

[Statutory Authority: RCW 75.08.080. 94-01-001, § 220-69-270, filed 12/1/93, effective 1/1/94; 83-24-049 (Order 83-203), § 220-69-270, filed 12/2/83; Order 76-153, § 220-69-270, filed 12/17/76.]

WAC 220-69-273 Imprinters. Use of a mechanical imprinter approved by the department of fisheries, in conjunction with a license card or treaty Indian identification card to identify the deliverer, and a dealer plate or buyer plate to identify the receiver on all state of Washington fish receiving tickets is hereby made mandatory.

Provided, That license card information may be recorded manually on the state of Washington fish receiving tickets in the following exceptions:

(1) Oregon licensed fishers delivering fish caught in the Columbia River.

(2) Purchases made from out-of-state firms.

(3) Fishers selling on a delivery license who have not received a delivery license card from the department at the time of their first sale. All subsequent sales require use of a license card.

[Statutory Authority: RCW 75.08.080. 94-01-001, § 220-69-273, filed 12/1/93, effective 1/1/94. Statutory Authority: RCW 75.08.080 and 75.58.040. 86-19-043 (Order 86-102), § 220-69-273, filed 9/12/86. Statutory Authority: RCW 75.08.080. 83-24-049 (Order 83-203), § 220-69-273, filed 12/2/83; Order 76-153, § 220-69-273, filed 12/17/76.]

Chapter 220-88 WAC

EMERGING COMMERCIAL FISHERIES

WAC

220-88-030 Experimental fishery permit advisory board.

WAC 220-88-030 Experimental fishery permit advisory board. The five-person advisory board that will review and make recommendations regarding number and qualifications of persons who will receive experimental fishery permits shall have knowledge of the commercial fishing industry.

[Statutory Authority: RCW 75.08.080. 93-15-051, § 220-88-030, filed 7/14/93, effective 8/14/93; 92-19-012 (Order 92-89), § 220-88-030, filed 9/3/92, effective 10/4/92.]

Title 222 WAC

FOREST PRACTICES BOARD

Chapters

- 222-08 Practices and procedures.
- 222-10 State Environmental Policy Act guidelines.
- 222-12 Policy and organization.
- 222-16 Definitions.
- 222-20 Application and notification procedures.
- 222-22 Watershed analysis.
- 222-24 Road construction and maintenance.
- 222-30 Timber harvesting.
- 222-34 Reforestation.
- 222-38 Forest chemicals.
- 222-46 Consultation and enforcement.

222-50 Relationship to other laws and regulations.

Chapter 222-08 WAC

PRACTICES AND PROCEDURES

WAC

222-08-030 Reporting procedures.
222-08-040 Regular meetings.

WAC 222-08-030 Reporting procedures. The department shall:

(1) **Survey and identify** all silviculturally related nonpoint sources of pollution and related control programs in the state,

(2) **Prepare an analysis** of the above activities and programs, and

(3) **Report and recommend** to the forest practices board and to the governor additional rules and regulations, procedures and/or methods necessary for the control of such sources to the extent feasible.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-08-030, filed 12/20/93, effective 1/1/94; Order 263, § 222-08-030, filed 6/16/76.]

WAC 222-08-040 Regular meetings. Regular meetings of the forest practices board shall be held quarterly on the second Wednesday of February, May, August and November, at a location to be designated by the forest practices board. Any person may obtain information as to said location and meeting time by contacting the Department of Natural Resources, Forest Practices Division, Olympia, Washington 98504-7012. A schedule of meetings will be published in the Washington Register in January of each year.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-08-040, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-08-040, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-08-040, filed 8/29/84, effective 10/1/84.]

Chapter 222-10 WAC

STATE ENVIRONMENTAL POLICY ACT GUIDELINES

WAC

222-10-110 Board's SEPA public information center.

WAC 222-10-110 Board's SEPA public information center. There is hereby established in the Natural Resources Building, 4th Floor, Olympia, Washington, the location of the board's SEPA public records in accordance with chapter 42.17 RCW.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-10-110, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 43.21C.120, 76.09.040 and 42.30.075. 84-18-021 (Order 429, Resolution No. 8-8-84), § 222-10-110, filed 8/29/84, effective 10/1/84; Order 258, § 222-10-110, filed 5/21/76.]

Chapter 222-12 WAC

POLICY AND ORGANIZATION

WAC

222-12-020	Regulation sections.
222-12-050	Notices to comply—Stop work orders.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-12-020 Regulation sections. These regulations are organized as follows:

- Chapter 222-08 WAC Practices and procedures.
- Chapter 222-10 WAC State Environmental Policy Act Guidelines.
- Chapter 222-12 WAC Policy and organization.
- Chapter 222-16 WAC Definitions.
- Chapter 222-20 WAC Application and notification procedures.
- Chapter 222-22 WAC Watershed analysis.
- Chapter 222-24 WAC Road construction and maintenance.
- Chapter 222-30 WAC Timber harvesting.
- Chapter 222-34 WAC Reforestation.
- Chapter 222-38 WAC Forest chemicals.
- Chapter 222-42 WAC Supplemental directives.
- Chapter 222-46 WAC Consultation and enforcement.
- Chapter 222-50 WAC Relationship to other laws and regulations.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-12-020, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-12-020, filed 5/19/93, effective 6/19/93; Order 263, § 222-12-020, filed 6/16/76.]

WAC 222-12-050 Notices to comply—Stop work orders. (1) **Violations.** When a forest practice has been completed, the department may issue a notice to comply requiring the operator or landowner to correct or compensate for damage to public resources where there was:

(a) A violation of the act, or these rules and regulations, or

(b) A deviation from the approved application, or

(c) A willful or negligent disregard for potential damage to a public resource.

(2) **Other required action.** When a forest practice has not yet been completed, the department may issue either a notice to comply to the operator and/or landowner, or a stop work order to the operator, requiring him/her to prevent potential or continuing damage to a public resource where:

(a) The need for additional actions or restrictions has become evident, and

(b) The department determines that a specific course of action is needed to prevent potential or continuing damage to public resources, and

(c) The damage would result or is resulting from the forest practices activities, whether or not the activities involve any violation, unauthorized deviation or negligence.

(3) **No notice to comply** shall be issued to require a person to prevent, correct, or compensate for any damage to public resources which occurs more than 1 year after the date of completion of the forest practices operations involved

exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: *Provided*, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance.

(4) **No notice to comply** to recover money damages shall be issued more than 2 years after the date the damage involved occurs.

(5) **In emergency action**, where the department requires the operator or landowner to do immediate work in the bed of the stream the department shall first seek approval from the departments of fisheries and wildlife.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-12-050, filed 5/19/93, effective 6/19/93; Order 263, § 222-12-050, filed 6/16/76.]

Chapter 222-16 WAC

DEFINITIONS

WAC

222-16-010	General definitions.*
222-16-030	Water typing system.
222-16-035	Wetland typing system.
222-16-050	Classes of forest practices.
222-16-060	Lands with a likelihood of future conversion.
222-16-070	Pesticide uses with the potential for a substantial impact on the environment.
222-16-080	Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Appeals board**" means the forest practices appeals board established in the act.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"**Board**" means the forest practices board established by the act.

"**Bog**" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce and may be associated with open water.

"**Borrow pit**" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"**Chemicals**" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"**Clearcut**" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation.

Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: *Provided*, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Department" means the department of natural resources.

"Eastern Washington" means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-30-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities. Fill does not include the growing or harvesting of timber including, but not limited to, slash burning, site preparation, reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.

"Flood level - 50 year." For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified

by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: *Provided*, That Christmas trees are forest trees and: *Provided further*, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

- Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

- Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Operator" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: *Provided*, That in any area where the ordinary

high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

- For fish and water:

- Physical fish habitat, including temperature and turbidity;

- Turbidity in hatchery water supplies; and

- Turbidity and volume for areas of water supply.

- For capital improvements of the state or its political subdivisions:

- Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the lands of the state lying west of the administrative line described in the definition of Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs,

fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-16-010, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-16-010, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 92-03-028, § 222-16-010, filed 1/8/92, effective 2/8/92; 91-23-052, § 222-16-010, filed 11/15/91, effective 12/16/91. Statutory Authority: RCW 76.09.040. 88-19-112 (Order 551, Resolution No. 88-1), § 222-16-010, filed 9/21/88, effective 11/1/88; 87-23-036 (Order 535), § 222-16-010, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-

16-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-16-010, filed 6/16/76.]

WAC 222-16-030 Water typing system. *The department in cooperation with the departments of fisheries, wildlife and ecology, and in consultation with affected Indian tribes shall classify streams, lakes and ponds and prepare stream classification maps showing the location of Type 1, 2, 3 and 4 Waters within the various forested areas of the state. Such maps shall be available for public inspection at region offices of the department. The waters will be classified using the following criteria. If a dispute arises concerning a water type the department shall make available informal conferences, which shall include the departments of fisheries, wildlife and ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

*(1) **"Type 1 Water"** means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, but not including those waters' associated wetlands as defined in chapter 90.58 RCW.

*(2) **"Type 2 Water"** shall mean segments of natural waters which are not classified as Type 1 Water and have a high fish, wildlife, or human use. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than 100 residential or camping units or by a public accommodation facility licensed to serve more than 100 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 2 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are within a federal, state, local, or private campground having more than 30 camping units: *Provided*, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

(c) Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater in width between the ordinary high-water marks and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water.

(d) Are used by salmonids for off-channel habitat. These areas are critical to the maintenance of optimum survival of juvenile salmonids. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a stream bearing salmonids and accessible during some period of the year; and

(ii) The off-channel water must be accessible to juvenile salmonids through a drainage with less than a 5% gradient.

*(3) **"Type 3 Water"** shall mean segments of natural waters which are not classified as Type 1 or 2 Water and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:

(i) Stream segments having a defined channel of 5 feet or greater in width between the ordinary high-water marks; and having a gradient of less than 12 percent and not upstream of a falls of more than 10 vertical feet.

(ii) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to an anadromous fish stream.

(c) Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:

(i) Stream segments having a defined channel of 10 feet or greater in width between the ordinary high-water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than 12 percent.

(ii) Ponds or impoundments having a surface area greater than 0.5 acre at seasonal low water.

(d) Are highly significant for protection of downstream water quality. Tributaries which contribute greater than 20 percent of the flow to a Type 1 or 2 Water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 Water or until their drainage area is less than 50 percent of their drainage area at the point of confluence, whichever is less.

*(4) **"Type 4 Water"** classification shall be applied to segments of natural waters which are not classified as Type 1, 2 or 3, and for the purpose of protecting water quality downstream are classified as Type 4 Water upstream until the channel width becomes less than 2 feet in width between the ordinary high-water marks. Their significance lies in their influence on water quality downstream in Type 1, 2, and 3 Waters. These may be perennial or intermittent.

*(5) **"Type 5 Water"** classification shall be applied to all natural waters not classified as Type 1, 2, 3 or 4; including streams with or without well-defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainageways having short periods of spring or storm runoff.

*(6) For purposes of this section:

(a) "Residential unit" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Resident game fish" means game fish as described in the Washington game code that spend their life cycle in fresh water. Steelhead, searun cutthroat and Dolly Varden trout are anadromous game fish and should not be confused with resident game fish.

(d) "Public accommodation facility" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(e) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(f) "Seasonal low flow" and "seasonal low water" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(g) "Channel width and gradient" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

(h) "Intermittent streams" means those segments of streams that normally go dry.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW, 94-01-134, § 222-16-030, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW, 92-15-011, § 222-16-030, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-16-030, filed 11/16/87, effective 1/1/88; Order 263, § 222-16-030, filed 6/16/76.]

