As required by the Washington State Administrative Act, RCW 34.05.

CONCISE EXPLANATORY STATEMENT

AND

RESPONSIVENESS SUMMARY

FOR THE ADOPTION OF

Chapter 197-11 WAC
State Environmental Policy Act (SEPA) Rules

July 30, 2003

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CHAPTER 197-11 WAC
State Environmental Policy Act (SEPA) Rules

Prepared by:

Washington State Department of Ecology

Shorelands and Environmental Assistance Program
Environmental Coordination Section

July 30, 2003

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CONCISE EXPLANATORY STATEMENT

I. Introduction

- Identify the reasons for adopting this rule:

  Ecology is proposing to amend the State Environmental Policy Act (SEPA) Rules in response to a lawsuit filed challenging the validity of WAC 197-11-305. In Plum Creek Timber Company v. FPAB, et. al., Thurston County Superior Court Cause No. 02-2-00490-1, Petitioners are seeking a declaratory ruling from the court that WAC 197-11-305 is invalid as applied to Class I, II, and III forest practices. The legislature has statutorily exempted Class I, II, and III forest practices from SEPA review under RCW 43.21C.037 and RCW 76.09.050(1).

  However, when Ecology adopted the SEPA rules in 1984, Class I, II, and III forest practices, along with all of the other "statutory exemptions" contained in RCW 43.21C, were included within the list of "categorical exemptions" contained in Part Nine of the SEPA rules. This has resulted in the "statutory exemptions" being subject to the provisions of WAC 197-11-305 requiring SEPA review in certain prescribed circumstances. This is inconsistent with legislation contained in RCW 43.21C providing that statutorily exempt actions are not subject to environmental review under SEPA. The proposed amendments are necessary to make the SEPA rules consistent with legislation set forth in RCW 43.21C statutorily exempting specific proposed actions from SEPA review.

- Identify the adoption date of rule and effective date of rule.

  Adoption date August 1, 2003 and effective date September 1, 2003.

II. Describe Differences Between Proposed and Adopted Rule

- Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted (other than editing changes): **No changes were made to the proposed rule.**

- Please state the reasons for the differences: **Not applicable.**

III. Summarize Comments

- Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. **See attached summary.**

- Please indicate how the final rule reflects agency consideration of the comments or why it fails to do so. **See attached summary.**

IV. Summary of public involvement opportunities

- Please provide a summary of public involvement opportunities for this rule adoption:

  A preliminary draft of the rule amendments was sent to interested parties in December asking for comments prior to filing of the CR-102.

  The CR-102 was filed with the Code Reviser on January 15, 2003. Copies of the CR-102, proposed amendments, focus sheet, and determination of nonsignificance were sent to those who had expressed an interest in the amendment. An email notice of availability was also sent to those on the SEPA contact list, including the counties, larger cities, air authorities, some ports, and the state resource agencies. Copies of the available documents were made available on the SEPA website and a news release was issued.

  A public hearing was held on February 26, 2003 at 2 pm in the Ecology Headquarters Building, 600 Desmond Drive, Lacey. Thirty six people attended the hearing and 27 testified.

V. Appendices

A. List of commenters
B. Responsiveness summary
C. Written comments – Available upon request
D. Transcript of public hearing – Available upon request
E. Public notices and handouts – Available upon request

Appendix A

SEPA Rule Amendments
Alphabetical List of Commenters

No	Date Received	Commenter Name	Address
1	2/26/03	Frank Backus	SDS Lumber Company PO Box 266 Bingen, WA 98605
T-6	2/26/03	Carol Beck	Port Blakely Communities 1775 12th NW, Suite 101 Issaquah WA 98027
2 T-16	2/28/03 3/3/03 – Corrected Letter	Wade Boyd	Longview Fibre Company 300 Fibre Way PO Box 667 Longview WA 98632
T-21	2/26/03	Mick Boynton	Carbon River Valley Conservation Project PB 188 Mowick Ld Rd Wilkeson WA 98396
T-8	2/36/03	Vicki Boynton	Friends of Carbon Canyon PO Box 188 Wilkeson WA 98396
3	2/25/03	Steve Bratz	Crown Pacific steve.bratz@crown-pacific.com
4	3/5/03	Bonnie Bunning	WA State Dept of Natural Resources PO Box 47000 Olympia WA 98504-7000
T-5	2/26/03	Mardel Chowen	Friends of the Carbon Valley PO Box 67 South Prairie WA 98385
5 T-17	2/26/03	Dennis Creel	Mid-Valley Resources, Inc PO Box 2315 Salem OR 97308-2315
6	3/5/03	David Crooker	Plum Creek Timber Company 999 Third Ave, Suite 2300 Seattle WA 98104-4096
7 T-18	2/26/03	Malcolm Dick	American Forest Resource Council 626 Columbia St NW, Suite 1A Olympia WA 98501 360-352-3910
T-13	2/26/03	Angela Emery	Washington Forest Law Center 615 Second Ave, Suite 360 Seattle WA 98104-2245

8	2/10/03	Byron Fitch	709 E Olive Ave Ritzville, WA 99169
9 T-1	3/05/03	Kevin Godbout	Weyerhaeuser 33663 Weyerhaeuser Way S PO Box 9777 Federal Way, WA 98063-9777
10	2/26/03	Peter Goldman and Toby Thaler	Washington Forest Law Center 615 Second Ave, Suite 360 Seattle, WA 98104-2245
11 T-12	3/5/03	Peter Goldman	(see above)
12 T-10	3/4/03	Ann Goos	Washington Forest Protection Association 2312 30th Ave W Seattle WA 98199 724 Columbia St NW, Suite 250 Olympia WA 98501
13 T-11	3/3/03	John Gorman	Simpson Resource Company 1301 Fifth Ave, Suite 2800 Seattle WA 98101-2613
14	2/14/03	Gregg Hall	Kittitas County 411 N Ruby, Suite 2 Ellensburg, WA 98926
T-14	2/26/03	David Harlow	Washington Forest Law Center 615 Second Ave, Suite 360 Seattle WA 98104-2245
15 T-26	3/5/03	John Hempelmann	Cairncross and Hempelmann 524 Second Ave, Suite 500 Seattle WA 98104-2323
16	2/25/03	Wayne Hutchins	Crown Pacific wayne.hutchins@corwn-pacific.com
17	3/5/03	James Johnston	Perkins Coie 1201 Third Ave, Suite 4800 Seattle WA 98101-3099
18	2/26/03	Jeff Jones	US Timberlands 700 E Mountain View, Suite 507 Ellensburg, WA 98926
19	3/5/03	Jeff Jones	US Timberlands 700 E Mountain View, Suite 507 Ellensburg, WA 98926
20	3/3/03	Jennifer Kauffman	8027 Bagley Ave N Seattle WA 98103
21	3/5/03	Becky Kelley	Washington Environmental Council 615 Second Ave, Suite 380 Seattle WA 98104

22 T-27	2/26/03	George Kirkmire	Washington Contract Loggers Association 2421 Pacific Ave PO Box 2168 Olympia WA 98507-2168
23	2/25/03	Paul Kriegel	Goodyear Nelson Hardwood Lumber Co PO Box 997 Bellingham WA 98227 360-733-3960
24	3/5/03	Flora Leisenring, Elizabeth Davies, Peggy Burton	League of Women Voters 1063 Capital Way S Olympia WA 98502
25 T-24	3/5/03	Jim McCauley	The Campbell Group One SW Columbia, Suite 1700 Portland OR 97258
26	2/24/03	Dale McGreer	Western Watershed Analyst dale@mcgreer.com
27 T-25	3/3/03	John McMahon	17923 Brittany Dr SW Seattle WA 98166-3617
T-22	2/26/03	Bruno Medergard	Carbon River Valley Conservation Project PO Box 315 South Prairie WA 98385
T-9	2/26/03	Robert Meier	Rayonier 3033 Ingram St Hoquiam WA 98550
28 T-20	2/26/03	Ken Miller	11801 Tilley Rd S Olympia WA 98512
29	3/3/03	Dwight Opp	Stimson Limber Company Inland Fee Resources PO Box 1499 Newport WA 99156
30	2/25/03	Russ Paul	Crown Pacific, Hamilton Tree Farm russ.paul@cornw-pacific.com
31	3/3/03	Jim Vander Ploeg	9705 Orchard Ave Yakima WA 98901
32	1/21/03	Eldon Roush	2213 Hwy 25 N Evans, WA 99126
33	3/4/03	Blake Rowe	Longview Fibre Company 300 Fibre Way PO Box 667 Longview WA 98632
43	3/3/03	Marilyn Sandall	6907 57th Ave NE Seattle WA 98115
T-3	2/26/03	Norm Schaaf	Merrill & Ring PO Box 1058 Port Angeles WA 98362
T-7	2/26/03	Court Stanley	Port Blakely 20825 River HB

			Centralia WA 98531
34	2/25/03	Aubrey Stargell	PO Box 2789 Bellingham WA 98227
35	3/5/03	Dan Stransky	Forest Systems 227 N 4th St, Suite 2002 Mount Vernon WA 98273
36	3/4/03	Liann Sundquist	7211 36th Ave SW Seattle WA 98126
37	3/5/03	David Sweitzer	Washington Hardwoods Commission PO Box 43123 Olympia WA 98504-3123
T-19	2/26/03	Toby Thaler	Washington Forest Law Center 615 Second Ave, Suite 360 Seattle WA 98104-2245
38	2/28/03	Jim Thiemens	Simpson Resource Company 1840 SE Bloomfield Rd Shelton WA 98584
39 T-2	2/27/03	Steve Tveit	Boise Cascade Corp 1274 Boise Kettle Falls, WA 99141-9625
40 T-23	3/5/03	John Warjone	Port Blakely Tree Farms 7515-A Terminal St SW Tumwater WA 98501-7247
41 T-15	2/26/03	Norm Winn	The Mountaineers 123 16th Ave E Seattle WA 98112
42	3/5/03	George Wooten	Kettle Range Conservation Group 23 Aspen Lane Winthrop WA 98862
T-4	2/26/03	David Wright	222 Albert St Wilkeson WA 98396

Appendix B

Responsiveness Summary

Abbreviations:

- FPAB Forest Practices Appeals Board
- FPB Forest Practices Board
- DNR Department of Natural Resources
- DNS Determination of nonsignificance
- EIS Environmental impact statement
- SEPA State Environmental Policy Act, Chapter 43.21C RCW

Introduction:

Both written comments and hearing testimony on the proposed rule amendments, are summarized in the table below. The comments are divided into four categories: (1) Comments opposing the rule amendments; (2) Comments supporting the rule amendments; (3) Specific comments and recommendations; and (4) Other comments.

The table contains a summary number (S-xx), the summarized comment and Ecology's response, the commenter's last name and a comment reference number.

Written comments were organized in alphabetical order by commenter's last name and each letter was numbered. Then each comment in the letter was assigned a sequential number. The reference number in the table is a combination of the letter number and the comment number. For example, the second comment in letter number 5 would be 5-2.

Testimony from the public hearing was also assigned numbers with a "T" prefix. Speakers were numbered in order of presentation from T-1 to T-27 and each of the speaker's comments was assigned a sequential number. For example, the third comment of the seventh speaker would be T-7-3.

Summary of Comments Opposing Rule Amendments

Number	Summary of Comment and Response	Commenter
S-1	**Comment**: Ecology's proposed amendments are purported to be a housekeeping matter. Ecology claims the rule change is necessary because statutorily exempt Class I, II, and III forest practices should not be subject to SEPA review. **Response**: Ecology's proposed amendments to its SEPA rules are intended to make them consistent with legislation set forth in RCW 43.21C. The legislature has statutorily exempted certain actions from SEPA review in RCW 43.21C. The "statutory exemptions" were included in the list of "categorical rule exemptions" contained in WAC 197-11-800 originally adopted in 1984. This has resulted in the "statutory exemptions" being subject to WAC 197-11-305 which requires SEPA review in certain prescribed circumstances. The proposed amendments remove the "statutory exemptions" codified in RCW 43.21C (except RCW 43.21C.0384 dealing with personal wireless services facilities) from the list of "categorical rule exemptions" in Part Nine of the rules. Ecology's rules are now consistent with RCW 43.21C by providing that those actions exempt from SEPA review by statute are not subject to the provisions of WAC 197-11-305. A number of comments opposing the proposed amendments address the need for WAC 197-11-305 to apply to Class I, II, and III forest practices because of the inadequacy of other state laws in addressing cumulative impacts from forest practices related to the phasing or segmentation of forest practice applications. However, Ecology's rulemaking authority is limited to the powers and authority granted by the legislature. RCW 43.21C does not provide Ecology with the authority to adopt rules addressing these issues. It is the FPB that is granted authority over the regulation of forest practices under RCW 76.09. See also responses to comments S-5, S-10, S-15, S-19 and S-22.	Goldman 10-1, T-12-2
S-2	**Comment**: The proposed amendment is an attempt to make it impossible for DNR, the FPAB, or interested citizens to apply WAC 197-11-305 to Class I, II, or III forest practices. The proposed amendment eliminates the possible use of the SEPA rules to prevent forest practices from having a significant adverse cumulative environmental impact. **Response**: The proposed amendments are intended for the reasons as set forth in response to comment S-1. It is correct that WAC 197-11-305 will not apply to Class I, II, and III forest practices as the proposed amendments delete these forest practices from the list of categorical rule exemptions in WAC 197-11-800. The legislature has determined that these classes of forest practices are statutorily exempt from SEPA review.	Goldman 10-2, T-12-3
S-3	**Comment**: Ecology's legal justification for the rule change is contrary to appellate court decisions. Ecology should assume that WAC 197-11-305 can be lawfully applied to forest practices.	Goldman 10-3, T-12-4

	Response: The recent lawsuit filed in Thurston County Superior Court, Plum Creek Timber v. FPB, et al., challenges for the first time the validity of WAC 197-11-305 as it applies to Class I, II, and III forest practices. The prior appellate court decisions did not address the underlying issue of whether Ecology acted consistent with its legislative authority in adopting the "statutory exemptions" as categorical rule exemptions and making them subject to SEPA review as provided in WAC 197-11-305. See response to comment S-1.	
S-4	**Comment**: Ecology must conduct SEPA review on the proposed SEPA rule amendments because Ecology's action will have a significant adverse environmental impact. **Response**: Ecology issued a determination of nonsignificance on Feb 4, 2003 after determining that the proposed rule amendments would not have a probable significant adverse impact on the environment. Ecology did not have the authority to unexempt by rule those actions the legislature provided were exempt from SEPA review by statute as provided in RCW 43.21C. The inclusion of the statutory exemptions within the list of categorical rule exemptions in WAC 197-11-800 was contrary to the provisions of RCW 43.21C because it required that in some circumstances statutory exemptions would be subject to SEPA review as provided in WAC 197-11-305. Therefore, the proposed amendments deleting the statutory exemptions from WAC 197-11-800 do not constitute an action which may have a "probable significant adverse environmental impact" for all the amendments do is to correct Ecology's rules to remove provisions of the existing rules that are inconsistent with the legislation in RCW 43.21C. See responses to comments S-1 and S-12.	Goldman 10-4
S-5	**Comment**: Ecology's proposed amendment of the SEPA rules violates RCW 43.21C.110(1) because Ecology has a statutory duty to promulgate SEPA rules implementing the purposes and policies of SEPA, particularly those that have been approved by the courts. The purported legal reason for the rule change is arbitrary and capricious. **Response**: While Ecology has the duty to "adopt and amend thereafter rules of interpretation and implementation" of Chapter 43.21C RCW, the rulemaking authority is limited to specific phases of interpretation and implementation as set forth in RCW 43.21C.110(a) through (m). Specifically, RCW 43.21C.110(a) authorizes Ecology to identify types of governmental actions that are categorically exempt by rule from environmental review based on a determination that they are not "major actions significantly affecting the quality of the environment". The legislature also directed Ecology in RCW 43.21C.110(1)(a) to provide for circumstances where actions that are categorically exempt by rule would still require environmental review under SEPA. The legislature did not authorize Ecology to adopt as "categorical rule exemptions" those actions that are statutorily exempt from SEPA review making them subject to WAC 197-11-305. See response to S-1.	Goldman 10-5, 10-22, T-12-6

S-6	**Comment**: Ecology has the duty, under RCW 43.21C.120(1) to ensure that the FPB has adopted adequate SEPA rules, which it has not. **Response**: RCW 43.21C.120(1) is a legislative directive for all governmental agencies of the state to adopt SEPA policies and procedures. It does not include a provision for Ecology to ensure the agencies' procedures are adequate.	Goldman 10-6, 10-23
S-7	**Comment**: Commenters are twelve conservation organizations whose members use, enjoy, and endeavor to protect Washington's forests, rivers, and mountains. Collectively, commenters have invested hundreds of hours in numerous forums to develop, improve, and obtain forest practice rules that provide adequate protection for forests, waters, wetlands, and other natural resources. Commenters have also devoted extensive time to monitoring and challenging individual forest practice applications that threaten to harm natural resources and the environment. Regrettably, commenters have not been able to achieve adequate protection for natural resources through these efforts. • Alpine Lakes Protection Society • Friends of the Loomis Forest • Gifford Pinchot Task Force • Kettle Range Conservation Group • The Mountaineers • Northwest Ecosystem Alliance • Peninsula Neighborhood Association • Seattle Audubon Society • Washington Environmental Council • Washington Wilderness Coalition • Whidbey Environmental Action Network • Wildlife Forever of Grays Harbor **Response**: Ecology appreciates the efforts of the conservation organizations in working with the FPB to develop forest practice rules that provide adequate protection. However, the adequacy of the forest practice rules is an issue under the jurisdiction of the FPB. See response to comment S-1.	Goldman 10-7, T-12-1
S-8	**Comment**: Eleven million acres of forest land is owned privately and by state and local agencies. In 1974 the Legislature enacted the Washington Forest Practices Act (Chapter 76.09 RCW) and created the FPB. The FPB's responsibilities include the duty to promulgate and maintain forest practices rules that establish minimum standards for forest practices. **Response**: We agree that the legislature has provided the FPB with statutory authority to adopt forest practice rules in accordance with the procedures enumerated in RCW 76.09.040 which includes establishing minimum standards for forest practices. See responses to comments S-18 and S-22.	Goldman 10-8

S-9	**Comment**: In 1971 the Legislature enacted the State Environmental Policy Act (Chapter 43.21C RCW). SEPA requires an EIS for any action that may have a significant adverse impact on the environment and authorizes agencies to impose substantive mitigation measures or deny a proposed project to reduce or avoid significant adverse effects. SEPA procedures apply only to forest practices that "have a potential for a substantial impact on the environment." To distinguish among the impacts of proposed forest practices, the Forest Practices Act creates four classes of forest practices. Only Class IV are subject to SEPA procedures. The FPB has authority to specify which forest practices fit into each class of forest practice. **Response**: Ecology agrees that pursuant to RCW 76.09.050, the FPB is authorized to adopt rules that establish classes of forest practices and that as provided in RCW 76.09.050 and RCW 43.21C.037, Class I, II, and III forest practices are exempt from SEPA review.	Goldman 10-9
S-10	**Comment**: SEPA supplements other existing agency authority and applies to all proposals that are not categorically exempt. A proposal may be exempt by statute or by Ecology's list of administratively exempt actions. **Response**: Ecology agrees that SEPA supplements all other state laws. An action can be exempt from SEPA as provided in statute. An action can also be exempt from SEPA as provided by Ecology rule adopted pursuant to RCW 43.21C.110. Further, those actions exempt from SEPA review by Ecology rule must still require environmental review under SEPA if the provisions of WAC 197-11-305 apply. However, RCW 43.21C.110(a) does not authorize Ecology to adopt as "categorical rule exemptions" the "statutory exemptions" contained in RCW 43.21C making them subject to the SEPA trigger for environmental review in WAC 197-11-305. See response to comment S-1.	Goldman 10-10
S-11	**Comment**: The Legislature gave agencies (such as the FPB and Ecology) the authority to determine whether an action shall be exempt from SEPA and expressly directed that agencies adopt SEPA rules providing for circumstances where even categorically exempt actions are subject to SEPA review. **Response**: Ecology is the only agency authorized to adopt categorical exemptions under the SEPA Rules. The FPB has the authority to identify the types of forest practices that should be designated Class IV and require SEPA review. [Note: A 2003 amendment to SEPA now gives cities and counties planning under the Growth Management Act the authority to adopt categorical exemptions for infill development within the urban growth area (see SHB 1707).]	Goldman 10-11

