

CHAPTER 4-7 FOREST PRACTICES

4-7-1 Findings

The Colville Business Council, on behalf of the Confederated Tribes of the Colville Reservation, finds: that there are approximately 811,000 acres of forest lands within the Colville Reservation, of which 729,000 are in Tribal or Indian ownership and 81,000 are in non-Indian fee ownership; that forest land resources are the most important natural resources within the Colville Reservation; that a sustained forest products industry is essential to the economy and welfare of all people of the Colville Reservation; that it is in the public interest that all forest lands be managed based on sound cultural and scientific policies to sustain all Reservation resources and the Reservation population; that promotion of a profitable forest products industry is compatible with sustainable forest management practices that integrate protections for water quality and quantity, fish and wildlife, soils, vegetation, and cultural resources, recreation and scenic beauty; that such management on all forest lands within the exterior boundaries of the Colville Reservation and all other associated Trust lands outside of the boundary lines of the Colville Reservation that are under the jurisdiction of the Colville Tribes is necessary to protect the political integrity, economic security, health, and welfare of the Colville Tribes and the Reservation population and to protect the authority of the Confederated Tribes of the Colville Reservation to effectively govern the Colville Reservation for these purposes; that the Tribes have a holistic goal, which states in pertinent part:

“we want a healthy society, environment and economy;... We are and continue to be self-sustaining sovereign entity; having flourishing enterprises; having healthy productive landscapes including rangelands cropland, forest, riparian areas, streams and lakes... The Reservation remains as a rural life-style and the populations in balance with an effective water, mineral, and energy cycle with biodiversity resulting in an abundance of culture, medicinal and edible plants, clean air and water, springs that flow year round, large trees, wildlife, fish and insects.”

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

4-7-2 Authority and Scope

(a) This Chapter is adopted pursuant to the retained inherent sovereignty of the Colville Tribes over the Colville Reservation and Tribal lands and over the conduct of all persons within the Reservation and tribal lands, in order to promote and protect the political integrity, economic security, and health and welfare of the Tribes and the Reservation community, as well as pursuant to any and all authority delegated to the Tribes by the United States.

(b) The provisions of this Chapter shall apply to forest practices on all forest lands and forest roads, within the Colville Reservation as defined in section 1-1-362 of this Code, including lands held in trust or in fee status, and on other Tribal trust lands or allotments of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

4-7-3 Definitions

Unless otherwise required by context, as used in this Chapter:

(a) “Application” means the forest practices application required pursuant to this Chapter.

(b) “Archaeological/Historical resources” means any material remains of past human life or activities which are of archaeological or historic interest and all historic property. Such material remains shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, or any portion or piece thereof, whether or not found in an archaeological context. Historic property includes any prehistoric or historic site, building, structure or object significant in Tribal history, architecture, culture or religion. The term includes all artifacts, records, and remains as designated. No item shall be treated as an archaeological/historic resource unless such

item is at least fifty (50) years of age.

I “Archeological/Historical site” means any location where an archeological/historical resource is identified. Archeological/historical sites include historic camping and gathering grounds, traditional fishing sites, sweat lodge locations, military forts, old settl’rs’ homes, historic buildings, historic trails, and kitchen middens.

(d) “Basal area” means the total cross-sectional area of trees measured outside the bark at 4 1/2 feet above the ground.

(e) “BIA” means the United States Department of Interior Bureau of Indian Affairs.

(f) “Borrow pit” means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

(g) “Burials” means any locations where human remains are found, except for those human remains that relate to a recent crime scene. Burials include purposefully interred human remains and any artifacts that may have been interred with the remains. For the purposes of this chapter, disinterred human remains will also be considered part of a burial. Colville Tribal elders have identified certain kinds of features as potentially containing burials, especially certain cairns and talus slide depressions. For the purposes of this chapter, cairns and talus slide depressions will be considered burials. Any reburial location will be considered the same as a primary burial.

(h) “Channel migration zone” means the area likely to be occupied by a stream channel over time as indicated by floodplain characteristics and evidence of active channel movement. It may include the floodplain, the area between stream channel and side channels, or an area within the full range of meander bends.

(i) “Chapter” means this Forest Practices Chapter of the Colville Tribal Code.

(j) “Chemical” means a substance or substances in liquid, gas or solid form that may be applied to forest lands, roads, or vegetation to accomplish specific purposes and includes pesticides, fertilizers, desiccants, fire retardants when used in controlled burning, repellents, oil, dust-control agents (other than water) and salt. In addition, “chemicals” shall include all other materials that may present hazards to the environment.

(k) “Colville Environmental Quality Commission” or “CEQC” means the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation, as provided under Chapter 4-23 of the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10)

(l) “Commercial tree species” means any species which are capable of producing a merchantable stand of timber on the particular site.

(m) “Completion of harvest” means whatever occurs latest of:

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

(2) Scheduled completion of any slash disposal operations where the Department and the applicant agree within six (6) months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal, or

(3) Scheduled completion of any site preparation or rehabilitation of adjoining lands

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

(n) "Contamination" means the introduction into the atmosphere, soil, vegetation, or water, as a result of forest practice activities of any substance, whether in liquid, gas or solid form, in sufficient quantities as may be directly injurious to the health, safety or welfare of the Reservation population or individually injurious to the Reservation population, or which may otherwise pose a threat to Reservation resources, in particular, air quality, water quality, soil, wildlife, fish or other aquatic life and their respective habitat.

Application of forest chemicals in accordance with the chemical label, sections 4-7-86 and 4-7-87 of this Chapter, and the conditions of an approved forest practice application shall not be considered contamination.

(o) "Conversion of forest land" means a bona fide conversion to an active use that is incompatible with timber growing. Reforestation requirements shall apply to portions of the harvested area which is not converted within three years of completion of harvest.

(p) "Cross Drain" means a feature or structure that disperses road surface or ditch runoff to adjacent ground. Cross drains include culverts, ditch diversions, water bars or dips, or other structures demonstrated to be equally effective.

