENT

form below, and is subject to field inspection at his discretion.

The requirement for reference to the Washington Coordinate System is hereby waived. Yes () No ()

BERT L. COLE
Commissioner of Public Lands

SEAL Date -----

Signature of Registered
Engineer or Land Sur-
veyor
Lic. No. Address -----

Date of Issue by -----
----- (Authorized Issuing
Officer)
(Detach at perforations)

State of Washington
Department of Natural Resources
Olympia, Washington

Mail completed form to:
Department of Natural Resources
Bureau of Surveys and Maps
P.O. Box 168 Tel. No. 753-5337
Olympia, WA 98504

REPORT ON TEMPORARY REMOVAL OR DESTRUCTION
OF SECTION CORNER OR OTHER LAND BOUNDARY
MARK OR MONUMENT

[Order 131, § 332-120-020, filed 3/1/72, effective 4/7/72.]

(date)

WAC 332-120-030 Permit. When satisfied that the application complies with all laws and regulations, the officer in charge of the bureau of surveys and maps, designated as the issuing officer for such permit, acting for the commissioner of public lands, shall issue a permit in substantially the following form for the temporary removal or destruction of the mark or monument. He shall maintain on file a public record of such permits issued, and provide copies of said permits on request and within 5 working days to the respective county or local governmental agencies where required.

To the Commissioner of Public Lands:

In accordance with your Permit No. ----- dated ----- 19--, I have (temporarily removed) (destroyed) monument named therein. There follows a description of monuments and accessories I established to perpetuate the original location of this point.

Permit No. -----

State of Washington
Department of Natural Resources
Olympia, Washington

(Sketch-attach sheet if necessary)

(signature)

(address)

PERMIT TO TEMPORARILY REMOVE OR DESTROY SECTION CORNER, OR OTHER LAND BOUNDARY MARK OR MONUMENT

To: -----
(applicant)

(street) (city) (state) (zip)

(Seal)
License No. -----

Pursuant to the authority vested in me by chapter 271, Laws of 1969 ex. sess., and in conformity with your application dated ----- 19--, you are hereby authorized to (temporarily remove) (destroy) the following described survey monument:

Except, applications concerning any monument of the Federal horizontal or vertical geodetic networks will be referred for appropriate action to the National Ocean Survey and as applicable and if so identified, the establishing party or agency of any monument will be immediately notified of the pending action.

Except, under extraordinary circumstances, to prevent hardship and delay, the issuing officer upon assurance by an authorized party that proper precautions are being taken to perpetuate a point, may verbally grant permission to proceed pending the processing and issuance of a written permit. [Order 131, § 332-120-030, filed 3/1/72, effective 4/7/72.]

This permit is granted subject to the provisions of law and the regulations promulgated by me, as given on the reverse side of the application form. The work performed by you under this permit is to be reported to the issuing officer on the Report

WAC 332-120-040 Standards. The issuing officer may waive the requirement for referencing to the

Washington state coordinate system where such referencing is deemed to be impractical. Replacement and/or reference monuments to be of a permanent nature suitable for local conditions, and identified as to the responsible party or agency and the month and year when set. Replacement monuments or reference monuments established in lieu thereof shall be of a kind or a higher standard than the monument being replaced. Said issuing officer shall be guided by the following recommended standards for remonumentation as published by the department of natural resources pursuant to section 27, chapter 271, Laws of 1969 ex. sess.:

(1) All concrete monuments used must contain reinforcing steel or other magnetic material, except those enclosed in monument cases.

(2) A minimum of 2" diameter iron pipe should be used for monuments in unpaved streets.

(3) Monument cases shall be used in paved streets. Minimum monument in cases shall be 2" diameter concrete filled iron pipe. [Order 131, § 332-120-040, filed 3/1/72, effective 4/7/72.]

WAC 332-120-050 Report. Upon completion of the temporary removal and replacement or the destruction of a mark or monument and the proper establishment of reference monuments, the applicant shall within 10 days complete the report form which is attached to his permit (see permit form under WAC 332-120-030) showing all pertinent information as to work accomplished, marks, reference marks, reference points, and any accessories or features by which the point can be located if inaccessible or otherwise difficult to ascertain. When completed, this form shall be detached from the permit and be returned to the issuing officer for his permanent file. The issuing officer shall furnish copies of this form upon request and within 5 working days to the county and local governing agencies as applicable. [Order 131, § 332-120-050, filed 3/1/72, effective 4/7/72.]

Chapter 332-130 WAC SURVEY STANDARDS

WAC

332-130-010	Authority.
332-130-020	Definitions.
332-130-030	Land subdivision standards—Recording.
332-130-040	Land description requirements—General.
332-130-050	Land description requirements—Specific items.
332-130-060	Survey map requirements.
332-130-070	Field traverse standards for land surveys.
332-130-080	Geodetic control survey standards.

WAC 332-130-010 Authority. The department of natural resources, in accordance with the authority defined in paragraph 1, RCW 58.24.040, does herewith prescribe the following regulations setting minimum standards for land boundary surveys and geodetic control surveys. [Order 275, § 332-130-010, filed 5/2/77.]