S-12	**Comment**: WAC 197-11-305 provides that an otherwise SEPA categorically exempt proposal can trigger SEPA review if the proposal is a segment of a proposal that includes a series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction. **Response**: The "categorical rule exemptions" are contained in WAC 197-11-800 through 197-11-890 (Part Nine of the SEPA Rules). This rule provides that these "categorical rule exemptions" are exempt form the threshold determination requirements under SEPA except as provided in WAC 197-11-305. WAC 197-11-305 provides that if a proposal in Part Nine is a segment of a proposal that includes a series of actions, physically or functionally related to each other, some of which are categorically exempt and some of which are not; or a series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact in the judgment of an agency with jurisdiction than the proposal is not exempt from the threshold determination requirements under WAC 197-11-720.	Goldman 10-12
S-13	**Comment**: When it adopted SEPA in 1971, the Legislature assigned several responsibilities to Ecology, including the following: (1) to determine the types of actions that should be administratively exempt from SEPA review; and (2) to provide for certain circumstances where actions which potentially are categorically exempt require environmental review. **Response**: These responsibilities were originally assigned to the Council on Environmental Policy created by the Legislature in 1974 to write rules to interpret and implement SEPA. The SEPA Guidelines, Chapter 197-10 WAC, adopted by the Council in 1975, included a list of categorically exempt actions and criteria for determining when the exemptions would not apply. The duties of the Council were transferred to Ecology in June 1976 when the Council was abolished. The Commission on Environmental Policy was created by the legislature in 1981 to review SEPA and the SEPA Guidelines, and proposed amendments. As a result, the SEPA Rules, Chapter 197-11 WAC, were adopted in 1984. See RCW 43.21C for the rulemaking authority granted to Ecology and response to comment S-1.	Goldman 10-13
S-14	**Comment**: As required by SEPA, the FPB adopted SEPA rules. The FPB did not specify which SEPA rules it adopted but, rather, adopted all of the SEPA rules in wholesale fashion. The FPB also adopted several SEPA policy rules to guide the FPB and DNR's application of SEPA. The FPB has declared that the FPB's SEPA classification rules are among the mechanisms for preventing multiple forest practices from having an adverse cumulative impact. (WAC 222-12-046(2))	Goldman 10-14, T-12-8

	The proposed amendments should not be adopted because the FPB has adopted WAC 197-11-305 in WAC 222-12-050 and only the FPB can repeal the rule with respect to forest practices. **Response** RCW 43.21C provides Ecology with the authority to adopt "categorical rule exemptions". Thus, only Ecology has the authority to amend its existing rules to insure consistency with the legislative directive contained in RCW 43.21C.110(a). Issues regarding the repeal of forest practices rules is within the FPB and not Ecology's legal authority.	
S-15	**Comment**: Over the years, courts and the FPAB have held that WAC 197-11-305 can be applied to Class I, II, or III forest practices. Not all Class I, II, and III forest practices, but just those which bear some relationship to something in the past, something in the present, or something in the future. In Plum Creek Timber Co. v. Forest Practices Appeals Board, 99 Wn.App 579, 590, 993 P.2d 287 (2000), the court characterized WAC 197-11-305 as an anti-segmentation rule. The Court held that the road and the future logging were related multiple segments. Twelve years earlier, the FPAB held that WAC 197-11-305 permits DNR to take present and past logging into account when it considers a proposed forest practice application that appears to be the first segment of a probable future proposal to conduct extensive logging in a specific geographic area. (Snohomish County v. State, FPAB 98-12, 13 (1989)) The FPAB eventually found that the forest practice applications were, as conditioned, not likely to cause significant cumulative adverse impacts to either fish habitat or terrestrial wildlife, the FPAB nevertheless held that DNR was authorized and required to consider the forest practices in light of their past and future forest practices. In Snohomish County v. State, 69 Wn.App.655, 668, 669, 850 P.2d 546 (1993), the court observed that an individual forest practice application could lose their categorical exemption "by operation" of WAC 197-11-305. In the Mountaineers v. Plum Creek and DNR, FPAB 00-02 (2002), the FPAB held that Plum Creek's sequential filing of forest practice applications in the same location could, under some circumstances, trigger SEPA review. The FPAB held that WAC 197-11-305 requires SEPA review when a landowner files an application for a permit and the application is "operationally linked" to a past, present, or future forest practice. The FPAB, however, held that a permit application does not trigger WAC 197-11-305 merely because the application is physically, geographically, or functionally related to a past, present, or future forest practice. In response to the FPAB's ruling in the Mountaineer's case, Plum Creek filed a	Goldman 10-15, T-12-7

	Petition for Declaratory Judgment in Thurston County Superior Court. The petition alleges Ecology did not have the authority to make WAC 197-11-305 apply to Class I, II, or III forest practices. Plum Creek argues that Section 305 is solely an Ecology-promulgated SEPA rule that cannot be applied, in any manner and under any circumstances, to trigger SEPA review for Class I, II, or III forest practices. Plum Creek's petition requests the Thurston County Superior Court to strike down the availability or applicability of WAC 197-11-305 to any Class I, II, or III forest practices. (Plum Creek Timber Company v. FPAB, et al, Thurston County Superior Court No. 02-2-00490-1) **Response**: Ecology's decision to proceed with amendments to its SEPA rules resulted from a review of its existing rules in light of the pending lawsuit in Thurston County Superior Court challenging the validity of WAC 197-11-305 as applied to Class I, II and III forest practices. While prior cases have determined that WAC 197-11-305 applies to forest practices, these decisions did not deal with the question of the validity of Ecology's rule. Also, see responses to comment S-1 and S-3.	
S-16	**Comment**: The Mountaineers moved the Thurston County Superior Court to join the FPB in this case on the grounds that the FPB adopted the SEPA rules in WAC 222-12-050 and the FBP was a necessary party for purposes of Plum Creek's rule challenge. The court granted the motion on Jan 24, 2003. Plum Creek reasons that WAC 197-11-305 is only an Ecology rule and not a rule that was adopted by or applicable to the forest practice rules. The FPB's decision not to defend WAC 197-11-305 and its related decision that it has not adopted this section makes it all the more important that the FPB now adopt a rule which, we believe, it is required to adopt. **Response**: This is an issue for the FPB and is beyond the scope of this rule amendment process or Ecology's legislative authority. See response to comment S-8.	Goldman 10-17
S-17	**Comment**: On August 23, 2002, a delegation from the environmental community met with Ecology Director Tom Fitzsimmons to discuss this matter. The delegation urged Mr. Fitzsimmons not to amend WAC 197-11-305 or the other SEPA rules implementing it because: (1) two courts and several panels of the FPAB have held that rule may be applied to segmented forest practice application; (2) the FPB had adopted the rule in WAC 222-12-050 and that only the FPB can repeal the rule with respect to forest practices; and (3) the rule is an essential tool to prevent segmentation and adverse cumulative impact of forest practice applications under SEPA. Ecology rejected this request. **Response**: See responses to comments S-1, S-3 and S-14.	Goldman 10-16
S-18	**Comment**: Multiple related SEPA-exempt forest practices in a single	Goldman

	watershed or distinct geographic area can have a significant adverse cumulative impact on aquatic species, upland wildlife or other elements of the environment, such as aesthetics and recreation. The SEPA rules do not clearly authorize DNR to require landowners to disclose their future forest practice plans for purposes of conducting a meaningful SEPA cumulative effects or segmentation review. The FPB's historic failure to adopt rules of this nature violates its duties to implement both SEPA and the 1974 Forest Practices Act. **Response**: The issue of whether the FPB is acting consistent with its legislative authority is beyond the scope of this rulemaking. Such challenges to the FPB's rulemaking authority should be brought within the appropriate forum as prescribed by state law. See response to comment S-22.	10-18
S-19	**Comment**: While the FPB has the ultimate authority and responsibility to promulgate forest practices, WAC 197-11-305 authorizes DNR to conduct segmentation and cumulative effects review. Several courts and the FPAB have held that WAC 197-11-305 requires cumulative effects review for segmented forest practice applications, even those that are Class I, II, or III. Ecology's proposed rule amendments potentially constitute the demise of WAC 197-11-305 for segmented forest practices. **Response**: The legislature authorized Ecology to exempt by rule certain governmental actions from SEPA review. However, these "categorical rule exemptions" must also be subject to SEPA review under certain prescribed circumstances as set forth in WAC 197-11-305. The legislature did not provide, however, that those actions exempt by statute could be subject to the SEPA trigger as set forth in WAC 197-11-305. Prior rulings of the FPAB and the courts held that WAC 197-11-305 applied to all of those actions listed as "categorical rule exemptions" in Part Nine. Since Class I, II and III forest practices were included within the list of categorical rule exemptions the rulings in these cases found they were subject to the provisions of WAC 197-11-305. However, Ecology's authority to adopt rules requiring SEPA review for those actions exempt by statute from environmental review was not at issue in these cases. See response to comment S-1.	Goldman 10-19
S-20	**Comment**: Ecology is amending WAC 197-11-305 because the inclusion of Class I, II, and III forest practices in WAC 197-11-800(25) have made these forest practices subject to SEPA review when they cannot be. This legal conclusion is arbitrary and capricious. Ecology has a duty to enforce state laws and regulations, particularly those that have been approved by the courts. Two courts and the FPAB have held that DNR can apply WAC 197-11-305 to certain segmented otherwise SEPA-exempt forest practices. Ecology should assume that WAC 197-11-305 can be lawfully applied to these forest practices. **Response**: See responses to comments S-1, S-3, and S-5.	Goldman 10-20

S-21	**Comment**: Ecology's amendment of the SEPA Rules will have a significant adverse environmental impact. Ecology's proposed changes do not constitute a "procedural" change. The proposed rule change could potentially have a significant adverse impact on the environment because it will prevent environmentally-degrading forest practices from receiving SEPA review. All of the WAC 197-11-305 cases could not have been brought but for the existence of WAC 197-11-305. The proposed rule amendment completely guts a forest practice rule that courts have held can be applied to forest practices on millions of acres of forest lands. **Response**: See responses to comments S-1, S-3, and S-4.	Goldman 10-21, T-12-9
S-22	**Comment**: Numerous SEPA rules require agencies to prevent landowners from segmenting their permit applications for land use, or from causing multiple SEPA exempt permits from having an adverse cumulative impact, including: WAC 197-11-060(3), 060(4), 330(3), 960, and 792(2). Without WAC 197-11-305, there would be no forest practice rules that prevent improper phasing or segmentation of forest practice applications. The current forest practice rules are not sufficient to prevent cumulative impacts. WAC 222-12-046 set forth the FPB's policy statement concerning cumulative effects. None of these "policies", individually or cumulatively, prevent cumulative effects. **Response**: WAC 197-11-305 is not being deleted. Rather, the SEPA rules are being amended to remove from the list of "categorical rule exemptions" those actions statutorily exempt from SEPA review. This includes Class I, II and III forest practices that are exempt from SEPA review by statute State agencies are creatures of statute, and their legal duties are determined by the Legislature. As a matter of law, therefore, Ecology's does not have the authority to adopt SEPA rules beyond that authorized by the legislature. The issue of the adequacy of the forest practices rules is beyond the scope of this rule making. Issues regarding the adequacy of the forest practices rules should be addressed to the FPB or other appropriate forum as prescribed by law. Also, see responses to S-1, S-7, S-14, and S-18.	Goldman 10-24
S-23	**Comment**: Although cumulative impacts are well accepted in the forestry arena, Washington does not have any general cumulative impact provisions. Washington needs a general and specific cumulative impacts tool. <u>Aquatic Impacts</u>: The EIS for the Forest and Fish Report concludes that, while the Forest and Fish Report constitutes a substantial improvement over the previous rules, the Report's abandonment of watershed analysis means there will not be a tool that takes a careful look at the cumulative impact of an individual forest practice on a specific watershed. The Forest and Fish Report and the forest practices rules adopted consistent	Goldman 10-25

	with the Report, apply state-wide and make no distinction between logging conducted in heavily logged watersheds with existing water quality problems, or more pristine watersheds. Upland Terrestrial Wildlife: The current Class IV-Special rule only considers forest practices that will be conducted on habitat of threatened or endangered listed species. The watershed analysis rules do not contain a module for upland wildlife. The landscape planning pilot project never produced a single landscape plan. The cumulative effect deficiency with respect to upland wildlife is that the current SEPA trigger, WAC 222-16-050, fails to require SEPA review for projects with the potential to adversely impact, through cumulative effects, habitat critical to the survival and recovery of listed and unlisted wildlife. Without SEPA review for potential adverse cumulative effects, forest practices can collectively and substantially impact habitat for threatened and endangered species, and other species at-risk. Recreation and Aesthetics: The existing Class IV-Special rules require SEPA review for aesthetics and recreation only in natural parks or the Columbia Gorge. They do not guard against the cumulative impact of multiple clear-cuts in a single geographic location. The current forest practices rules do not expressly authorize DNR to request or review future harvest information from forest landowners to determine whether presently proposed logging, in conjunction with past or future foreseeable logging, could have an adverse cumulative environmental impact. In contrast, if WAC 197-11-305 applies, DNR would take an approach to segmentation and cumulative effects consistent with a memorandum prepared by Lenny Young, DNR, dated Nov 8, 2002. We believe Mr. Young's memorandum makes the case why a rule such as WAC 197-11-305 is necessary. **Response**: See responses to comments S-1 and S-8.	
S-24	**Comment**: Two case studies reflect that Ecology's modification of the SEPA rules will have a significant adverse environment impact. The Forest Practices Rules make most individual forest practice applications exempt from SEPA. Landowners file multiple SEPA exempt forest practice applications and cumulative effects often occur as a result of the failure of any agency to consider the long term cumulative impact of multiple related forest practice applications. WAC 197-11-305 provides a mechanism for DNR to require cumulative effect review when a landowner has long term plans to conduct physically or functionally related logging in a specific watershed.	Goldman 10-26

Teanaway Basin: Boise Cascade Corporation conducted a watershed analysis for the North Fork Teanaway in July 1996. The 18,724 acres were sold to US Timberlands in 1999. In 2000 DNR had a Forest Practices Science Team review the Teanaway River Basin in 2000 "in light of the high rate of harvest taking place there…." The team considered mass wasting, surface erosion, and water quality to be the main items of concern that need to be considered in the current harvest activity.

Timber harvesting has increased 329% from 1997 to 2002. To support this increased level of harvest, US Timberlands has done considerable road work and increased road density to 3.4 miles/square mile. Sediment delivery from forest roads can be significant.

Although surface erosion from harvesting was considered minimal in the North Fork Teanaway Watershed Analysis, the dramatic increase in the rate of harvest and the area disturbed is likely to increase the amount of sediment delivered to streams.

The Teanaway River is listed on the 1998 303(d) list for temperature, which triggered the development of aTotal Maximum Daily Load. Although several factors were described as affecting stream temperatures, sediment input from management activities were cited as contributing to higher width-depth ratios and degraded fish habitat.

A number of fish species are found in the Tenaway River. Although harvest now occurs under the Forest and Fish Report rules, which are more protective of the riparian corridor that the old forestry rules, the cumulative impact of hundreds of US Timberlands forest practice applications on fish habitat and populations has not been determined.

On Dec 7, 2000, the Dept of Fish and Wildlife sent US Timberlands a letter recommending that they develop a Landowner Option Plan for spotted owls on their Teanaway Tree Farm. In the letter , WDFW expressed concern that the current and proposed rate of harvest, along with the company's efforts to decertify five spotted owl circles, will result in conditions that do not meet the conservation goals of the I-90 East Spotted Owl Special Emphasis Area.

Carbon River Valley: Located near the northwestern corner of Mount Rainier National Park. Plum Creek Timber Company has filed 28 forest practice applications over five years directly adjacent to the national park.

DNR did not condition any of these applications to mitigate adverse cumulative effects for impacts to recreation and scenic beauty. In fact, recreation and scenic beauty are not triggers on the Class IV-Special List and there are no substantive forest practices rules protecting recreation and scenic beauty.

	Without WAC 197-11-305, it would not have been possible for plaintiffs to bring an action against Plum Creek. WAC 197-11-305 provided a vitally needed mechanism to ensure that DNR has the tools to determine whether presently proposed logging could have a significant adverse cumulative impact in conjunction with past and potential future logging. **Response**: See responses to comments S-1 and S-4.	
S-25	**Comment**: Without WAC 197-11-305 and the WAC 197-11-800(25)(a) listing of Class I, II, and III forest practices, neither the DNR, the FPAB, or interested citizens have a clear mechanism to ensure that forest landowners with preconceived future harvest plans do not file multiple physically or functionally related SEPA exempt forest practice applications that could have a significant adverse cumulative impact. **Response**: See responses to comments S-1 and S-22.	Goldman 10-27
S-26	**Comment**: WAC 197-11-305 is an extremely valuable SEPA rule that vests in DNR and the FPAB the authority to require SEPA review for physically and functionally related forest practices that could have a significant adverse cumulative impact. Numerous court and FPAB cases over the years reflect the use of WAC 197-11-305 to prevent segmentation and cumulative effects. The Teanaway and Carbon River examples provide a vivid example of the type of forest practice application piece-mealing that is taking place at the present time. If Ecology amends this rule as proposed, it potentially removes this mechanism from DNR's toolbox. **Response**: See responses to comments S-1.	Goldman 10-28
S-27	**Comment**: Ecology should not proceed with this rulemaking. If it chooses to do so, it should conduct threshold SEPA review to assess impacts to the forested environment. **Response**: Comment noted. See responses to comments S-1 and S-4.	Goldman 10-29
S-28	**Comment**: The SEPA checklist accompanying Ecology's proposed rulemaking is clearly erroneous. There is no analysis. There is nothing here to show what is going to happen when the tool in WAC 197-11-305 doesn't exist any more. The responsible official must determine whether the nonproject action will have a significant adverse environmental impact. Similarly, changes to the SEPA rules require Ecology to determine whether the proposal established a precedent for future actions with significant effects. Rule changes or proposals that could potentially lead to more logging, even if unintended and not quantifiable at the time of SEPA review, require an EIS. In King County v. Boundary Review Board, 122 Wn. 2d 648, 662 (1993), the	Goldman 11-1, T-12-5, T-12-10

	Supreme Court reversed the City of Black Diamond's issuance of a DNR for an annexation of property that was likely to result in increased urban development. The court held that possible future development, even if not quantifiable or identifiable at the time of the DNS, nevertheless required SEPA EIS review. Ecology must reduce this determination of nonsignificance or better yet, conduct an environmental impact statement on the effect of its action. **Response**: See response to comment S-4.	
S-29	**Comment**: Ecology has a legal duty under SEPA to disclose, up front, the potential adverse future consequences of its removal of the Class I, II, and III forest practices from WAC 197-11-800. Ecology has a duty to disclose the actual impacts of its rule repeal and not just provide that the rulemaking is a legal housekeeping matter. The checklist accompanying Ecology's rulemaking is clearly deficient. The checklist simply repeats "Not Applicable" in response to every question. It assumes that all Ecology is doing is conducting perfunctory housekeeping of its SEPA rules. **Response**: See response to comment S-4.	Goldman 11-2
S-30	**Comment**: Ecology is essentially attempting to "overrule" the two appellate court cases and the multiple FPAB cases that have expressly held that the FPB adopted WAC 197-11-305, that WAC 197-11-305 was consistent with the FPB's statutory authority, and that WAC 197-11-305 provides vital SEPA review when multiple SEPA exempt forest practice applications can have a significant adverse cumulative impact. We believe that when Ecology's proposed rulemaking seeks to reverse judicial rulings that provide the public with remedies to prevent cumulative effects, it is a significant event. **Response**: See responses to comments S-3 and S-4.	Goldman 11-3
S-31	**Comment**: Ecology's repeal will have an effect on the ground. The mere availability of WAC 197-11-305 and the court rulings that have held it applies has provided DNR and conservation groups with the legal tools to request additional mitigation. Careful review of the FPAB cases applying WAC 197-11-305 reflect that WAC 197-11-305 has secured substantive environmental protection for specific locations, protection that would not be available if Ecology proceeds with this rulemaking. This needs to be disclosed in a SEPA checklist. **Response**: See response to comment S-4.	Goldman 11-4
S-32	**Comment**: Ecology's rule revision is effectively revoking the DNR guidance document dated Nov 8, 2002 prepared by Lenny Young of DNR. When	Goldman 11-5