(q) "Cultural resources" means those parts of the physical environment, either natural or artificially constructed, that have cultural value to the people of the Colville Reservation.

(r) "Debris" means garbage, trash, leftover cable and equipment, and other non-wood waste material.

(s) "Department" means the Natural Resource Department of the Confederated Tribes of the Colville Reservation.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)
(Amended 11/5/15, Certified 11/20/15, Resolution 2015-668)

(t) "Detrimental soil conditions" are conditions caused by forest practices that reduce site productivity and include any of the following:

(1) Displacement - movement or removal of topsoil. Topsoil is the surface layer of mineral soil, or A Horizon, that is rich in nutrients, contains partially decomposed organic matter, and is often dark-colored.

(2) Compaction - topsoil is noticeably compressed or flattened, decreasing several inches in depth in contrast to nearby undisturbed soils of similar character.

(3) Fire damage - most of the topsoil is consumed and the top layer of mineral soil has changed color (usually to red).

(u) "Diameter at breast height (dbh)" means the diameter of a tree at 4 ½ feet above the ground measured from the uphill side.

(v) "Dominant trees" means trees that are larger than average for a site with crowns extending above the general level of the crown cover.

(w) "Drainage improvements" means all culverts, ditches, dips, waterbars, cross drains, or other structures or provisions for passing natural waters under roads or collecting and dispersing road runoff.

(x) “End hauling” means the removal and transportation of excavated material, to a deposit site not adjacent to the point of removal.

(y) “Fill” means the placement of earth material or aggregate for road or landing construction or other similar activities.

(z) “Floodplain” means a generally flat landform lying adjacent to streams, composed primarily of depositional material derived from the stream, and subject to periodic flooding by the stream.

(aa) “Forest land” means all land capable of supporting a merchantable stand of timber that is not being actively used for a use which is incompatible with timber growing. Forest land does not include land within 200 feet of an occupied residence or the right-of-way or easement of paved roads improved and maintained to provide general public transportation.

(bb) “Forest landowner” means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner; Provided, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of “forest landowner” unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(cc) “Forest practice” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to forest road construction, maintenance, and abandonment; forest products haul; forest vegetation treatments, including timber harvesting, pre-commercial thinning and slashing; application of chemicals; site preparation; prescribed burning; tree planting; and fire suppression and construction of fire trails.

(dd) “Forest Road” means all roads on forest lands and other roads that receive use periodically for log haul, but shall not include paved roads improved and maintained to provide general public transportation nor roads used solely for residential driveways.

(ee) “Ground-based” means forest practice operations carried out using heavy equipment or vehicle-mounted spray equipment off road.

(ff) “Habitat type” means the collective area that now supports, or is capable of supporting, a specific climax plant community or association. Forest habitat types of the Reservation are described in the publication, “Forest Habitat Types of the Colville Indian Reservation,” Washington State University Publication MISC0110.

(gg) “Heavy equipment” means any mobile, track or wheeled machinery used to excavate, perform site preparation, construct fire trail, or fell, bunch, forward, or skid timber.

(hh) “Merchantable stand of timber” means a stand of trees that will yield logs and/or fiber:

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

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

(ii) “Notice to Comply” means a notice issued by the Department that may require initiation or completion of action necessary to prevent, correct or compensate for material damage to Reservation resources resulting from forest practices.

(jj) "Operator" means any person engaging in forest practices except an employee with wages as his sole compensation.

(kk) "Person" means any individual, partnership, private, public, Tribal or municipal corporation, Tribal enterprise, county, the Department or any Tribal, state or local governmental entity, or association of individuals of whatever nature.

(ll) "Pesticide" means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(3) Any spray adjuvant or similar agent with or without toxic properties of its own intended to be used with any pesticide as an aid to the application, and sold in a container separate from that of the pesticide with which it is to be used.

(mm) "Preferred grass seed mixture" means one of the following mixtures, which shall be weed-free:

(1) For dry habitat types including all ponderosa pine, Douglas-fir/Idaho fescue, Douglas-fir/ninebark/heartleaf arnica phase and all Douglas-fir/snowberry habitat types:

A seed mixture of the following composition:

| | |
|------------------------------------|-----|
| Bluebunch wheatgrass | 30% |
| Slender wheatgrass or winter wheat | 30% |
| Sherman BigBlue | 5% |
| Thickspike wheatgrass | 35% |

(2) For other habitat types:

A seed mixture of the following composition:

| | |
|------------------------------------|-----|
| Mountain Brome | 35% |
| Slender wheatgrass or winter wheat | 30% |
| Sherman Big Blue | 10% |
| Blue Wildrye | 25% |

(3) Where conditions in section 4-7-64 (d) occur, a preferred alternative seed mixture of the following composition:

| | |
|------------------------------------|-----|
| Sherman Big Blue | 10% |
| Intermediate wheatgrass | 30% |
| Slender wheatgrass or winter wheat | 35% |
| Siberian wheatgrass | 25% |

(nn) "Regeneration harvest" means harvests intended to promote growth of regeneration (tree seedlings or saplings) already present or to make new regeneration possible, and which rely upon even-aged cutting methods such as seed tree, shelterwood or regeneration reserve tree.

(oo) "Relief culvert" means a cross drain culvert to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

(pp) “Reserve patch” means unharvested sites located within areas being harvested, comprising at least two contiguous acres, having timber and other vegetation representative of the stand being harvested.

(qq) “Reserve trees” means conifer trees that occupy a dominant or codominant canopy position, have a live crown-to-total height ratio of 30% or more, and which will not infect or infest surrounding understory trees.

(rr) “Reservation population” means all people residing on any lands, whether trust or fee, within the exterior boundaries of the Colville Reservation.

(ss) “Reservation resources” means air, archaeological/historical, cultural, soil, water, plant, fish, and wildlife resources, and in addition shall mean capital improvements on the Colville Reservation.