WAC 222-16-035 Wetland typing system. *The department in cooperation with the departments of fisheries, wildlife, and ecology, and affected Indian tribes shall classify wetlands. The wetlands will be classified in order to distinguish those which require wetland management zones and those which do not. Wetlands which require wetland management zones shall be identified using the following criteria. Accurate delineation of wetlands in accordance with the manual shall be required only where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10) and shall be limited to the area of wetland proposed to be filled. For the purposes of determining acreage to classify or type wetlands under this section, approximate determination using aerial photographs and maps, including the national wetlands inventory, shall be sufficient. In addition, the innermost boundary of the wetland management zone on Type A or B wetlands may be determined by either of two methods: Delineation of the wetland edge, or identifying the point where the crown cover changes from less than 30% to 30% or more. Except where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10), accurate delineation shall not be required under this Title 222 WAC for activities

regulated by these rules, including but not limited to the location of roads, landings, culverts, and cross drains. Landowners are encouraged to leave vegetation in these forested wetlands in undisturbed leave areas where possible. When so requested by any affected landowners, applicant or aggrieved person, the department shall make available informal conferences, which shall include the departments of fisheries, wildlife, and ecology, and affected Indian tribes and those contesting the adopted wetland types. These conferences shall be established under procedures established in WAC 222-46-020.

*(1) "Nonforested wetlands" means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of less than 30 percent.

(a) "Type A Wetland" classification shall be applied to all nonforested wetlands which:

(i) Are greater than 0.5 acre in size, including any acreage of open water where the water is completely surrounded by the wetland; and

(ii) Are associated with at least 0.5 acre of ponded or standing open water. The open water must be present on the site for at least 7 consecutive days between April 1 and October 1 to be considered for the purposes of these rules; or

(iii) Are bogs and fens greater than 0.25 acre.

(b) "Type B Wetland" classification shall be applied to all other nonforested wetlands greater than 0.25 acre.

*(2) "Forested wetland" means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of 30 percent or more.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW, 94-01-134, § 222-16-035, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW, 92-15-011, § 222-16-035, filed 7/2/92, effective 8/2/92.]

WAC 222-16-050 Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices regulations.

(1) "Class IV - special." Application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as:

(i) Critical wildlife habitat (state) of threatened or endangered species; or

(ii) Critical habitat (federal) of threatened or endangered species except those excluded by the board under WAC 222-16-080(3).

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a

local governmental entity, except harvest of less than 5 MBF within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on slide prone areas as defined in WAC 222-24-020(6) and field verified by the department, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, when such slide prone areas occur on an uninterrupted slope above water typed pursuant to WAC 222-16-030, Type A or Type B Wetland, or capital improvement of the state or its political subdivisions where there is potential for a substantial debris flow or mass failure to cause significant impact to public resources.

*(e) Timber harvest in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, on slide prone areas, field verified by the department, where soils, geologic structure, and local hydrology indicate that canopy removal has the potential for increasing slope instability, when such areas occur on an uninterrupted slope above any water typed pursuant to WAC 222-16-030, Type A or Type B Wetland, or a capital improvement of the state or its political subdivisions where there is a potential for a substantial debris flow or mass failure to cause significant impact to public resources.

(f) Timber harvest, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation, as high avalanche hazard.

(g) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state office of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

*(h) Forest practices subject to a watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

*(i) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV - general."** Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special." Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the State Environmental Policy Act pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a 30-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4)

that the county/city is the lead agency for purposes of compliance with State Environmental Policy Act.

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, or on lands being converted to another use.

(b) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development. (See WAC 222-16-060 and 222-34-050.)

(3) **"Class I."** Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: (i) Replacement of bridges and culverts across Type 1, 2, 3 or flowing Type 4 Waters; or (ii) movement of material that has a direct potential for entering Type 1, 2, 3 or flowing Type 4 Waters or Type A or B Wetlands.

*(c) Construction of landings less than 1 acre in size, if not within a shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or 3 Water, the ordinary high-water mark of a Type 4 Water, a wetland management zone or within a wetland.

*(d) Construction of less than 600 feet of road on a sideslope of 40 percent or less if the limits of construction are not within the shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or Type 3 Water, the ordinary high-water mark of a Type 4 Water, a wetland management zone or within a wetland.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type 1 Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding 40 percent or off-road use of tractors within the shorelines of a Type 1 Water, the riparian management zone of any Type 2 or 3 Water, or the ordinary high-water mark of a Type 4 Water, a wetland management zone or within a wetland.

*(o) Ground application of chemicals. (See WAC 222-38-020 and 222-38-030.)

*(p) Aerial application of chemicals (except insecticides) when applied to not more than 40 contiguous acres if the application is part of a combined or cooperative project with

another landowner and where the application does not take place within 100 feet of lands used for farming, or within 200 feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type 1 Water or the riparian management zone of a Type 2 or 3 Water, or within the ordinary high-water mark of a Type 4 Water or flowing Type 5 Water, and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on active and inactive roads. A hydraulics project approval from the Washington department of wildlife or the Washington department of fisheries may be required.

(4) "**Class II.**" Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: *Provided*, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 75.20.100) or is within a "shorelines of the state," or involves a bond in lieu of landowners signature (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, or on lands being converted to another use. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification.

(b) Renewal of a previously approved Class III or IV forest practice application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water, within a wetland management zone or within a wetland:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than 1 acre.

*(d) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-

water mark of a Type 4 Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

Salvage of logging residue.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water, within a wetland management zone or within a wetland and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of 40 percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of 5,000 board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than 40 percent of the total timber volume is removed in any 12-month period.

(iv) Any harvest on less than 40 acres.

(v) Construction of 600 or more feet of road, provided that the department shall be notified at least 2 business days before commencement of the construction.

(5) "**Class III**" forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 75.20.100).

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*(f) All road construction and reconstruction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type 1, 2, 3, or flowing Type 4 Waters; or

(ii) Movement of material that has a direct potential for entering Type 1, 2, 3 or flowing Type 4 Waters or Type A or B Wetlands.

(i) Operations involving an applicant's bond in lieu of a landowner's signature.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding 19 acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

* (n) Any filling of wetlands, except where classified as Class IV forest practices.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-16-050, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-16-050, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 91-23-052, § 222-16-050, filed 11/15/91, effective 12/16/91. Statutory Authority: RCW 76.09.040. 88-19-112 (Order 551, Resolution No. 88-1), § 222-16-050, filed 9/21/88, effective 11/1/88; 87-23-036 (Order 535), § 222-16-050, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-16-050, filed 8/3/82, effective 10/1/82; Order 263, § 222-16-050, filed 6/16/76.]

WAC 222-16-060 Lands with a likelihood of future conversion. (1) Prior to identification of any forest lands as having a likelihood of future conversion to urban development within a ten-year period, the department shall consider all available information, including but not limited to:

(a) Whether the land is assessed under the provisions of chapter 84.33 or 84.34 RCW;

(b) Whether the land is excluded from any local improvement district;

(c) Whether the classification of the land in the local comprehensive plan or the local zoning ordinance permits or encourages long-term timber production;

(d) Whether the land lies outside the current or proposed boundary of a city or the urban growth boundary of a city or outside a water or sewer district;

(e) Whether the land has received previous development permit approval;

(f) The presence or absence of a written forest management plan for the land.

Any identification must be consistent with any local or regional land use plans or ordinances.

(2) A local government entity with jurisdiction or an affected Indian tribe may submit to the department a proposal for identification of forest lands that have the likelihood of future conversion to urban development within a ten-year period.

(3) The department may develop a public participation process when identifying forest lands with a likelihood of future conversion to urban development within a ten-year period.

(4) Forest lands that have been identified by the department prior to the effective date of this section as having a likelihood of future conversion to urban development within a ten-year period shall be reviewed under subsection (1) of this section to determine if the identification should be withdrawn or modified.

(5) A landowner that submits an application or notification in an area that has been identified as having a likelihood of future conversion to urban development within a ten-year period may request the department to reconsider the identification of the affected parcel. The department shall remove the identification if the landowner complies with (a) of this subsection and at least one from (b) or (c) of this subsection:

(a) The landowner submits a statement of intent not to convert to a use other than commercial timber operation for

a period of ten years after completion of the forest practice. The statement shall be on a form prepared by the department and shall indicate the landowner is aware of the provisions of RCW 76.09.060 (3)(b); and

(b) The land is enrolled under the provisions of chapter 84.28, 84.33, or 84.34 RCW; or

(c) A written forest management plan for the land covering the next ten years has been reviewed and accepted by the department.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-16-060, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 91-23-052, § 222-16-060, filed 11/15/91, effective 12/16/91.]

WAC 222-16-070 Pesticide uses with the potential for a substantial impact on the environment. *To identify forest practices involving pesticide uses that have the potential for a substantial impact on the environment, the department shall apply the process prescribed in this section. See WAC 222-16-050 (1)(a).

(1) Pesticide list - The department shall maintain a list of all pesticides registered under chapter 15.58 RCW for use in forest practices. The department shall conduct, in consultation with the departments of ecology, health, agriculture, and wildlife, an annual review of the list for the purpose of including new pesticides and/or removing those pesticides which have been prohibited from use. The list shall be available to the public at each of the department's offices. A list of the department's offices and their addresses appears at WAC 332-10-030. In preparing the pesticide list, the department shall include information on the following characteristics:

(a) Active ingredients, name brand or trade mark, labeled uses, pesticide type, EPA-registration number;

(b) Toxicity of the pesticide based on the Environmental Protection Agency (EPA) label warning under 40 C.F.R. 156.10 (h)(1), listed as "caution," "warning," "danger," or "danger - poison" except as modified to consider aquatic or mammalian toxicity; and

(c) Whether the pesticide is a state restricted use pesticide for the protection of ground water under WAC 16-228-164(1).

(2) Key for evaluating applications. To determine whether aerial application of a pesticide has the potential for a substantial impact on the environment, the department shall apply the following analysis:

KEY FOR EVALUATION OF SITE SPECIFIC USE OF AERIALY APPLIED CHEMICALS

Question	Question	Resp	Action
1 (a)	Is the pesticide on the pesticide list (WAC 222-16-070(1))?	Yes No	go to 2 go to 1(b)
1 (b)	Is the pesticide being used under a Dept of Agriculture Experimental Use Permit (WAC 16-228-125)?	Yes No	Class III Class IV Sp
2	Is the toxicity rating for the pesticide to be used "Danger -Poison" as designated in the pesticide list (WAC 222-16-070(1)(b))?	Yes No	Class IV Sp go to 3(a)
3 (a)	Is <i>Bacillus thuringiensis</i> (BT) the only pesticide being used on this application?	Yes No	go to 3(b) go to 4(a)
3 (b)	Is there a Threatened or Endangered species or the critical habitat (Federal) or critical wildlife habitat (State) of a species within the application area that is susceptible to the BT strain being used?	Yes No	Class IV Sp Class III
4 (a)	Is this operation occurring over ground water with a high susceptibility to contamination as specified in EPA 910/ 9-87-189 or in documentation provided by the department of ecology?	Yes No	go to 4(b) go to 5(a)
4 (b)	Is this pesticide a state restricted use pesticide for the protection of ground water under WAC 16-228-164 (1)?	Yes No	Class IV Sp go to 5(a)
5 (a)	Is the operation adjacent (within 100 ft.) of surface water?	Yes No	go to 5(b) go to 5(e)
5 (b)	Determine the toxicity rating from the pesticide list: * Is the toxicity rating "Caution" or "Warning"? * Is the toxicity rating "Danger"?	Yes Yes	go to 5(c) go to 5(d)
5 (c)	Is there a Group A or B water surface water system (WAC 240-290-020) intake OR a fish hatchery intake within one half mile downstream of the operation?	Yes No	Class IV Sp go to 5(e)
5 (d)	Is there a Group A or B water surface system intake OR a fish hatchery intake within 1 mile downstream of the operation?	Yes No	Class IV Sp go to 5(e)
5 (e)	Is the operation within 200 feet of the intake of a Group A or B spring water system?	Yes No	Class IV Sp go to 5(f)
5 (f)	Is the operation applying a pesticide in a Type A or B wetland?	Yes No	Class IV Sp go to 6(a)
6 (a)	Does any portion of the planned operation cover 240 or more contiguous acres? Pesticide treatment units will be considered contiguous if they are separated by less than 300 feet or treatment dates of adjacent units are less than 90 days apart.	Yes No	Class IV Sp go to 6(b)
6 (b)	Is there a Threatened or Endangered species or the critical habitat (Federal) or critical wildlife habitat (State) of a species within the application area.	Yes No	Class IV Sp go to 6(c)
6 (c)	If there is a special concern identified for this pesticide in the Board manual, does it apply to this application?	Yes No	Class IV Sp Class III

(3) Special concerns (see WAC 222-16-070 (2)6(c)) shall be evaluated by the department of agriculture. Information regarding special concerns shall be presented to the board for review. Approved special concerns shall be included in the board's manual. Special concerns shall include situations where use of pesticides has the potential for a substantial impact on the environment, beyond those covered specifically in the key in subsection (2) of this section.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW, 93-12-001, § 222-16-070, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW, 92-15-011, § 222-16-070, filed 7/2/92, effective 8/2/92.]