	Ecology's rulemaking revokes another agency's policy document, the potential environmental impacts need to be disclosed in a SEPA checklist. **Response**: See response to comment S-4. It is Ecology's understanding that DNR's guidance document is only intended to be in place until such time that Ecology's proposed amendments are adopted and take effect.	
S-33	**Comment**: Director Fitzsimmons' October 2, 2002 letter to the FPB supports our argument that Ecology's action will have an impact. In this letter, Director Fitzsimmons admits that WAC 197-11-305 has required DNR to change its operations and he candidly advises the FPB that it must deal with cumulative effects eventually, one way or the other. None of these impacts are disclosed in the checklist. **Response**: See response to comment S-4.	Goldman 11-6
S-34	**Comment**: Essentially Ecology is overruling two divisions of the Court of Appeals and the FPAB, and conveniently wiping its hands clean of a problem which it does not have to wipe. The problem should be the FPB, but the reality of it is if the FPB adopted Ecology's SEPA rules. Ecology's rule was a lawful one and it was well intentioned and it was met to be. It is the FPB's problem now. Maybe working together, we can deal with some of the cumulative effect issues that are underlying this. **Response**: See response to comment S-3.	Goldman T-12-11
S-35	**Comment**: The proposed SEPA rule amendment is unnecessary. It's unlawful. The SEPA documentation accompanying this rule-making is patently inadequate. I would like Ecology's Attorney General to stand in front of the Court of Appeals and say your rules are, the fact that we're not following your law is not going to have an impact environment. It will. Ecology necessarily must consider that the Courts have expressly upheld the ability of WAC 197-11-305 applied to forest practices in this context and I don't see it in here. **Response**: See responses to comments S-1, S-3, and S-4.	Goldman T-12-12
S-36	**Comment**: I understand that Ecology is amending a SEPA rule so that the "cumulative adverse impacts" will not apply to many forest practices. I am extremely concerned that this piecemeal approach will cause significant impacts on wildlife and forest habitats. **Response**: See responses to comments S-1, S-3 and S-4.	Kauffman 20-1
S-37	**Comment**: I am writing to request that the FPB adopt a SEPA rule that resembles WAC 197-11-305. It is extremely important that landowners be required to address the cumulative effects of forest practices that are important in protecting the wildlife habitat and forest watersheds.	Kauffman 20-2 Sundquist 36-1

	Response: The FPB's decision to adopt or amend a rule is beyond the scope of this rulemaking process. Such a request should be directed to the FPB. See responses to comments S-18 and S-22.	
S-38	**Comment**: The proposed amendment of WAC 197-11-800(25), would eliminate SEPA review of the cumulative effects of virtually all private forest practices in the state. This proposed revision is bad public policy, bad for the environment, and, contrary to Ecology's suggestion, is not compelled by any statutory or legal requirements. The effect of the proposed revision is to eliminate application of WAC 197-11-305 to Class I, II, and III forest practices. WAC 197-11-305 is a general rule that compels SEPA analysis of related actions that individually are categorically exempt, but together may have significant adverse environmental impacts. WAC 197-11-305 is sound public policy and consistent with SEPA's fundamental goals because it promotes complete analysis of the environmental impacts of proposed actions and it prevents project proponents from segmenting their actions to avoid SEPA review. **Response**: See response to comment S-1.	Kelly 21-1
S-39	**Comment**: It is well-established that forest practices have significant cumulative effects on the environment. Multiple forest practices within a watershed or similar geographic unit can have profound additive impacts on hydrology, water quality, soil stability, forest regeneration, fish and wildlife habitat, scenic beauty, and recreation. These impacts may and often do occur even when the impacts of a single project are *de minimus*. The affected natural resources are of profound public interest, and Ecology should be enforcing, not relinquishing, the need to assess the significant cumulative impacts of forest practices on these resources. **Response**: See response to comment S-1.	Kelley 21-2
S-40	**Comment**: Class I, II, and III forest practices, which constitute the vast majority of forest practices in the state, are categorically exempt as individual projects. Current forest practice rules permit DNR to approve logging permits on an individual basis without either DNR or the landowner ever looking at the cumulative effects of the project. WAC 197-11-305 is the only tool consistently available for the agencies or concerned citizens to prevent multiple SEPA-exempt forest practices from having a significant adverse cumulative impact on the environment. **Response**: See response to comment S-1.	Kelley 21-3
S-41	**Comment**: Many forest practices are segmented in a way that prevents important SEPA analysis. Timber companies plan multiple forest activities in a watershed years in advance, taking advantage of roads and landings built for	Kelley 21-4

	one project to access subsequent projects in the same area. However, because the companies apply for forest practice permits one logging unit at a time, the individual forest practice applications are generally SEPA-exempt. WAC 197-11-305 is the only means of penetrating this shell game and assuring proper environmental consideration of projects that are operationally, functionally, and ecologically linked. **Response**: See response to comment S-1.	
S- 42	**Comment**: It is precisely the power and importance of WAC 197-11-305 that has prompted the timber industry to challenge its use. It is extremely disappointing to see Ecology bow to the political and legal pressure brought by Plum Creek and its allies. Ecology should be fighting to preserve "big picture" review of logging and related activities, not abandoning the requirement of cumulative effects analysis for related forest practices. There is no legal reason to revise WAC 197-11-800 to exempt forest practices from the scope of WAC 197-11-305. For over 16 years, conservation groups and counties have used WAC 197-11-305 to trigger SEPA review in cases where multiple related forest practices could have a significant adverse environmental impact. The superior and appellate courts and the FPAB consistently have held that WAC 197-11-305 may be applied to forest practices in general, and specifically to Class I, II, and III forest practices that have been segmented or that are "operationally linked." **Response**: See responses to comments S-1 and S-3.	Kelley 21-5
S-43	**Comment**: The conclusion of the courts and the FPAB are perfectly consistent with statutory law. Unlike some statutory categorical exemptions, the exemption for forest practices is a qualified or conditional one. The statute grants the FPB the authority to determine which forest practices are and are not categorically exempt. By adopting the existing WAC 197-11-305 as part of its adoption of Ecology's SEPA rules, the FPB exercised that authority to require SEPA review of otherwise exempt practices that have cumulatively significant environmental effects. This was a prudent and permissible choice. The FPB can revisit that decision and eliminate or modify the cumulative effects trigger for otherwise exempt actions. However, such action is best left to the FPB. Ecology should not relieve landowners or the FPB of the duty to address the significant cumulative effects of clear-cutting, logging, and road-building by amending a rule whose application has been consistently upheld by the courts and FPAB. **Response**: See response to comment S-1.	Kelly 21-6
S-44	**Comment**: Ecology should not eliminate application of WAC 197-11-305 just because it is working. Not only is WAC 197-11-305 a powerful tool for Ecology, DNR, and concerned citizens to assure consideration of cumulative effects, it is the only tool consistently available for this purpose. Without	Kelly 21-7

	WAC 197-11-305, the significant harms to water, wildlife, and recreation posed by multiple forest practices will go unchecked. Ecology's mandate is to protect the public interest in the environment and natural resources. The proposed revision is directly contrary to that mission. **Response**: See response to comment S-1.	
S-45	**Comment**: The League of Women Voters strongly opposes this amendment, both in letter and spirit. The League strongly supports retaining the current authority of WAC 197-11-305. **Response**: WAC 197-11-305 is not being deleted by the proposed amendments and will remain in effect. Rather, the SEPA rules are being amended to remove those statutory exemptions that have been included within the list of "categorical rule exemptions" in Part Nine. Thus, they will no longer be subject to the SEPA trigger set forth in WAC 197-11-305. See response to comment S-1.	Leisenring 24-1, 24-5
S-46	**Comment**: The proposed rule change would have serious detrimental environmental consequences for the state's forest lands. WAC 197-11-305 requires that the total impact of all forest activities over an ecosystem be considered during the permitting process. Without this requirement, the evaluation of cumulative effects over a landscape--a fundamental cornerstone of the state's forest practices--would not be possible. In turn, a lack of cumulative effect data and analysis would eliminate the function of adaptive management, a basic tool of existing state forest practices. **Response**: See responses to comments S-1 and S-4.	Leisenring 24-2
S-47	**Comment**: In addition to damaging environmental effects, the loss of WAC 197-11-305 removes the only tool available to citizens to prevent multiple SEPA-exempt forest practices from having a significant adverse cumulative impact on the environment. WAC 197-11-305 has been successfully used by counties and conservation groups to require SEPA analysis of operationally linked forest practices. It is irresponsible for Ecology to take this provision away when there is no other rule that operates in such a way. If Ecology proceeds with the proposed rule changes, it would substantially reduce the state's and public's ability to hold timber companies accountable for damage to public resources. **Response**: See response to comment S-1.	Leisenring 24-3
S-48	**Comment**: At the very least, DOE has a duty to analyze the environmental and public process implications of the proposed rule change. **Response**: See responses to comments S-1 and S-4.	Leisenring 24-4

S-49	**Comment**: The Mountaineers is the oldest and one of the largest environmental organizations in the Northwest. The Mountaineers has been actively involved in forestry issues with members serving on the Forest Practices Board, the Forest Practice Appeals Board, and the SEPA commission. The Mountaineers is also a lead plaintiff in a current FPAB case. The Mountaineers strongly oppose the proposed SEPA rule amendments. The effect of the regulation change is that Class I, II and III forest practices which are "functionally related" and together may have a significant adverse impact on the environment would no longer be subject to SEPA. We believe that this proposal is wrong and should be rejected. **Response**: See response to comment S-1.	Winn 41-1, T-15-1
S-50	**Comment**: The current forest practices litigation involving the Mountaineers and Plum Creek illustrates the necessity for the current "anti-segmentation rule." Plum Creek filed 28 forest practice applications over a period of five years adjacent to Mount Rainier National Park. It then filed an application to clearcut 28 acres 1.5 miles from the park. The Mountaineers contested this last application and asserted that this proposed clearcut, together with the earlier forest practices applications, had a significant adverse impact on the environment, particularly the environment of the Park. On March 21, 2002, the FPAB held that Plum Creek's sequential filing of all of those forest practice applications within a limited area could, under some circumstances, trigger SEPA review since the applications were "operationally linked." If the proposed rules are adopted, this "anti-segmentation" review would not be permitted. Any timber company could file a series of forest practice applications which could have devasting effect on a watershed, for example, and yet none of the forest practices would be subject to review. The forest ecosystem could be devastated by "a death by a thousand cuts" and there would be no review or legal recourse. **Response**: See response to comment S-1.	Winn 41-2
S-51	**Comment**: The current rules have worked well. There is no reason for the proposed change. It is unwise and unnecessary. **Response**: See response to comment S-1.	Winn 41-3, T-15-6
S-52	**Comment**: Mountaineers is also a lead plaintiff in the Mountaineers vs. Plum Creek and DNR lawsuit, which is the forest practice case which deals with the precise issues that are involved in this hearing. And you have already heard this afternoon, four or five people from the Carbon River Valley who have talked about the impact of logging on that valley and what happens when you do not have analysis of cumulative impacts in a small area. I hope you will take to heart their comments about the environmental devastation that has occurred in that area because of a lack of environmental analysis on cumulative	Winn T-15-2

	impacts. **Response**: See response to comment S-1.	
S-53	**Comment**: I have been involved in forest practices since the early 1970s. I was also a member of the SEPA Commission in the early 1980s that passed the SEPA regulations. I remember talking with Alan Bluechel, the chairman of the committee, about the inter-relationship of SEPA regulations and forest practices. I think since the early 1970s, with fits and starts, the general trend has been improvement in forest practice regulations and in forest practice activities on the ground. I think the step today, if it occurs, will be a major step backward. I think that the trend in environmental activities in the state of Washington and around the country and around the world is to recognize the inter-relationship and the inter-connectiveness of a variety of activities. One of the major ways that you do that is by analysis of cumulative affects. That has been happening to some extent in the state of Washington and it has happened in some forest practice cases. Mr. Goldman and Mr. Thaler have referred to several of them. **Response**: See response to comment S-1.	Winn T-15-3
S-54	**Comment**: I was on the Forest Practices Board in the early 1980s when the Lake Roosevelt case was decided in Snohomish County. The Court of Appeals in that case said that under some circumstances forest practices could be subject to cumulative impacts review. I was also Forest Practices Appeal Board when the Scatter Creek lawsuit came down in the mid-1990s, not in the Cle Elum area, in the central part of the state and that was another important case holding that logging activities and road-building activities could not be segmented in the same area where there was an obvious inter-relationship between those activities. I think those are important cases. And I think the principles should be affirmed. **Response**: See response to comment S-3.	Winn T-15-4
S-55	**Comment**: The need for a study of cumulative impacts is reflected in the Plum Creek case which is currently under review. In that case, there were 28 forest practice applications over a period of five years in a small area adjacent to Mount Rainier National Park. Then there was an additional application to clear cut 28 acres close to those other acres. This is an area that all the tourists would see as they drove along the Carbon River into the Park. So it obviously had an impact on the aesthetics of the Park, in addition to the watershed implications of having a large number of harvesting sites in a small area. I agree with Mr. Goldman and Mr. Thaler that that's exactly the type of situation where you need to have cumulative affects analyses. If you don't have that, I think what is going to happen is that our environment is going to suffer death by a thousand cuts. You're going to have a whole series of activities that are going to occur, segmented one-by-one without the over all environmental analysis. I think this will have a devastating impact on our forest eco-systems,	Winn T-15-5

	on watershed protection, on fish and wildlife. **Response**: See response to comment S-4.	
S-56	**Comment**: The Kettle Range Conservation Group recommends that the proposed rule amendments not be approved unless a new rule is formulated to replace the existing rule. The amendments should only be approved on condition of the FPB adoption of a new SEPA forest practice rule to provide for the review of cumulative effects from segmented proposals. **Response**: The proposed amendments are intended to insure that Ecology's rules are consistent with the SEPA statute, RCW 43.21C. A request that the FPB adopt a SEPA rule to provide for review of cumulative effects should be directed to that Board as that is beyond the scope of this rulemaking. See response to comments S-18 and S-22.	Wooten 42-1
S-57	**Comment**: WAC 197-11-305 provides for review of cumulative effects resulting from segmented proposals. Normally, DNR approves logging permits on an individual basis without consideration of their cumulative effects in time and space, e.g., within a watershed management unit or in regard to other recent sales. Taken cumulatively, the rate of harvest may reach a critical point when further actions will produce irreversible impacts that harm public resources. Landscape-scale reviews of management plans is a critical function of government that must be retained. For example, the public has benefited from FPAB use of WAC 197-11-305 to initiate SEPA review of individually exempt forest practices that have caused multiple cumulative effects. **Response**: See response to comment S-1.	Wooten 42-2
S-58	**Comment**: The proposed amendments would allow piece-meal approval of logging permits that are individually exempt from SEPA, but which cumulatively have unacceptable impacts on public resources. If Ecology repeals WAC 197-11-305 it could substantially hamper the protection of public resources from multiple related forest practices. **Response**: See response to comment S-1.	Wooten 42-3, 42-5
S-59	**Comment**: The proposed amendments would render some aspects of tiered management plans ineffective. Tiered management plans are those that fall under overarching plans such as the Forest Resource Plan, the Loomis Forest Landscape Plan, or the Capitol Forest Management Plan. Tiered management plans incorporate specific measures for forest protection by reference existing regulations in other plans. Removal of authority such as WAC 197-11-305 will leave the Forest Resource Plan without a sound basis. **Response**: See responses to comments S-1, S-8, S-18 and S-22.	Wooten 42-4

S-60	**Comment**: WAC 197-11-305 currently allows the FPB to improve the rules relating to cumulative effects. If WAC 197-11-305 is repealed without replacement language, the FPB may lose its ability to amend regulations. **Response**: See responses to comments S-1, S-8, S-18 and S-22.	Wooten 42-6
S-61	**Comment**: WAC 197-11-305 provides for incorporation of management decisions into landscape-level management plans. Without WAC 197-11-305, managers will lose the ability to make intelligent decisions about management areas at the landscape scale. **Response**: See responses to comments S-1, S-8, S-18 and S-22.	Wooten 42-7
S-62	**Comment**: The argument that WAC 197-11-305 must be repealed because of a lack of Ecology authority to promulgate rules is unconvincing because the existing WAC 197-11-305 is not technically a forest practice. **Response**: See responses to comments S-1,S-8, S-18 and S-22.	Wooten 42-8
S-63	**Comment**: Rather than following an initiative process for rule-making, the proposal to repeal WAC 197-11-305 appears to be an attempt to circumvent Thurston County Superior Court's ruling that Plum Creek Timber adopt a valley-wide landscape plan for the Carbon River. **Response**: This is not the intent of the proposed rulemaking. See response to comment S-1.	Wooten 42-9
S-64	**Comment**: I've lived in the Carbon River Valley for the last ten years. And I've watched the systematic devastation of this valley. We can sit up here and talk all day about how none of this is going to affect anything. I think one trip up the valley to see what has happened by one little piece here, another piece here, and you get them all combined into one humongous rape of our landscape and then tell me it's not affecting our environment. It hurts me. It hurts my family. It hurts the recreation we moved there to see. **Response**: See response to comment S-1.	Wright T-4-1
S-65	**Comment**: The logging trucks that come down ruined our roads that we go to work on. Tell me it is not harmful to take away the WAC 197-11-305 when WAC 197-11-305 is the only option the citizens have to try to take control. Without WAC 197-11-305 we have no way to make our voices heard and to have any say in what happens to the environment that we live in. We don't live downtown in an office building. We live right there in the Carbon River Valley. We're absolutely affected by it. We have to look at it every single day. **Response**: See response to comment S-1.	Wright T-4-2

S-66	**Comment**: I grew up in the Carbon River Valley and I've watched it over my lifetime. The valley is about two to three miles wide, several miles long. There are little clearcuts spanning from a 1,000 feet to almost 3,000 feet drop all through our valley. With each cut an aerial spraying is legal, when it drains all the way down and accumulates at the bottom, it affects our water supplies, our lands, and our roads. They over-sprayed onto houses and property twice, and they failed to consider the adjoining lands. **Response**: See response to comment S-1.	Chowen T-5-1, T-5-3
S-67	**Comment**: The mudslides in 1996, just missed our loaded school bus by minutes, and were caused by logging above the roads. The cuts were all done up to code by the DNR, but failed to consider the surroundings. The taxpayers paid one and a half million dollars to clean up the mudslides. The timber company that was responsible paid nothing. **Response**: See response to comment S-1.	Chowen T-5-2
S-68	**Comment**: These huge cuts, which add these little cuts that edge up to the huge cuts, have tremendous affects on us. They change cloud and rainfall patterns, wind gust blow down our trees and dry out our forested properties which leaves us vulnerable to forest fires, they change the water flows that are moved or cut off or cause new flows which wash out roads and cause mudslides. **Response**: See response to comment S-1.	Chowen T-5-4
S-69	**Comment**: You can't take one link or one square from a quilt and say that you don't have to consider the affects. It is our understanding that is why WAC 197-11-305 exists, so there is away to tell what the total affect will be on the area surrounding you. **Response**: WAC 197-111-305 will continue to exist. However, it will not be applied to Class I, II, and III forest practices that are exempt by statute from SEPA review and not included in the list of "categorical rule exemptions" that are subject to the SEPA trigger if applicable in WAC 197-11-305. See response to comment S-1.	Chowen T-5-5
S-70	**Comment**: If I bought property right above your house and decided to clearcut and spray it, what would you as a citizen have to fight that if it was all up to code with the DNR. This rule has worked for many years. It's been upheld by several courts and it's often the only tool to prevent the destruction which the taxpayers pay for. We are not trying to stop logging. But like any other industry, they should operate in a responsible manner. This may even promote sustainable logging that keeps our loggers working longer and makes their jobs more valuable.	Chowen T-5-6

	This rule should stay in effect for forest practices as a tool for us taxpaying citizens to be heard. So the DNR, the timber companies and the citizens all know what the guidelines are. **Response**: See response to comment S-1.	
S-71	**Comment**: I'm a northwest herbalist and I live in the Upper Carbon Canyon. I've watched plants disappear. I've watched things disappear. I hear all kinds of words being spoke, but the reality here on the ground is that all of this needs to be watched. You know we can call it a non-segmented unit here or there, but again the fact remains as you drive up the Canyon, there's a cut here, there's a cut here, there's a cut here, there's a cut here. Then they come and spray. They spray our water. They've made us sick. They've made our animals sick. We must keep WAC 197-11-305 in effect because it is our only tool to make any difference. I ask you to drive up there and take a look. We hear that it might be a little more expensive to do this. Well, it's the timber industry. We do need logging. We need timber for some things. But we do not need to devastate one of our national treasures which is the Carbon Canyon Valley. **Response**: See response to comment S-1.	Boynton T-8-1
S-72	**Comment**: US Timberlands purchased 56,000 acres in 1999 in the Teanaway Basin in eastern Washington near Cle Elum. Over four years, the vast majority of the Forest Practice Applications (FPA) in this area have been exempt from SEPA and have not undergone SEPA analysis. A specific example is the west fork of the Teanaway Basin. FPA 2700465 was approved in June 1999 and included 285 acres of harvest and 8,400 feet of new road construction. Part of this road construction went into areas that were subsequently harvested. FPA 2701379 was approved in July 2000, just four months after the previous FPA. It included 64 acres of partial harvest. FPA 2701692 was approved about a year later. No road activities were included in this FPA. It is very clear in this example that these FPAs are operationally linked. We think that WAC 197-11-305, if applied properly in this situation some of the impacts would not have occurred. So on behalf of the environmental community and some of the citizens of the state of Washington, we urge that the Department of Ecology abandon its proposal to take away the protections under WAC 197-11-305. **Response**: See response to comment S-1.	Emery T-13-1
S-73	**Comment**: There has been a lot of discussion about how the current Forest Practice Rules are sufficient to protect against segmentation and cumulative affects. The Teanaway example shows that is not always the case. The Teanaway Basin is about 207 square miles. It's an eastside tributary to the	Harlow T-14-1