(tt) “Riparian function” means the combination of stream energy dissipation, sediment filtering, bedload capture, floodplain development, water storage, streambank stabilization, shade, woody debris recruitment, litter fall, wildlife habitat, genetic exchange, and biodiversity provided by riparian management zones.

(uu) “Riparian Management Zone” means a specified area alongside natural waters and wetlands where specific measures are required to protect water quality and riparian function.

(vv) “Road prism” means the components of a road that form its cross section, including the cutslope, ditch, road surface, and load-bearing fill.

(ww) “Road reconstruction” means the maintenance, repair, or re-opening of pre-existing, non-driveable or abandoned road beds.

(xx) “Road surface” means the road’s running surface and shoulders.

(yy) “Salvage” means the removal of snags, down logs, windthrow, or dead and dying material.

(zz) “Scarify” means to loosen the topsoil and disrupt the forest floor (organic material overlying soil) in preparation for regeneration.

(aaa) “Shoreline Regulatory Area” means those lands subject to Chapter 4-15 and the regulations contained in the Shoreline Management Program and shall include any floodways and formally mapped and approved contiguous floodplain areas and all wetlands associated with the streams and lakes which are subject to the provisions of the Chapter. The Shoreline Regulatory Area includes those lands extending landward on a horizontal plane two hundred (200) feet from the ordinary high water mark of Type 1, 2, and 3 waters, and one hundred (100) feet from the ordinary high water mark of Type 4 waters.

(bbb) “Side cast” means the act of moving excavated material to the side and beyond the load bearing road or trail materials, or the material so deposited.

(ccc) “Site preparation” means the mechanical or chemical treatment or prescribed burning of forest floor, logging slash, or vegetation for the purpose of exposing a seed bed or creating plantable spots to enable reforestation.

(ddd) “Skid trail” means a route used by ground-based machinery to move logs to a landing or road.

(eee) “Slash” means non-merchantable woody material resulting from forest practice activities.

(fff) “Spoil” means excess material generated during road, pit, or landing construction which is placed or stored outside the road prism, pit or landing.

(ggg) “Stocking” or “acceptable stocking” means the minimum number of well distributed, vigorous seedlings, saplings or trees per acre of commercial species as approved by the Department or as contained in any approved Forest Practice application.

(hhh) “Stop Work Order” means the order described in section 4-7-16 that may be issued by the Department to stop violations of this Chapter to prevent damage or to correct or compensate for damages to Reservation resources or harm to the health, safety or welfare of the Reservation population resulting from forest practices.

(iii) “Timber” means forest trees, standing or down, of a commercial species.

(jjj) “Timber owner” means any person having all/or any part of the legal interest in timber.

(kkk) “Traditional Cultural Activities” mean any activity by a member of the Confederated Tribes of the Colville Reservation that has been traditionally practiced by the members of this region for the subsistence of body and spirit, such as food gathering practices of root digging, berry picking, hunting, fishing, medicine gathering, the assembly of and use of sweat lodges, the use of spiritual/vision quests areas, and the retrieval of plants, trees, rocks, water, skins/hides and feathers which are within the cultural tradition of the membership.

(lll) “Unstable slopes or landforms” means any areas containing features or landforms which cumulatively indicate the presence of potential slope instability. Such features may include seeps and sag ponds, hummocky ground, jack-strawed or pistol-butted trees, or existing slide escarpments. Landforms may include very steep slopes (65% or more), inner gorges, bedrock hollows, convergent headwalls, deep-seated landslides, valley walls and terrace escarpments mantled with colluvium and glacial deposits, and outer edges of meander bends or high terraces. Unstable slopes or landforms shall be field verified by the Department.

(mmm) “Water bar” means a dip, ditch, hump, or combination thereof cut across a trail, landing, or road for the purpose of dispersing surface water runoff to directed areas and preventing erosion.

(nnn) “Windthrow” means a natural process by which trees are uprooted or sustain severe trunk damage as a result of wind action.

(ooo) “Winter roost” means locations that provide congregations of migrant bald eagles protection from wind, inclement weather, and human disturbance during the winter months beginning in mid-October thru mid-March.

(ppp) “Woody debris” means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities.

4-7-4 Forest Practice Chapter—Administration—Review—Revisions

(a) This Chapter establishes the minimum standards for forest practices affecting Reservation resources and the Reservation population, and the necessary administrative procedures to achieve the policies and goal of this Chapter.

(b) Forest practice regulations shall be administered and enforced by the Department except as otherwise provided in this Chapter. Enforcement shall be exclusively by civil proceeding.

(c) This Chapter shall be continuously reviewed, and the Department shall annually provide to the Tribal Council recommendations for amendments. Prior to any such revisions, the Tribal Council shall seek and evaluate recommendations of persons and agencies with expertise or interest in the

subject matters.

4-7-5 Classes of Forest Practices

There are four (4) classes of forest practices created by this Chapter. These classes include all forest practice activities conducted on forest land, in groupings that recognize their potential impact on Reservation resources and the health, safety and welfare of the Reservation population. All forest practices, regardless of whether or not they require an application for approval, must be conducted in accordance with this Chapter.

(a) Class I Forest Practices: Operations that are deemed to have no direct potential for damaging a Reservation resource or the health, safety or welfare of the Reservation population. The following operations are Class I forest practices and do not require an application:

- (1) Forestry research studies and tests by a research organization approved by the Colville Tribes.
- (2) The removal of forest products (including live, dead and down material, i.e., firewood, fence posts, poles, fern, etc.) for personal, noncommercial use, provided:
 - (A) Heavy equipment shall not be used; and
 - (B) Removals and operations shall not be conducted within waters or wetlands.
- (3) The removal of trees posing safety hazards;
 - (A) Within 200 feet of developed park areas; or
 - (B) Within 100 feet of county or BIA system roads providing the primary access route to groups of five or more residences.
- (4) Road maintenance including road grading, rocking, and installation of cross drains, except:
 - (A) Replacement of bridges and culverts at crossings of waters or wetlands; or
 - (B) Movement, placement, or replacement of materials which have a direct potential for entering waters or wetlands; or
 - (C) Application of roadside chemicals.
- (5) Emergency fire control and suppression.
- (6) Loading and hauling of forest products.
- (7) Operations such as pre-commercial thinning or slashing conducted outside the Riparian Management Zone.
- (8) Slash burning conducted in accordance with a burn plan approved by BIA Fire Management.
- (9) Tree planting.