WAC 222-16-080 Critical wildlife habitats (state) and critical habitat (federal) of threatened and endangered species. (1) Critical wildlife habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf - harvesting, road construction, or site preparation within 1 mile of a known active den site,

documented by the department of wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain caribou - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of wildlife.

(e) Oregon silverspot butterfly - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of wildlife.

(f) Peregrine falcon - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of wildlife.

(h) Northern spotted owl - harvesting, road construction, or aerial application of pesticides on the 500 acres of suitable nesting, breeding, and foraging habitat surrounding the activity center of known Status 1, 2, or 3 spotted owls, documented by the department of wildlife.

This rule is intended to be interim and will expire on February 9, 1994. Prior to the above expiration date the forest practices board will reconsider the protection of spotted owls based on consideration of advancing science and increased data analysis, as well as the board's landscape planning for wildlife and would be influenced by the completion of the northern spotted owl recovery plan, rule making under the Federal Endangered Species Act, or other federal action, or other state actions.

The department shall rely upon the department of wildlife for the determination of status based on the following definitions:

Status 1 Pair or reproductive - the presence or response of two birds of the opposite sex where past or current reproductive activities have been documented.

Status 2 Two birds, pair status unknown - the presence or response of 2 birds of the opposite sex where pair status cannot be determined and where at least 1 member must meet the resident single requirements.

Status 3 Resident territorial single - the presence or response of a single owl within the same general area on 3 or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or multiple responses over several years (i.e., 2 responses in year one and 1 response in year two, for the same general area).

(i) Western pond turtle - harvesting, road construction, aerial application of pesticides, or site preparation within

0.25 mile of a known individual occurrence, documented by the department of wildlife.

(2) A site specific special wildlife management plan, including a bald eagle site management plan under WAC 232-12-292, developed by the landowner shall replace the critical wildlife habitats (state) listed in subsection (1) of this section when such a plan has been established in cooperation with, and approved by, the department of wildlife.

(3) The following critical habitats (federal) designated by the United States Secretary of the Interior, or specific forest practices within those habitats, have been determined to not have the potential for a substantial impact on the environment:

None listed.

(4) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington wildlife commission and/or the United States Secretary of the Interior, the department shall after consultation with the department of wildlife, prepare and submit to the board a proposed list of critical wildlife habitats (state) of threatened or endangered species. This list shall be submitted to the board within 15 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical wildlife habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b)(i).

(5) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior which do not have the potential for a substantial impact on the environment, the department shall, after consultation with the department of wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for exclusion from Class IV - special forest practices. The department shall submit the list to the board within 120 days of the date the United States Secretary of the Interior publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats excluded by the board from Class IV - Special shall be added to the list in subsection (3) of this section. See WAC 222-16-050 (1)(b)(ii).

(6)(a) Except for bald eagles under subsection (1)(b) of this section, the critical wildlife habitats (state) of threatened and endangered species and specific forest practices designated in subsection (1) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington wildlife commission.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend by May 1993 a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(7) Regardless of any other provision in this section, the following are not critical wildlife habitats (state) or critical habitats (federal) for the particular species:

(a) Forest practices on lands covered by a conservation plan and permit for a particular species approved by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. 1539 (a)(2) consistent with that plan and permit; or

(b) Forest practices covered by a rule adopted by the U.S. Fish and Wildlife Service for the conservation of a particular threatened species pursuant to 16 U.S.C. 1533(d).

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-16-080, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-16-080, filed 7/2/92, effective 8/2/92.]

Chapter 222-20 WAC

APPLICATION AND NOTIFICATION PROCEDURES

WAC

222-20-010

Applications and notifications—Policy.

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND REGULATIONS AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Applications and notifications** for operations not converting to another use shall be signed by the landowner, the timber owner and the operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)). Where the application is not signed by the landowner, the department shall, provided all the other requirements contained in

chapter 222-20 WAC are met, approve the application without the signature of the landowner if:

(a) The operator or timber owner provides legal evidence of timber rights, ownership, or other legal rights;

(b) The timber owner or operator posts a bond, in an amount determined by and a form acceptable to the department, securing compliance with the requirements of the forest practices regulations; and

(c) The operator or timber owner provides evidence of reasonably advance notification to the landowner of the proposed forest practice and that the landowner has been requested to sign the application, a copy of which has been made available to the landowner: *Provided*, That in lieu of such evidence the applicant may submit a sworn statement indicating inability to locate the landowner after a reasonable good faith attempt to locate and notify the landowner of the proposed forest practice.

(4) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(5) **Transfer of the approved application or notification** to a new landowner, timber owner or operator requires written notice by the original landowner or applicant to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices regulations as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(6) **Applications and notifications** must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.

(7) **Applications and notifications** shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application. An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications. A local government entity clearing and/or grading permit is necessary information for all Class IV applications on lands that will be converted to a use other than commercial timber production or on lands which have been platted after January 1, 1960, if the local government entity has jurisdiction and has an ordinance requiring such permit. If a notification or application is delivered in person

to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-20-010, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 91-23-052, § 222-20-010, filed 11/15/91, effective 12/16/91. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-20-010, filed 11/16/87, effective 1/1/88; 82-18-053 (Resolution No. 82-2), § 222-20-010, filed 8/31/82. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-20-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-20-010, filed 6/16/76.]

Chapter 222-22 WAC WATERSHED ANALYSIS

WAC

222-22-010	Policy.
222-22-020	Watershed administrative units.
222-22-030	Qualification of watershed resource analysts, specialists, and field managers.
222-22-040	Watershed prioritization.
222-22-050	Level 1 watershed resource assessment.
222-22-060	Level 2 watershed resource assessment.
222-22-070	Prescription recommendation.
222-22-080	Approval of watershed analysis.
222-22-090	Use and review of watershed analysis.
222-22-100	Application review prior to watershed analysis.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-22-010 Policy. *(1) Public resources may be adversely affected by the interaction of two or more forest practices. The purpose of this rule is to address these cumulative effects of forest practices on the public resources of fish, water, and capital improvements of the state or its political subdivisions. The long-term objective of this rule is to protect and restore these public resources and the productive capacity of fish habitat adversely affected by forest practices while maintaining a viable forest products industry. The board intends that this be accomplished through prescriptions designed to protect and allow the recovery of fish, water, and capital improvements of the state or its political subdivisions, through enforcement against noncompliance of the forest practice rules in this Title 222 WAC, and through voluntary mitigation measures. This system also allows for monitoring, subsequent watershed analysis, and adaptive management.

*(2) Adaptive management in a watershed analysis process requires advances in technology and cooperation among resource managers. The board finds that it is appropriate to promulgate rules to address certain cumulative effects by means of the watershed analysis system, while recognizing the pioneering nature of this system and the need to monitor its success in predicting and preventing adverse change to fish, water, and capital improvements of the state and its political subdivisions.

*(3) Many factors other than forest practices can have a significant effect on the condition of fish, water, and capital improvements of the state or its political subdivisions. Nonforest practice contributions to cumulative effects should be addressed by the appropriate jurisdictional authorities. When a watershed analysis identifies a potential adverse

effect on fish, water, and capital improvements of the state or its political subdivisions from activities that are not regulated under chapter 76.09 RCW, the department should notify any governmental agency or Indian tribe having jurisdiction over those activities.

*(4) The rules in this chapter set forth a system for identifying the probability of change and the likelihood of this change adversely affecting specific characteristics of fish, water, and capital improvements of the state or its political subdivisions, and for using forest management prescriptions to avoid or minimize significant adverse effects from forest practices. The rules in this chapter are in addition to, and do not take the place of, the other forest practices rules in this Title 222 WAC.

*(5) These rules are intended to be applied and should be construed in such a manner as to minimize the delay associated with the review of individual forest practice applications and notifications by increasing the predictability of the process and the appropriate management response.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-010, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-010, filed 7/2/92, effective 8/2/92.]

WAC 222-22-020 Watershed administrative units.

*(1) For purposes of this chapter, the state is divided into areas known as watershed administrative units (WAUs). The department shall, in cooperation with the departments of ecology, fisheries, and wildlife, federally recognized Indian tribes, local government entities, forest land owners, and the public, define WAUs throughout the state. The department shall identify WAUs on a map.

*(2) WAUs should generally be between 10,000 to 50,000 acres in size and should be discrete hydrologic units. The board recognizes, however, that identified watershed processes and potential effects on resource characteristics differ, and require different spatial scales of analysis, and the department's determination of the WAUs should recognize these differences. The board further recognizes that mixed land uses will affect the ability of a watershed analysis to predict probabilities and identify causation as required under this chapter, and the department's conduct and approval of a watershed analysis under this chapter shall take this effect into account.

*(3) The department is directed to conduct periodic reviews of the WAUs adopted under this chapter to determine whether revisions are needed to more efficiently assess potential cumulative effects. The department shall consult the departments of ecology, fisheries, and wildlife, affected Indian tribes, forest land owners, local government entities, and the public. From time to time and as appropriate, the department shall make recommendations to the board regarding revision of watershed administrative units.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-020, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-020, filed 7/2/92, effective 8/2/92.]

WAC 222-22-030 Qualification of watershed resource analysts, specialists, and field managers. *(1) The department shall set the minimum qualifications for analysts participating in level 1 assessments conducted under

WAC 222-22-050, for specialists participating in level 2 assessments conducted under WAC 222-22-060, and for field managers participating in recommendation of prescriptions under WAC 222-22-070. The minimum qualifications shall be specific for the disciplines needed to participate in level 1 and level 2 assessments and in the recommendations of prescriptions, and shall include, at a minimum, formal education in the relevant discipline and field experience. Minimum qualifications for analysts participating in level 2 assessments should typically include a graduate degree in the relevant discipline.

*(2) The department shall coordinate with relevant state and federal agencies, affected Indian tribes, forest land owners, local government entities, and the public to seek and utilize available qualified expertise to participate in watershed analysis.

*(3) Qualified analysts, specialists, and field managers shall, while and only for the purpose of conducting a watershed analysis or monitoring in a WAU, be duly authorized representatives of the department for the purposes of RCW 76.09.150.

*(4) An individual may qualify in more than one science or management skill. Qualification under subsection (1) of this section shall be effective for 5 years. When a qualification expires, a person requesting requalification shall meet the criteria in effect at the time of requalification.

*(5) The department shall provide and coordinate training for, maintain a register of, and monitor the performance of qualified analysts, specialists, and field managers by region. The department shall disqualify analysts, specialists, and field managers who fail to meet the levels of performance required by the qualification standards.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-030, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-030, filed 7/2/92, effective 8/2/92.]

WAC 222-22-040 Watershed prioritization. *(1)

The department shall determine, by region, the order in which it will analyze WAUs. The department shall cooperate with the departments of ecology, wildlife, and fisheries, affected Indian tribes, forest land owners, and the public in setting priorities. In setting priorities or reprioritizing WAUs, the department shall consider the availability of participation and assistance that may be provided by affected Indian tribes and local government entities.

*(2) Except as set forth in subsection (3) of this section, the department shall undertake a watershed analysis on each WAU, in the order established under subsection (1) of this section.