	Yakima River. It had large, historic runs of Coho, fall, winter, and spring Chinook, Steelhead, resident Cutthroat, Rainbow and Bull trout. Needless to say that there are not nearly the levels of fish populations that there once were historically. In fact, steelhead and bull trout are listed species, and the river is on the 303(d) List for temperature. In 1996, a watershed analyses was completed by Boise Cascade, the landowner at the time. And 1999, the entire 56,000 acre Teanaway block was sold to U.S. Timberlands. Since acquiring the Teanaway block in 1999, U.S. Timberlands has applied for, and DNR has approved, 175 forest practice applications in the Teanaway block for 10,000 acres of even aged management, 21,000 of uneven aged management. For a total of 31,558 acres, which is 57 percent of the area in the Teanaway block. They have also approved 87 miles of new road construction in the Basin. When compared to the harvest levels that took place by Boise Cascade from 1990 to 1995, this represents an increase of 329 percent in the amount of board feet harvested and 717 percent of area harvest under even and uneven age management. It's a 27 percent increase in new roads construction. Most or all of this harvest will occur through individual SEPA exempt Forest Practice Act applications. And some of the potential effects from this level of harvesting include increased sedimentation, and increased stream temperatures due to sedimentation and TMDL listed stream segments, not to mention loss of Spotted Owl habitat of which there are numerous Spotted Own circles in the area. **Response**: See response to comment S-1.	
S-74	**Comment**: I'd like to read a quote from John Daily, the former Forest Practice Board chair and deputy for Resource Protection, which is I feel is very enlightening on the issue of cumulative affects. He stated in a letter dated January 2001 to Forest Practice Board members and I quote, "Last week I went to Ellensburg to look at timber harvest plans in the Teanaway River area which left me unsettled about the potential for cumulative affects on the land that had both owls and fish currently listed. The issue is not the company or specifics of these particular circumstances, but rather looking at a plan that appears to meet the minimum Forest Practice Rule requirements, yet it seems counter-intuitive to think that there won't be cumulative impacts as a result." I would like to finish by saying that the current rules do not adequately address cumulative affects. And I would like the Department of Ecology to answer the question, "If this law, as proposed, is amended, how will issues like this be addressed?" **Response**: Ecology's authority to adopt SEPA rules is limited to that as provided in RCW 43.21C. The proposed amendments are intended to insure that Ecology is acting consistent with its legislative mandate in the adoption of its SEPA rules. Comments and requests for legislation regarding forest	Harlow T-14-2

	practices should be addressed to the FPB who is empowered to adopt forest practices rules in accordance with the procedures enumerated in RCW 76.09.040. See responses to comments S-1, S-18, and S-22.	
S-75	**Comment**: The proposed amendment concerns the state's duties under SEPA. I'd like to refresh our collective memory as to why we have the SEPA. In RCW 43.21C.020, the following language occurs, "The continuing responsibility of the state of Washington and all agencies of the state to use all practical means consistent with other essential considerations of state policy to improve and coordinate plans, functions, programs, and resources to the end of the statement citizens may fulfill the responsibility of each generation of trustee of the environment for succeeding generations. Assure for all people of Washington safe, healthful, productive, and aesthetically, and culturally pleasing surroundings." This is not a special interest. This is the public interest. It is without question part of the government's duties when complying with SEPA's continuing responsibility to consider the cumulative effects of government actions. This duty also applies to consideration of the cumulative affects of actions permitted by government actions, such as forest practices. In fact, forest practices is one area of human land use where cumulative affects are most readily determinable. It's one of the simpler, technical, and scientific areas for evaluation of cumulative affects. **Response**: See responses to comments S-1 and S-74.	Thaler T-19-1
S-76	**Comment**: The Legislature articulated Ecology's specific duty with respect to SEPA as follows, "Rules shall provide for certain circumstances where actions which potentially or categorically exempt require environmental review." That's a section that we've referred to many times. The footnote in Lake Roesiger decision refers to it. Alps 3 refers to it. I would like to ask if anybody in this room can hear in that sentence the language "rule shall provide for circumstances where actions which are statutorily categorically exempt." It is not there. The Legislature told Ecology to adopt rules which provide for circumstances where actions which are potentially categorically exempt require environmental review. There is no distinction between administrative statutory exemptions. Alps 3 pointed out correctly that the definition of Class I, II, and III is done administratively by the FPB. So in essence, it's not a statutory exemption in the first place. Under RCW 43.21C.120, every agency of the state is required to adopt its own SEPA Rules which implement the rules adopted by Ecology under RCW 43.21C.110. The Forest Practices Board does have that separate SEPA duty and did adopt WAC 197-11-305 by reference. **Response**: See response to comment S-1.	Thaler T-19-2

S-77	**Comment**: There is no legal basis for distinction in the rules between statutory and administrative exemptions. The state has a continuing legal obligation to provide for cumulative affects. Essentially, what Ecology is proposing today is explicitly a change in the rules because some parties don't like the rulings that have been issued by the Courts and the FPAB. **Response**: RCW 43.21C.110 authorizes Ecology to adopt rules that exempt certain categories of governmental action from SEPA review that can be subject to SEPA review in certain circumstances. This statute does not provide that Ecology can include within the list of "categorical rule exemptions" those actions that the legislature has provided are exempt from SEPA review by statute. See response to comment S-1.	Thaler T-19-3
S-78	**Comment**: This proposal offends the sensibilities of citizens in the government of laws. When the landowners don't like the way the rules are being applied to their actions, the response of government should not be to change the rules without consideration of the impacts on public resources. That speaks to the inadequacy of the DNS to evaluate the real effects of what is being done here. If the landowners who wish this change brought forward have evidence of a problem other than inconvenience or expense in the conduct of profit-making activities, they should produce it. Otherwise this entire exercise simply reflects the desires by the few to avoid considering the interest of the many. **Response**: See response to comment S-1.	Thaler T-19-4
S-79	**Comment**: I want to respond to statements that prior SEPA review of programmatic rule-makings have addressed the problems and that the current rules are adequate. The statement that the rule-making always happens voluntarily is not true. All of those major rule-makings were in response to litigation. Without WAC 197-11-305, we don't have that tool. The EIS from 1992 explicitly states that the alternative that was not picked would provide better protection from cumulative impacts. It acknowledged that the watershed analysis rules that were adopted would likely have adverse cumulative affects. The same thing is in the forest and fish report EIS that explicitly acknowledges that cumulative affects are not adequately addressed by the current rules. **Response**: See response to comment S-1.	Thaler T-19-5
S-80	**Comment**: I live in the Carbon Canyon. I'm a small forest owner and I've been there since the '70s. I've seen a lot of changes through the timber companies. I don't mind them being there so much, if they would just be more responsible neighbors. They have burnt timber, stole it, and then sprayed the heck out of me. After awhile, you see things disappear and areas have not been replanted. **Response**: See response to comment S-1.	Boynton T-21-1

S-81	**Comment**: We formed the Friends of the Carbon Canyon in 1996 to fight back. The only reason the timber industry does any environmental review is because they have to. All they're really concerned about is their profits. And they're going to take away from all of the landowners who live around there and anybody else who gets in their way. They say they're trying to do the right thing and well, may be a lot of them are, but they're not. **Response**: See response to comment S-1.	Boynton T-21-2
S-82	**Comment**: The Carbon River Valley is one big checkerboard. The trees don't have a chance to come back because they take them out too fast. You can't be a responsible timber company if you're taking something out faster than it's replacing itself. That's just not the timber industry, that's pretty much all the resources that we have on this earth. I sat there one day on my front porch after they clearcut down the front of me. I haven't seen elk in probably eight, ten years. A few deer come through if they don't get poached off because there's nowhere for them to hide any more. **Response**: See response to comment S-1.	Boynton T-21-3
S-83	**Comment**: I watched the helicopters come in and spray right through my yard. Do they ever come up to me and say friendly, nice neighbor we're going to be spraying into your watershed. I got springs on my place. They come in spray right over my head, right out in front of me, and this stuff just goes on and on. **Response**: See response to comment S-1.	Boynton T-21-4
S-84	**Comment**: There are seven draws in the Carbon River Canyon. After clearcutting, a mudslide took out the road and just missed a school bus. I was right behind it, but I got through. There was a truck behind me, he didn't make it. When do these people start taking responsibility? Why should the taxpayers have to cover the expenses of cleaning up the mudslide? They go to court. You've got to fight them tooth-and-nail. The timber companies should be a little bit more responsible. All they want to do is just do what they have to and fight everybody. **Response**: See response to comment S-1.	Boynton T-21-5
S-85	**Comment**: When people drive in the canyon and they wonder why we have the meth lab, we have the garbage dumping, we have all these other illicit things going up there, the poaching. Well, when you're driving through a canyon, you used to see beautiful forests up there and now you're coming through a clearcut. If the timber companies don't have respect for that valley, how can you expect anybody else coming up in that valley to have any respect for it because they're looking at a washed out, clearcut valley. Without a good attitude, they're not going to appreciate it any more than the people ruining it.	Boynton T-21-6

	I want to make another point, we need the logging, we just need it done in a better way. **Response**: See response to comment S-1.	
S-86	**Comment**: I'm here on behalf of myself and the Carbon River Valley Conservation Project which I consider to mean the trees, and the water, and the air, and the wildlife, and indeed, the human beings that live up in this area. The ecological health of our state is at issue with this possible removal of WAC 197-11-305. This afternoon I heard a lot of legal and scientific and corporate jiggle. We need to stop to recognize and analyze all the potential harmful activities and legislation that will directly affect our valuable natural resources in this state. It's alarming to hear that there has been almost no comments directly addressing the human and wildlife side of this question. You can talk so many statistics and so many formulas and such, but it surely never truly addresses what happens to people like Mick and Vic who live up in that valley and what they might get poisoned by and the affects of the mass amounts of roads that go in making it easier to put a meth lab in, to dump human bodies after murders, to access the woods that should be accessed on foot and may be on a mountain bike. We're ruining the habitat. We are threatened with just too much corporate greed. They cut down so many vast amounts of trees and not think about the cumulative affect of what it can do to everybody's enjoyment of the outdoors. I think the push is so hard to eliminate WAC 197-11-305 because we're not looking at the big picture. It would be a shame to do it without really thorough analysis to recognize what we're ruining. I'm now asking Ecology to not take away this rare and effective tool that helps prevent unchecked damages to our public resources. **Response**: See response to comment S-1.	Medergard T-22-1
S-87	**Comment**: Our Washington forests are ecosystems with continuity over geographic space and time. The cumulative impacts of all forest practices should be reviewed before they are begun. Because Section 305 of SEPA is being amended to drop the cumulative impacts for Forest Practices Class I-III, I urge you to adopt a policy that will replace it. Forests provide wildlife habitat that does not recognize property boundaries but requires an intact sustainable ecosystem. Forest practices that segment an ecosystem will likely threaten habitat. It is not enough to measure impacts permit by individual permit. The cumulative effects of forest practices over sequential permitting and property boundaries must be analyzed before issuing a permit. **Response**: This comment was intended for the FPB. See response to S-18, S-22 and S-37.	Sandall 43-1

Summary of Comments Supporting Rule Amendments

Number	Summary of Comment and Response	Commenter
S-100	**Comment**: We support the proposed SEPA rule amendments. The Legislature has exempted Class I, II, and III forest practices from SEPA review in both the SEPA Rules, RCW 43.21C, and the Forest Practices Act, RCW 76.09. Adopting the proposed SEPA rule amendments will clarify that Class I, II, and III forest practices are not subject to SEPA review or the requirements of WAC 197-11-305. **Response**: Ecology agrees that Class I, II, and III forest practices are exempt by statute from SEPA review and that the proposed amendments will make Ecology's rules consistent with the legislative mandate as set forth in these statutes. Ecology's proposed amendments are intended to insure that its SEPA rules are consistent with RCW 43.21C. A number of commentators indicated support for the proposed amendments for other reasons However, these comments were not factors in Ecology's rulemaking since its purpose was limited to insuring that its rules were within its statutory authority and not in conflict with the SEPA statute, RCW 43.21C. See response to comment S-1.	Creel 5-1, T-17-1 Crooker 6-1 Dick 7-2, T-18-2 Godbut 9-1, T-1-1 Goos 12-1 Gorman 13-1, T-11-1 Hemplemann 15-1, T-26-1 Hutchins 16-1 Johnston 17-1, 17-8 Kirkmire 22-1, T-27-2 McCauley 25-1, T-24-1 McGreer 26-1 McMahon 27-1, T-25-1 Meier T-9-1 Opp 29-1 Paul 30-1, 30-5 Ploeg 31-1, 31-3 Rowe 33-1 Schaaf T-3-1, T-3-3 Stanley T-7-1 Stargell 34-1 Sweitzer 37-1 Tveil T-2-3 Warjone 40-1, T-23-1
S-101	**Comment**: Adoption of the proposed SEPA rule amendments will provide clear direction to DNR that Class I, II, and III forest practices are not subject to SEPA review and preclude DNR from requiring SEPA review for statutorily exempt forest practices.	Backus 1-1 Goos 12-2 Gorman 13-2 McCauley

	Response: Comment noted.	25-3 Ploeg 31-2 Rowe 33-2
S-102	**Comment**: The Legislature intended that potential adverse environmental impacts of exempt forestry activities will be avoided or mitigated through comprehensive forest practices regulatory program, not through individual SEPA review. The Legislature and the FPB addressed the statutory and regulatory relationship of SEPA to forest practices in implementing the recommendations described in the landmark Forests and Fish Report. In addition to maintaining the statutory exemptions for Class I, II, and III forest practices, the legislature amended SEPA to establish new statutory exemptions including emergency rules pertaining to forest practices and aquatic resource protection, approval of forest road maintenance and development plans, approval of future timber harvest schedules involving eastside clear-cuts, acquisitions of forestlands in stream channel migration zones, and acquisition of conservation easements pertaining to forest lands in riparian management zones. **Response**: See response to comment S-100.	Backus 1-2
S-103	**Comment**: The proposed rule amendments re-emphasize environmental protection through the rule-making of the FPB rather than through SEPA review. The proposed rule amendment will not impair but rather emphasize that the FPB, through rulemaking integrated with programmatic SEPA review, ensures that substantial adverse impacts of forestry activities on public resources will be adequately analyzed and avoided or mitigated. **Response**: See response to comment S-100.	Backus 1-3 Goos 12-9
S-104	**Comment**: The Forest Practices Act was passed by the Legislature in 1974 shortly after SEPA was adopted. The findings, purposes and policies of the Forest Practices Act are similar to those of SEPA. The Forest Practices Act relies on the SEPA concepts of interagency and interdisciplinary cooperation by establishing the FPB and the FPAB, with representatives of diverse agencies and interest groups. The Forest Practices Act relies on the FPB to develop rules and directs that forest practices applications be circulated to four state agencies and local government for review. **Response**: See response to comment S-100.	Backus 1-4 Godbut T-1-2 Goos 12-10 Ploeg 31-4
S-105	**Comment**: Where necessary to protect public resources, the Forest Practices Act gives DNR discretion to impose additional conditions on particular operations after they have been approved and for up to a year (and sometimes more) after they have been completed, even if conducted in full compliance with all applicable rules and all conditions of their initial approval. **Response**: See response to comment S-100.	Backus 1-5

S-106	**Comment**: The FPB has prepared five programmatic EISs to identify environmental effects of connective, cumulative, and similar forestry activities and their effect on a host of public resources. The FPB has studied alternative approaches to protect public resources from the impacts of forestry related activities, and used mitigation through regulatory and management-based measures when addressing public resource protection. The regulated and stakeholder community actively participate in the EIS process including scoping and comment phases thereby helping the EIS inform the FPB on the impacts of the alternatives for forest practices rules. **Response**: See response to comment S-100.	Backus 1-6
S-107	**Comment**: The FPB has consistently demonstrated, in keeping with the goals embodied in SEPA, that its rules are designed to achieve incremental improvement based on new information and the balancing of relevant public interests in the public policy arena. **Response**: See response to comment S-100.	Backus 1-7 Godbut T-1-3
S-108	**Comment**: The FPB through numerous public rulemaking procedures and the involvement of many experts from a wide variety of disciplines, has crafted comprehensive operational rules to protect public resources from potential adverse negative impacts of forestry activities, thereby avoiding any need for additional environmental review through the EIS process. The FPB has passed major rule packages 1975-76, 1982, 1987-88, 1992-93, 1996-97, and 2000-2001. **Response**: See response to comment S-100.	Backus 1-8 Godbut T-1-4
S-109	**Comment**: The FPB has expanded the list of Class IV-Special forest practices a number of times since 1982, by identifying which forest practices "have the potential for a substantial impact on the environment" and require extra SEPA threshold review by the DNR. **Response**: See response to comment S-100.	Backus 1-9
S-110	**Comment**: All rulemaking by the FPB includes SEPA review and carefully follows the procedural requirements of the Administrative Procedures Act (APA). **Response**: See response to comment S-100.	Backus 1-10
S-111	**Comment**: Operating rules that apply to all classes of forest practices adequately prevent substantial adverse impacts on the environment from most forestry operations in most circumstances. For more sensitive Class III practices, ID teams provide an alternative mechanism for interdisciplinary and multi-stakeholder input. Whether an ID team is used or not, DNR can impose additional conditions on a case by case basis, through conditions on DNR's	Backus 1-11

	approval of Class III practices and—for all classes of forest practices—through stop work orders, notices to comply, and other corrective action procedures. **Response**: See response to comment S-100.	
S-112	**Comment**: Clarification of the SEPA Rules to assure that statutory exemptions are not subject to SEPA review will not allow regulated forest practices to avoid environmental protection through "piecemealing". Regulated forest practices are not "segments of proposals" in the traditional sense of this issue.' Foresters are not deliberately filing an application for an individual forest practice in order to avoid review of other forest practices in the general area or exclude from consideration, the environmental fate of another forestry activity. Rather, the forester (and regulator) knows that each and every forest practices activity will be mitigated to address public resource protection. The environmental impacts of the forest practices rules are described in related programmatic EISs. **Response**: See response to comment S-100.	Backus 1-12
S-113	**Comment**: The FPB has used programmatic EISs over the last 20 years to evaluate issues and acknowledging that forest practices have separate components that share similar features. The administrative record accompanying at least five major rule revisions, e.g., 1982, 1987, 1992, 1996, and 2001 rule packages, is replete with evidence that the FPB has appropriately prepared programmatic EISs to identify environmental effects of connective, cumulative, and similar forestry activities and their effect on a host of public resources. **Response**: See response to comment S-100.	Backus 1-13 Godbut T-1-5
S-114	**Comment**: Critics of the forest practices rules have traditionally used the court system and various legal strategies in seeking to impose SEPA's EIS-related procedures into day- to-day forestry operations. They have argued that although the forest practices in question are not in Class IV, threshold SEPA review and an EIS nevertheless could be required under WAC 197-11-305. In spite of numerous appeals, lawsuits, and threats of such appeals and lawsuits, no EIS has ever been required for Class I, II or III forest practices on private lands based on WAC 197-11-305 Anti-segmentation rules like WAC 197-11-305 were designed to address projects where environmental review should not be limited for instance, to just the construction of a 20-mile stretch of a highway, but rather should take into account the impacts of 280-mile anticipated superhighway, which would be subject to SEPA or NEPA. WAC 197-11-305 was designed to prevent a proponent from this kind of piecemealing of big, on-the-ground activities into several smaller activities to avoid SEPA review. In sharp contrast, the FPB has consistently taken a comprehensive planning approach to forest practices	Backus 1-14, 1-16

	and relies on programmatic SEPA review to ensure broader study of the impacts of mitigated forest practices on the environment. **Response**: See response to comment S-100.	
S-115	**Comment**: Current forest practices rules increase resource protection and conservation through programmatic and prescriptive standards and guidelines. Current rules are intended to improve management in several key resource areas including water quality, wildlife and aquatic habitat. and provide many associated benefits useful in restoring, maintaining, and enhancing the quality of the environment. **Response**: See response to comment S-100.	Backus 1-15
S-116	**Comment**: Washington State is recognized as having one of the most effective sets of comprehensive forest practices rules in the country. This is based on: • Strong and detailed standard operating rules; • Case-by-case review of individual forest practice applications and notification of diverse agencies and stakeholders; • EIS procedures for Class IV forest practices; • DNR's discretionary authority to impose special conditions on a site-specific basis; and • A comprehensive set of enforcement mechanisms. **Response**: See response to comment S-100.	Backus 1-17 Goos 12-18 Ploeg 31-6
S-117	**Comment**: Ecology and EPA have found that Washington State's non-point water quality control program, of which the regulatory Forest Practices Act is a cornerstone, is currently recognized as having an "Enhanced Benefits Status". EPA recognized only seven states as having met the criteria for that recognition. **Response**: See response to comment S-100.	Backus 1-18 Goos 12-21
S-118	**Comment**: The timber industry has supported and heavily invested in the forest practices program, through the active involvement in negotiated, collaborative rulemaking since 1974 and particularly since the Timber/Fish/Wildlife negotiations in 1986. This includes, for example, supporting complex and costly rules relating to spotted owls, marbled murrelets, water quality, salmon and other aquatic species, etc., and cooperative monitoring and research under the Timber, Fish, Wildlife program. Like the Legislature and administrative agencies, the industry believes that difficult environmental issues relating to forest practices should be dealt with on a programmatic basis where possible, through substantive operating rules and standardized agency procedures developed by the FPB through a public process with extensive involvement of all stakeholders, including environmental groups.	Backus 1-19