(b) Class II Forest Practices: Operations that are deemed to have little potential for damaging a Reservation resource, or the health, safety or welfare of the Reservation population. The following operations are Class II forest practices and require an application:

- (1) Renewal of an approved forest practice application where:
 - (A) No modification of the uncompleted operations is proposed, and
 - (B) No Notice to Comply, Stop Work Orders, or other Tribal enforcement actions is outstanding with respect to the prior application.
 - (2) Harvest on sole ownerships of 20 acres or less that lie outside Riparian Management Zones, except as listed as Class IV forest practices.
- (c) Class III Forest Practices: Operations that are deemed to have some potential for damaging a Reservation resource, or the health, safety or welfare of the Reservation population. The following operations are Class III forest practices and require an application:
- (1) All forest practices except those listed as Class I, II or IV forest practices.
 - (2) The removal of forest products for commercial purposes, such as logs, firewood, shakes, poles, posts.
 - (3) Ground-based or hand application of chemicals.
 - (4) Forest practices utilizing heavy equipment, such as:
 - (A) Timber harvest;
 - (B) Road construction and reconstruction;
 - (C) Development of rock pits;
 - (D) Construction of fire trails prior to prescribed burning; and
 - (E) Site preparation.
 - (5) Road abandonment.
 - (6) Replacement of water crossing structures, and road maintenance wherein the movement, placement, or replacement of materials has the direct potential for entering waters or wetlands.
 - (7) Any forest practices application proposing an alternate plan.
 - (8) Operations such as pre-commercial thinning or slashing if conducted inside the Riparian Management Zone.

(d) Class IV Forest Practices: Operations that are deemed to have potential for a significant effect on Reservation resources or the health, safety or welfare of the Reservation population. Class IV forest practices require an application. It may be determined that additional information or a detailed environmental impact statement is required prior to conducting the forest practices. The responsibility and cost of preparing any assessment, additional information, or statement required by the Department shall be borne by the applicant. At the discretion of the Department, the applicant may be required to pay for costs reasonably incurred in evaluating the environmental information. The following are Class IV forest practices:

- (1) Forest practices (except those listed as Class I) on lands identified as follows:
 - (A) Lands zoned as residential, commercial, tourist, game reserve, wilderness,

or industrial zone pursuant to the Colville Tribes Land Use & Development Code, Chapter 4-3 as it now exists or may be afterward be amended,

(B) Lands being or declared to be converted to a non-forest use, including sites where reforestation will not be achieved within the times specified in section 4-7-77.

(C) Lands within two hundred (200) feet of any park or campground,

(D) Lands containing, or with a high probability of containing, burials, cultural sites, or historically significant resources such as cultural, religious, or archaeological/historical resources under Tribal or federal law.

(E) Lands containing or adjacent to unstable slopes or landforms,

(F) Lands containing habitat of species specified in sections 4-7-84 and 4-7-85,

(2) Any aerial application of chemicals, or use of a pesticide under an experimental use permit granted under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act.

(e) Continuing Review of Forest Practices Classification

(1) Pursuant to this Chapter, forest practices shall be included in each of the four (4) classes.

(2) Further refinement of four (4) classes may be necessary as additional experience develops under this Chapter. The Department shall provide recommendations to the Colville Business Council annually on any categories of forest practice that should be reclassified:

(A) To make the classification better conform to these criteria, and;

(B) To provide greater clarity and certainty for potential applicants and others as to which forest practice activities are in Classes I, II, III and IV forest practices.

(3) The classification of a forest practice shall not be subject to administrative appeal or judicial review.

4-7-6 Water Categories

(a) For the purposes of this Chapter, four water types are established for all surface waters, including but not limited to streams, wetlands, lakes, and ponds within the Reservation. All waters are classified as Type 1, 2, 3, or 4 Waters based upon the criteria set forth in subsections (b) through (e) of this section. Prior to commencement of any forest practices, operators and landowners shall verify accurate water types for all waters within and near the practices, based upon the actual characteristics and locations of the waters, provide the appropriate protections required by this Chapter.

(b) "Type 1 Water" means all waters having exceptional resource functions and values, including stream segments with their side channels having mean annual flow exceeding 20 cubic feet per second, lakes having surface areas at mean high water exceeding 20 acres, non-forested wetlands having surface areas exceeding 20 acres, all bogs, and any waters so designated by the Colville Business Council. A water resource of exceptional resource function and value, as determined by the Tribal Council is a water resource that provides values critical to the well-being of the Reservation population and resources, which may include but are not limited to:

- (1) traditional or cultural uses;
- (2) major domestic water supplies;
- (3) Tribal or public recreation;
- (4) fish spawning, rearing or migration;
- (5) wildlife habitat and uses;
- (6) agricultural or industrial uses; and
- (7) capital improvements.

(c) “Type 2 Water” classification shall be applied to segments of natural waters that:

- (1) are not classified as a “Type 1 Water;” and
- (2) have a channel width that averages eight (8) feet or more between ordinary high water marks; or
- (3) are ponds or lakes having a surface area of at least 5 acres but less than 20 acres between ordinary high water marks; or
- (4) are non-forested wetlands having a surface area of at least 5 acres but less than 20 acres, or smaller non-forested wetlands that adjoin Type 2 waters.