*(3) The owner or owners of ten percent or more of the nonfederal forest land acreage in a WAU may notify the department in writing that the owner or owners intend to conduct a level 1 assessment, level 2 assessment, or both, and the prescription recommendation process on the WAU under this chapter at their own expense. The notice shall identify the teams proposed to conduct the watershed analysis, which shall be comprised of individuals qualified by the department pursuant to WAC 222-22-030. The department shall promptly notify any owner or owners sending notice under this subsection if any member of the designated teams is not so qualified. Within 30 days of

delivering a notice to the department under this subsection, the forest land owner or owners shall begin the level 1 assessment under WAC 222-22-050 or, at its option, the level 2 assessment under WAC 222-22-060. An approved forest land owner team shall, while and only for the purposes of conducting a watershed analysis in a WAU, be a duly authorized representative of the department for the purposes of RCW 76.09.150. The board encourages forest land owners conducting assessments under this chapter to include available, qualified expertise from state and federal agencies, affected Indian tribes, forest land owners, local government entities, and the public.

*(4) Before beginning an analysis in a WAU, the department or the forest land owner conducting the analysis shall provide reasonable notice, including notice by regular United States mail where names and addresses have been provided to the department, to all forest land owners in the WAU, and to affected Indian tribes. The department or the forest land owner shall provide reasonable notice to the public and to state, federal, and local government entities, by, among other things, posting the notice conspicuously in the office of the departmental region containing the WAU. The notice shall be in a form designated by the department and give notice that an analysis is being conducted, by whose team, the time period of the analysis, and the dates and locations in which the draft analysis will be available for review and comment.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-040, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-040, filed 7/2/92, effective 8/2/92.]

WAC 222-22-050 Level 1 watershed resource assessment. *(1) To begin a watershed resource analysis on a WAU, the department shall assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1). A forest land owner or owners acting under WAC 222-22-040(3) may assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1) or, at its option, may begin the analysis under WAC 222-22-060. Each level 1 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include persons qualified in:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science; and
- (e) Geomorphology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

*(2) The level 1 team shall perform an inventory of the WAU utilizing the methodology, indices of resource condition, and checklists set forth in the manual in accordance with the following:

(a) The team shall survey the WAU for fish, water, and capital improvements of the state or its political subdivisions and shall display their location on a map of the WAU. The team shall determine the current condition of the resource

characteristics of these resources, shall classify their condition as "good," "fair," or "poor," and shall display this information on the map of the WAU. The criteria used to determine current resource conditions shall include indices of resource condition, in addition to such other criteria as may be included in the manual. The indices will include two levels, which will distinguish between good, fair, and poor conditions.

(b) The team shall assess the likelihood that identified watershed processes in a given physical location will be adversely changed by one forest practice or by cumulative effects and that, as a result, a material amount of water, wood, sediment, or energy (e.g., affecting temperature) will be delivered to fish, water, or capital improvements of the state or its political subdivisions. (This process is referred to in this chapter as "adverse change and deliverability.") (For example, the team will address the likelihood that road construction will result in mass wasting and a slide that will in turn reach a stream.) The team shall rate this likelihood of adverse change and deliverability as "high," "medium," "low," or "indeterminate." Those likelihoods rated high, medium, or indeterminate shall be displayed on the map of the WAU.

(c) For each instance of high, medium, or indeterminate likelihood of adverse change and deliverability identified under (b) of this subsection, the team shall assess the vulnerability of potentially affected resource characteristics. Criteria for resource vulnerability shall include indices of resource condition as described in (a) of this subsection and quantitative means to assess the likelihood of material adverse effects to resource characteristics caused by forest practices. (For example, the team will assess the potential damage that increased sediment caused by a slide reaching a stream will cause to salmon spawning habitat that is already in fair or poor condition.) The team shall rate this vulnerability "high," "medium," "low," or "indeterminate" and shall display those vulnerabilities on the map of the WAU. If there are no other criteria in the manual to assess vulnerability at the time of the assessment, current resource condition shall be used, with good condition equivalent to low vulnerability, fair condition equivalent to medium vulnerability, and poor condition equivalent to high vulnerability.

(d) The team shall identify as areas of resource sensitivity, as provided in table 1 of this section, the locations in which a management response is required under WAC 222-22-070(3) because, as a result of one forest practice or of cumulative effects, there is a combination of a high, medium, or indeterminate likelihood of adverse change and deliverability under (b) of this subsection and a low, medium, high, or indeterminate vulnerability of resource characteristics under (c) of this subsection:

Table 1

AREAS OF RESOURCE SENSITIVITY AND MANAGEMENT RESPONSE

Likelihood of Adverse Change
and Deliverability

Vulnerability	Likelihood of Adverse Change and Deliverability		
	Low	Medium	High
	Standard rules	Standard rules	Response: Prevent or avoid
	Standard rules	Response: Minimize	Response: Prevent or avoid
High	Standard rules	Response: Prevent or avoid	Response: Prevent or avoid

The team shall display the areas of resource sensitivity on the map of the WAU.

(e) The decision criteria used to determine low, medium, and high likelihood of adverse change and deliverability shall be as set forth in the manual. A low designation generally means there is minimal likelihood that there will be adverse change and deliverability. A medium designation generally means there is a significant likelihood that there will be adverse change and deliverability. A high designation generally means that adverse change and deliverability is more likely than not with a reasonable degree of confidence. Any areas identified as indeterminate in the level 1 assessment shall be classified for the purposes of the level 1 assessment as medium until a level 2 assessment is done on the WAU under WAC 222-22-060, during which the uncertainties shall be resolved.

(f) The team shall prepare a causal mechanism report regarding the relationships of each process identified in (b) and (c) of this subsection. The report shall demonstrate that the team's determinations were made in accordance with the manual. If, in the course of conducting a level 1 assessment, the team identifies areas in which voluntary corrective action will significantly reduce the likelihood of material, adverse effects to the condition of a resource characteristic, the team shall include this information in the report, and the department shall convey this information to the applicable land owner.

*(3) Within 21 days of mailing notice under WAC 222-22-040(4), the level 1 team shall submit to the department its draft level 1 assessment, which shall consist of the map of the WAU marked as set forth in this section and the causal mechanism report proposed under subsection (2)(f) of this section. If the level 1 team is unable to agree as to one or more resource sensitivities or potential resource sensitivities, or the casual mechanism report, alternative designations and an explanation therefor shall be included in the draft assessment. Where the draft level 1 assessment delivered to the department contains alternative designations, the department shall within 21 days of the receipt of the draft level 1 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

*(4) If the level 1 assessment contains any areas in which the likelihood of adverse change and deliverability or resource vulnerability are identified as indeterminate under this section or if the level 1 methodology recommends it, the department shall assemble a level 2 assessment team under WAC 222-22-060 to resolve the uncertainties in the assess-

ment, unless a forest land owner acting under WAC 222-22-040(3) has conducted a level 2 assessment on the WAU.

*(5) Pending the completion of the level 2 assessment, if any, on the WAU, the department shall select interim prescriptions using the process and standards described in WAC 222-22-070 (1), (2), and (3) and 222-22-080(3) and shall apply them to applications and notifications as provided in WAC 222-22-090 (1) and (2). Before submitting recommended interim prescriptions to the department, the field managers' team under WAC 222-22-070(1) shall review the recommended prescriptions with available representatives of the jurisdictional management authorities of the fish, water, and capital improvements of the state or its political subdivisions in the WAU, including, but not limited to, the departments of fisheries, ecology, and affected Indian tribes.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-050, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-050, filed 7/2/92, effective 8/2/92.]

WAC 222-22-060 Level 2 watershed resource assessment. *(1) The department, or forest land owner acting under WAC 222-22-040(3), may assemble a level 2 assessment team either, in the case of a forest land owner, to begin a watershed analysis or to review the level 1 assessment on a WAU. The level 2 team shall consist of specialists qualified under WAC 222-22-030(1). Each level 2 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include persons qualified in:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science; and
- (e) Geomorphology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to designate one qualified member of the team at its own expense.

*(2) The level 2 team shall perform an assessment of the WAU utilizing the methodology, indices of resource condition, and checklist set forth in the manual in accordance with the following:

(a) If a level 1 assessment has not been conducted under WAC 222-22-050, the assessment team shall complete the tasks required under WAC 222-22-050(2), except that the level 2 team shall not rate any likelihood of adverse change and deliverability or resource vulnerability as indeterminate.

(b) If the level 2 team has been assembled to review a level 1 assessment, the level 2 team shall, notwithstanding its optional review of all or part of the level 1 assessment, review each likelihood of adverse change and deliverability and resource vulnerability rated as indeterminate and shall revise each indeterminate rating to low, medium, or high and shall revise the map of the WAU accordingly.

*(3) Within 60 days of mailing notice under WAC 222-22-040(4) where a watershed analysis begins with a level 2 assessment or within 60 days of beginning a level 2 assessment after completion of a level 1 assessment, the level 2 team shall submit to the department its draft level 2 assess-

ment, which shall consist of the map of the WAU and the causal mechanism report.

*(4) The level 2 team shall endeavor to produce a consensus report. If the level 2 team is unable to agree as to one or more areas of resource sensitivity or the causal mechanism report, alternative designations and an explanation therefor shall be included in the draft assessment. Where the draft level 2 assessment delivered to the department contains alternative designations or reports, the department shall within 30 days of the receipt of the draft level 2 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-060, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-060, filed 7/2/92, effective 8/2/92.]

WAC 222-22-070 Prescription recommendation.

*(1) For each WAU for which a watershed analysis is undertaken, the department, or forest land owner acting under WAC 222-22-040(3), shall assemble a team of field managers qualified under WAC 222-22-030(1). The team shall include persons qualified in the disciplines indicated as necessary in the methodology, and shall generally include persons qualified in:

- (a) Forest resource management;
- (b) Forest harvest and road systems engineering;
- (c) Forest hydrology; and
- (d) Fisheries science or management.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

*(2) Each forest land owner in a WAU shall have the right to submit to the department or the forest land owner conducting the watershed analysis prescriptions for areas of resource sensitivity on its land. If these prescriptions are received within the time period described in subsection (4) of this section, they shall be considered for inclusion in the watershed analysis.

*(3) For each identified area of resource sensitivity, the field managers' team shall, in consultation with the level 1 and level 2 teams, if any, select and recommend to the department prescriptions. These prescriptions shall be reasonably designed to minimize, or to prevent or avoid, as set forth in table 1 in WAC 222-22-050 (2)(d), the likelihood of adverse change and deliverability that has the potential to cause a material, adverse effect to resource characteristics in accordance with the following:

(a) The prescriptions shall be designed to provide forest land owners and operators with as much flexibility as is reasonably possible while addressing the area of resource sensitivity. The prescriptions should, where appropriate, include, but not be limited to, plans for road abandonment, orphaned roads, and road maintenance and plans for applying prescriptions to recognized land features identified in the WAU as areas of resource sensitivity but not fully mapped;

(b) Each set of prescriptions shall provide for an option for an alternate plan under WAC 222-12-040, which the applicant shows meets or exceeds the protection provided by the other prescriptions approved for a given area of resource sensitivity; and

(c) The regulation of forest practices and cumulative effects under this chapter shall not require mitigation for activities or events not regulated under chapter 76.09 RCW. Any hazardous condition subject to forest practices identified in a watershed analysis requiring corrective action shall be referred to the department for consideration under RCW 76.09.300 et seq.

*(4) The field managers' team shall submit the recommended prescriptions to the department within 30 days of the submission to the department of the level 2 assessment under WAC 222-22-060 or within 21 days of the submission to the department of the level 1 assessment under WAC 222-22-050.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-070, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-070, filed 7/2/92, effective 8/2/92.]

WAC 222-22-080 Approval of watershed analysis.

*(1) Upon receipt of the recommended prescriptions resulting from a level 2 assessment under WAC 222-22-060 or a level 1 assessment under WAC 222-22-050 where a level 2 assessment will not be conducted, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology, fisheries, and wildlife, affected Indian tribes, local government entities, forest land owners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the prescriptions, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

*(2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, and capital improvements of the state or its political subdivisions.

*(3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) For the prescriptions, that they will not accomplish the purposes and policies of this chapter and of the Forest Practices Act, chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090(3).

* (4) If the department does not approve the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-080, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-080, filed 7/2/92, effective 8/2/92.]