	Response: See response to comment S-100.	
S-119	**Comment**: SDS Timber Company like other timber companies in Washington have implemented substantive operating rules, thereby protecting the environment using methods and procedures developed by the FBP and DNR: Road maintenance and abandonment plans are required under the forest practices rules to help guide ongoing road related activities. Maintenance projects are timed to avoid sediment delivery to all waters. During and following storm events, roads are inspected to assure proper function of drainage systems. Replacement or repair of man-made structures that block fish passage is a high priority. The harvest permitting process involves many hours of field and office time. Foresters, biologists and engineers evaluate many aspects of the harvest unit after the resource inventory has been completed. After stream and wetlands are mapped and typed, appropriate protection measures are implemented. Forest and engineers select the best harvest methods based on site specific ground conditions such as topography, presence of streams, type of soils, and road locations. The harvest process involves coordination between company foresters, company logging crews and contractors. **Response**: See response to comment S-100.	Backus 1-20
S-120	**Comment**: The Legislature twice exempted Class I, II, and III forest practices in 1975 and then again in 1981. These statutory exemptions recognize the extent to which forest practices are very strictly regulated by the FPA and Forest Practices Rules to afford environmental protection while at the same time promoting a viable forest products industry. **Response**: See response to comment S-100.	Beck T-6-6
S-121	**Comment**: Longview Fibre Company supports amendment of the SEPA rules in order to enforce the legislative intent of RCW 43.21C and to eliminate any potential challenge to the statutory exemptions of Class I, II, and III forest practices. **Response**: Comment noted.	Boyd 2-1
S-122	**Comment**: Forest Practices Regulations in Washington State have been developed over a period of 25+ years through public processes involving input from forest landowners, the scientific community, the environmental community, State and Federal agencies, Native American Tribes and other interested citizens. **Response**: See response to comment S-100.	Boyd 2-2, T-16-1

S-123	**Comment**: Washington State's current Forest Practice Rules were developed through a process which considered all the potentially significant impacts, and they contain comprehensive regulatory elements to protect public values. Adaptive management provides ongoing monitoring and adjustment to keep the rules current with developing science and public input. FPB actions, which lead to changes in the Forest Practices Rules, are subject to SEPA review. **Response**: See response to comment S-100.	Boyd 2-3, T-16-2
S-124	**Comment**: The current forest practices rules require a board range of specific considerations, actions, and protections which combine to effect landscape level controls. These include: road management and design criteria, clear-cut size and green up requirements; consideration of rain and snow zones, expanded riparian protections on a greatly expended stream layer, protected habitats for spotted owls and marbled mureletts, reforestation requirements, identification and special constraints on potentially unstable soils, wildlife leave tree and downed log requirements. **Response**: See response to comment S-100.	Boyd 2-4, T-16-3
S-125	**Comment**: In considering the potential impacts of forest practices it is important to bear in mind that there exists a great variety of forest conditions: species composition, ages, density and ownership objectives. At any large-area level of consideration the inherent variability of the forest condition interacting with Forest Practices Rules assures dispersal of impacts and continued diversity. **Response**: See response to comment S-100.	Boyd 2-5, T-16-4
S-126	**Comment**: Amending the SEPA rules to eliminate any potential for inconsistency with the RCW is important, and is the right thing to do. **Response**: Comment noted.	Boyd 2-6
S-127	**Comment**: I have not heard one specific citation of a measurable, cumulative impact in any of the testimony given this far. There is considerable speculation about cumulative effects, it's a grand theory, but here are no citations of measurable impacts given in evidence. Amending the SEPA Rules to eliminate any potential for inconsistency with the RCWs is important and is the right thing to do. **Response**: Comment noted. See response to comment S-100.	Boyd T-16-5
S-128	**Comment**: I am in favor of the proposed changes to the SEPA rules, specifically the correction that will eliminate the confusion surrounding Class I, II and III forest practices. RCW 43.21C.030(2)(c) specifically exempts these forest practice applications and clearly intends to maintain that exemption	Bratz 3-1

	through any and all rule changes in the forest practices code. The proposal to strike 197-11-800(25)(a) from the WAC will clear up this confusion for all parties and agencies working with forest practices. **Response**: See response to comment S-100.	
S-129	**Comment**: DNR supports the proposed amendment and applauds Ecology for addressing the current inconsistency in the rule regarding statutory exemptions and the administrative rule provisions. **Response**: See response to comment S-100.	Bunning 4-1
S-130	**Comment**: The legislature has clearly stipulated in RCW 43.21C that certain activities including Class I, II, and III forest practices, are not subject to the environmental review provisions of the act. The legislature has also explicitly exempted Class I, II, and III forest practices from SEPA review under the Forest Practices Act, RCW 76.09. However, the inclusion of Class I, II, and III forest practices in the list of categorically exempt activities within Ecology's SEPA rules suggests that they are subject to the provisions of WAC 197-11-305 and may in certain situations lose their exempt status and thus become subject to SEPA review. The lack of clarity regarding the relationship between WAC 197-11-305 and Class I, II, and III forest practices has resulted in several legal challenges that needlessly tie up limited state resources. **Response**: See response to comment S-100.	Bunning 4-2
S-131	**Comment**: We believe Ecology is correct in concluding that the statutory exemptions contained in RCW 43.21C and RCW 76.09 should not be subject to the administrative provisions of the SEPA rules, including the provisions of WAC 197-11-305. The amended rule language makes the SEPA Rules consistent with both the SEPA and Forest Practices Act statutes regarding the exemption of Class I, II and III forest practices from SEPA review and should be adopted as soon as possible. **Response**: Comment noted.	Bunning 4-3
S-132	**Comment**: The legislature recognized that the FBP has a process in place to develop rules for timber harvesting activities and this process conforms to SEPA requirements. This reduces the potential duplicative effort by government agencies resulting in unnecessary costly government inefficiencies and landowner operations that are cost prohibitive. Delegating the authority with the responsibility is an important principle to follow in both government and private enterprise. A CEP cannot make all the decision all the time. Federal lands are a good example of such a situation where biologically sound forest health operations are constantly being litigated and owl habitat is going up in smoke. **Response**: See response to comment S-100.	Creel 5-2, T-17-2

S-133	**Comment**: Hampton Affiliates protects the environment using methods and procedures developed by the FPB and DNR. Ecology is actively involved in forest practices at the program level. They participate on interdisciplinary teams on Class I, II or III forest practices when necessary. They evaluate road use and abandonment plans of sensitive areas in the field, and of course, examine Class IV special projects requiring SEPA review. **Response**: Comment noted.	Creel 5-3, T-17-3
S-134	**Comment**: Hampton has completed 700 miles of road surveys to determine the quality of the drainage structures, fish passage and road surface. Based on the surveys, we have spent in the millions of dollars correcting identified problem areas as well as building new roads to a very high standard of construction. The company has opened thousands of acres of habitat to fish by correcting fish passage problems. We have improved fish habitat in streams by placing structure where there was not. We are participating in training programs that train loggers and road buildings of forest practices that protect the resource of the state and provide for a sustainable environment. Fish-bearing streams have some of the strictest protections in the world and we include equipment limitation zones on non-fish seasonal streams. **Response**: Comment noted.	Creel 5-4, T-17-4
S-135	**Comment**: WAC 197-11-305 has been used in appeals and litigation of Plum Creek forest practice applications that were approved by DNR. Some of the litigation is summarized in Plum Creek Timber Company v. Washington State Forest Practices Appeals Board, et al, 99 Wn.App. 579, 993 P.2d 287 (2000). **Response**: Ecology is aware that WAC 197-11-305 has been the subject of prior litigation involving forest practices.	Crooker 6-2 Hemplemann 15-2
S-136	**Comment**: Plum Creek Timber Company often plans forestry activities with environmental protections that exceed regulatory requirements. In addition, Plum Creek has been a leader in conducting watershed analyses and in preparing habitat conservation plans. Thus it is ironic and distressing that Plum Creek forest practices have been the target of those who would use WAC 197-11-305 in an effort to nullify the statutory exemptions for Class I, II and III forest practices. In the end, Plum Creek has been reassured by the decisions of the FPAB and the Court of Appeals. Both the FPAB and the Court of Appeals have held that there are no probable significant adverse environmental impacts arising from the Plum Creek applications that were appealed under WAC 197-11-305. **Response**: See response to comment S-100.	Crooker 6-3
S-137	**Comment**: Plum Creek Timber Company, the forest industry, the FPAB and the courts should never have been drawn into the WAC 197-11-305 litigation.	Crooker 6-4 Hemplemann

	The Legislature has stated clearly in two separate statutes, the Forest Practices Act and SEPA, that Class I, II, and III forest practices are exempt from SEPA Review. The Legislature recognized that forest practices in Washington are heavily regulated to protect the environment and public resources and that further regulation of the exempt forest practices under SEPA would be redundant and wasteful. **Response**: See response to comment S-100.	15-4
S-138	**Comment**: A detailed history and analysis of the interrelationships between the regulation of forest practices and SEPA is presented in a comment letter being submitted by the Washington Forest Protection Association and we commend that letter to you. **Response**: The referenced letter was received and is included in the agency rule making file.	Crooker 6-5 Hemplemann 15-3 Godbut 9-2, 9-13 McCauley 25-2 Gorman T-11-3
S-139	**Comment**: The intent of the Legislature to exempt Class I, II and III forest practices from SEPA was inadvertently undermined when Ecology adopted the SEPA Rules. As directed by the Legislature, Ecology added "administrative" categorical exemptions to the SEPA Rules. The SEPA Rules also included WAC 197-11-305 to address "segmented proposals" that relied on the categorical exemptions. In an apparent effort to make the SEPA Rules "user friendly" and to put all the statutory and administrative exemptions in one place, Ecology added the statutory exemptions to Part Nine of the SEPA Rules. As we have learned, that action led some to conclude that the statutory exemptions, including the exempt forest practices, were subject to WAC 197-11-305 and the SEPA review that can follow, in some cases, from the application of WAC 197-11-305. Ecology has recognized the problem and has stated in the explanation for this rulemaking process that WAC 197-11-305 was never intended to apply to statutory exemptions. We agree with Ecology. The statutory exemptions stand on their own. They do not need to be listed in the SEPA Rules. **Response**: See response to comment S-100.	Crooker 6-6
S-140	**Comment**: Extensive Plum Creek experience in WAC 197-11-305 litigation shows that Ecology's proposed rule will not weaken the regulation of forest practices or allow significant adverse environmental impacts to be ignored. The WAC 197-11-305 litigation has been lengthy, expensive and time consuming and it has wasted Plum Creek, DNR, FPAB and judicial resources but it has not resulted in even a single change in the conditions imposed on the forest practices applications that were the subject of the litigation. No environmental benefit resulted from the litigation. **Response**: See response to comment S-100.	Crooker 6-7

S-141	**Comment**: SEPA is a complex law with several clear exemptions, among them Class I, II, and III forest practices. Special interest groups seek to extend SEPA coverage to Class I, II, and III forest practices. These efforts have no basis in the law, no basis in the field and no support in the legislature. Their sole basis rests on their success in shutting down federal timber sales on federal land using a convoluted review and appeals process to achieve their goals. The forest industry can't afford that kind of approach to forest practices and neither can a state that is watching its base industries moving to friendlier climates. **Response**: Ecology recognizes that the parties supporting and opposing the adoption of the rule amendments have strong opinions regarding the application of WAC 197-11-305 to Class I, II, and III forest practices. However, Ecology's reasons for adopting the amendments are focused on insuring that the SEPA rules are consistent with legislative authority. See response to comment S-100.	Dick 7-1, T-18-1
S-142	**Comment**: I want to give a different perspective on cumulative affects. I began my career in 1974 when the present Forest Practices Act came into existence. The rules were in a booklet. The rules now come in a big, 3-ring binder. The reason I mentioned cumulative affects is that we have reached a point where these rules have accumulated to the extent and the complexity that people are saying "I don't want to do this anymore." And they're converting their timberlands. I live in a part of Olympia that still has some commercial timberlands. I want those neighbor lands to stay in timberlands. I want the forest industry. I don't want them driven out by a process gone berserk. **Response**: See response to comment S-100.	Dick T-18-3
S-143	**Comment**: I am familiar with the Teanaway Basin. I realize some people don't like the intensity of the harvest that is going on there now. But I want to point out to those people that the Teanaway Basin has another attribute. The first is that the timberlands are amenably developable. If the owner of the timberlands can't make a profit, they're going to sell those lands and they will sell them to a developer. That doesn't serve anybody well. If you look at the Teanaway Basin, you look at where the timberlands meet the agricultural lands, you'll see lots of good water coming out of the timberlands. There is an awful lot of water withdrawn to water alfalfa fields. That's one reason why there aren't any fish in the Teanaway because it goes dry in the summer. There's another problem there in that recreationists have built cabins and homes all along the Teanaway River from the point where it comes out of the forestlands to the point where it flows into the Yakima. If you want to look at troubles, go look at that. **Response**: Issues regarding development and water usage in the Teanaway Basin are beyond the scope of the proposed rule making. See response to	Dick T-18-4

	comment S-100.	
S-144	**Comment**: I support any rule that limits government and puts authorities back to that which the legislature intended. I am in favor of the subject rule making for that purpose. **Response**: As previously noted, the proposed amendments to the SEPA rules are intended to make them consistent with legislation set forth in RCW 43.21C and to clarify that the statutory exemptions are not subject to the provisions of WAC 197-11-305. See response to comment S-100.	Fitch 8-1
S-145	**Comment**: Ecology can and should adopt the proposed changes without preparing an EIS or treating this action as a major legislative rule. The scope of this proposed rule-making is regulatory house-keeping since the Legislature clearly intended that statutorily exempt actions, including Class I, II, and III forest practices, not be subject to environmental review through SEPA. **Response**: See responses to comments S-4 and S-100.	Godbut 9-3, 9-12
S-146	**Comment**: We commend both Ecology and the FPB on their history of preparing thoughtful and thorough programmatic EISs on proposed forest practices rule packages. From a policy standpoint, we believe this is a much more effective and efficient use of the EIS process than the alternative of preparing EISs for individual forest practices applications or small groups of applications. **Response**: See response to comment S-100.	Godbut 9-6, 9-14
S-147	**Comment**: The proposed rule changes are needed to resolve misunderstandings that have arisen about the relationship between statutory exemptions and WAC 197-11-305. It is a fundamental principle of our government system that rules implement statutes and must be consistent with statutes. Rules cannot "trump" statutes, particularly the statute authorizing their adoption. The Legislature can add to, modify, or repeal the statutory exemptions at any time, and any such statutory changes would take effect regardless of any contrary or conflicting provisions that might be contained in Ecology rules. Therefore, we agree that Ecology need not include the statutory exemptions in its rules and that Ecology's rules should make clear that the statutory exemptions apply, are self-effectuating, and are not negated or impaired by anything in Ecology's SEPA rules. **Response**: See response to comment S-100.	Godbut 9-7
S-148	**Comment**: For all but one of the statutory exemptions, there has been no confusion or controversy: the statute has been considered controlling and the Ecology rules on EIS-related procedures have been considered inapplicable. However, for Class I, II, and III forest practices there has been confusion as to	Godbout 9-8, 9-10

	whether WAC 197-11-305 might trump the statutory SEPA provision. On several occasions the FPAB and lower courts have suggested that this could be the case in some undefined circumstances other than the facts then at issue. None of these cases reached the state Supreme Court so there is no definitive court decision on this point. In no case has an EIS ever been written for a Class I, II, or III forest practice based on that theory. In no case has DNR;s approval of Class I, II or III forest practices ever been overturned for failure to prepare an EIS under that theory. The proposed rule changes would reject contrary positions suggested by a few decisions of the FPAB and the lower courts. The proposed rule changes do not change anything, they merely confirm positions historically taken by Ecology, the PCHB, DNR, and the Attorney General, and would not require any changes in the way DNR historically has administered the Forest Practices Act. **Response**: The reason for the proposed rulemaking is as stated in response to comment S-100. Therefore, the issue of whether or not an EIS has been required for a Class I, II, or III forest practice under WAC 197-11-305 or an approved forest practice overturned for failure to prepare an EIS under this WAC is not at issue in the proposed rulemaking.	
S-149	**Comment**: The Attorney General has consistently argued on behalf of DNR that WAC 197-11-305 was not intended to trump the statutory exemption for Class I, II, and III. Similarly, Ecology has not interpreted WAC 197-11-305 as trumping statutory exemptions for it own actions. Ecology's position on that has been upheld by the Pollution Control Hearings Board (PCHB). The proposed rule changes would merely clarify the situation by: confirming the original intent as illustrated by Ecology's interpretation of WAC 197-11-305 as applied to its own actions; the PCHB decisions affirming Ecology's position on that point; DNR's historical position; and the position historically taken by the Attorney General when DNR's position on that point has been challenged before the FPAB and the courts. **Response**: See response to comment S-100.	Godbut 9-9 Sweitzer 37-4
S-150	**Comment**: Weyerhaeuser supports the additional comments being submitted by the Washington Forest Protection Association, which include important information on the history of the forest practices rules and the comprehensive, programmatic EISs prepared by the FPB and Ecology in connection with those rules. **Response**: Comment noted. See response to comment S-100.	Godbut 9-13
S-151	**Comment**: EISs have been and should continue to be prepared on a programmatic basis at the rule-making state, when they can make the greatest contributions to wiser environmental decision making. There are 8,000 to	Godbut 9-15