(d) “Type 3 Water” classification shall be applied to segments of natural water that:

- (1) are not classified as “Type 1 or 2 Waters;”
- (2) have a channel width that averages four (4) feet or more but less than eight (8) feet between the ordinary high water marks; or
- (3) are ponds or lakes having a surface area of at least 0.5 acres but less than 5 acres between the ordinary high water marks; or
- (4) are non-forested wetlands having a surface area of at least 0.5 acres but less than 5 acres, or smaller non-forested wetlands that adjoin Type 3 waters; or
- (5) are waters having smaller channel width or surface area, that provide fish habitat, as determined by the Department in consultation with the Department of Fish & Wildlife.

(e) “Type 4 Water” classification shall be applied to segments of natural water that:

- (1) are not classified as “Type 1, 2, or 3 Waters” and do not provide fish habitat.
- (2) have a channel width that averages less than four (4) feet between the ordinary high water marks; or
- (3) are ponds or lakes having a surface area less than 0.5 acre between the ordinary high water marks; or
- (4) are non-forested wetlands having a surface area less than 0.5 acres; or
- (5) are areas of perennial or intermittent seepage, forested wetlands, or drainage ways

having short periods of seasonal or storm run-off that show evidence of scour or bedload movement.

(f) The CCT Natural Resources Department maintains a Water Type Map which displays water locations and types based on the criteria in subsections (b) through (e) above. Mapped water locations and water type designations may be corrected, from time to time through a water type change process. Proposed corrections to the Water Type Map shall be submitted in writing to the Department on a Water Type Change form. The form shall identify the water, location, evaluation method, results, and the initiator of the proposed change. Prior to approval of the change, the form shall be distributed to the landowner and affected natural resource programs and 30 days shall be allowed for review and comment

(g) For purposes of this section:

(1) “Bog” means wetlands that commonly exhibit deep, organic-rich, hydric soils and indicator species including sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges. An overstory of spruce, hemlock, lodgepole pine, cedar, crabapple, or aspen may exist. Bogs may be associated with open water.

(2) “Channel width” means the distance between ordinary high water marks measured over a representative section of at least five hundred (500) lineal feet with at least ten (10) evenly spaced measurement points along the normal stream channel.

(3) “Fish habitat” means waters having flow volumes and duration, and physical characteristics that could be expected to provide seasonal or perennial habitat, and that have (or would have if not artificially blocked) connectivity to other fish-bearing waters.

(4) “Forested wetland” means a wetland with an overstory of commercial tree species (more than 50% existing or potential canopy closure from commercial tree species), excluding bogs.

(5) “Natural Waters” means only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(6) “Non-forested wetland” is a wetland dominated by vegetation other than commercial tree species (generally less than 50% existing or potential canopy closure from commercial tree species).

(7) “Ordinary high water mark” (OHWM) means the mark on the shores of all waters found by examining the beds and banks and ascertaining where the presence and action of waters create a condition distinct from that of the abutting upland. It is the elevation above which water would enter the floodplain or intersect a terrace or hillslope, identified by a combination of the following: (1) top of point bars, (2) vegetation changing from none or annual water-tolerant species to perennial water-tolerant or upland species, (3) break in slope from the channel bank to a flat valley bottom, terrace or bench, (4) change in size, staining, or color of substrate materials (surface sediments changing from gravel to fine sand), and (5) change in the nature and amount of woody debris deposits. The width between Ordinary High Water Marks of a stream shall equal the sum of the widths of the main channel and side channels.

(8) “Side channel” means a secondary stream channel having a bed elevation below the ordinary high water elevation of the main channel and showing evidence of scour or bedload movement.

(9) “Wetland” means those areas, which under normal conditions exhibit at least two of the following criteria: saturated surface conditions or open water present during a

significant portion of the year; hydric soils; a prevalence of vegetation adapted to saturated soils. Swamps, marshes, bogs, wet meadows, and ponds typically are wetlands. For the purposes of this Chapter, wetlands are considered to be natural waters.

4-7-7 Applications; Policy

(a) No Class II, III, or IV forest practices shall be commenced unless the Department has received and approved or conditionally approved an application for forest practices pursuant to this Chapter. Where the time limit for the Department to act on the application has expired and no action thereon has been taken by the Department, and none of the conditions in section 4-7-9 (a) exist, the operation may commence, providing that such operations shall comply in all respects with the requirements of this Chapter and other applicable Tribal and federal laws, and that the operator shall provide written notice to the Department prior to beginning operation.

(b) At the option of the applicant, applications may be submitted to cover a single forest practice or any number of forest practices within reasonable geographic boundaries as specified by the Department. Long range plans may be submitted to the Department for review and consultation.

(c) The Department shall prescribe the form and contents of the application, specifying what information is required for the Department to accept an application for review.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-623)

(d) Applications for operations not converting land to another use shall be signed by the landowner, the timber owner and the operator; or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he is familiar with this Chapter, including the provisions dealing with conversion to another use. Where the application is not signed by the landowner, timber owner or operator may be required by the Department to submit a bond securing compliance with requirements of the Forest Practice Regulations. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(e) Applications must be delivered to the Department at the appropriate office. Delivery should be in person or by registered or certified mail.

(f) Applications shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general delivery. Applications that are not complete or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application. If an application is delivered in person or by mail to the Department by the operator or his authorized agent, the Department shall promptly but not later than twenty-four (24) hours provide a dated receipt. In all other cases, the Department shall promptly mail a dated receipt to the applicant. Every receipt will indicate the file number assigned to the notification or application.