WAC 222-22-090 Use and review of watershed analysis. *(1) Where a watershed analysis has been completed for a WAU under this chapter:

(a) Forest practices applications and notifications submitted to the department shall indicate whether an area of resource sensitivity will be affected and, if so, which prescription the operator, timber owner, or forest land owner shall use in conducting the forest practice in the area of resource sensitivity;

(b) The department shall assist operators, timber owners, and forest land owners in obtaining governmental permits required for the prescription (see WAC 222-50-020 and 222-50-030);

(c) The department shall confirm that the prescription selected under (a) of this subsection was one of the prescriptions approved for the area of resource sensitivity under WAC 222-22-080 and shall require the use of the prescription; and

(d) The department shall not further condition forest practice applications and notifications in an area of resource sensitivity in a WAU where the applicant will use a prescription contained in the watershed analysis nor shall the department further condition forest practice applications and notifications outside an area of resource sensitivity in a WAU, except for reasons other than the watershed processes and fish, water, and capital improvements of the state or its political subdivisions analyzed in the watershed analysis in the WAU, and except to correct mapping errors, misidentification of soils, landforms, vegetation, or stream features, or other similar factual errors.

* (2) Pending completion of a watershed analysis for a WAU, the department shall process forest practices notifications and applications in accordance with the other chapters of this title, except that applications and notifications received for forest practices on a WAU after the date notice is mailed under WAC 222-22-040(4) commencing a watershed analysis on the WAU shall be conditioned to require compliance with interim, draft, and final prescriptions, as available. Processing and approval of applications and notifications shall not be delayed by reason of review, approval, or appeal of a watershed analysis.

* (3) The board encourages cooperative and voluntary monitoring. Evaluation of resource conditions may be conducted by qualified specialists, analysts, and field managers as determined under WAC 222-22-030. Subsequent watershed analysis and management strategies in response to areas where recovery is not occurring shall be conducted in accordance with this chapter.

* (4) Where the condition of resource characteristics in a WAU are fair or poor, the department shall evaluate the effectiveness of the prescriptions applied under this chapter

to the WAU in providing for the protection and recovery of the resource characteristic. If the department finds that the prescriptions are not providing for such protection and recovery over a period of 3 years, the department shall repeat the watershed analysis in the WAU. Aside from the foregoing, once a watershed analysis is completed on a WAU, it shall be revised in whole or in part upon the earliest of the following to occur:

(a) Five years after the date the watershed analysis is final, if necessary;

(b) The occurrence of a natural disaster having a material adverse effect on the resource characteristics of the WAU;

(c) Deterioration in the condition of a resource characteristic in the WAU measured over a 12-month period or no improvement in a resource characteristic in fair or poor condition in the WAU measured over a 12-month period unless the department determines, in cooperation with the departments of ecology, wildlife, and fisheries, affected Indian tribes, forest land owners, and the public, that a longer period is reasonably necessary to allow the prescriptions selected to produce improvement; or

(d) The request of an owner of forest land in the WAU which wishes to conduct a watershed analysis at its own expense.

Revision of an approved watershed analysis shall be conducted in accordance with the processes, methods, and standards set forth in this chapter, except that the revised watershed analysis shall be conducted only on the areas affected in the case of revisions under (b) or (c) of this subsection, and may be conducted on areas smaller than the entire WAU in the case of revisions under (a) and (d) of this subsection. The areas on which the watershed analysis revision is to be conducted shall be determined by the department and clearly delineated on a map before beginning the assessment revision. Forest practices shall be conditioned under the current watershed analysis pending the completion of any revisions.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-090, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-090, filed 7/2/92, effective 8/2/92.]

WAC 222-22-100 Application review prior to watershed analysis. *The watershed analysis system established in this chapter is a principal methodology for assessing the effects on fish, water, and capital improvements of the state or its political subdivisions of two or more forest practices. Recognizing that it will not be possible to achieve state-wide implementation of the analysis process for all WAUs for some time, the board hereby establishes certain interim regulatory measures pending watershed analysis on a given WAU. These measures are designed to ensure use of the best available analysis techniques and existing authorities to protect fish, water, and capital improvements of the state or its political subdivisions.

* (1) The department shall continue to use its implementation and enforcement authority to prevent damage to fish, water, and capital improvements of the state or its political subdivisions. See chapter 222-46 WAC.

(a) The department shall continue to concentrate and exercise its authority in implementing the use of existing

road construction, maintenance, and abandonment rules where there is evidence of road-related damage to fish, water, and capital improvements of the state or its political subdivisions. The applicable road construction and maintenance rules can be found in chapter 222-24 WAC.

(b) The department shall report to the board each quarter the results of its road construction, maintenance, and abandonment enforcement program. No later than October 31 of each year, the board shall report on results and recommendations for regulatory change as needed to protect fish, water, and capital improvements of the state or its political subdivisions.

*(2) The department shall condition the size of clearcut harvest applications in the significant rain-on-snow zone where the department determines, using local evidence, that peak flows have resulted in material damages to public resources. The department may prepare conditioning guidelines to assess and condition applications located in a significant rain-on-snow zone.

(a) Each year not later than August 31, the department shall provide a summary report of actions taken under rain-on-snow conditioning or conditioning guidelines to the appropriate board committee.

(b) Such conditioning authority shall expire upon completion of watershed analysis in a WAU.

(c) Nothing in this section shall require a watershed analysis to develop harvest size recommendations.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-22-100, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-22-100, filed 7/2/92, effective 8/2/92.]

Chapter 222-24 WAC

ROAD CONSTRUCTION AND MAINTENANCE

WAC

222-24-010	Policy.
222-24-025	Road design.
222-24-040	Water crossing structures.
222-24-050	Road maintenance.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-24-010 Policy. *(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

*(2) All road and landing construction within wetlands shall be conducted so that choices are made in the following descending order of preference:

(a) Avoid impacts by selecting the least environmentally damaging landing location, road location and road length; or

(b) Minimize impacts by such things as reducing the subgrade width, fill acreage and spoil areas; or

(c) Restore affected areas by removing temporary fills or road sections upon the completion of the project; or

(d) Reduce or eliminate impacts over time by preserving or maintaining areas; or

(e) Replace affected areas by creating new wetlands or enhancing existing wetlands.

*(3) An accurate delineation of wetland boundaries shall not be required under this section except where necessary to determine acreage of road or landing construction which fills or drains more than 0.5 acre of a wetland. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term.

*(4) Extra protection is required during road construction and maintenance to protect these resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate to develop road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

*(5) This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and regulations and/or permit requirements may apply. See chapter 222-50 WAC.)

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-24-010, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-010, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-24-010, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-24-010, filed 6/16/76.]

WAC 222-24-025 Road design. (1) Use the minimum design standard that produces a road sufficient to carry the anticipated traffic load with reasonable safety.

*(2) **Subgrade width** should average not more than 32 feet for double lane roads and 20 feet for single lane roads, exclusive of ditches, plus any additional width necessary for safe operations on curves and turnouts. Where road location in wetlands is unavoidable (see WAC 222-24-010(2)), minimize subgrade width.

(3) **Balance excavation** and embankments so that as much of the excavated material as is practical will be deposited in the roadway fill sections. Where full bench construction is necessary, design suitable embankments so that the excavated material may be end hauled to appropriate deposit areas.

(4) **Design or construct** cut and fill slopes to the normal angle of repose for the materials involved, or at a lesser angle whenever practical.

*(5) **All roads** should be outsloped or ditched on the uphill side and appropriate surface drainage shall be provided by the use of adequate cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.

*(6) **Cross drains**, relief culverts, and diversion ditches shall not discharge onto erodible soils, or over fill slopes unless adequate outfall protection is provided.

*(7) **Install** cross drains, culverts, water bars, drivable dips, or diversion ditches on all forest roads to minimize erosion of the road bed, cut bank, and fill slope, or to reduce sedimentation of Type 1, 2, 3 or 4 Water. Cross drains are required in wetlands to provide for continued hydrologic connectivity. These drainage structures shall be installed at all natural drainages, all low points in the road gradient and spaced no wider than as follows:

Grade	Distance Westside	Distance Eastside
0 to 7%	1,000 ft.	1,500 ft.
8% to 15%	800 ft.	1,000 ft.
over 15%	600 ft.	800 ft.

More frequent culvert spacing or other drainage improvements are required where site specific evidence of peak flows or soil instability makes additional culverts necessary to minimize erosion of the road bed, ditches, cut bank, and fill slope to reduce sedimentation of Type 1, 2, 3 or 4 Waters, or within wetlands or to avoid unreasonable risk to public resources. See "Additional culvert spacing recommendations" in the forest practices board manual. On request of the applicant, the department may approve less frequent drainage spacing where parent material (e.g. rock, gravel) or topography justify.

*(8) **Relief culverts** installed on forest roads shall meet the following minimum specifications:

(a) Be at least 18 inches in diameter or equivalent in western Washington and 15 inches in diameter or equivalent in eastern Washington.

(b) Be installed sloping toward the outside edge of the road at a minimum gradient of 3 percent.

*(9) **Ditch diversion.** Where roadside ditches slope toward a Type 1, 2, 3 Water, or Type A or B Wetland for more than 300 feet and otherwise would discharge into the stream or wetland, divert the ditchwater onto the forest floor by relief culvert or other means at the first practical point.

*(10) **Filling or draining** more than 0.5 acre of a wetland requires replacement by substitution or enhancement of the lost wetland functions and, for creation of new wetlands, area. See the Board Manual. Where creation of new wetlands is proposed, the objective of successful replacement by substitution of lost wetland area shall be on an acre for acre basis and of the same type and in the same general location. Where replacement by enhancement of wetlands is proposed, the objective shall be to provide for an equivalent amount of function to replace that which is lost.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-24-025, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-025, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-24-025, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-025, filed 8/3/82, effective 10/1/82.]

WAC 222-24-040 Water crossing structures. *(1) Bridge construction.

(a) Bridges are required for new crossings of any Type 1 or 2 Waters regularly used for recreational boating.

(b) Permanent bridges shall not constrict clearly defined channels and shall be designed to pass the 50-year flood level or the road shall be constructed to provide erosion

protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure.

(c) One end of each new permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within 10 vertical feet of the 50-year flood level.

(d) Excavation for bridges, placement of sills or abutments, and the placement of stringers or girders shall be accomplished from outside the ordinary high-water mark of all waters, except when such operations are authorized by a hydraulic project approval.

(e) Earth embankments constructed for use as bridge approaches shall be protected from erosion by high water. Some examples of protection are: Planted or seeded ground cover, bulkheads, rock riprap, or retaining walls.

(f) When earthen materials are used for bridge surfacing, curbs of sufficient size shall be installed to be above the surface material and prevent such surface material from falling into the stream bed.

*(2) **Culvert installation:** All permanent culverts installed in forest roads shall be of a size that is adequate to carry the 50-year flood or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure. Refer to "Recommended culvert sizes" in the forest practices board manual for the size of permanent culverts recommended for use in forest roads. If the department determines that because of unstable slopes the culvert size shown on that table is inadequate to protect public resources, it may require culvert sizes in accordance with the nomograph (chart) contained in the forest practices board manual or with other generally accepted engineering principles.

(a) No permanent culverts shall be installed that are smaller than:

(i) 24 inches in diameter or the equivalent for anadromous fish streams or wetlands where anadromous fish are present.

(ii) 18 inches or the equivalent for resident game fish streams.

(iii) 18 inches or the equivalent for all other water or wetland crossings in western Washington.

(iv) 15 inches or the equivalent for all other water or wetland crossings in eastern Washington.

(b) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

(c) When fish life is present, construct the bottom of the culvert at or below the natural stream bed at the inlet and outlet.

(d) Terminate culverts on materials that will not readily erode, such as riprap, the original stream bed (if stable), or other suitable materials.

(e) If water is diverted from its natural channel, return this water to its natural stream bed via culvert, flume, spillway, or the equivalent.

(f) When flumes, downspouts, downfall culverts, etc., are used to protect fill slopes or to return water to its natural courses, the discharge point shall be protected from erosion by: (i) Reducing the velocity of the water, (ii) use of rock spillways, (iii) riprap, (iv) splash plates, or (v) other methods or structures demonstrated to be equally effective.