	12,000 individual forest practice applications and notifications per year. It would not be efficient or effective to prepare EISs on individual applications or on small groups of them—and there would be no consensus on how applications should be grouped for that purpose if "physically or functionally related" operations were addressed in smaller scale EISs. Smaller scale EISs for forest practices would not improve this regulatory program; on the contrary, they could weaken it by removing incentives of all stakeholders to fully participate in the rule-making process and work to develop the best possible sets of forest practices rules. **Response**: See response to comment S-100.	
S-152	**Comment**: Many agencies have been unable to prepare high-quality programmatic EISs on their proposed rules, and rely instead on EISs prepared for particular projects. Since the original intent of SEPA was to prepare EISs on "proposals for legislation and other major actions." EISs should be prepared on a programmatic basis where possible, so improved environmental protection can be embedded deeply in agency programs and become an integral part of day-to-day operations. The programmatic EISs for forest practices rules have achieved this goal better than the alternative approaches of SEPA compliance for individual projects. Perhaps the fact that all stakeholders knew that EISs would not be prepared for the majority of individual forest practices applications helped motivate efforts to prepare meaningful programmatic EISs during the rule-making process. In short, the statutory exemption of individual Class I, II, and III forest practices from EIS-related procedures benefits not only the industry and landowners—it contributes to maintaining the integrity and effectiveness of SEPA on a programmatic basis. **Response**: See response to comment S-100.	Godbut 9-16
S-153	**Comment:** We recognize that there are sincerely held differences of opinion about the environmental effects of some forest practices. These issues can and should be addressed by the Forest Practices Board through rule making and through thoughtful programmatic EISs prepared in connection with proposed forest practice rule decisions. Ecology's proposed changes in its SEPA Rules will help achieve this result help SEPA remain an important and integral part of the rule-making process. **Response**: See response to comment S-100.	Godbut 9-17
S-154	**Comment**: Current Forest Practices Rules increase resource protection and conserve through programmatic and proscriptive standards and guidelines. Clarifying the statutory exemptions in the SEPA Rules, this will not affect the implementation of Forest Practices Rules. Current rules are intended to improve management in several key resource areas, including water quality, wildlife and aquatic habitat, and provide many associated benefits useful in	Godbut T-1-6

	restoring, maintaining, and enhancing the quality of the environment. **Response**: See response to comment S-100.	
S-155	**Comment**: The proposed rule amendments would correct a misunderstanding and misuse of the SEPA rules, making Ecology's rules consistent with legislation exempting Class I, II, and III forest practices from all environmental review under SEPA. The legislature has established over a dozen statutory exemptions in SEPA, covering specific classes of activities from air pollution permits to wireless services facilities. It is a fundamental principle that agency rules implement and must be consistent with statutes. Therefore, statutes are controlling to the extent of any conflicts with agency rules. However, some people have claimed that WAC 197-11-305 effectively "trumps" one of those statutory exemptions, the one for Class I, II, and Ill forest practices. WFPA is not aware of anyone claiming that WAC 197-11-305 also "trumps" any of the other statutory exemptions, so these comments focus on the forest practices exemption. **Response**: See response to comment S-100.	Goos 12-3
S-156	**Comment**: The statutory exemption for Class I, II, and III forest practices reflects a legislative intent that environmental protection for most forest practices would be afforded by the FPB substantive operating rules supplemented by case-by-case decisions made under Forest Practices Act procedures, rather than imposed on a case-by-case, ad hoc basis through SEPA's ElS procedures. The legislature exempted most forest practices from SEPA review procedures because that review would be unnecessary and potentially counterproductive, given the systematic, rigorous regulation of forest practices under the FPA, RCW Ch. 76.09, and rules of the FPB. Ecology is wisely proposing to amend the agency's SEPA rules to support the Legislature's intent. The FPB regulations provide a very comprehensive, detailed and uniform set of criteria, which one must comply with or be in violation. The regulations are intended to be predictable and expeditious: an important policy goal of the Legislature in regulating forest practices and the implementation of FPB rules to forest practices by DNR. **Response**: See response to comment S-100.	Goos 12-4 Rowe 33-3
S-157	**Comment**: The proposed amendment aligns with the Legislature's goal of not squandering scarce agency resources on needless and time-consuming SEPA processes when these resources would be better devoted to substantive environmental protection and other public interests through the Forest Practices Act . The legislature has made it clear many times, over many years, that it wants to avoid the unintended consequences of increasing the costs, uncertainties, and delays in processing forest practices applications. Instead,	Goos 12-5

	the FPA provides alternative ways of obtaining multidisciplinary review and input from diverse stakeholders in forms that are more efficient and effective in the context of forest practices. **Response**: See response to comment S-100.	
S-158	**Comment**: The forest practices rules are promulgated by a special board having representatives of diverse interests and viewpoints: state agencies, local government, large and small forestland owners, contract loggers, and the general public. Rules pertaining to water quality must be approved by Ecology. Applications and notifications for individual forest practice operations are distributed to state and local agencies and tribes, and made available to the public. Interdisciplinary teams are used to review applications involving more complex environmental issues. DNR monitors active and completed operations, and can impose additional conditions if necessary to protect public resources. EIS procedures are used at the programmatic level; full EISs have been prepared for every major forest practices rule package. **Response**: See response to comment S-100.	Godbut T-1-2 Goos 12-6
S-159	**Comment**: In 1999, the legislature and the FPB addressed the statutory and regulatory relationship of SEPA to forest practices in implementing the recommendations of the Forest and Fish Report. In addition to maintaining the statutory exemptions for Class I, II, and III forest practices, new SEPA statutory exemptions were adopted for emergency rules, forest road maintenance and development plans, timber harvest schedules, acquisition of forestlands in stream channel migration zones and conservation easements in riparian management zones. **Response**: See response to comment S-100.	Goos 12-7 Sweitzer 37-5
S-160	**Comment**: WFPA fully supports the proposed SEPA amendment by Ecology because it is consistent with legislative direction. The Legislature recognizes that in light of the substantive and comprehensive regulations due to frequent statutory amendments and rule revision processes, most forest practices will not have significant adverse impacts, and, thus by statute, are exempt from SEPA's ad hoc environmental review requirements. **Response**: See response to comment S-100.	Goos 12-8
S-161	**Comment**: All rulemaking by the FPB includes SEPA review and carefully follows the procedural requirements of the Administrative Procedures Act. The FPB relies on SEPA to review the environmental consequences of its rulemaking activities, including the classification of forest practices. The FPB has consistently determined that changes to the forest practices rules have the potential for significant adverse environmental impact. The FPB has prepared six programmatic EISs to identify environmental effects of connective, cumulative, and similar forestry activities and their effect on a host of public	Godbut T-1-5 Goos 12-11

	resources. EISs were written for the: • Forest Practices Regulations, March 1976 • Proposed Forest Practices Rules and Regulations, June 1982 • Proposed Forest Practices Rules and Regulations, May 1987 • Proposed Forest Practices Rules and Regulations, June 1992 • Rule Proposals for Northern Spotted Owl, Marbled Murrelet, and Western Gray Squirrel, May 1996 • Rules for Aquatic and Riparian Resources, April 2001 Through these programmatic EISs, the FPB has studied alternative approaches to protect public resources from the impacts of forestry related activities. After carefully considering alternatives, the FPB has required mitigation through regulatory and management-based measures to improve public resource protection and achieve other Forest Practices Act goals. The regulated and stakeholder community actively participate in the EIS process including scoping and comment phases, thereby helping these EISs inform the FPB on the impacts of the alternatives for forest practices rules. The FPB has consistently sought to achieve the goals embodied in both the FPA and SEPA through rules designed to achieve incremental improvement based on new information and balancing relevant public interests in the public policy arena. **Response**: See response to comment S-100.	
S-162	**Comment**: We believe the FPB has done more than any other state agency to integrate SEPA's EIS procedures into its rulemaking on a programmatic basis. In the context of forest practices applying SEPA procedures at the programmatic level during rulemaking has been much more efficient and effective than could be expected from much smaller scale EISs on individual applications or on smaller groups activities considered to be physically or functionally related under WAC 197-11-305. **Response**: See response to comment S-100.	Goos 12-12
S-163	**Comment**: The administrative record on forest practices rulemaking demonstrates that the FPB takes its responsibilities seriously and uses its administrative powers frequently and when needed. The FPB has passed a series of rules and SEPA policies to address public resource protection over the past 28 years: • Washington State first adopted reforestation requirements in 1945. The law required private owners to get a harvesting permit from the state prior to harvest. A permit would not be issued unless the owner assured adequate	Goos 12-13

residual stocking or retention of seed trees on adjacent owner's land for long enough to assure natural regeneration.

- The Forest Practices Act (RCW 76.09) was first enacted in 1974, amended in 1975, and has been further amended as described in the bullets below. The first regulatory package included rules to address primarily water quality, fish passage, and improved reforestation. The new Board passed rules governing road construction and maintenance, timber harvesting, reforestation, forest chemicals, supplemental directives, enforcement, and the relationship of the FPA to other lands and regulations.

- In 1982, the FPB amended the forest practices rules to include new regulations governing parks, archeological, and historic sites, threatened and endangered species, chemical applications, forest roads, timber harvest, slash and debris disposal, post harvest site preparation, and reforestation.

- In the mid-1980s, the FPB grappled with new forest practices to protect fish, water quality, and wildlife. Timber, Fish, Wildlife (TFW) was formed and officially sanctioned by the FPB in 1986 to address the problems associated with the differences of facts and opinions among various interest groups, and to develop a new collaborative approach among stakeholders. The FPB developed new rules for riparian and wildlife protection in 1988.

- Following the 1988 rules package, another round of TFW negotiations started to address additional wildlife protection and other issues that were of concern during the first TFW discussions. This round of negotiations was titled the "Sustainable Forestry Roundtable Discussions" (SFR). Out of the SFR discussions, the FPB passed another series of forest practices rules in 1992 to require (1) retention of wildlife reserve trees, including live, dead, or deformed trees along with green recruitment trees so they will become wildlife reserve trees, (2) protection for wetlands, (3) limits on clearcut size and green-up requirements, (4) SEPA guidance for critical habitats (state) and critical habitats (federal) for threatened and endangered species (5) additions to the Class IV- Special list to protect slide-prone slopes from the impacts of harvest, limit aerial application of pesticides, and provide protection to registered archeological or historic sites or on sites containing evidence of Native American cairns, graves, or glyptic records, (6) consideration of heat input into streams by requiring the use of a stream temperature model in addition to leave tree requirements, and (7) a statewide watershed analysis program to address concerns regarding cumulative effects.

  Before adopting new rules, the FPB directed DNR to monitor the rate of timber harvesting and report the results to the FPB each year. The rate of harvest studies of the early and mid-1990s demonstrated that harvests were being conducted at a sustainable rate and that habitat was not being dramatically altered in any Watershed Resource Inventory Area (WRIA).

	In its 1992 rules package, the FPB also recognized the public resource protection provided by Habitat Conservation Plans and incidental take permits or an incidental take statement covering species under an approved Habitat Conservation Plan (16 U.S.C. section 1536(b) or 1539(a)) and reviewed under the National Environmental Policy Act, (42 U.S.C. section 4321 et seq). The FPB further recognized cooperative planning for fish and wildlife under state processes subject to SEPA review. After July 1, 2001, the FPB will require federal planning or management strategies to be done in consultation with WDFW, ECOLOGY, and affected Indian Tribes. In 1993, the FPB also passed rules protecting bogs and fens. These rules provided technical corrections to the 1992 wetlands rules as well as protecting these unique wetland types. • In 1996, the FPB passed substantive rules to address the protection for the northern spotted owl. The process to get an owl rule adopted was complicated. It started in June of 1992 with the passage of an interim rule to protect the owl. The FPB commissioned a Scientific Advisory Group (SAG) in 1993 to review the adequacy of the interim rule and to assist in permanent rule adoption as needed. Final owl rules were based on TFW collaboration and the work of the SAG, and complemented the proposed 4(d) rule for the northern spotted owl as drafted by the USFWS in 1995.' The FPB specifically designed the rules to protect owl sites that comprise portions of important sub-populations in ten specific Spotted Owl Special Emphasis Areas (SOSEAs). The FPB also (1) established SEPA policy relating to the creation of the ten SOSEAs and suitable habitat definitions, (2) required restrictions on harvest, road building, and aerial application of pesticides around all active nest sites during nesting season and within designated nesting, roosting, and foraging habitat as defined for each SOSEA, and (3) provided the opportunity to develop Landowner O Plans (LOPs) and Cooperative Habitat Enhancement Agreement (CHEAs). • In the same year, three landowners (DNR state lands, Boise Cascade, and Stimson Lumber Company) developed lynx habitat plans to protect.designated lynx critical habitat (state) on their respective ownerships. The FPB accepted these habitat plans to protect the lynx in lieu of rules. Additionally, the FPB, after consulting with WDFW, decided not to craft SEPA based rules for the western gray squirrel. Instead, voluntary landscape-planning efforts have taken place to ensure that habitat conditions are created for the western gray squirrel in specific areas of the state e.g., Klickitat and south-central Washington. • Starting in 1994, tribes along with state and federal agencies reviewed water types throughout the state of Washington. They found that streams previously thought to be non-fish bearing were in fact either supporting fish or capable of supporting fish based on defined habitat characteristics. Based	

on this information, the FPB enacted emergency rules in 1996 to modify the definition of type 2 and 3 waters.

- In the summer of 1997, the FPB passed substantive rules to address marbled murrelets. Emergency rules had been adopted by the FPB starting in 1992 and re-adopted until the permanent rule became effective. In 1993, another SAG committee was formed and a marbled murrelet report was presented to the FPB. In addition, the TFW group, reconvened to help craft final rules that were adopted by the FPB. The murrelet rules protect habitat of all occupied marbled murrelet sites and non-surveyed murrelet nesting habitat where landowners own more than 500 acres within 50 miles of saltwater.

- Starting in May of 1998, the FPB passed emergency, interim rules that covered the federally listed steelhead and salmon runs listed in Washington at that time. These emergency rules covered the Upper Columbia steelhead, Snake River steelhead, and Lower Columbia steelhead Evolutionarily Significant Units (ESUs). The emergency rules were expanded to include the Columbia River bull trout in November 1998. In March 1999, the FPB again expanded the emergency rules to cover seven additional ESUs including stocks of chinook, chum, steelhead, and sockeye salmon. Finally, the emergency rules were expanded again in November 1999 to include the coastal and Puget Sound federal listings of bull trout.

- In November 1996, the FPB was successful in re-engaging TFW to address a number of aquatic habitat issues including (1) ESA listing of fish stocks in the Columbia River system, (2) the impending listing of several additional fish stocks in state waters, and, (3) the inclusion of more than 300 stream segments on Washington forestlands on the Clean Water Act (CWA) 303(d) list. In the spring of 1997, the TFW caucuses, now expanded to include the three federal resource agencies (EPA, USFWS, NMFS), joined with the Governor's office to address forest practices in the context of the ESA and CWA issues. The FPB worked with TFW to establish four goals guiding the development of new protection measures leading to new forest practices rules:

  1. To provide compliance with the ESA for aquatic and riparian-dependent species on non-federal forestlands;
  2. To restore and maintain riparian habitat on non-federal forestlands to support a harvestable supply of fish;
  3. To meet the requirements of the CWA for water quality on non-federal forestlands; and
  4. To keep the timber industry economically viable in the State of Washington.

  In April of 1999, the results of the negotiations culminated in the release of the Forests & Fish Report (FFR). On June 7, 1999, Governor Gary Locke signed Engrossed Substitute House Bill 2091(ESHB 2091) into law. This act directed the FPB to adopt emergency rules consistent with the FFR and

	strongly encouraged the FPB to follow the FFR recommendations in adopting permanent rules. In 2000, the FPB passed emergency rules consistent with the FFR as required under ESHB 2091 and adopted permanent rules in 2001. The rules include standards and guidelines to manage riparian vegetation and sediment input to maintain or enhance stream habitats and water quality. In addition to the protection provided for all native fish, salmonids, and marine fish species, the rules specifically protect six stream-breeding amphibians: the Columbia torrent salamander, Cascade torrent salamander, Olympic torrent salamander, Dunn's salamander, Van Dyke's salamander, the tailed frog and their respective habitats. **Response**: See response to comments-100.	
S-164	**Comment**: The FPB has identified, as precisely as possible – but on a programmatic basis – which forest practices "have the potential for a substantial impact on the environment" and require extra SEPA threshold review by the DNR on whether an EIS needs to be prepared. Nothing in the proposed amendment to SEPA will stop the FPB from continuing to update rules to require SEPA threshold review, where and when appropriate. **Response**: See response to comment S-100.	Goos 12-14
S-165	**Comment**: Operating rules that apply to all classes of forest practices adequately prevent substantial adverse impacts on the environment from most forestry operations in most circumstances. For more sensitive Class III practices, ID teams provide an alternative mechanism for interdisciplinary and multi-stakeholder input. In addition, whether an ID team is used or not, DNR can impose additional conditions on a case by case basis, through conditions on DNR's approval of Class III practices and—for all classes of forest practices—through stop work orders, notices to comply, and other corrective action procedures. Conditioning authority can be enacted by the DNR, even if the particular operation is conducted in full compliance with all applicable rules and all conditions of their initial approval, through Stop Work Orders and Notice to Comply. **Response**: See response to comment S-100.	Goos 12-15
S-166	**Comment**: Regulated forest practices under the Forest Practices Act are not "segments of proposals" in the traditional sense of this term. Foresters are not deliberately filing an application for an individual forest practice in order to avoid review of other forest practices in the general area, or to exclude from consideration the environmental fate of another forestry activity. Rather, the forester (and regulator) knows that each forest practices activity will be mitigated to address public resource protection by the forest practices rules that have been designed and repeatedly amended in accordance with adaptive management and programmatic SEPA processes to adequately	Goos 12-16

	address the cumulative impacts of individual forest practices. The environmental impacts of the forest practices rules are described in related programmatic EISs. The FPB has used programmatic EISs to evaluate issues and acknowledge that forest practices have separate components that share similar features. The administrative record accompanying at least five major rule revisions is replete with evidence that the FPB has appropriately prepared programmatic EISs to identify environmental effects of connective, cumulative, and similar forestry activities and their effect on a host of public resources. **Response**: See response to comment S-100.	
	Comment: Some critics of the forest practices rules have traditionally used various legal strategies in seeking to impose SEPA's EIS-related procedures into day-to-day forest operations. They have argued that although the forest practices in question are not designated as Class IV-Special, threshold SEPA review and an EIS nevertheless could be required under WAC 197-11-305. In spite of numerous appeals, lawsuits, and threats of such appeals and lawsuits, no EIS has ever been required for Class I, II, or III forest practices on private lands based on WAC 197-11-305. Based on this fact, Ecology's proposed amendment will have no impact on DNR's implementation of the current rules. **Response**: See response to comment S-100.	Goos 12-17
	Comment: The timber industry has supported and heavily invested in the forest practices program, through the active involvement in negotiated, collaborative rulemaking since 1974 and particularly since the Timber/Fish/Wildlife negotiations in 1986. The industry believes that difficult environmental issues relating to forest practices should be dealt with on a programmatic basis where possible, through substantive operating rules and standardized agency procedures development by the FPB through a public process with extensive involvement of all stakeholders, including environmental groups. There will be no gap in protection for public resources due to Ecology's proposal rule amendments. **Response**: See response to comment S-100.	Goos 12-19
S-167	**Comment**: WFPA is attaching an example of how forest practices are being implemented on private forestlands. The report summarizes one company's procedures, policies, and BMPs for implementing portions of the Forests & Fish Report requirements as required under the Forest Practices Act (RCW 76.09). The report provides a chronology of Port Blakely's management activities and voluntary efforts to ensure BMPs are used to protect public resources. It provides evidence that clarifying statutory exemptions in SEPA, including Rule 305, will not impact the manner in which the regulated industry mitigates its activities in accordance with the forest practices.	Goos 12-20

	Response: See response to comment S-100.	
S-168	**Comment**: There have been a number of comments today and I think it's important for the record to note that the state Legislature, when they passed the Forest Practices Act felt that the way that forest practices would be mitigated and the way that the public could interact in terms of improving forestry interaction with public resources would be through the Forest Practices Act. The Forest Practices Board has been a highly responsive board to the public who have had concerns over forestry and those impacts on public resources. An example would be particularly the 1982 rules where the Board in fact heard from the public that there was a need to add more specific practices into Class IV special that would actually then receive additional SEPA review. The Board took many public comments, did a SEPA analysis of those numerals, and we had rules in 1982. Sure enough, public started talking, by 1988 the Board again adopted a whole new set of rules specifically for riparian and wildlife habitat. By 1992, the public was speaking again. And the Board again updated those rules based on SEPA, based on listening to the public, based on the needs of the Forest Practices Act; in other wards, balancing public resource protection with maintaining a viable industry. And then once again, we saw that the Forest Practices Board updated rules again based on the public in 2001. So I sure hope that as Ecology simply clarifies the relationship of SEPA to statutorily exempt forest practices that the public understands that they have a regulatory board to go to with concerns. They have a Board that acts. They have a Forest Practices Act that is responsive to SEPA and public resources are protected. **Response**: See response to comment S-100.	Goos T-10-1
S-169	**Comment**: The legislature clearly intended when it enacted the Forest Practices Act in 1974, and has consistently reinforced its intent that potential adverse environmental impacts of exempt forest activities will be avoided or mitigated through a comprehensive forest practices regulatory program. The Act and especially the forest practices regulations have been amended numerous times through a deliberate rule making process to provide additional protection to public resources. Adoption of the proposed rule amendments supports the legislative intent of exempting certain activities from additional environmental reviews, and also fulfills the legislative intent of avoiding redundant and unnecessary burdensome regulatory reviews. **Response**: See response to comment S-100.	Gorman 13-3, T-11-2
S-170	**Comment**: The clear intent of the Legislature to exempt Class I, II and III forest practices from SEPA was inadvertently undermined when Ecology adopt the SEPA Rules. Including the statutory exemptions in Part Nine of the	Hemplemann 15-5