(g) The information required by the Department on a application shall include but not be limited to:

- (1) Name and address of the forest land owner, timber owner, and operator;
- (2) Description of the proposed forest practice or practices to be conducted;
- (3) Legal description of the land on which the forest practices are to be conducted;
- (4) Specific locations of any lands to be converted.
- (5) Planimetric and topographic maps of adequate size and detail showing location and

type of all wetlands, lakes, streams and other Reservation waters in and immediately adjacent to the operating area and showing all existing and proposed roads, forest practice activities, landings, major tractor roads, rock pits, spoil disposal areas, and fire trails;

(6) Description and locations of all activities to be conducted within or across waters, wetlands, and Riparian Management Zones;

(7) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(8) Proposed plan for reforestation and for any stabilization necessary to reduce erosion potential from road and operating areas as required by the Forest Practices Regulations;

(9) Other environmental documents prepared by the Tribes, government agencies, or consultants; the chemical label; and soil, geological, and hydrological or watershed data relating to the forest practices when required by the Department;

(10) The expected dates of commencement and completion of all forest practices specified in the application;

(11) Assessment of existing roads including haul roads, and provisions for construction, reconstruction, or abandonment of roads needed to achieve the standards set forth in section 4-7-61 and to afford protection to Reservation resources; and

(12) An affirmation that the statements contained in the application are true.

(h) The applicant shall indicate whether any land covered by the application will be converted to a use other than commercial timber production within three (3) years after completion of the forest practices described in it. If the application states that any such land will be converted or is intended to be converted:

(1) The reforestation requirements of this Chapter shall not apply if the land in fact is so converted within three (3) years unless applicable alternatives or limitations are provided in forest practices regulations issued under this Chapter as now or hereafter amended;

(2) Conversion to a use other than commercial timber production upon completion of such forest practices without appropriate consent or approval from the Colville Business Council constitutes a violation of those laws for which such consent or approval is required.

(i) As part of an application, an alternate plan may be proposed in variance with certain requirements specified in sections 4-7-60 through 4-7-91. The application shall specify in writing which requirements are proposed to be modified, and how the proposed alternate plan will provide protection to Reservation resources equal to or greater than that provided by the requirement or requirements for which an alternative is sought. During review of the alternate plan, the Department shall conduct a site inspection, consult with other departments or specialists having relevant resource expertise or jurisdiction, and shall approve an alternate plan that provides protection to Reservation resources equal to or greater than provided by the requirements for which an alternative is sought.

Alternate plans proposed with respect to forest practices proposed on Tribal or allotment trust land shall be reviewed by the Department in consultation with a multidisciplinary team to be coordinated by the CCT IRMP Coordinator. If consensus is not achieved, the IRMP Coordinator may provide a recommendation to the CCT Natural Resources Department Managers Team for its concurrence. The Managers Team shall be provided a copy of the proposed alternate plan and written notice of the need for decision at least one week prior to the Managers decision date. The

Department shall determine in writing whether the multidisciplinary process or the Managers Team recommendation provides protection to Reservation resources equal to or greater than that provided by the requirements for which an alternative is sought.

If proposed, an alternate plan shall contain adequate details to allow comparison with the standard provisions, including:

- (1) Standard provisions to be waived and specifications of the alternate practice proposed;
- (2) General description of site, resource conditions, and special circumstances that support use of an alternate practice;
- (3) Analysis describing Reservation resources affected, and comparing near- and long-term effects on condition and function of Reservation resources resulting from the alternate practice versus standard practices;
- (4) Map specifying location and operational details of the alternate practice.

(j) Before the operator commences any forest practice in a manner significantly different from that described in a previously filed notification or application, there shall be submitted to the Department a new application or notification in the manner set forth in this section.

(k) The approval given by the Department to conduct a forest practice shall be effective for a term of up to five (5) years as specified by the Department. If a written notice is submitted to the Department thirty (30) days before such term ends, an extension for one year may be granted and no new application shall be required, providing that the forest practices to be employed remain the same and the Department does not believe a new application is needed.

(Amended 6/7/05, Resolution 2005-326)
(Certified 7/12/05)

(l) Notwithstanding any other provision of this section, no prior notification or application shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake or other emergency defined by the Colville Environmental Quality Commission, but the operator shall submit an application or notification, whichever is applicable, to the Department within forty-eight (48) hours after commencement of such practice, provided that the operator shall comply with any Stop Work Order or Notice to Comply the same as if such forest practices were being performed pursuant to an approved application.

4-7-8 Application Time Limits

(a) A properly completed application delivered to the Department shall be approved or disapproved within three (3) working days for Class II, fourteen (14) working days for Class III and thirty (30) working days for Class IV forest practices, except:

- (1) To the extent the Department is prohibited from approving the application by this Chapter.
- (2) For "Class IV" applications when the Department has determined that additional information, or an environmental assessment or statement must be prepared, an application received without the information, assessment, or statement shall be considered incomplete.

(b) Where an application covers both Class III and Class IV forest practices, the Department shall have thirty (30) working days to approve or disapprove the application.

(c) If the application indicates that only Class II or III forest practices will occur, and the Department determines it involves some Class IV forest practices, the Department shall notify the applicant and extend the review as in (b) above. If the application is already approved, the Department shall issue a Stop Work Order or take other appropriate action.

(d) If field conditions prevent the Department from being able to properly evaluate the application, the Department may disapprove the application or portions thereof until field conditions allow for an on-site review.

4-7-9 Approval and Disapproval Policy

(a) Applications shall be approved except to the extent the Department finds:

(1) The application is incomplete, improperly filed, or inaccurate.

(2) The operator has been enjoined from conducting forest practices by a Colville Tribal Court action under this Chapter.

(3) Conducting the operation(s) in accordance with the application would be inconsistent with this Chapter and no acceptable alternate plan is approved.

(b) If an application is properly filed but portions of it must be disapproved any portions of the proposed operations which can be separately conducted in compliance with this Chapter without reasonable risk to a Reservation resource or the health, safety and welfare of the Reservation population shall be approved, or approved with conditions.

(c) The Department shall specify the particular operation or parts thereof disapproved and the reasons therefore, citing the provision(s) of these Regulations with which the proposed operations(s) do not comply.

(d) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damages to either a Reservation resource or to the health, safety or welfare of the Reservation population, as determined by the Department, the applicant shall, when required by a condition or approval, notify the Department two (2) days before the commencement of actual operations.