(g) Stream beds shall be cleared for a distance of 50 feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

(h) The entrance of all culverts should have adequate catch basins and headwalls to minimize the possibility of erosion or fill failure.

***(3) Culverts in anadromous fish streams.** In addition to the requirements of subsection (2) of this section, in streams used by anadromous fish:

(a) Culverts shall be either open bottomed or have the bottom covered with gravel and installed at least 6 inches below the natural stream bed at the inlet and outlet.

(b) Closed bottom culverts shall not slope more than 1/2 percent; except as provided in (e) of this subsection; open bottom culverts shall not slope more than the natural slope of the stream bed.

(c) Where multiple culverts are used, one culvert shall be at least 6 inches lower than the other(s).

(d) Culverts shall be set to retain normal stream water depth throughout the culvert length. A downstream control may be required to create pooled water back into the culvert and to insure downstream stream bed stability.

(e) Closed bottom culverts, set at existing stream gradients between 1/2 percent and 3 percent slope shall be designed with baffles for water velocity control, or have an approved designed fishway.

(f) The department, after consultation with the departments of fisheries and wildlife, shall impose any necessary limitations on the time of year in which such culverts may be installed to prevent interference with migration or spawning of anadromous fish.

(g) Any of the requirements in (a) through (f) of this subsection may be superseded by a hydraulic project approval.

***(4) Temporary water crossings.**

(a) Temporary bridges and culverts, adequate to carry the highest anticipated flow in lieu of carrying the 50-year flood, may be used:

(i) In the westside region if installed after June 1 and removed by September 30 of the same year.

(ii) In the eastside region if installed after the spring runoff and removed prior to the snow buildup which could feed a heavy runoff.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal.

(b) Temporary bridges and culverts shall be promptly removed upon completion of use, and the approaches to the crossing shall be water barred and stabilized at the time of the crossing removal.

(c) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.

(5) Properly prepared and maintained fords may be used during periods of low water providing a hydraulic permit is acquired.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-24-040, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.060, 76.09.040 and chapter 34.05 RCW. 92-23-056, § 222-24-040, filed 11/17/92, effective 12/18/92. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-040, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-24-040, filed 11/16/87, effective 1/1/88.

Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-040, filed 8/3/82, effective 10/1/82; Order 263, § 222-24-040, filed 6/16/76.]

WAC 222-24-050 Road maintenance. *(1) Road maintenance and abandonment plan.

(a) The landowner when notified by the department shall submit a plan for road maintenance and abandonment for those drainages or road systems the department determines based on physical evidence to have a potential to damage public resources. The plan is subject to annual review and shall include:

(i) Ownership maps showing the road or road system;

(ii) Road status, whether active, inactive, abandoned or planned for abandonment;

(iii) Maintenance schedule and priorities for the year; and

(iv) Plan for further maintenance and reconstruction beyond the current year for repair of extensive damage.

(b) The plan shall be submitted to the department region office on or before June 30, 1988, and each June 30th thereafter unless the department agrees that no further plans are necessary.

(c) The department will review the plan annually with the landowner to determine whether it will be effective and is being implemented.

(d) Such plans shall also be reviewed with departments of ecology, fisheries and wildlife and affected Indian tribes, any of whom may request an informal conference with the landowner.

***(2) Active roads.** An active road is a forest road being actively used for hauling of logs, pulpwood, chips, or other major forest products or rock and other road building materials. To the extent necessary to prevent damage to public resources, the following maintenance shall be conducted on such roads:

(a) Culverts and ditches shall be kept functional.

(b) Road surface shall be maintained as necessary to minimize erosion of the surface and the subgrade.

(c) During and on completion of operations, road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills.

***(3) Inactive roads.** An inactive road is a forest road on which commercial hauling is discontinued for 1 or more logging seasons, and the forest landowner desires continuation of access for fire control, forest management activities, Christmas tree growing operations, occasional or incidental use for minor forest products harvesting or similar activities on such inactive roads:

(a) Before the first winter rainy season following termination of active use, nonfunctional ditches and culverts shall be cleared and the road surface shall be crowned, outsloped, water barred or otherwise left in a condition not conducive to accelerated erosion or interrupt water movement within wetlands; and

(b) Thereafter, except as provided in (c) of this subsection, the landowner shall clear or repair ditches or culverts which he/she knows or should know to be nonfunctional and causing or likely to cause material damage to a public resource.

(c) The landowner shall not be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by public use, unless he/she fails to make repairs as directed by a notice to comply.

***(4) Additional culverts/maintenance.** If the department determines based on physical evidence that the above maintenance has been or will be inadequate to protect public resources and that additional measures will provide adequate protection it shall require the landowner or operator to either elect to:

(a) Install additional or larger culverts or other drainage improvements as deemed necessary by the department; or

(b) Agree to an additional road maintenance program. Such improvements in drainage or maintenance may be required only after a field inspection and opportunity for an informal conference.

***(5) Abandoned roads.** An abandoned road is a forest road which the forest landowner has abandoned in accordance with procedures of (a) through (e) of this subsection. Roads are exempt from maintenance only after (e) of this subsection is completed:

(a) Roads are outslopped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands; and

(b) Ditches are left in a suitable condition to reduce erosion; and

(c) The road is blocked so that four wheel highway vehicles can not pass the point of closure at the time of abandonment; and

(d) Bridges, culverts, and fills on all waters are removed, except where the department determines other measures would provide adequate protection to public resources.

(e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it shall within thirty days notify the landowner in writing that the road is officially abandoned.

***(6) Brush control.** Chemical control of roadside brush shall not be done where chemicals will directly enter any Type 1, 2, or 3 or flowing Type 4 or 5 Water or Type A or B Wetlands. Refer to WAC 222-38-020 for additional information.

***(7) Road surface treatment.**

(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours. Use of waste oil is subject to RCW 70.95L.060(5).

(b) Water the road surface prior to application of oil to assist in penetration.

(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.

(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.

(e) When cleaning out chemical storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water.

(f) The use of dry road chemicals shall be in compliance with WAC 222-38-020.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-24-050, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-050, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-24-050, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-050, filed 8/3/82, effective 10/1/82; Order 263, § 222-24-050, filed 6/16/76.]

Chapter 222-30 WAC TIMBER HARVESTING

WAC

222-30-020

Harvest unit planning and design.

222-30-040

Shade requirements to maintain stream temperature.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-30-020 Harvest unit planning and design.

(1) **Logging system.** The logging system should be appropriate for the terrain, soils, and timber type so yarding or skidding can be economically accomplished in compliance with these regulations.

***(2) Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

***(3) Western Washington riparian management zones.** These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than 25 feet in width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.

WATER TYPE/ AVERAGE WIDTH	RMZ MAXIMUM WIDTH	RATIO OF CONIFER TO DECIDUOUS/ MINIMUM SIZE LEAVE TREES	# TREES/1000 FT. EACH SIDE	
			GRAVEL/ COBBLE <10" DIAMETER	BOULDER/ BEDROCK
1 & 2 Water 75' & over	100'	representative of stand	50 trees	25 trees
1 & 2 Water under 75'	75'	representative of stand	100 trees	50 trees
3 Water 5' & over	50'	2 to 1/ 12" or next largest available	75 trees	25 trees
3 Water less than 5'	25'	1 to 1/ 6" or next largest available	25 trees	25 trees

"Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified. Ponds or lakes which are Type 1, 2 or 3 Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and the harvest unit is a clearcutting of 30 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection.

***(4) Eastern Washington riparian management zones.** These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters

not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 30 feet to a maximum of 50 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 50 feet in width on each side of the stream with a minimum width of 30 feet and a maximum of 300 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type 1, 2 or 3 Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 16 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 3 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees/acre 20 inches or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and

(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type 1, 2 and 3 Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 135 trees/acre 4 inches dbh or larger.

(C) On lakes or ponds the minimum leave tree requirement shall be 75 trees/acre 4 inches dbh or larger.

Note: (See the Forest Practices Board Manual for assistance in calculating trees/acre and average RMZ widths.)

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and either the harvest unit is a clearcutting of 30 acres or less or

the harvest unit is a partial cutting of 80 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010 "Partial cutting.")

***(5) Riparian leave tree areas.** The department will require trees to be left along Type 4 Water where such practices are necessary to protect public resources. Where such practices are necessary leave at least 25 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 25 feet of the stream. The leave trees may be arranged to accommodate the operation.

(6) Forested wetlands. Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (30 to 70%) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than 1000 feet from a wildlife reserve tree and green recruitment tree retention area.

(d) Approximate determination of the boundaries of forested wetlands greater than 5 acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(e) The department shall consult with the department of wildlife, the department of fisheries, and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

(7) Wetland management zones (WMZ). These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

***(a) Wetland management zones (WMZ)** shall have variable widths based on the size of the wetland and the wetland type, described as follows:

WETLAND MANAGEMENT ZONE WIDTHS				
Wetland Type	Acres of Nonforested Wetland	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A	Greater than 5	200 feet	100 feet	50 feet
A	0.5 to 5	100 feet	50 feet	25 feet
A Bog/Fen	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ Required		

(b) Within the WMZ, leave a total of 75 trees per acre of WMZ greater than 6 inches dbh in Western Washington and greater than 4 inches dbh in Eastern Washington, 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed 100 feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than 200 feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

***(e)** Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

***(f)** When 10% or more of a harvest unit lies within any combination of a wetland management zone or a riparian management zone of Type 1, 2, or 3 Waters and either the harvest unit is a clearcut of 30 acres or less or the harvest unit is a partial cut of 80 acres or less, leave not less than 50% of the trees required in (b) of this subsection.

***(8) Nonforested wetlands (Type A or B).** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(9) Future productivity. Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(10) Wildlife habitat. This subsection is designed to encourage timber harvest practices that would protect

wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of wildlife to identify critical wildlife habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to insure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(11) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) In Western Washington, for each acre harvested 3 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. In Eastern Washington for each acre harvested 2 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than 2 green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(b) In Eastern Washington, for 5 years from the effective date of this subsection where over-story harvest of seed trees left for purpose of reforestation are proposed and less than 10 trees per acre will be harvested within the 5-year period, 50% of the green recruitment trees otherwise required in this subsection may be left.

(c) In Western Washington, only those wildlife reserve trees 10 or more feet in height and 12 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees 10 or more feet in height and 10 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, 10 or more inches dbh and 30 or more feet in height and with at least 1/3 of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred

as green recruitment trees. Only down logs with a small end diameter greater than or equal to 12 inches and a length greater than or equal to 20 feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than 800 feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-30-020, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.060, 76.09.040 and chapter 34.05 RCW. 92-23-056, § 222-30-020, filed 11/17/92, effective 12/18/92. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-30-020, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. 88-19-112 (Order 551, Resolution No. 88-1), § 222-30-020, filed 9/21/88, effective 11/1/88; 87-23-036 (Order 535), § 222-30-020, filed 11/16/87, effective 1/1/88; Order 263, § 222-30-020, filed 6/16/76.]

WAC 222-30-040 Shade requirements to maintain stream temperature. *(1) Determination of adequate shade. The temperature prediction method in subsections (2) and (3) of this section shall be used to determine appropriate shade levels for flowing Type 1, 2, and 3 Waters to prevent excessive water temperatures which may have detrimental impact on aquatic resources.

*(2) Temperature prediction method. In addition to the riparian management zone requirements, leave trees shall be retained in riparian management zones on flowing Type 1, 2, and 3 Waters as provided by the method described in the board manual which includes the following considerations:

(a) Minimum shade retention requirements; and

(b) Regional water temperature characteristics; and

(c) Elevation; and

(d) Temperature criteria defined for stream classes in chapter 173-201A WAC.

*(3) Leave tree requirements for shade. The method described in subsection (2) of this section shall be used to establish the minimum shade cover based on site specific

characteristics. When site specific data indicate that preharvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed.