WAC 332-130-020 Definitions. As used for these rules, the following definitions shall apply:

(1) **Land boundary surveys:** All surveys whether made by private persons or entities or public bodies of whatsoever nature for the specific purpose of establishing or reestablishing the boundary of any lot, tract or parcel of real property in the state of Washington;

(2) **Geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the Lambert grid net and establishing plane coordinate values on primary cadastral monuments within the requirements of the Washington coordinate system, as defined in chapter 58.20 RCW;

(3) **Land surveyor:** Shall mean every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW, as now or hereafter amended;

(4) **Land survey:** Shall mean the locating and monumenting, in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more parcels or which reestablish or restore general land office or bureau of land management survey corners;

(5) **Washington coordinate system:** Shall mean that system of plane coordinates as established and designated by chapter 58.20 RCW;

(6) **Public record:** Shall be the system of records maintained by the bureau of surveys and maps, the county auditors and such other agencies as may be officially designated and by law assigned the responsibility of maintaining a record of such information available to the general public during normal working hours;

(7) **The Survey Recording Act:** Shall mean chapter 50, Laws of 1973, (chapter 58.09 RCW) as now or hereafter amended;

(8) **GLO and BLM:** Means the general land office and its successor, the bureau of land management. [Order 275, § 332-130-020, filed 5/2/77.]

WAC 332-130-030 Land subdivision standards—Recording. The following minimum standards shall apply to land subdivision:

(1) The subdivision of a section shall conform to the rules prescribed for official U.S. government surveys of the public lands and instructions relating thereto, and/or applicable federal or state court decisions relating thereto;

(2) Section subdivision and line data shall be shown on the record of survey to the extent necessary to support the position of any subdivisional corner used to reference a surveyed parcel and to justify the location of the parcel boundary therein; except where a section subdivision is a matter of public record, then reference may be made to that record and only so much of the section subdivision as is necessary to properly orient the surveyed parcel need be shown;

(3) Every general land office or bureau of land management survey mark or corner controlling a surveyed parcel shall be documented and recorded as required by the Survey Recording Act, unless the corner and its accessories are substantially as described in an existing record conforming to the provisions of this section on file

with the county auditor and the bureau of surveys and maps. The documentation of any GLO or BLM corner shall include at least three substantial references to the corner mark placed in such a manner that they are not likely to be destroyed along with the corner. A valid set of coordinates on the Washington coordinate system may serve as one of the three required references. [Order 275, § 332-130-030, filed 5/2/77.]

WAC 332-130-040 Land description requirements—General. Any legal land description written defining land boundaries shall be complete and accurate from the title standpoint, providing definite and unequivocal identification of the lines or boundaries from which a physical survey can be accomplished. [Order 275, § 332-130-040, filed 5/2/77.]

WAC 332-130-050 Land description requirements—Specific items. The following items must be considered and included in a land description when applicable:

- (1) Lot, tract or portion thereof in a recorded plat:
 - (a) Lot and block number or designation,
 - (b) Addition or subdivision name and number and its location by section, township, range and meridian,
 - (c) Plat book and page number of recorded plat,
 - (d) Recording office, city or county and state.
- (2) Lot or tract described by metes and bounds:
 - (a) City and/or county and state,
 - (b) Subdivision(s) of section, township, range, meridian or other official GLO or BLM survey subdivision, or portion of recorded plat,
 - (c) Measurement to official GLO or BLM survey subdivision corner or properly determined subdivision corner thereof with physical description of such corners,
 - (d) A traverse of the boundary giving:
 - (i) Place of beginning and/or initial point including description of the physical monument,
 - (ii) Bearings or azimuths in degrees, minutes and seconds,
 - (iii) Distances in feet to the nearest one-hundredth,
 - (iv) Identification of adjoining giving official recording office and recovery index when other deed calls are uncertain,
 - (v) Indicate if course is a dividing line of a section subdivision, a line of record or parallel thereof,
 - (vi) indicate area to the nearest one-hundredth acre. [Order 275, § 332-130-050, filed 5/2/77.]

WAC 332-130-060 Survey map requirements. The record of survey shall be a map properly drawn to a convenient scale such as to satisfy the requirements of the Survey Recording Act and/or chapter 58.17 RCW relating to platting, subdivision and dedication of land.

- (1) Boundary survey maps shall include the following where applicable:
 - (a) Title of survey;
 - (b) Land surveyor certification by showing name, license number, signature and seal;
 - (c) Date;
 - (d) North arrow and bearing reference;

- (e) Deed calls and reference to control monuments;
- (f) Indicate monuments found and set;
- (g) Gearing, azimuths or angles in degrees and minutes and seconds and distances to the nearest one-hundredth of a foot;
- (h) Legal description of property;
- (i) Indicate hiatuses (gaps) and/or overlapping boundaries;
- (j) Physical appurtenances (fences, structures, etc.) which may indicate encroachment, lines of possession or conflict of title;
- (k) Indexing data block, showing:
 - (i) Section, township and range and, additionally, the quarter(s) of a section in which the surveyed parcel lies,
 - (ii) Other official subdivisional tract of the GLO or BLM survey,
 - (iii) In a recorded subdivision, show lot, block, name and number of subdivision with volume and page of recorded plat;
- (2) A copy of the survey map shall be furnished the client. [Order 275, § 332-130-060, filed 5/2/77.]