	SEPA Rules has led some to conclude that the statutory exemptions were subject to WAC 197-11-305. Ecology has recognized the problem and has stated in the explanation for this rulemaking process that WAC 197-11-305 was never intended to apply to statutory exemptions such as Class I, II and III forest practices. We agree with Ecology. The statutory exemptions stand on their own. They do not need to be listed in the SEPA Rules. **Response**: See response to comment S-100.	
S-171	**Comment**: Because Ecology added the statutory exemptions to Part Nine of the SEPA Rules, WAC 197-11-305 has been misused, albeit unsuccessfully, to attack the exempt forest practices applications of Plum Creek. This is both unfortunate and ironic because Plum Creek often plans forest practices with environmental protections in excess of the regulatory requirements. This was the case for all the Plum Creek applications associated with the Scatter Creek and Doggone harvests that were the subject of WAC 197-11-305 litigation. <u>Scatter Creek Harvest</u>: Plum Creek has an "open lands" policy and allows the public to use its lands for recreation. When Plum Creek planned the Scatter Creek Harvest, it took special steps, not required by either law or regulation, to relocate and protect the rough trail through the Plum Creek land. Nonetheless, the Plum Creek forest practices applications were appealed on the basis of WAC 197-11-305, with the allegation that the harvest would have a probable significant adverse impact on wildlife, recreation and aesthetics. After extensive, time consuming and expensive hearings, the FPAB rejected the appeals. After four years of litigation, the Court of Appeals held that the FPAB has made the correct decision and that there was no probably significant impact to either recreation or aesthetics from the applications or the future harvests. Thus there was absolutely no substantive environmental gain from the litigation. <u>Doggone Harvest</u> (Carbon River Valley): Plum Creek voluntarily engages in "landscape planning" to address the visual impacts of its forest practices in certain areas of public view. When opponents of the proposed harvest objected to the aesthetic impact of the harvest, Plum Creek withdrew its application and voluntarily engaged in further landscape planning under the direction of the University of Washington professor recommended by the opponents. Plum Creek filed a revised application which was approved by DNR. The opponents of the harvest then appealed the application using WAC 197-11-305 to claim there were probable significant adverse impacts on aesthetics. After extensive, time consuming and expensive hearings, the FPAB rejected the appeal and the partial harvest was completed. Thus, there was absolutely no substantive environmental gain from the litigation. Even though the Doggone Harvest has been completed, the litigation continues in the Thurston County Superior Court because the opponents claim that the WAC 197-11-305 litigation is of great public importance.	Hemplemann 15-6, T-26-3

	It is clear from the history described above that WAC 197-11-305 has been misused by opponents of timber harvest. WAC 197-11-305 has been a weapon of harassment. It has produced no benefit for the environment. It has wasted the resources of Plum Creek, DNR, the FPAB and the courts. The good intention of Ecology to put all the exemptions in one place in the SEPA Rules has had an unfortunate and unintended result. **Response**: See response to comment S-100.	
S-172	**Comment**: Extensive experience in the WAC 197-11-305 litigation shows that Ecology's proposed rule will not weaken the regulation of forest practices or allow significant adverse environmental impacts to be ignored. The WAC 197-11-305 litigation has not resulted in even a single change in the conditions imposed on the forest practices applications that were the subject of litigation. No environmental benefit resulted from the litigation. **Response**: See response to comment S-100.	Hemplemann 15-7
S-173	**Comment**: I have a different perspective on this rule from what you have heard today. I have been involved as an attorney in all of the litigations of the Scatter Creek and Carbon River cases at every level in the proceedings. And I have seen the misuse of WAC 197-11-305. It was clear that the Legislature intended the Class I, II, and III forest practices be exempt from SEPA. It was only when Ecology inadvertently included the statutory exemptions with the adopted administrative exemptions that WAC 197-11-305 was found applied to the statutory exemptions. Because of this inadvertent act by Ecology, those who do not like the statutory exemptions have used WAC 197-11-305 as a weapon of harassment. All that has been accomplished in all of the litigation over the last ten years has been a huge waste of time and resources of attorney's time and court time. There has not been one substantive environmental protection benefit or result on the ground from any of the litigation. **Response**: See response to comment S-100.	Hemplemann T-26-2
S-174	**Comment**: If there is the need for a new and additional cumulative impact rule with respect to forestry, that case should be made to the Legislature or to the FPB and they should decide. Let's not use an obscure, archaic, convoluted inter-relationship between Part 8 and Part 9 to accomplish a result that if that result is justified should be addressed head on. **Response**: See response to comment S-100.	Hemplemann T-26-4
S-175	**Comment**: I've been involved in SEPA since it was passed as a land use and environmental natural resources lawyer. It's my opinion that there would be no probable significant adverse impact to the adoption of this rule clarifying legislative intent. Because there will be no change on the ground. There will no adverse impact to the environment because none of the litigation has proved	Hemplemann T-26-5

	of any benefit to the environment. The only adverse impact from the change of this rule will be on the generation of legal fees. And I have yet to find it. I've been looking. But I've yet to find it as an element of the environment in either the statutes or the rules. **Response**: See response to comment S-100.	
S-176	**Comment**: Some interests were dissatisfied with the policy decision by the Legislature and have argued that WAC 197-11-305 should be applied to make two or more Class I, II, or III forest practices subject to SEPA review. That result is directly contrary to both RCW 43.21C.037 and RCW 76.09.050. Ecology has correctly concluded that the application of WAC 197-11-305 to Class I, II, and III forest practices is inconsistent with the legislative intent. **Response**: Comment noted.	Johnston 17-2
S-177	**Comment**: When the Council on Environmental Quality adopted the predecessor of WAC 197-11-305, its intent was to engraft into the SEPA Guidelines the concept of an "anti-segmentation" rule. The concept of anti-segmentation is designed to preclude the proponent of a project from avoiding or limiting SEPA review by breaking a single project into small components or segments. This concept has no applicability in the context of forest practices, and creates a duplicative, unworkable scheme. The rules implementing the Forest Practices Act directly address situations where "segmentation" might have a potentially unacceptable impact by either prohibiting operations or a certain size or by requiring more detailed review before such operations may proceed. Anti-segmentation was intended to apply to a "project" that was being segmented by its proponent in an attempt to have it "fly under the radar". That concept is not amenable to being applied in the context of commercial forestry, where, over time, the entire landscape will likely be subject to some form of management activity. While in some sense, those activities conducted over time (years or decades) are physically interrelated, the activities are not part of a "project" as that term is used in WAC 197-11-305. **Response**: See response to comment S-100.	Johnston 17-3
S-178	**Comment**: The Forest Practices Act created the FPB (on which Ecology sits) to adopt comprehensive rules governing the conduct of forest practices. That board adopted rules in 1976 and has modified those rules extensively on several occasions. Substantial public input was received by the FPB prior to adoption of each rule amendment. The current rules provide a very high level of protection to the environment; that is verified in the SEPA documents associated with the various rules adopted by the FPB. **Response**: See response to comment S-100.	Johnston 17-4

S-179	**Comment**: The forest practices rules were designed to protect environmental values through their implementation across the landscape in a commercial forest setting. That is, inherent in the rules themselves is a presumption that these rules will be applied to forest practices conducted over time and across a broad landscape. Thus, the rules were designed based on a premise that most if not all of the forested landscape will be subject to multiple forest practices over time. Also, the rules directly address efforts to "segment" a timber operation. Any even-aged harvest greater than 120 acres requires special interdisciplinary team review and an even-aged harvest greater than 240 acres is simply prohibited. Breaking an area down into multiple units that, taken together, exceed the 240 acre limit is not allowed by the rules, by virtue of the "green-up" requirements. **Response**: See response to comment S-100.	Johnston 17-5
S-180	**Comment**: Some have contended that making an application for road construction or upgrading that is separate from the harvests to be conducted at later time is an example of an effort to segment. In fact, such separation is usually done simply to facilitate road construction in one operating season and an opportunity for the road to "firm up" before truck traffic commences in a subsequent season. In certain situations, this has been demonstrated to reduce the impacts of the roads. Moreover, the landowner avoids none of the performance standards in the forest practices rules by varying the sequence of activities. Road design and construction is carefully regulated to minimize impacts in all cases. **Response**: See response to comment S-100.	Johnston 17-6
S-181	**Comment**: Some of the opponents to this Ecology rule change have filed a rulemaking petition with the FPB contending that the FPB has a legal duty under the Forest Practices Act to adopt a "305-like" rule as part of the forest practices regulation scheme. Those arguments actually lend further support for Ecology making the proposed changes, as under their view the FPB would need to address the issues directly and specifically in the context of forestry. **Response**: See response to comment S-100.	Johnston 17-7
S-182	**Comment**: The legislative intent of protecting the environment and allowing for economic activity in our state is the crux of the current amendment to clarify that statutory exemptions are not subject to SEPA review. The current system provides greater protection for the environment and public resources than subjecting all forest practices to environmental review under SEPA. **Response**: See response to comment S-100.	Jones 18-1
S-183	**Comment**: The cost of requiring a SEPA review for routine operational activities is cost prohibitive and irrational	Jones 18-2

	Response: See response to comment S-100.	
S-184	**Comment**: Environmental values have been integrated during the 28 years of rulemaking under forest practice rules and regulations. The FPB has prepared 5 programmatic EISs to identify environmental effects of connective, cumulative and similar forestry activities and their effect on a variety of public resources. Forest practices that are classified as Class I, II and III are not "segments of a proposal" or a deliberate action to piece-meal activities to avoid SPEA environmental review, as all rulemaking by the FPB includes SEPA review. The forest and fish agreement is a good example of increased protection and conservation of the environment as it takes into account a landscape view of the forest. **Response**: See response to comment S-100.	Jones 18-3
S-185	**Comment**: It has been brought to our attention that representatives from the Washington Forest Law Center testifying at the public hearing provided certain information concerning US Timberlands property in Kittitas County. We have determined that the data presented by the Center contains significant errors. For example, the acres of harvest that we have performed are overstated and out of context. Many acres that the Center infers we harvested in the Teanaway River basin are either outside of the basin or are the result of "double-counting" of forest practices applications. The Center focuses particular attention to the North Fork Teanaway WAU. The North Fork had a watershed analysis performed in 1996 to address cumulative effects. Operations in the North Fork were consistent with that watershed analysis except as to matters where the new "Forests and Fish" rules superceded the watershed analysis prescriptions. The Center's suggestion that sediment yields from roads may have increased "21-fold" is simply not correct factually. We have made substantial upgrades to roads throughout the Teanaway basin since acquiring the property in 1999, spending over $3 million on upgrades and maintenance. In fact, the Teanaway is an example of how well the new road requirements under the Forests and Fish rules are working. **Response**: See response to comment S-100.	Jones 19-1
S-186	**Comment**: The Washington Forest Law Center makes much ado about Ecology's temperature TMDL for the Teanaway River. US Timberlands have actively participated in the development of the TMDL. It reached the conclusion that riparian vegetation is the key to making improvements in temperature reductions. We have fully complied with the new Forests and Fish riparian management requirements, which contain enhanced leave-tree requirements, and is effective in reducing head inputs into streams. **Response**: See response to comment S-100.	Jones 19-2

S-187	**Comment**: Those involved in the timber industry in this state already operate under some of the strictest forest practice regulations in the country, if not the world. This was true even prior to the adoption of Washington's Forest and Fish forest practice rules. Any additional environmental reviews are not needed and threaten the viability of the forest products industry. **Response**: See response to comment S-100.	Kirkmire 22-2, T-27-3 Stargell 34-2
S-188	**Comment**: I've heard some pretty compelling testimony here today and I just frankly didn't realize that logging and timber harvesting could be somewhat connected to every one of society's ills. It's the first I've heard that the increase of the meth lab problem here in Washington State could be directly connected to timber harvesting. I guess if we just quit cutting trees and logging, that peace would probably break out in the Middle East or domestic violence would probably stop. I guess that if we look at it, that's our whole problem in this state is timber harvesting. **Response**: See response to comment S-100.	Kirkmire T-27-1
S-189	**Comment**: The proposed rule is fair to all businesses since it applies to all statutory exemptions, not just those affecting forestry. **Response**: The proposed amendments delete all of the statutory exemptions from the categorical rule exemptions in WAC 197-11-800 through WAC 197-11-880.	Kriegel 23-1 Stargell 34-3
S-190	**Comment**: Washington's new Forest and Fish rules are having an enormous financial impact on landowners. Placing additional environmental rules on top of these will only threaten the viability of the forest products industry in this State. **Response**: See response to comment S-100.	Kriegel 23-2
S-191	**Comment**: The proposed rule should be adopted; as the SEPA exemptions were legislative and this would fix the intent of the original legislation and repair the previous rulemaking error. **Response**: See response to comment S-100.	Kriegel 23-3
S-192	**Comment**: The proposed amendments will not harm the environment or reduce any effectiveness at protecting SEPA's environmental policies. Washington's forest practices project has many layers of policy and technical review and allows for several agencies to directly interact in the process including Ecology. As a result, forest operations continue to provide protection of water quality and other aquatic resources. Without this proposed change the system runs the risk of creating redundancy where it offers no additional benefit to the public or resource.	McCauley 25-4, T-24-2

	Response: See response to comment S-100.	
S-193	**Comment**: The rulemaking will make the SEPA rules consistent with the statutes that exempt Class I, II, and III forest practices from SEPA review. Including such activities within the scope of the SEPA process serves no useful purpose and is not a meaningful way to insure that the public's environmental resources are protected. **Response**: See response to comment S-100.	McGreer 26-1
S-194	**Comment**: I served on the FPB from 1981 through 1988 during which time the FPB was actively engaged in reviewing and determining the appropriate classification of forest practices into their Class I, II, III, and IV categories. Two major rule-making efforts were completed in 1982 and in 1988. In addition, some milestone studies on cumulative affects in riparian habitat were commissioned by the FPB and completed with the aid of some reputable outside consultants. All of these efforts strengthened the forest practice regulations and added to the types of forest practices classified in the respective Class I, II, III, and IV Special and General categories. **Response**: See response to comment S-100.	McMahon 27-2, T-25-2
S-195	**Comment**: I am quite familiar with the history and process by which the FPB assigned forest practices to the appropriate classifications, based on the Board's collective judgment as to whether or not specific forest practices had the potential to cause damage to public resources. Consequently, I fully support Ecology's efforts to reaffirm the intent of the "statutory exemption" which recognizes, for purposes of SEPA environmental review, the important distinction between Class I, II, and III forest practices, and those classified as Class IV Special. This is the forest practices regulatory system, together with its relationship to SEPA, that was authorized by the Legislature when the state's Forest Practices Act was adopted in 1974 and amended in 1975. **Response**: See response to comment S-100.	McMahon 27-3, T-25-3
S-196	**Comment**: Three essential elements of the Forest Practices Act are: (1) the FPB has the responsibility to identify routine forest practices which, when conducted in accordance with the forest practices regulations, present limited risk of damage to public resources; (2) to identify those forest practices that, due to their potential for having a substantial impact on the environment, require more specific environmental review under SEPA (Class IV specials); and (3) the FPB has the responsibility, based on DNR's experience in administering the forest practices regulations, to periodically review and update the types of forest practices assigned to the appropriate classes.	McMahon 27-4 Warjone 40-5

	Response: See response to comment S-100.	
S-197	**Comment**: Since 1976, the FPB's fulfillment of its responsibility to develop comprehensive forest practices regulations has further reduced the likelihood that routine forest practices, conducted in accordance with the FPB's regulations, present a risk of damage to public resources. The forest practices regulations, together with continual improvement in operational practice by forest landowners, have emphasized prevention of damage to public resources before-the-fact, thereby demonstrating the workability and effectiveness of the forest practices classification and regulation system. **Response**: See response to comment S-100.	McMahon 27-5, T-25-4
S-198	**Comment**: Since 1976, each substantive revision of the forest practices regulations has been supported by an extensive public review and comment process and by a supporting EIS. Consequently, the decisions of the FPB in determining which forest practices are signed to the Class I, II, III, and IV categories have themselves, through public comment and EIS process, undergone thorough environmental review. **Response**: See response to comment S-100	McMahan 27-6, T-25-5
S-199	**Comment**: The proposed amendment is consistent with the original legislative intent, and will further strengthen the effective and workable relationship that forest land owners rely on to meet the requirements of the forest practices regulations, while also meeting the requirements of SEPA. **Response**: See response to comment S-100.	McMahan 27-7, T-25-6
S-200	**Comment**: Rayonier has been operating under the Forest Practice Rules since the Act's conception in 1974. I personally was closely involved in the rule-making processes of 1992, 1993, again in 1996 and 2001. As part of this process, Rayonier and all other interested parties have provided comments on programmatic SEPA reviews of proposed rule packages to assure that they address specific and cumulative affects. **Response**: See response to comment S-100.	Meier T-9-2
S-201	**Comment**: Rayonier has used many of the regulatory tools available under the forest practices program which ensure that similar connected and cumulative actions are minimized or mitigated to protect public resources. For instance, Rayonier has completed seven watershed analyses; thereby, analyzing cumulative affects on over one-third of our land. Just last week, we held the hand-off of the Wishkah Watershed analysis to the prescription team which will develop forest practice prescriptions which, when approved under SEPA, will become the standard operating rules for the watershed.	Meier T-9-3

	It is very important to note that since forest and fish rules are currently in place to protect aquatic habitat and water quality, we do not expect environmental protections resulting from watershed analysis to be significantly different. After all, the forest and fish rules were in large part based on the results of the earlier watershed analyses work. However, by completing watershed analysis, we will know more specifically the actions that will need to be included in each harvest unit for the entire watershed. Because of our concentrated ownership, the presence of a municipal watershed and the geologic complexity, it is more efficient for Rayonier geomorphologists to use watershed analysis than just to rely on operating rules to identify and address specific issues of concern. However, either approach is environmentally sound as consistent results from watershed analysis were a key factor in developing the baseline operating rules. Luckily both baseline rules and watershed analysis are currently available to landowners such as Rayonier to assure that public resources are protected in an efficient and effective manner. **Response**: See response to comment S-100.	
S-202	**Comment**: Rayonier has also developed a wildlife management plan for a portion of it's ownership. Our biologists recently reported that environmental reserves increased from 14.5 percent of the plan area to 22.6 percent of the land base just between 1996 and 2002. Much of the original reserve acreage and virtually all of the increase was related to the effects of Forest Practice Regulations which substantially increase the amount of habitat set aside for endangered species protection. When forest practices rules are combined with our silvercultural practices, a complete landscape plan emerges across forested watersheds which, in conjunction with road maintenance, addresses cumulative affects that might occur in the forest. It's clear to me that Rayonier is implementing the operational baseline rules under the Forest Practices Act and that they are protective of public resources both at an individual basis and on a cumulative basis. **Response**: See response to comment S-100.	Meier T-9-4
S-203	**Comment**: We applaud Ecology for amending SEPA to make it clear that the substantive and comprehensive operating rules adopted through rule-making do not require a second round of review under SEPA for individual forest practices. This is clearly consistent with the direction provided by the Legislature, re-emphasizes the rule-making authority of the Forest Practices Board, and provides forest operators with certainty, predictability, and permitting expediency. These are all important factors in the economic survival of the forest products industry which I believe is also critical to protecting the environment in the State of Washington.	Meier T-9-5