(4) **Waivers.** The department may waive or modify the shade requirements where:

(a) The applicant agrees to a staggered setting program producing equal or greater shade requirements to maintain stream temperature; or

(b) The applicant provides alternative means of stream temperature control satisfactory to the department; or

(c) The temperature method indicates that additional shade will not affect stream temperature.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-30-040, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-30-040, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-30-040, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-30-040, filed 8/3/82, effective 10/1/82; Order 263, § 222-30-040, filed 6/16/76.]

Chapter 222-34 WAC REFORESTATION

WAC

222-34-030 Reforestation—Plans—Reports—Inspections.
222-34-040 Site preparation and rehabilitation.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-34-030 Reforestation—Plans—Reports—Inspections. (1) **Reforestation plans.** Reforestation plans must be submitted with the application or notification except where no reforestation is required. The department shall designate difficult regeneration areas utilizing silvicultural information. When a forest practice is proposed for such an area, the department may require additional information regarding harvest systems and post harvest site preparation, as well as regeneration. The department shall approve the reforestation plan for difficult regeneration areas if it determines that such a plan will achieve acceptable stocking according to WAC 222-34-010 and 222-34-020.

(2) **Reforestation reports.** The landowner, forest landowner, or his/her designee shall file a report with the department either at the time of completion of planting or reforestation or at the end of the normal planting season. When artificial seeding is used the report shall be filed 2 growing seasons after seeding.

(3) **The reports in subsection (2) of this section must contain at least the following:**

(a) The original forest practice application or notification number.

(b) Species reforested, planted, or seeded.

(c) Age of stock planted or seed source zone.

(d) Description of actual area reforested, planted, or seeded.

(4) **Inspection; supplemental planting or reforestation directives.**

(a) Within 12 months after a reforestation report is received, the department shall inspect the reforested lands. The department shall issue written notice to the landowner,

forest landowner, or his/her designee stating whether supplemental planting or reforestation or further inspection is required within 30 days after the deadline for inspection or the reforestation shall be deemed satisfactory.

(b) If the inspection shows that acceptable stocking levels have not been achieved, the department shall direct the forest landowner to perform supplemental planting in accordance with the planting standards of WAC 222-34-010 (3) and (4)(a)(ii), 222-34-020 (3) and (4)(a)(ii): *Provided, That:*

(i) In lieu of such supplemental planting, the department and the forest landowner may agree on a supplemental reforestation plan.

(ii) Supplemental planting or reforestation shall not be required where in the opinion of the department planting or reforestation is not feasible due to rocky ground, dry conditions, excessively high water table or other adverse site factors and the department determines that there is little probability of significantly increasing the stocking level.

(iii) Where supplemental planting or reforestation has been required by the department, the landowner, forest landowner, or his/her designee shall file a report of supplemental planting or reforestation upon completion.

(iv) Except where stocking improvement is necessary to protect public resources and is feasible, further supplemental planting shall not be required where acceptable stocking levels have not been achieved after two properly performed supplemental plantings.

(c) Within 12 months after a supplemental planting or reforestation report is received, the department shall inspect the reforested lands.

(d) **Evidence of compliance.** The department shall within 30 days after the deadline for inspection or reinspection and when requested by the forest landowner confirm in writing whether acceptable stocking levels have been achieved, provided field conditions do not prevent the department from properly evaluating the reforestation.

(e) Where a natural regeneration plan has been approved by the department, the department may allow up to 10 years to achieve acceptable stocking levels.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-34-030, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-34-030, filed 11/16/87, effective 1/1/88; 86-21-040 (Resolution No. 86-2), § 222-34-030, filed 10/10/86, effective 12/1/86. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-34-030, filed 8/3/82, effective 10/1/82; Order 263, § 222-34-030, filed 6/16/76.]

WAC 222-34-040 Site preparation and rehabilitation. *(1) Heavy equipment. Heavy equipment shall not be used in connection with site preparation or rehabilitation work:

(a) When, because of soil moisture conditions or the type of soils, undue compaction or unnecessary damage to soil productivity would occur or erosion would result in damage to water quality; or

(b) Within riparian management zones, Type A and B Wetlands, wetland management zones, or within 10 feet of the ordinary high-water mark of Type 4 and 5 Waters on slopes of 30 percent or less. On slopes greater than 30 percent heavy equipment shall not operate within 50 feet of

Type 1 through 5 Waters unless a site specific plan has been approved by the department.

***(2) Surface water drainage.** Where site preparation or rehabilitation involves contouring or terracing of slopes, drainage ditches, or similar work:

(a) The gradient of ditches or other artificial water courses in erodible soils shall not cause significant stream, lake, pond, or wetland siltation.

(b) Ditches and other artificial water courses shall not discharge onto any road, landing or fill.

(c) Ditches and other artificial water courses shall not be constructed to discharge onto the property of other parties without their consent.

***(3) Stream channel alignment.** Where work involves deepening, widening, straightening or relocating the channel; or bulkheading, riprapping or otherwise stabilizing the banks of a Type 1, 2 or 3 Water, the work shall be done only:

(a) After consultation with any party having an appropriation permit or registered right to appropriate waters from the affected stream segment in cases of streams used for domestic water supplies.

(b) Where no significant adverse effects on either the peak or minimum water levels or flows downstream can be expected.

(c) In a manner not expected to result in long-term damage to public resources or to adjacent or downstream property.

(NOTE: OTHER LAWS AND REGULATIONS AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-34-040, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-20-021, § 222-34-040, filed 9/28/92, effective 10/29/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-34-040, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-34-040, filed 8/3/82, effective 10/1/82; Order 263, § 222-34-040, filed 6/16/76.]

Chapter 222-38 WAC FOREST CHEMICALS

WAC

222-38-020 Handling, and storage, application of pesticides.
222-38-030 Handling, storage, and application of fertilizers.

Reviser's note: For an explanation of the rules marked with an asterisk (*), see WAC 222-12-010.

WAC 222-38-020 Handling, storage, and application of pesticides. ***(1) No pesticide leakage, contamination, pollution.**

Transportation, handling, storage, loading, application, and disposal of pesticides shall be consistent with applicable label requirements and other state and federal requirements.

***(2) Mixing and loading areas.**

(a) Mix pesticides and clean tanks and equipment only where any accidental spills would not enter surface water or wetlands.

(b) Storage and loading areas should be located where accidental spillage of pesticides will not enter surface water or wetlands. If any pesticide is spilled, immediate appropriate procedures should be taken to contain it.

(c) Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.

***(3) Riparian management zone.** Pesticide treatments within the riparian management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

***(4) Wetland management zone.** Pesticide treatment within the wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

***(5) Aerial application of pesticides.**

(a) To keep pesticides out of the water, leave a 50 foot buffer strip on all typed waters, except segments of Type 4 and 5 Waters with no surface water and other areas of open water, such as ponds or sloughs.

(b) Apply the initial swath parallel to the buffer strip in (a) of this subsection unless a deviation is approved in advance by the department. Drift control agents shall be required adjacent to buffer strips. Avoid applications that might result in drift causing direct entry of pesticides into riparian management zones, Type A and B Wetlands, wetland management zones, and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

(c) Use a bucket or spray device capable of immediate shutoff.

(d) Shut off spray equipment during turns and over open water.

(e) Leave at least a 200 foot buffer strip around residences and 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.

(f) The landowner shall identify for the operator the units to be sprayed and the untreated areas within the units with appropriately marked aerial photos or detailed planimetric maps. Before application of the pesticide an over-flight of the area shall be made by the pilot with the marked photos or maps.

(g) Aerial chemical application areas shall be posted by the landowner by signing at significant points of regular access at least 5 days prior to treatment. Posting shall remain at least 15 days after the spraying is complete. The department may require an extended posting period in areas where human use or consumption of plant materials is probable. Posting at formal, signed trailheads that are adjacent to aerially treated units is required. The signs will contain the name of the product used, date of treatment, a contact telephone number, and any applicable restrictions.

***(6) Ground application of pesticides with power equipment.**

Leave a 25-foot buffer strip on each side of Type A or B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

***(7) Hand application of pesticides.**

Apply only to specific targets, such as vegetation, trees, stumps, and burrows, or as bait or in traps.

***(8) Limitations on application.** Pesticides shall be applied only in accordance with all limitations:

(a) Printed on the United States Environmental Protection Agency container registration label, and/or

(b) Established by regulation of the state department of agriculture.

(c) Established by state and local health departments (in municipal watersheds).

(d) Established by the Federal Occupational Safety and Health Administration, or the state department of labor and industries, as they relate to safety and health of operating personnel and the public.

(e) The department or the department of agriculture may suspend further use of any equipment responsible for chemical leakage until the deficiency has been corrected to the satisfaction of the department suspending its usage.

***(9) Container disposal.** Pesticide containers shall be either:

(a) Removed from the forest and disposed of in the manner consistent with label directions; or

(b) Removed and cleaned for reuse in a manner consistent with any applicable regulations of the state department of agriculture or the state or local health departments.

***(10) Daily records - aerial application of pesticides.** On all aerial applications of pesticides, the operator shall maintain for 3 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.

***(11) Reporting of spills.** All potentially damaging chemical spills shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department's regional offices.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-38-020, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-38-020, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 88-19-112 (Order 551, Resolution No. 88-1), § 222-38-020, filed 9/21/88, effective 11/1/88; 87-23-036 (Order 535), § 222-38-020, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-38-020, filed 8/3/82, effective 10/1/82; Order 263, § 222-38-020, filed 6/16/76.]

WAC 222-38-030 Handling, storage, and application of fertilizers. ***(1) Storage and loading areas.** Storage and loading areas should be located where accidental spillage of fertilizers will not enter surface water or wetlands. If any fertilizer is spilled, immediate appropriate procedures shall be taken to contain it.

***(2) Riparian management zone.** Fertilizer treatments within a riparian management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

***(3) Wetland management zone.** Fertilizer treatments within a wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

***(4) Aerial application of fertilizer.**

(a) Proposed fertilization units shall be planned to avoid and to minimize the direct or indirect introduction of fertilizer into waters and wetlands.

(b) Leave a 25 foot buffer on all Type 1, 2, and 3 Waters, except as noted in (f) of this subsection.

(c) When the helicopter flight path during fertilizer application is parallel to a water course or the WMZ edge, the centerline of the initial swath should be adjusted to prevent direct application within the buffers or WMZs.

(d) Leave at least a 200 foot buffer strip around residences and a 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.

(e) The landowner shall identify for the operator the units to be fertilized and the untreated areas within the units with appropriately marked aerial photos or detailed planimetric maps. Before application of the fertilizer, an over-flight of the area shall be made by the pilot with the marked photos or maps.

(f) Where the department has been provided information by the department of ecology indicating that water quality in downstream waters is likely to be impaired by entry of fertilizer into waters, such waters shall be protected by site specific conditioning.

***(5) Ground and hand application of fertilizers.** Prevent fertilizer from entering Type A and B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

***(6) Reporting of fertilizer spills.** All fertilizer spills involving streams, lakes, wetlands, or other waters of the state shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department's regional offices.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-38-030, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-38-030, filed 7/2/92, effective 8/2/92.]

Chapter 222-46 WAC

CONSULTATION AND ENFORCEMENT

WAC

222-46-010	Policy—Enforcement.
222-46-020	Informal conferences.
222-46-030	Notice to comply.
222-46-040	Stop work orders.
222-46-060	Civil penalties.
222-46-065	Base penalty schedule.
222-46-070	Injunctions, civil suits, disapprovals.

WAC 222-46-010 Policy—Enforcement. It is the policy of the act and the board to encourage informal, practical, result-oriented resolution of alleged violations and actions needed to prevent damage to public resources. It is also the policy of the act and the board to provide, consistent with the principles of due process, effective procedures for enforcement. It is the policy of the board to use a progressive approach to enforcement, and civil penalties should be one of the least used enforcement mechanisms; such an approach usually begins with consultation and voluntary efforts to achieve compliance while generally reserving civil penalties to more serious infractions. This part of these regulations provides the following enforcement procedures: Informal conferences; notices to comply; stop work orders; corrective actions by the department; civil penalties; injunctions and other civil judicial relief; and criminal penalties. Civil penalties shall be appropriate to the violation or its potential to damage public resources.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-010, filed 12/20/93, effective 1/1/94. Order 263, § 222-46-010, filed 6/16/76.]