WAC 332-130-070 Field traverse standards for land surveys. The following standards shall apply to field traverses used in land boundary surveys. Such standards should be considered minimum standards only. Higher levels of precision are expected to be utilized in areas with higher property values or in other situations necessitating higher accuracy.

- (1) Linear closures after Azimuth adjustment.
 - (a) City – central and local business and industrial areas 1:10,000
 - (b) City – residential and subdivision lots 1:5,000
 - (c) Section subdivision, new subdivision boundaries for residential lots and interior monument control 1:5,000
 - (d) Suburban – residential and subdivision lots 1:5,000
 - (e) Rural – forest land and cultivated areas 1:5,000
 - (f) Lambert grid traverses 1:10,000
- (2) Angular closure.
 - (a) Where 1:10,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of $10 \sqrt{n}$, where "n" equals the number of angles in the closed traverse or three seconds per angle whichever is the least.
 - (b) Where 1:5,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of $30 \sqrt{n}$ where "n" equals the number of angles in the closed traverse or eight seconds per angle whichever is the least. [Order 275, § 332-130-070, filed 5/2/77.]

WAC 332-130-080 Geodetic control survey standards. The following standards shall apply to geodetic control surveys:

- (1) Horizontal control.
 - (a) At least second-order Class II accuracy and specifications as published by the Department of Commerce,

February, 1974 in Bulletin titled, "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Surveys";

(b) Cadastral monuments, as defined in chapter 58.20 RCW.

(2) Vertical control.

At least second-order Class II accuracy and specifications as published by the Department of Commerce, February, 1974 in Bulletin titled, "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Surveys." [Order 275, § 332-130-080, filed 5/2/77.]

Chapter 332-140 WAC

FOREST PRODUCTS INDUSTRY RECOVERY ACT OF 1982

WAC

332-140-010	Introduction and general definitions.
332-140-020	Extension procedure.
332-140-030	New plan of operations required.
332-140-040	Extension time credits.
332-140-050	Paid extension credit.
332-140-060	Defaults.
332-140-070	Reinstatement of sales.
332-140-090	Extension interest rate limitation.
332-140-100	Mt. St. Helens sales excluded.
332-140-200	Introduction and definitions.
332-140-210	Market indexes established.
332-140-220	Price to be paid for timber removed.
332-140-230	Payment and adjustments.

WAC 332-140-010 Introduction and general definitions. (1) The regulations in this chapter are promulgated by the commissioner of public lands of the state of Washington to implement the Forest Products Industry Recovery Act of 1982. Unless provided otherwise herein or unless the context clearly requires otherwise, the following definitions apply to this chapter and to the act:

(a) "The act" means the Forest Products Industry Recovery Act of 1982, which is sections 3 through 9, chapter 222, Laws of 1982.

(b) "ARRF" means the access road revolving fund referred to in the contract and in RCW 79.38.050.

(c) "Assignment" means the assignment of rights or delegation of duties by a purchaser of a sale or contract to another.

(d) A purchaser "commences operations" on a sale by engaging in removals on that sale or by commencing road construction, falling, bucking, or other contract requirements.

(e) A timber sale contract or timber sale which was "purchased," "entered into," or "purchased at auction" in reference to certain dates specified in sections 4, 5 and 6 of the act refers to the date on which the public auction was held at which such contract or sale was offered.

(f) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired and on which there are forest products yet to be removed. Under section 6 of the act, a purchaser may default a sale by giving notification which specifies that the purchaser is waiving all its rights to the sale. Upon

receipt of the notification by the department, the purchaser's operating authority on the sale expires.

(g) "Department" means the department of natural resources of state of Washington.

(h) "Existing," in reference to a sale, means a sale on which the operating authority has not expired and on which there are forest products yet to be removed.

(i) "Expiration date," in reference to a sale, means the date on which the operating authority expires on that sale under the terms of the contract.

(j) To "identify" a sale means to state the name of the sale and its application number.

(k) "Merchantable" forest products means those forest products included in a sale which are "merchantable" as that term is used in the contract and does not include "cull" or "utility" forest products as those terms are defined in the contract.

(l) "MBF" means thousand board feet Scribner Scale of forest products.

(m) "MMBF" means million board feet Scribner Scale of forest products.

(n) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is to remove the forest products which are the subject of the sale.

(o) A "partial cut" sale is one other than a clearcut and on which only part of existing forest products are designated to be removed.

(p) "Performance security" means the surety bond, cash bond, savings account assignment, irrevocable bank letter of credit, or other form of security which insures the faithful performance by the purchaser of the terms of the contract.

(q) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation which owns at least a majority of shares of another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser under the provisions of the act.

(r) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which were sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. The terms "sale" or "contract" shall be used in these regulations. All of the foregoing terms are considered to be synonymous as referred to in the act and these regulations.

(s) "Person" as used in section 5(2) of the act means the business entity which paid extension fees prior to the effective date of the act.

(t) "Window sale" means a sale which is referred to in subsection (2) below.