(e) The Department may specify application approval conditions when necessary to protect Reservation resources. In the development of such conditions, the Department will rely upon the expertise of qualified specialists regarding the resources at risk. When an alternate plan is approved as part of a forest practice application, the approval shall include a finding of equal or better resource protection.

(f) All approvals are subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a Stop Work Order or a Notice to Comply.

(g) Approval of an application to conduct forest practices under this Chapter does not constitute approval of any other permit that may be required, and except as expressly provided in this Chapter, does not constitute a waiver of any other requirement of this Code. Other permits may also be required for certain practices, such as a Road Use Permit, or permits which may be required by the Hydraulics Project Act, Shoreline Protection Act or other applicable laws.

4-7-10 Conversion to Non-forest Use

If an application to harvest signed by the landowner indicates that within three (3) years of application approval the forest land will be converted to an active use which is incompatible with timber growing, the reforestation requirements of these regulations shall not apply to the area proposed for conversion. Information relating to reforestation of the area to be converted need not be supplied. However, if such other use is not implemented within three (3) years after application

approval the reforestation requirements shall apply and such reforestation shall be completed within one (1) additional year. Any conversion of forest land shall comply with Chapters 4-3 and 4-15 of this Colville Tribal Code.

4-7-11 Supplemental Directives

(a) Purpose of supplemental directives: The Department may issue supplemental directives to the forest landowner, timber owner and operator, advising them to modify forest practice operations when the Department determines a different course of action or minor changes in the operation will provide greater assurance that the purposes and policies set forth in this Chapter will be met.

(b) Content of supplemental directives: Supplemental directives shall indicate the reason for their issuance specifying:

- (1) the preferred course of action or minor change;
- (2) expected improvements in protection to Reservation resources or population; and
- (3) location the preferred course of action or change will occur.

(c) Form, service: All supplemental directives shall either be in writing or be confirmed in writing. The supplemental directive shall be given to the operator and a copy mailed promptly to the forest landowner and to the timber owner if different from the forest landowner.

(d) Directive constitutes approval: No other approval of the Department shall be necessary to conduct forest practice operations in compliance with the terms of a supplemental directive.

4-7-12 Enforcement Policy

It is the policy of this Chapter to encourage informal, practical, result-orientated resolution of alleged violations and actions needed to prevent damage to Reservation resources or harm to the health, safety or welfare of the Reservation population. It is also the policy of this Chapter, consistent with the principles of due process, to provide effective procedures for enforcement. This Chapter provides the following enforcement procedures: informal conferences; Notices to Comply; Stop Work Orders; corrective actions by the Department; civil penalties; injunctions and other civil and administrative judicial relief. The enforcement procedures, following these policies, will be carried out by the Department, or other tribal enforcement officials as requested by the Department, or both. The enforcement procedure used in any particular case shall be appropriate in view of the nature and extent of the violation or the damage or risk to Reservation resources and the health, safety and welfare of the Reservation population and the degree of bad faith or good faith of the persons involved.

4-7-13 Informal Conferences

(a) Opportunity mandatory: The Department shall afford the operator or his representative reasonable opportunities to discuss proposed enforcement actions at an informal conference prior to taking further enforcement action, unless the Department determines that there may be either imminent environmental damages to a Reservation resource or adverse impact upon the health, safety and welfare of the Reservation population. Informal conferences may be used at any stage in enforcement proceedings, except that the Department may refuse to conduct informal conferences with respect to any matter then pending before the Colville Environmental Quality Commission or the Colville Tribal Court.

(b) Reports required: Department personnel in attendance at informal conference shall keep written notes of the date and place of the conference, the persons in attendance, the subject matter discussed, and any decisions reached with respect to further enforcement action.

(c) Records available: Copies of written notes shall be sent to each participant in the conference, be kept in the Department files until one (1) year after final action on the application involved,

and be open to public inspection.

4-7-14 Notice to Comply—Contents—Procedures—Hearing—Final Order—Limitations on Actions

(a) Where a violation, deviation from an approved application, or material damage to a Reservation resource or harm to the Reservation population has occurred, or the Department determines that a reasonable potential for such material damage or harm exists as a result of a forest practice, and the Department determines that a Stop Work Order is unnecessary then the Department shall issue and serve upon the operator or landowner a Notice to Comply, which shall clearly set forth:

- (1) The specific nature, extent, and time of violation or deviation and the damage or potential damage to a Reservation resource or harm to the Reservation population;
- (2) The relevant provisions of this Chapter relating thereto;
- (3) The right of the operator or landowner to a hearing before the Department; and
- (4) The specific course of action violation or deviation, and to prevent, correct and compensate for material damage to Reservation resources or harm to the Reservation population which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource; and/or those courses of action necessary to prevent continuing damage to Reservation resources or harm to the Reservation population where the damage is resulting from circumstances that could not be reasonably foreseen at the time of the approval of the application.

(b) The Department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. The operator or owner shall undertake the course of action so ordered by the Department unless, within fifteen (15) days after the date of service of such Notice to Comply, the operator, forest landowner, or timber owner, shall request the Department in writing to schedule a hearing. If so requested the Department shall schedule a hearing on a date not more than twenty (20) days after receiving such request. Within ten (10) days after such hearing, the Department shall issue an interim order either withdrawing its Notice to Comply or clearly setting forth the specific course of action to be followed. Such interim order shall become final ten (10) days after its issuance and the operator or owner shall undertake the course of action so ordered by the Department unless within this ten (10) day period the operator, forest landowner, or timber owner elects to exhaust his administrative remedies by appealing such interim order to the Colville Environmental Quality Commission. The order of the Colville Environmental Quality Commission shall be final agency action from which there is the right of judicial review.

4-7-15 Stop Work Order—Grounds—Contents—Procedure—Appeals

(a) The Department shall have the authority to serve upon an operator or landowner a Stop Work Order if there is any violation of the provisions of this Chapter or a deviation from the approved application, or immediate action is necessary to prevent continuation of or to avoid material damage to a Reservation resource or harm to the Reservation population.