WAC 222-46-020 Informal conferences. (1) **Opportunity mandatory.** The department shall afford the operator and/or a designated representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the department determines that there may be imminent damages to the public resource. Informal conferences may be used at any stage in enforcement proceedings, except that the department may refuse to conduct informal conferences with respect to any matter then pending before the appeals board or a court.

(2) **Reports required.** Department personnel in attendance at informal conferences shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to further enforcement action. Copies of the conference notes shall be forwarded to the landowner and the timber owner.

(3) **Records available.** Copies of written notes shall be sent to each participant in the conference, be kept in the department files until one year after final action on the application involved, and be open to public inspection.

(4) **Local government entity conditions.** If the proposed enforcement actions involve conditions imposed pursuant to WAC 222-20-040(3), then the local government entity shall be involved in the informal conference.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-020, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-46-020, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 91-23-052, § 222-46-020, filed 11/15/91, effective 12/16/91; Order 263, § 222-46-020, filed 6/16/76.]

WAC 222-46-030 Notice to comply. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator and/or landowner a notice which will clearly set forth:

(1)(a) **The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or**

(b) **The relevant provisions of the Forest Practices Act or of the forest practices regulations relating thereto;**

(2) **The right of the operator, landowner, or timber owner to a hearing before the department; and**

(3) **The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.**

(4) **Local government entity conditions.** If the notice to comply involves a condition imposed pursuant to WAC

222-20-040(3), then the specific course of action ordered by the department shall include a requirement that the operator obtain approval of the local government entity of the action to be taken.

(5) **The department shall mail a copy of the notice to comply to the forest landowner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. The department shall also mail a copy to the local government entity if a condition imposed pursuant to WAC 222-20-040(3) is involved.**

Such notice to comply shall become a final order of the department: *Provided*, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest landowner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. The local government entity shall participate in the hearing if a condition imposed pursuant to WAC 222-20-040(3) is involved. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest landowner, or timber owner appeals such final order to the appeals board. No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: *Provided*, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-030, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 91-23-052, § 222-46-030, filed 11/15/91, effective 12/16/91; Order 263, § 222-46-030, filed 6/16/76.]

WAC 222-46-040 Stop work orders. (1) **The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:**

(a) **There is any violation of the provisions of the Forest Practices Act or these regulations; or**

(b) **There is a deviation from the approved application;**
or

(c) **Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.**

(2) **The stop work order shall set forth:**

(a) **The specific nature, extent, and time of the violation, deviation, damage, or potential damage;**

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource. The stop work order shall also set forth those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence. If the stop work order involves a condition imposed pursuant to WAC 222-20-040(3), then the specific course of action ordered by the department shall include a requirement that the operator obtain approval of the local government entity of the action to be taken.

(d) The stop work order shall also set forth the right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest landowner at the addresses shown on the application. The department shall also mail a copy to the local government entity if a condition imposed pursuant to WAC 222-20-040(3) is involved.

The operator, timber owner, or forest landowner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be a contested case within the meaning of chapter 34.05 RCW.

The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-040, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 91-23-052, § 222-46-040, filed 11/15/91, effective 12/16/91; Order 263, § 222-46-040, filed 6/16/76.]

WAC 222-46-060 Civil penalties. (1) Amount of penalty. Every person who violates any provisions of RCW 76.09.010 through 76.09.280 or of the forest practices rules adopted pursuant thereto, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for each such violation. Each and every such violation shall be a separate and distinct violation. In case of a failure to comply with a stop work order, every day's continuance thereafter shall be a separate and distinct violation.

(2) **Penalty assessments** shall consider the following:

(a) Repairability of the adverse effect from the violation;

(b) Whether the violation of the act or rules was intentional;

(c) Cooperation with the department;

(d) Previous violation history;

(e) Severity of the impact or the potential for material damage to public resources; and

(f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and did not receive substantial economic benefits from the violation.

(3) **Calculation of penalty.** The department shall evaluate any violation to determine if a civil penalty is warranted. When penalties are to be assessed they shall be calculated using the following process:

(a) Determine the base penalty; see WAC 222-46-065.

(b) The penalty may be adjusted using factors specific to the incident and the site. The following additional factors will be independently considered and added to the base penalty to calculate the civil penalty:

(i) **Repairability:**

Repairability shall be based on the length of time natural restoration or implementation of a restoration plan will take and whether repair can be achieved. The penalty will be substantially increased when natural restoration will not occur within three years and the damage cannot be effectively corrected. For this factor, up to double the base penalty may be added to the penalty.

(ii) **Intention:**

In making a determination of intent, the department shall consider, but not be limited to, the following considerations: The foreseeability of the violation; whether precautions were taken to avoid the violation; whether an informal conference or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added to the penalty.

(iii) **Cooperation:**

The department shall consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives shall determine if the penalty shall be increased. For this factor, up to double the base penalty may be added to the penalty.

(iv) **Previous violation(s):**

The department shall consider whether the violator has previous violations of a forest practice rule or regulation as documented in an enforcement action. The department may consider company organizations and assignment of operational responsibilities when evaluating previous violations. A history of violations with adverse impacts or potential for adverse impacts or that shows a pattern of ignoring the rules or the act, shall result in a substantially larger penalty.

Enforcement actions for the purposes of this section shall include notices to comply, stop work orders, civil penalties, and criminal citations when those enforcement actions are associated with forest practice violations. For this factor, up to quadruple the base penalty may be added to the penalty.

(v) **Severity:**

The department shall adjust the penalty based on the extent and magnitude of the damage or potential damage to public resources. For this factor, up to quadruple the base penalty may be added to the penalty.

(vi) **Landowner involvement:**

If in the opinion of the department, the landowner exercised reasonable prudence in the development of timber

sale contracts or supervision of the forest practice operations, was unaware of the forest practice violation, and the landowner received no substantial economic benefit from the violation, then the landowner generally would not be assessed a civil penalty.

(c) In accordance with RCW 76.09.170, the penalty may not exceed ten thousand dollars for each and every violation.

(d) The department shall determine whether all or a portion of the penalty should be assessed against the operator, landowner, and/or timber owner. The department should consider the responsible party, the degree of control, the sophistication of the party and whether different parties conducted different violations.

(4) **Other participants.** Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided for in this section.

(5) **Government employees.** No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board created by the act for any act or omission in his/her duties in the administration of the act or of these rules.

(6) **Written notice.** The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity.

(7) **Remission or mitigation.** Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department's manager of the region in which the penalty was issued, for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper: *Provided*, That the department deems such remission or mitigation to be in the best interests of carrying out the purposes of the act. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as they may deem proper. The reviewer may reduce, dismiss or not change the civil penalty. Within fifteen days of the completion of the regional review, the person incurring the penalty may apply in writing to the supervisor of the department for further review.

(8) **Right of appeal.** Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation. Concurrently with the filing of any appeal to the forest practices appeals board as provided in this section, the appellant shall file a copy of the appeal with the department region from which the penalty was issued and a copy with the office of the attorney general.

(9) **Penalties due.** The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final order or decision confirming the penalty in whole or in part.

(10) **Enforcement.** If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in the Forest Practices Act. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties.

(11) **Liens.** Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty. The department may collect such amounts in the same manner provided in chapter 60.04 RCW for mechanics' liens.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-060, filed 12/20/93, effective 1/1/94; Order 263, § 222-46-060, filed 6/16/76.]

WAC 222-46-065 Base penalty schedule. All other WAC or RCW violations not specifically mentioned in this list shall have a base penalty of five hundred dollars.

Violations of the following shall have a base penalty of two thousand dollars:

Statute or Rule	Description
WAC 222-20-010 RCW 76.09.050	Operation without an approved forest practices application/notification.
WAC 222-20-010 RCW 76.09.060	Willful misrepresentation of information on the forest practices application /notification.
WAC 222-20-050 RCW 76.09.060	Conversion of land without consent of the county, city or town.
WAC 222-20-040 WAC 222-20-060 RCW 76.09.060	Significant, in the opinion of the department, deviation from an approved forest practices application/notification.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-065, filed 12/20/93, effective 1/1/94.]

WAC 222-46-070 Injunctions, civil suits, disapprovals. (1) **The department** may take any necessary action to enforce any final order or final decision, and may disapprove for up to one year any forest practices application or

notification submitted by any person who has failed to comply with a final order or decision as set forth in RCW 76.09.080, 76.09.090, or 76.09.110, or has failed to pay any civil penalties as provided in RCW 76.09.170.

The department shall provide written notice of its intent to disapprove future applications or notifications, and shall forward copies of such notice to any affected landowner, timber owner or operator; such written notice shall occur within ninety days of the failure to comply with a final order or decisions as set forth in RCW 76.09.080, 76.09.090, or 76.09.110, or has failed to pay any civil penalties as provided in RCW 76.09.170. The disapproval period shall run from thirty days following the date of actual notice or from the date all appeals, if any, have been exhausted.

Any person provided notice of intent to disapprove an application or notification may seek review from the forest practices appeals board within thirty days of the date of notice.

(2) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practices regulations or any final order of the department or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. A county may not commence injunctions, declaratory actions, or other actions for enforcement under this subsection unless the department fails to take appropriate actions after ten days' written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

[Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW. 94-01-134, § 222-46-070, filed 12/20/93, effective 1/1/94; Order 263, § 222-46-070, filed 6/16/76.]

Chapter 222-50 WAC

RELATIONSHIP TO OTHER LAWS AND REGULATIONS

WAC

222-50-020 Other agency requirements.

WAC 222-50-020 Other agency requirements. (1) Many other laws and regulations apply to the conduct of forest practices. Other agencies administer some of these other regulatory programs. Permits may be required by such agencies prior to the conduct of certain forest practices. The department will maintain a list for distribution of state, regional and local regulatory programs that apply to forest practice operations. Affected parties are urged to consult with the specified agencies and independent experts with respect to the regulatory requirements shown on the list.

(2) **Hydraulics project approval law, RCW 75.20.100.** A hydraulics project approval must be obtained from the department of fisheries and the department of wildlife prior to constructing any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any of the

waters of the state or materials from the stream beds. See RCW 75.20.100 and WAC 232-14-010.

(3) **Compliance with the Shoreline Management Act,** chapter 90.58 RCW, is required. The Shoreline Management Act is implemented by the department of ecology and the applicable local governmental entity. A substantial development permit must be obtained prior to conducting forest practices which are "substantial developments" within the "shoreline" area as those terms are defined by the Shoreline Management Act.

(4) Nothing in these regulations is intended to interfere with any authority of the department of wildlife to protect wildlife under any other statutes or regulations, or under any agreements with landowners.

(5) **Federal Endangered Species Act, 16 U.S.C. 1531 et seq.,** and other federal laws. The federal Endangered Species Act and other federal laws may impose certain obligations on persons conducting forest practices. Compliance with the Forest Practices Act or these rules does not ensure compliance with the Endangered Species Act or other federal laws.

[Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 93-12-001, § 222-50-020, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040. 88-19-112 (Order 551, Resolution No. 88-1), § 222-50-020, filed 9/21/88, effective 11/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-50-020, filed 8/3/82, effective 10/1/82; Order 263, § 222-50-020, filed 6/16/76.]

Title 230 WAC

GAMBLING COMMISSION

Chapters

- 230-02** General provisions and definitions.
- 230-04** Licensing.
- 230-08** Records and reports.
- 230-12** Rules of general applicability.
- 230-20** Bingo, raffles and amusement games.
- 230-25** Fund raising events.
- 230-30** Punchboards and pull tabs.
- 230-40** Card games.

Chapter 230-02 WAC

GENERAL PROVISIONS AND DEFINITIONS

WAC

- 230-02-035 Field offices and operations.
- 230-02-108 Gambling proceeds defined.
- 230-02-183 Active member defined.
- 230-02-210 Distributor defined.
- 230-02-230 Manufacturer defined.
- 230-02-250 Bingo equipment.
- 230-02-270 Punchboard defined.
- 230-02-278 Program services defined.
- 230-02-400 Card game.
- 230-02-511 Attended amusement game defined.
- 230-02-514 Coin or token activated amusement games defined.