	Response: See response to comment S-100.	
S-204	**Comment**: I have supported the Forest and Fish process although I am discouraged by the devils in the detail; discouraged that the State is probably going to cut the funding support promised for small tree farmers; I feel discriminated against by not being eligible for voluntary CREP dollars available to Ag land when I'm forced to provide even better riparian habitat; I'm hurt that other states' tree farmers use us and our good intentions as examples of what not to let happen in their states; I'm starting to feel duped! I'm told the proposed SEPA rule amendment will reduce the risk of even further regulatory burdens being placed on tree farmers like myself when its time to harvest and replant. For once it sounds like government is trying to help those doing so much good for the environment so I'm supportive of this proposal. **Response**: See response to comment S-100.	Miller 28-1, T-20-1
S-205	**Comment**: If we care about doing the most for our environment we will do everything possible to stop penalizing the folks that make the largest contributions to the environment. It seems like every law or regulation that is passed increases the cost of managing working forests. Less, or no profitability in these long-term investments encourages conversion of land to non-forested uses, all of which are far worse for the environment. **Response**: The proposed amendments are intended to make Ecology's rules consistent with the SEPA statute, RCW 43.21C. This will result in all of the statutory exemptions being deleted from the list of "categorical rule exemptions" in WAC 197-11-800. This includes Class I, II, and III forest practices. Thus, the proposed amendments will not result in any additional costs being passed onto those people managing working forests.	Miller 28-2, T-20-2
S-206	**Comment**: Eliminating the chance SEPA review will be needed for routine forest management activities is the right thing for those trying to stay in tree farming, and most importantly it's the right thing for the environment. Ecology should always be a supporter, not an obstacle to those of us that clearly do so much good for the environment. **Response**: See response to comment S-1.	Miller 28-3, T-20-3
S-207	**Comment**: RCW 76.09.010, legislative finding and declaration, leaves no doubt about the will and intent of the people in providing both environmental resource protection and operating freedom for forest practices on private and State lands. **Response**: See response to comment S-100.	Opp 29-2
S-208	**Comment**: The FPB and its demonstrated rulemaking over the last 3 decades,	Opp 29-3

	has a solid record of dealing thoughtfully and proactively with the task of protection of public resources and the responsibility to maintain a viable forest products industry. Additionally, the forest products industry has a remarkable and extensive record of other voluntary actions, including but not limited to such things as participation in T-F-W, federal habitat conservation plans and conservation agreements, watershed analysis, and special wildlife management plans. **Response**: See response to comment S-100.	
S-209	**Comment**: Failure to make this proposed clarification amendment will leave the normal, routine, day in day out practice of forestry on state and private lands wide open to frivolous opposition from those opposed to any timber harvesting. A prime example of this sort of analysis paralysis gridlock can be seen with the management of the federal forests where such appeals thru the NEPA process has been brought about, often to the detriment of local communities as well as the environment. **Response**: See response to comment S-100.	Opp 29-4
S-210	**Comment**: I strongly urge the adoption of this proposed amendment by the Department of Ecology. **Response**: Comment noted.	Opp 29-5
S-211	**Comment**: Forest lands are regulated by numerous agencies with sometimes confusing and over lapping regulations. The proposed amendments will help clarify which regulations must be followed. We are completely in support of the change to the WAC which clearly states that Class I, II, and III forest practices are exempt from SEPA. **Response**: See response to comment S-100.	Paul 30-1
S-212	**Comment**: Many challenges have been brought against various forest practices using the cloud now in effect with WAC 197-11-800 and RCW 43.21C which differs from the statutory exemption in the current Fish and Forest RCW 76.09 regulations. The legislature's clear intent was that forest practices covered by the new Fish and Forest regulations were to be exempt from SEPA. **Response**: See response to comment S-100.	Paul 30-2
S-213	**Comment**: Many months of negotiations with the federal government, tribes, and state agencies resulted in all of these groups giving assurances that these regulations would satisfy the Endangered Species Act, the Clean Water Act, and other regulations. It is our opinion that these efforts were taken by all parties to protect the environment.	Paul 30-3

	Response: Ecology's proposed amendments to its SEPA rules were not made in consideration of the Forest and Fish rules but rather to insure that its rules are consistent with the legislative mandate as set forth in RCW 43.21C. See response to comment S-100	
S-214	**Comment**: The Fish and Forest regulations are working. They have provisions for those forest practices which, in the opinion of DNR have a potential for a substantial impact to the environment, to be classed as a Class IV forest practice. This classification requires that the proposal goes through the SEPA process. The current forest practices rules already address cumulative effects. These regulations have already gone through SEPA review and have been deemed adequate to protect the environment. **Response**: See responses to comments S-100 and S-213.	Paul 30-4
S-215	**Comment**: The FPB has expanded the list of Class IV Special forest practices a number of times since 1982, by identifying which forest practices have the potential for a substantial impact on the environment and require extra SEPA review by the DNR **Response**: See response to comment S-100.	Ploeg 31-5
S-216	**Comment**: The proposed amendment aligns with the legislature's goal of avoiding the squandering of scarce agency resources on needless and time-consuming SEPA processes when these resources would be better devoted to substantive environmental protection and other public interests through the Forest Practices Act. Further, the legislature has made it clear many times, that it wants to avoid the unintended consequences of increasing the costs, uncertainties, and delays in processing the forest practices applications. **Response**: See response to comment S-100.	Rowe 33-4
S-217	**Comment**: This morning, we received from DNR our very first notification that a renewal of the previously approved application was incomplete because the application only noted road construction and did not note an associated timber harvest that might occur some time in the future. We have not even yet planned that. I want to assure Ecology that we are not intending to segment our operations. We don't' build roads that we cannot later use. The application involved about a 1,000 feet of road, about 40 acres potentially of timber harvest. Ultimately when that operation is approved, I think it would be hard-pressed for anyone to suggest that there is a potential significant impact on the environment. Particularly in this area where it does not involve streams and any that do exist in the area are fully protected under the Forest Practices Rules. **Response**: See response to comment S-100.	Schaaf T-3-2

S-218	**Comment**: Port Blakely Tree Farms is currently developing the 2008 harvest plans. They include planning for green-up, verifying stream classification – fish, non-fish, perennial seasonal. We check for threatened, endangered species and associated habitat and we plan for road maintenance and abandonment plans. These early activities are required under the Forest Act, and they ensure that harvesting and road building are mitigated to minimize the affects in the environment. This summer, we will construct roads and upgrade existing roads to forest and fish standards for our 2005 harvest units. We build our roads at least two years out. It's just common sense to allow the roads to settle, to cut banks to serve soils to be re-vegetated, and allow the road prism to solidify before we haul logs across it. Associated Logging Units are not planned for at least two years out. Our forest practice permits are only good for two years; thus, the permit would be expired before we started logging. This is environmentally good planning in our minds. It's not trying to segment activities or try to hide management activities to regulators. Rather we're putting in our road permits because it's a responsible thing to do. And our harvest permits are mitigated to ensure the public resources are protected. Right now, we're also laying out and permitting our 2004 harvest units. Our foresters are very familiar with all the forest practice regulations that we're governed by. They flag and paint RMZ boundaries, upland wildlife trees are identified and marked, unstable slopes are identified and protected, non-fish bearing streams are identified and protected, wetlands are flagged. These are per the current Forest Practice Rules. After all the work is completed, we fill out the 30-page permit and turn it into the Department of Natural Resources. And finally to this year's harvest units, we choose the most ideal seasons for our logging based on terrain, soil erosion, slope, and the potential for environmental risks. The loggers are selected based on proper equipment for the terrain and soils, the quality of their work, and certification of training the logger goes through. All this planning ensures that the units are carefully logged to meet or exceed all regulations we are governed by. Forestry is a business that demands several years of planning. Cumulative, connected, and similar actions are mitigated. **Response**: See response to comment S-100.	Stanley T-7-2
S-219	**Comment**: It is unnecessary, costly, and redundant to require SEPA review for Class I, II, and III forest practices. Public resource protection will not suffer; therefore we strongly encourage and support Ecology's proposed amendment. **Response**: See response to comment S-100.	Stanley T-7-3

S-220	**Comment**: If we want to promote keeping land in forestry status as opposed to development, then the adoption of these rules are the kind of measures we should be taking to preserve working forests. **Response**: See response to comment S-100.	Stargell 34-4
S-221	**Comment**: We strongly believe that the current system provides greater protection for the environment and public resources than subjecting all forest practices to environmental review under SEPA. The reasons are: • Environmental protection for forest practices is afforded by the FPB's substantive operating rules; • 28 years of forest practices rulemaking has integrated environmental values; • The FPB has prepared 5 programmatic EIS's to identify environmental effects of connective, cumulative and similar forestry activities and their effect on a variety of public resources; • The rule making authority of the FPB ensure that substantial adverse impacts to public resources from forest practices will be avoided; • Forest practices that are classified as Class I, II and III are not "segments of a proposal" or a deliberate action to piece-meal activities to avoid SEPA review as all rulemaking by the FPB includes SEPA review; and • Current forest practices rules increase protection and conservation of the environment as they take into account a landscape view of the forest, instead of the narrow view of project by project SEPA review. **Response**: See response to comment S-100.	Stransky 35-1
S-222	**Comment**: The exemptions of Class I, II, and III forest practices from SEPA procedures are activity-oriented categorical exemptions. These exemptions apply to all permits and approvals from all agencies. **Response**: RCW 43.21C.037 exempts applications for Class I, II, and III forest practices, but it does not exempt other agency approvals or permits that may be required for such actions. For example, a shoreline permit needed for road construction would not be exempt. Other required approvals or permits would not be exempt unless expressly provided in statute or rule.	Sweitzer 37-2
S-223	**Comment**: Class IV forest practices require SEPA review. The FPB has expanded the list of Class IV Special forest practices a number of times since 1982, by identifying which forest practices have the potential for a substantial impact on the environment and require extra SEPA review. Based on recommendations in the Forests and Fish Report, the FPB added five identifiable landforms and potentially unstable slope features that could be subject to SEPA. The FPB also included snow avalanche slopes where there is a potential to deliver sediment or debris to a public resource or the potential to threaten public safety.	Sweitzer 37-3, 37-8

	Response: Ecology agrees that RCW 43.21C requires SEPA review for Class IV forest practices. The authority to designate whether a particular forest practice should be designated as Class I, II, III, or IV is the responsibility of the FPB and not Ecology.	
S-224	**Comment**: Statutory exemptions immunize the specified activities from SEPA requirements regardless of their environmental impact, hence why the proposed rule is in alignment with legislative intent. It is evident that the Legislature did not feel that the operating rules to improve forest practices in relation to protecting aquatic habitat and water quality were inadequate and needed additional environmental review under SEPA. **Response**: See response to comment S-100.	Sweitzer 37-6
S-225	**Comment**: The legislature re-affirmed the Class I, II, and III forest practice exemptions and due to the improvements in regulations and management systems, expanded the list of SEPA-exempt activities under Forest and Fish Report based forest practices program. The Legislature recognized the predictability in the prescriptive measures would ensure that buffers would be retained on specific kinds of streams, roads would be maintained to higher standards, and new triggers for SEPA review would be established for unstable slopes. The Legislature had such faith in the effectiveness of the forest practices program and prescriptive rules in the Forest and Fish Report that it directed the FPB to implement the recommendations on an emergency basis, exempting the rulemaking from SEPA. **Response**: See response to comment S-100.	Sweitzer 37-7
S-226	**Comment**: Current forest practices more than adequately address public resource protection. **Response**: See response to comment S-100.	Sweitzer 37-9
S-227	**Comment**: Simpson is extremely concerned that this technicality could potentially require all Class I, II and III forest practices to be subject to SEPA review and require preparation of lengthy and costly EISs. Simpson has been extremely involved the lengthy and costly process of negotiating foret practice rules and has been engaged in that process through the FPB. FPB rulemaking is comprehensive and this system includes a SEPA review process before adoption of rules. Subjecting routine forest management operations to this level of review is cost prohibitive and unnecessary, as the rules we operate under have already been through extensive review and public comment. **Response**: See response to comment S-100.	Thiemens 38-1
S-228	**Comment**: Boise Cascade Corporation files 150 forest practice permits annually. The process of going through the Class IV SEPA process is avoided and mitigated in our planning and layout because the process is an added	Tveit 39-1, T-2-1

	expense to our operations and increases the risk of legal challenge. SEPA is not designed, nor is it user friendly in considering the impacts of forest management activities. **Response**: See response to comment S-100.	
S-229	**Comment**: The major forest land owners have been very involved in designing the regulations so that the public resources are protected. Boise has had many people involved in the science and policy making of the regulation since the inception of the FPA. These rules have worked to balance the needs of public resources with the need to maintain a viable forest industry in Washington. **Response**: See response to comment S-100.	Tveit 39-2, T-2-2
S-230	**Comment**: We strongly support the proposed rule amendment. This action will not impact the public resources of Washington. It will only help to streamline the permitting process. **Response**: See response to comment S-100.	Tveit 39-3
S-231	**Comment**: Port Blakely Tree Farms and other commercial timber companies have the potential to be significantly effected economically by past and pending Court decisions relating to the interpretation of the legislative intent of statutory exemptions for Class I, II, and III forest practices. **Response**: See response to comment S-100.	Warjone 40-2
S-232	**Comment**: The relationship between statutory and administrative exemptions became confused when Ecology placed the statutory exemptions in Part Nine of the SEPA Rules along with the administrative exemptions adopted by Ecology. This treatment is inconsistent with the rules on school closures. The issue of whether statutory and administrative categorical exemptions are different has been raised in several recent court cases in the context of the categorical exemptions for Class III forest practices. We feel that the Court has erroneously determined that because WAC 197-11-305 applied to Part Nine of the SEPA Rules, the limitations in WAC 197-11- 305 applied to forest practices in spite of the exemption language in both the SEPA statute and the Forest Practices Act. **Response**: See responses to comments S-3 and S-100.	Warjone 40-3 Beck T-6-1
S-233	**Comment**: The Forest Practices Act attempts to achieve broad purposes and policies. "The Legislatures' intent in enacting FPA was to "foster commercial timber industry while protecting the environment", Snohomish Cy. V. State, 69 Wn App. 655, 665, 850 P.2d 546 (1993). To implement the Forest Practices Act, the Legislature created the FPB and provided it with statutory authority to	Warjone 40-4

	promulgate forest practice regulations. RCW **Response**: See response to comment S-100.	
S-234	**Comment**: In 1992, the FPB adopted the Watershed Analysis Rules, chapter 222-22 WAC, as a subset of the Forest Practices Rules. Prior to 1992, the DNR typically reviewed applications on a case-by-case basis and did not consider potential cumulative impacts of forest practices on a watershed resource. The express purpose of creating the Watershed Analysis was to avoid the past "piecemeal' effect by not reviewing cumulative impacts of forest practices on the fish, water and capital improvements of the state. When the FPB adopted the Watershed Analysis Rules, they also amended the Class IV-Special List. The FPB then determined that if a proposed forest practice is consistent with the prescriptions contained in an approved Watershed Analysis, a forest practice that otherwise would be classified as a Class IV-Special would now be classified as a Class III exempt from SEPA review. **Response**: See response to comment S-100.	Warjone 40-6 Beck T-6-3
S-235	**Comment**: SEPA supplements other existing agency authority. It is an overlay of all existing land use and environmental and procedural mandates. **Response**: See response to comment S-10.	Warjone 40-7
S-236	**Comment**: Since adopting SEPA in 1971, the Legislature has enacted ten statutory exemptions for a wide variety of activities. As noted by Professor Richard Settle, a leading commentator on SEPA, the statutory SEPA exemptions represent the Legislature's determination that certain actions are exempt from SEPA regardless of the environmental impacts of such actions. The Legislature has twice adopted statutory SEPA exemptions for Class I, II, and III forest practices. In 1975, the Legislature amended the FPA to provide that forest practices under Class I, II, III are exempt. In 1981, the Legislature amended SEPA to include the statutory exemption for Class I, II, and III forest practices. The Legislature directed Ecology to establish by rule categorical exemptions that were types of actions which would not significantly affect the environment. The rules also contain provisions for certain circumstances when exempt actions require SEPA review (WAC 197-11-305). It has been argued that WAC 197-11-305 should apply as a "limitation" on the statutory SEPA exemption for forest practices. This proposition ignores the substantial distinction between statutory SEPA exemptions and administrative categorical exemptions. Actions that fall within a statutory SEPA exemption are exempt regardless of their environmental impact. Under fundamental principles of statutory construction, we need to interpret statutes as to give effect to the entire statute with no portion rendered meaningless.	Warjone 40-8 Beck T-6-2, T-6-4, T-6-5, T-6-7

	We urge Ecology to amend the rules and "clarify" what the law already is – that Class I, II, and II forest practices are statutorily exempt. **Response**: See response to comment S-100.	
S-237	**Comment**: The misuse of WAC 197-11-305 has resulted in litigation and conflict that has been costly and wasteful in terms of dollars that could have been put to better use. The proposed amendment brings back clarity and the proper application of SEPA, and supports the legislative intent. **Response**: See response to comment S-100.	Warjone T-23-2
S-238	**Comment**: The Forest Practices Act was passed by the Legislature in 1974 shortly after SEPA was adopted by the Legislature in 1971. The Legislature intended that environmental protection for most forest practices would be afforded by the FPB substantive operating rules supplemented by case-by-case decisions made under Forest Practices Act procedures, rather than imposed on a case-by-case, ad hoc basis through the SEPA procedures. The proposed SEPA rule amendments will reemphasize the FPB's authority. **Response**: See response to comment S-100.	Warjone T-23-3
S-239	**Comment**: The Washington Forest Protection Association is confident through our active involvement in the development of forest practice rules over the last 28 years that amending SEPA will do nothing to stop responsible rule-making by the Forest Practice Board when needed. Due to rule-making by the FPB, streams are buffered, wetlands are protected, threatened species have habitat retained, cultural resources are identified and soon to be completely protected, harvest units are regulated in size and timing, steep and potentially unstable slopes are avoided in harvesting. All of these rules add up to a forested landscape where buffers and prohibitions against harvesting in certain areas result in protection of habitat on both site-specific and landscape basis. Amending SEPA does nothing to stop the FPB from doing what it does best – passing responsible rules to protect the public resources while maintaining the viability of the industry. **Response**: We agree that amending the SEPA Rules will not change the duties of the FPB associated with adopting forest practices rules. See response to comment S-8.	Warjone T-23-4
S-240	**Comment**: Maintaining our industry is a second policy goal important in this state. With the current economic situation, maybe it should be the first. Port Blakely Tree Farms has a long history of following the law as long as the law is clear and understandable. I've always been proud of this state in its policy. It recognizes the public and private interest. The profitable growing and	Warjone T-23-5

	harvesting of timber is good for this state. Jobs right now are more than just a little important. This state has also recognized that permitting the maximum operating freedom consistent with other policies such as protecting public resources is a vital goal to maintaining economic liability. Amending SEPA ensures the timber industry is regulated under one comprehensive system of laws, the Forest Practices Act. **Response**: See response to comment S-100.	
S-241	**Comment**: Any effort that simplifies state law, especially these kinds of laws is a good thing. The proposed amendment avoids duplicate processes in driving up the cost of operating in this state and aligns the goals of SEPA policy to reduce paperwork, duplication, and delay of improved environmental decision-making. Clearing up the role of SEPA in forest practices allows the state to continue to achieve two important goals I just outlined -- public resources are protected and the industry has predictable and expeditious permitting processes vital to our future. This should be a win-win situation for all. **Response**: See response to comment S-100.	Warjone T-23-6

Summary of Specific Comments and Recommendations

Number	Summary of Comment and Response	Commenter
S-300	**Comment**: WAC 197-800(4), Water Rights – The proposed amendments are confusing. If someone is not familiar with the statutory exemptions, SEPA review may be required on statutorily exempt water rights. Suggest changing the wording to: "Appropriations (<u>other than certain irrigation projects covered under RCW 43.21C.035</u>) or one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of ground water, for any purpose." **Response**: Rather than add a reference to chapter 43.21C RCW in each subsection of Part Nine, the proposed amendments include a note after the first paragraph of WAC 197-11-800 that states: "The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements."	Hall 14-1
S-301	**Comment**: We urge Ecology to publish with its SEPA Rules a list of statutory exemptions, with references to the SEPA sections in which they appear, so persons reading the Rules can easily find statutory exemptions that may be of interest to them.	Godbut 9-5, 9-11

	Deleting the paraphrased versions of the statutory exemptions from WAC 197-11-800 could make it more difficult for many people, both in state and local agencies and among the general public, to be aware of and quickly find statutory exemptions of interest to them. Ecology should expand the "note" after the introductory sentence of WAC 197-11-800 to include a table showing all the statutory exemptions in place as of a specified date, recognizing that this list is for guidance and convenience of readers but is subject to change by the Legislature. **Response**: Your comment is noted. Ecology had determined that the note is adequate to insure that readers will also refer to RCW 43.21C in determining whether an action is statutorily exempt from SEPA review.	
S-302	**Comment**: Revise/clarify the exemptions for hydrological measuring devises and construction associated with exempt water appropriations (diversion or intake structures, well and pumphouse, distribution system). **Response**: The suggested changes are beyond the scope of this rule amendment process.	Roush 32-3

Summary of Other Comments

Number	Summary of Comment and Response	Commenter
S-303	**Comment**: No public hearings are scheduled for regional areas. **Response**: Only one public hearing was scheduled since no changes were proposed to the individual categorical exemptions. The proposal is to remove the statutory exemptions from the SEPA Rules, but this does not change any of the exemptions.	Roush 32-1
S-304	**Comment**: No avenue to comment via e-mail **Response**: An e-mail address was provided with the public notice (CR-102).	Roush 32-2