(2) **Window sales.** (a) As referred to in these regulations and in sections 4, 5 and 6 of the act, sales or contracts "entered into," "purchased," or "purchased at auction" between January 1, 1978, and July 1, 1980, means those sales for which the auction was held after January 1, 1978, and before July 1, 1980.

(b) "Lincoln day blowdown" sales are those sales identified by the department which were prepared and sold as a result of damage to the timber caused primarily by the Lincoln day windstorm which occurred on or about February 13, 1979. Such term does not include sales sold because of other reasons or sales sold because timber which was damaged by the Lincoln day storm was further substantially damaged by later storms or other causes. The following sales are the only Lincoln day blowdown sales which were auctioned from July 1, 1980, through December 31, 1980, on which there are forest products remaining to be removed:

- (i) Lower Wasankari, Application No. 40694
- (ii) Piedmont Blowdown, Application No. 42799
- (iii) Miller Road Blowdown, Application No. 42817
- (iv) 4 Corners Blowdown, Application No. 43196
- (v) Key Boundary, Application No. 42078
- (vi) Peaks Pickens, Application No. 42933
- (vii) Three Sisters Blowdown, Application No. 42493
- (viii) Little Boy Blew, Application No. 42163
- (ix) Miller Pickup Blowdown, Application No. 43474
- (x) Shay, Application No. 42133

(3) **Full reservation of rights.** These regulations are being adopted because of the presumption that enacted laws are valid. However, all existing, past and future purchasers should be aware that claims have been made that the act is invalid and that there is a possibility that the act or portions thereof may be challenged in court, even by the department or other governmental agency or entity.

Any purchaser who requests relief under the act does so at its own risk as to the validity of the act and the possibility of judicial orders or decrees affecting it. The department makes no warranty of the validity of the act and reserves the right to immediately terminate, rescind, or otherwise refuse to grant relief under the act if all or a portion of the act is declared invalid, whether such court order or decision is obtained by others or itself. The department further reserves the right to secure all rights, monies, charges, damages or claims that it would otherwise have been entitled to if the act or portions thereof are declared invalid, and to take such action as may be necessary to secure the same. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-010, filed 7/1/82.]

WAC 332-140-020 Extension procedure. Requests for extensions under the act shall be in writing. Extensions will be granted only by a written extension document. Extensions granted under the act shall only be on

a quarterly (3 month) basis and shall be for 3, 6, 9 or 12 months, except as provided in WAC 332-140-050 (2)(c). An extension will not be granted for less time than is reasonably required, as determined by the department, to remove all of the forest products remaining on the sale being extended. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-020, filed 7/1/82.]

WAC 332-140-030 New plan of operations required. A new plan of operations must be filed and approved for all window sales on which the purchaser commences operations prior to July 15, 1982, before the purchaser commences operations. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-030, filed 7/1/82.]

WAC 332-140-040 Extension time credits. This section implements section 4 of the act.

(1) **Introduction.** "Extension time credit" means the number of calendar days a purchaser receives by engaging in or agreeing to engage in the removal of forest products on a sale which qualifies under subsection (2) below. Extension time credit can be received only for removals engaged in after April 3, 1982. This credit can only be used to extend window sales which exist at the time of the application for an extension of such sale. There are two ways to receive extension time credit. First, a purchaser can "earn" the credit. The extension time credit is "earned" only after the purchaser has satisfactorily engaged in the removals. Second, a purchaser can receive "conditional" credit by agreeing to engage in removals in the future.

(2) **Sales upon which purchaser may earn credit.** The following sales are sales on which the purchaser may earn extension time credit:

(a) All sales auctioned prior to April 3, 1982, but only if and to the extent that the purchaser agrees to and engages in removals and receives a logging release on that sale prior to December 31, 1983.

(b) Sales auctioned on or after April 3, 1982, which, in the prospectus and contract, are identified by the department as sales on which extension time credit may be earned, but only if and to the extent that the purchaser agrees to and engages in removals on that sale prior to the sale's expiration date or December 31, 1983, whichever is sooner. Up to 60% of the number of sales auctioned in 1982 and 1983 may be so designated by the department.

(3) **Amount of extension time credit.** One calendar day of extension time credit is earned for each acre of forest products which the purchaser satisfactorily removes and for which a logging or operating release has been issued, except that on partial cut sales or units on which less than 10 MBF/acre is satisfactorily removed, the following schedule shall be used to compute the number of days of extension time credit which may be earned:

Department's presale cruise volume of forest products (average board feet per acre)	Acres of forest products to be removed to earn one day of Extension Time Credit
9,000 to 9,999	1.1
8,000 to 8,999	1.2
7,000 to 7,999	1.4
6,000 to 6,999	1.7
5,000 to 5,999	2.0
4,000 to 4,999	2.5
3,000 to 3,999	3.3
2,000 to 2,999	5.0
Less than 2,000	10.0

Extension time credit will be computed on the foregoing basis, whether the removal of the forest products actually takes a longer or shorter time. The volume of forest products and acreage of a sale shall be the volume and acreage stated in the contract. Extension time credit is earned for time spent on yarding, loading and hauling activities only and not for road construction, falling and bucking, or for other contract requirements.

(4) **Request to earn extension time credit.** To earn extension time credit on a sale qualifying under subsection (2) above, a purchaser must submit a written request to the department. Extension time credit will be granted only for forest products removed on or after the day the request is received by the department. This request must identify the sale(s) on which the purchaser wishes to operate to earn extension time credit. The department shall determine the amount of extension time credit available to be earned on a sale in accordance with subsection (3) above. The department and the purchaser shall enter into a written agreement on a form provided by the department which sets forth the limitations of subsection (2) above as well as the amount of extension time credit which can be earned by engaging in such removals. The department shall establish an extension time credit account for the purchaser. After extension time credit is earned on a sale, the department will credit the purchaser's extension time credit account with the proper number of days of extension time credit. The account shall be debited from time to time as extension time credit is used under subsection (9) below. The purchaser which earns the extension time credit may not assign that credit to another purchaser.

(5) **Request to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982.** If a purchaser wishes to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982, it must submit a written request to the department on or before May 14, 1982. This request must identify the sale on which the purchaser wishes to receive the credit. The department shall determine the proper number of days of extension time credit in accordance with subsection (3) above and shall credit the purchaser's extension time credit account accordingly. If a purchaser fails to meet the foregoing deadline, it shall not receive credit for engaging in removals from April 3, 1982, up through the time it submits a request on that sale under subsection (4) above.

(6) **Conditional extension time credit.** If a purchaser needs to extend a window sale and does not have a sufficient amount of extension time credit in its extension time credit account to do so, the purchaser may submit a written request to the department to receive conditional extension time credit. The request must identify the window sale to be extended and the sale on which the purchaser will agree to engage in removals to receive the conditional credit.

The department and the purchaser shall enter into an agreement, on a form provided by the department, which identifies the sale being extended, the sale on which the purchaser agrees to engage in removals, the amount of extension time credit being conditionally granted, and the date by which the purchaser must complete the removals agreed upon. Failure of the purchaser to complete the removals by the foregoing date subjects the purchaser to subsection (8) below. A purchaser which receives conditional extension time credit may not assign that credit to another purchaser.

(7) **Performance security required for agreements involving conditional credit.** An agreement extending a sale using conditionally granted extension time credit shall be secured by the initial deposit and the performance security on the sale being extended and by the initial deposit of the sale on which the purchaser agrees to engage in removals. An adequate amount of the deposits and such security, as determined by the department, must be maintained until the purchaser completes the removals as agreed to, or can substitute the conditionally granted credit with credit actually earned after the date of the agreement referred to above.

(8) **Purchaser's failure to engage in removals.** If the purchaser fails to meet the completion date for removals as stated in the agreement referred to in subsection (6) above, all of the conditional extension time credit granted on that sale will be disallowed, and the sale(s) which was extended using the conditional extension time credit shall not receive such credit. The purchaser shall receive no extension time credit for the removals engaged in. The department shall notify the purchaser in writing of a failure to meet the completion date. Within 30 days of the date of mailing or personal service of this notice, the purchaser must pay for any extension granted, to the extent that it was granted using conditional credits, as that extension fee would have been computed under the contract as limited only by section 9 of the act. In addition, the purchaser shall pay an additional interest charge on the value of that portion of the extension granted using conditional credit at 12 percent per annum from the date the extension was granted through the date of actual payment by the purchaser. If the purchaser fails to make this payment within 30 days following the above notice, the purchaser's operating authority on the sale shall terminate, and the department may recover damages against the purchaser and its surety as allowed by law.

(9) **Use of extension time credit to extend a window sale.** (a) Credit earned and credited to the purchaser's

extension time credit account may be used by the department to extend a window sale upon written application by the purchaser. Extensions under section 4 of the act will be granted only by written extension agreement. The purchaser must deliver to the department a properly executed extension agreement on or before the expiration date of the sale which the purchaser wishes to extend under section 4 of the act. Failure to meet the above deadline will disqualify the sale for an extension under section 4 of the act.

(b) The purchaser may use the extension time credit earned or conditionally granted to extend as many window sales as it selects. Sales may be extended for 3, 6, 9 or 12 months only, but the purchaser may apply as much credit as it has earned toward the extension. Extension time credit earned may be applied together with cash or road credit in any combination toward the extension fee. Conditionally granted extension time credit may also be used, but only if needed.

(c) Days of extension time credit earned shall be applied to a sale without regard to whether the extension is during the operating season, closed or winter season, or shutdowns, except that contract termination date adjustments under contract clause 14-4 may still be made.

(d) The department will grant no extension under section 4 of the act after December 31, 1983, except that the department may exercise its rights under subsection (8) above after December 31, 1983. The term of extensions granted under section 4 of the act shall not extend beyond December 31, 1984. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-040, filed 7/1/82.]

WAC 332-140-050 Paid extension credit. This section implements section 5 of the act.

(1) **Section 5(1).** (a) **Qualifying sales.** Only window sales which exists as of the date of the application under this subsection qualify for a paid extension credit under section 5(1) of the act.

(b) **Written application.** To qualify for the paid extension credit, an extension agreement, properly executed by the purchaser and surety (if applicable), must be received by the department at least one working day prior to the then current expiration date of the sale on which the purchaser seeks a paid extension credit. No credits will be granted under section 5(1) of the act if the purchaser does not meet the foregoing deadline.

(c) **Amount of paid extension credit.** The amount of the paid extension credit on a sale shall be equal to the total amount of the extension fees paid by the purchaser on that sale after April 3, 1982 by cash or road credits.

(d) **Same sale.** The paid extension credit shall be applied, dollar for dollar, to payments for forest products only on the same sale as the extension fee is paid by the purchaser. The paid extension credit may not be used to pay ARRF charges.

(e) **Length of extensions.** The extensions granted on a sale under section 5(1) of the act shall only be 3, 6, 9 or 12 months in length. The department's authority to grant extensions under section 5(1) of the act expires on December 31, 1984.

(2) **Section 5(2).** (a) **Qualifying sales.** Section 5(2) of the act applies only to extensions which were requested, paid for, and for which the extension agreements were executed on or before April 2, 1982. Section 5(2) of the act applies to all sales existing as of the date of the purchaser's application hereunder. Extensions of sales for which extensions were paid after April 2, 1982, do not qualify for an equivalent extension under section 5(2) of the act. A person may not receive a credit under section 5(2) of the act for minimum fee (\$100) extensions granted before April 3, 1982, but only for extensions paid in cash by the purchaser.

(b) **Written application.** A person wishing to receive an extension on a sale under section 5(2) of the act must make a written application to the department which identifies the sale, the amount of extension time claimed under section 5(2) of the act, and the dates and periods of past extensions purchased on that sale.

(c) If a person satisfies the provisions of (2)(a) and (b) above, the department shall, without any charge, grant the person applying for an extension under section 5(2) of the act an extension equal in time to the total time of the extensions on that sale which were paid by the person extending the sale, up to a total of twelve months. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-050, filed 7/1/82.]

WAC 332-140-060 Defaults. This section is to implement section 6 of the act.

(1)(a) **Qualifying sales.** Section 6 of the act applies only to window sales which were in existence as of April 3, 1982, or for which a payment is made after April 3, 1982, under section 7 of the act to reinstate the sale.

(b) **Written notification.** The purchaser must provide the department with written notification on or before July 14, 1982, stating that the purchaser elects to terminate or default a sale under section 6 of the act. Such notification must state that the purchaser is giving up all of its rights under that contract as of the date of the notification. The notification must be accompanied by a sworn written statement by an authorized representative of the purchaser which identifies the names of all affiliates, subsidiaries, and parent companies of the purchaser which purchased a window sale. The department shall provide the form for this statement. The notification must also be accompanied by a \$2,500 administrative fee. The notification will be considered received by the department only when the fee and sworn statement are received by the department.

(c) **Limitation on sales to be defaulted.** The following limitations apply to the sales which a purchaser may terminate or default under section 6 of the act.

(i) The purchaser may default on the sale(s) of its choice of which it was the purchaser as of April 3, 1982, if the sale qualifies under subsection (1)(a) above and if the cumulative volume remaining on those sales for which notification is given does not exceed 15 MMBF of forest products as of the date of the notification. The volume remaining on a sale shall be computed by the department by subtracting the volume of merchantable forest products removed from the department's presale

cruise volume of merchantable forest products stated in the contract.

(ii) No sales which have been assigned after April 3, 1982, may be terminated or defaulted.

(iii) Only entire sales may be defaulted. A purchaser may not default on part of a sale under section 6 and choose to retain any right to remove forest products from any part of the same sale.

(iv) A sale may be terminated or defaulted even though the purchaser has operated on it and removed forest products from the sale, subject to the further limitations of subsection (1)(d) below.

(v) A sale on which all of the forest products have been removed may not be terminated or defaulted under section 6 of the act.

(d) Limitations on defaults of sales on which operations have occurred. A sale which otherwise qualifies for termination or default under section 6 of the act and this section may be defaulted subject to the following obligations and reservations:

(i) All forest products must be paid for which were removed from the sale and all due ARRF payments and other payments due must be paid, including all payments for forest products and ARRF deferred under a deferred payment agreement. The department reserves the full right to take appropriate action against the purchaser and its surety to recover all applicable damages for a failure of the purchaser to make the foregoing payments on or before the receipt of the notification of default.

(ii) All outstanding contract requirements (other than removal of forest products) which arose as a result of the purchaser's activities on the sale must be performed. These requirements include, but are not limited to, slash disposal preparation work, stream cleanout, falling non-merchantable forest products, road maintenance, ditching, waterbarring and fire trail construction. If the purchaser fails to perform the foregoing outstanding requirements, the department shall determine the current cost of performing that work and charge the purchaser therefor. If the purchaser fails to promptly pay such charges, the department may take appropriate action to recover the same from the purchaser and its surety.

(iii) The purchaser and its surety are not released from any liability or duty to indemnify the department which arose as a result of the acts or omissions of the purchaser or its delegate relating to the sale being defaulted.

(2) No refunds or credits. Upon notification under subsection (1)(b) above, the department shall make no refunds nor give any credits of any cash payments made to the department in connection with the contract which is being defaulted. Such cash payments include, but are not limited to, the initial deposit, extension fees, cash advance payments, and cash performance bonds, whether the foregoing deposits or payments are used or unused. All such sums shall be retained by the department.

(3)(a) Road credits. Upon receipt of notification under subsection (1)(b) above, the department shall compute the road credit which is provided by section 6(3) of

the act. The credit shall only be allowed for construction of roads that are listed under the ROAD DEVELOPMENT section of the timber sale prospectus, as shown on the timber sale map.

(b) Amount of road credit. The amount of the road credit shall be determined based upon the percentage of road work satisfactorily completed in each road construction phase. The phases of road construction are those separate phases expressly identified in the road appraisal work forms used by the department in the presale appraisal. The percentages of satisfactory completion shall be applied to the road construction cost estimates as stated in the department's road construction presale appraisal.

(c) Reduction of credit. The total amount of the road credit as computed in subsection (3)(b) above shall be reduced by the difference between the current costs, as determined by the department, of correcting road work which was unsatisfactorily performed and the cost of completing such road work as computed in the department's original presale road construction appraisal.

(d) Amortization. The amount of the road credits shall be further reduced by the same percentage as the percentage of forest products removed on that sale. The percentage of forest products removed shall be computed by dividing the volume of merchantable forest products removed by the volume stated in the contract.

(4) Application of road credit. (a) Road credit will be applied only upon written application of the purchaser and after the department has determined the amount of the road credit. Such credit may be applied to one-half of any required payment for stumpage, cash deposits for performance security, or extension fee on a sale. Road credits cannot be applied to the initial deposit on a sale nor to a payment made under section 7 of the act.

(b) Road credit will only be applied to sales of that purchaser which are situated on land of the same trust and beneficiary as the sale on which the road credit is given. If the sale on which the road credit is given is situated on land of more than one trust and beneficiary the total road credit for the sale shall be divided in proportion to the acreage of each trust and beneficiary and applied separately and only to sales situated on the same trust and beneficiary.

(5) A purchaser whose sale expires or expired without removing all of the forest products from the sale and which sale does not qualify to be terminated or defaulted by the purchaser under section 6(1) of the act remains fully liable to the department for whatever damages that may be recovered under law notwithstanding the provisions of the act. This includes a sale which had expired as of April 3, 1982, and which the purchaser does not reinstate under section 7 of the act on or before July 14, 1982. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-060, filed 7/1/82.]

WAC 332-140-070 Reinstatement of sales. This section implements section 7 of the act.

(1) Qualifying sales. Section 7 of the act applies to sales on which the operating authority had expired as of

April 3, 1982 which otherwise would qualify for extension under sections 4 or 5 of the act or to be defaulted under section 6 of the act. The purpose of section 7 of the act is to allow the purchaser to make a payment to reinstate such a sale and thereby make that sale eligible for relief under sections 4, 5, 6 and 9 of the act. A reinstatement payment made under section 7 of the act is not considered an extension payment for purposes of section 5 of the act.

(2) **Application for reinstatement.** To reinstate a sale under section 7 of the act, the purchaser must make written application to the department for reinstatement on or before July 14, 1982.

(3) **Reinstatement payment.** To be effective, an application for reinstatement under section 7 of the act must be accompanied by a payment equal to the extension payment for that sale computed from the date the sale or a previous extension thereof expired through the date the application is received. The amount of this payment shall be computed as provided in the contract for extensions. The interest limitation of section 9 of the act does not apply to the extension computation under the provisions of section 7 of the act and this section. Road credits under section 6 of the act may not be used to make the reinstatement payments required by section 7 of the act. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-070, filed 7/1/82.]

WAC 332-140-090 Extension interest rate limitation. This section implements section 9 of the act.

(1) Section 9 of the act applies to extensions on sales which were auctioned on or before December 30, 1980, for which extensions are granted after April 3, 1982, but before December 31, 1984. In computing the fees for such extensions, the department shall use the interest rate stated in the contract or 13 percent, whichever is less, in computing the interest charge on the unpaid portion of the contract which forms part of the extension fee.

(2) Reinstatement payments made under section 7 of the act are not subject to the interest rate limitation of section 9 of the act. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-090, filed 7/1/82.]

WAC 332-140-100 Mt. St. Helens sales excluded. Sections 2 through 9 of the act do not apply to any sales sold before or after any eruption of Mt. St. Helens and which include or included timber damaged by any such eruption. [Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-100, filed 7/1/82.]

WAC 332-140-200 Introduction and definitions. (1) Implementation of RCW 79.01.126. These regulations, WAC 332-140-200 through 332-140-230, are promulgated by the department of natural resources for the purpose of implementing RCW 79.01.126, which provides for the adjustment of contract bid prices on timber sales sold on a scale basis having a minimum appraisal

value over twenty thousand dollars and which are auctioned on or after October 1, 1983. Stumpage rate adjustment shall apply only to major species of timber removed.

(2) **Definitions.** As used in these regulation and in RCW 79.01.126, where applicable:

(a) "Coast publication" means the market indexes published by the Western Woods Products Association in its publication known as the PNW Coast Lumber Price Index.

(b) "Inland publication" means the market indexes published by the Western Wood Products Association in its publication known as the Inland Lumber Price Index.

(c) "Contract bid price" for a given species of timber means the price for that species bid by the purchaser or set in the contract where bidding is not allowed on that species.

(d) "Department" means the department of natural resources.

(e) "Market index change amount" means the same in these regulations as it is defined in RCW 79.01.126(2).

(f) Timber "removed" means and includes only timber that is taken from the sale area.

(g) "Timber removed during a calendar quarter" shall be determined using the date the timber removed is scaled as provided for in the contract. [Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-200, filed 8/26/83.]

WAC 332-140-210 Market indexes established. (1) Following the conclusion of each calendar quarter, the department shall establish the amount of each market index for that quarter for the species of timber listed below. These species are determined to be major species, for which reasonably available and reliable market price information is available. Each index amount shall be established by extracting from the appropriate Western Wood Products Association index the quarterly average prices per thousand board feet. The major species will be indexed to the following indexes:

(a) Douglas fir and larch. For Douglas fir situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Douglas fir" index of the Coast publication. For Douglas fir and larch situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "dry Douglas fir-larch" index of the Inland publication. Larch situated west of the cascade crest is not a major species and shall not be subject to adjustment of the contract bid price.

(b) Hemlock/true fir. For the hemlocks and true firs situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "hem-fir" index of the Coast publication. For the hemlocks and true firs situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white fir (hem-fir)" index of the Inland publication.

(c) Ponderosa pine. For ponderosa pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "coast-inland north ponderosa pine" index of the Inland publication. Ponderosa pine situated west of the cascade crest is not a major species and is not subject to adjustment of the contract bid price.

(d) White pine. For white pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Idaho white pine" index of the Inland publication. White pine situated west of the Cascade Crest is not a major species and is not subject to adjustment of the contract bid price.

(e) Englemann spruce and lodgepole pine. For Englemann spruce and lodgepole pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white woods" index of the Inland publication. Englemann spruce and lodgepole pine situated west of cascade crest are not major species and are not subject to adjustment of the contract bid prices.

(2) Other species not indexed. Species other than those listed above are not major species. There is no readily available and reliable market information for such species and they are not subject to adjustment of the contract bid price.

(3) Cull volume not indexed. Cull logs, including utility logs as defined in the contract, of all species are not major species. There is no readily available and reliable market information for such logs and they are not subject to adjustment of the contract bid price. [Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-210, filed 8/26/83.]

WAC 332-140-220 Price to be paid for timber removed. The rate to be paid by the purchaser for each species of timber subject to adjustment of the contract bid price shall be the contract bid price plus or minus the market index change amount, as appropriate, but not less than sixty-five percent of the contract bid price. [Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-220, filed 8/26/83.]

WAC 332-140-230 Payment and adjustments. The periodic payments made by the purchaser for timber removed during a given quarter shall be based upon the adjusted price for the previous quarter, except that for removals during a quarter in which the sale is sold, the price used shall be the contract bid price. Following the establishment of the market index for the quarter, the appropriate adjustments will be made to the payments for the timber removed during that quarter. [Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-230, filed 8/26/83.]

Chapter 332-150 WAC

SURVEY, PLAT AND MAP FILING AND RECORDING FEES

WAC

332-150-010	Authority and scope.
332-150-020	Definitions.
332-150-030	Filing and recording fees.
332-150-040	Filing and recording fees—Designation of fees.
332-150-050	Biennial review.

WAC 332-150-010 Authority and scope. This chapter is promulgated pursuant to the authority granted in chapter 165, Laws of 1982. WAC 332-150-010 through 332-150-040 are intended to implement section 7, chapter 165, Laws of 1982. [Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-010, filed 6/30/82.]

WAC 332-150-020 Definitions. As used in WAC 332-150-010 through 332-150-040, the following definitions shall apply:

(1) "Surveys." All records of surveys required to be filed by law pursuant to chapter 58.09 RCW and all other land division plats or maps required by local ordinance to be filed and recorded.

(2) "Subdivision plats." All plats required to be filed by law pursuant to chapter 58.17 RCW.

(3) "Short plats." All short plats required to be filed by law pursuant to chapter 58.17 RCW.

(4) "Condominium surveys, plats or maps." All surveys, plats, or maps required to be filed by law pursuant to chapter 64.32 RCW.

(5) "Instrument." The total document filed and recorded of each of the above regardless of the number of pages. This term also includes corrections to such instruments, including but not limited to boundary line adjustments, correction affidavits, and correction plats and surveys. [Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-020, filed 6/30/82.]

WAC 332-150-030 Filing and recording fees. After the effective date of this regulation, each county auditor shall collect the fee of fifteen dollars per instrument in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats or condominium surveys, plats or maps. [Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-030, filed 6/30/82.]

WAC 332-150-040 Filing and recording fees—Designation of fees. The fees imposed by the foregoing rules are designated for and related solely to the purposes and provisions of chapter 58.24 RCW and not for the maintenance, sale and distribution of publications authorized by RCW 43.99.142. [Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-040, filed 6/30/82.]

WAC 332-150-050 Biennial review. The fee established by these rules shall be reviewed subsequent to the adoption of each biennial budget for surveys and maps to determine the sufficiency of such fee. If revenue is determined to be inappropriate for the program need the department shall adjust the fee accordingly. [Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-050, filed 6/30/82.]