(b) The Stop Work Order shall set forth:

- (1) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;
- (2) An order to stop all work in connection with the violation, deviation, damage, or potential damage;
- (3) The specific course of action required to correct such violation or deviation or to prevent, correct and compensate for damage to Reservation resources which has resulted

from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a Reservation resource or potential harm to the Reservation population; or those courses of action necessary to prevent continuing damage to Reservation resources or harm to the Reservation population where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(4) The right of the operator to a hearing before the Colville Environmental Quality Commission: The Department shall immediately file a copy of such order with the Colville Environmental Quality Commission and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest landowner may commence an appeal to the Colville Environmental Quality Commission within fifteen (15) days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty (20) days after copies of the notice of appeal were filed with the Colville Environmental Quality Commission. The operator shall comply with the order of the Department immediately upon being served, but the Colville Environmental Quality Commission, if requested, shall have authority to continue or discontinue in whole or in part the order of the Department under such conditions as it may impose pending the outcome of the proceeding.

4-7-16 Failure to Take Required Course of Action—Notice of Cost—Department Authorized to Complete Course of Action—Liability of Owner for Cost

If an operator or owner fails to undertake and complete any course of action with respect to a forest practice, as required by final order of the Department or a final decision of the Colville Environmental Quality Commission, the Department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty (30) days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the Department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the Department, plus attorney fees, investigatory, court and other costs. If not paid within sixty (60) days after the Department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become an obligation on such forest land and the Reservation Attorney at the Department's direction shall enforce this obligation to the extent provided by law.

4-7-17 Failure to Obey Stop Work Order—Department Action Authorized—Liability of Owner or Operator for Costs

When the operator has failed to obey a Stop Work Order the Department may take immediate action to prevent continuation of or avoid material damage to Reservation resources or adverse impact on the health, safety and welfare of the Reservation population. If a final order or decision fixes liability with the operator, timber owner, or forest landowner, they shall be jointly and severally liable for such emergency costs which may be collected in any manner provided for in Tribal law.

4-7-18 Inspection—Right of Entry

(a) The Department shall inspect forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this Chapter and to insure that no material damage shall occur to either Reservation resources or the health and welfare of the Reservation population as a result of such practices.

(b) Any duly authorized representative of the Department shall have the right to enter upon forest

land at any reasonable time to enforce the provisions of this Chapter.

(c) In the event a duly authorized representative of the Department is denied access to enter upon any forest lands at reasonable times to enforce the provisions of this Chapter, the Department may apply for administrative civil search warrant to the Colville Tribal Court which shall have authority to issue such search warrant upon reasonable cause.

4-7-19 Civil Remedial Actions—Monetary Compensation—Notice—Right of Appeal

Any person who fails to comply with the provision of this Chapter, as it now provides or may hereafter amended, shall be required to pay civil monetary damages in the full amount of the costs of detecting and repairing any damages done as a result of the violation plus the administrative costs of enforcement, including but not limited to investigatory costs, expert witnesses and collection of such damages, including attorney's fees.

(a) In the event a specific monetary value cannot readily be placed on such damages, every such violating person shall be required to pay civil monetary damages in accordance with the liquidated damage schedule of this Chapter. The maximum liquidated amount is one thousand dollars (\$1000) per day for each such violation. Each day of such operation shall constitute a separate violation. In the case of a failure to comply with a written notice from the Department, every day's continuance after serving of the written notice shall be a separate and distinct violation.

(b) Written Notice: The remedial action herein provided for shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the Department, describing the violation with reasonable particularity. The person incurring civil damages pursuant to this section may within thirty (30) days of receipt of notice apply in writing to the Department for the remission or mitigation of such remedial action. Upon receipt of the application, the Department may remit or mitigate the remedial action upon whatever terms the Department, in its discretion, deems proper; Provided, that the Department deems such remission or mitigation to be in the best interests of carrying out the purposes of this Chapter. Any compensation imposed hereunder shall become due and payable thirty (30) days after receipt of such notice or thirty (30) days after the conclusion of any administrative or judicial appeals. The Department shall have authority to ascertain the facts regarding all such applications in a reasonable manner.

(c) Right of Appeal: Any person incurring any civil remedial action hereunder may appeal the same to the Colville Environmental Quality Commission. Unless such an appeal is taken, the civil remedial action hereunder shall be final and binding upon the person(s) affected by that civil remedial action. Such appeals shall be filed within thirty (30) days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the Department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty (30) days of receipt of notice from the Department setting forth the disposition of the application. The decision of the Colville Environmental Quality Commission shall be final agency action for purposes of judicial review.

(d) Enforcement Action: If the amount of any compensation is not paid to the Department within thirty (30) days after it becomes due and payable, the Office of the Reservation Attorney, upon request of the Department, shall bring action in the Colville Tribal Court to recover such compensation.

(e) Balance after costs will be placed into a separate account for rehabilitation purposes related to water quality and administered by the Department.

4-7-20 Enforcement

The Colville Tribes, through the Colville Tribal Court, may take any necessary action to enforce any final order or final decision after such person has failed to comply with the final order or the final decision.

4-7-21 Administrative Appellate and Judicial Review

(a) Any person aggrieved by any order, decision, or other action of the Department may obtain administrative appellate review thereof by submission of a timely petition to the Colville Environmental Quality Commission pursuant to the standards and procedures of the Colville Administrative Procedure Act, Chapter 2-4. Such petition for administrative appellate review shall be filed with the Chairman of the Colville Environmental Quality Commission within thirty (30) days of the date of the order, decision, or other action that is the subject of such appeal. Exhaustion of such administrative appellate review is a jurisdictional requirement to judicial review.

(b) Any person directly affected by any final order, final decision or other final action of the Colville Environmental Quality Commission may obtain judicial review of such order, decision or action by filing a timely petition with the Colville Tribal Court pursuant to the Colville Administrative Procedure Act. Such petition for judicial review shall be filed with the Court, as a civil matter under the Colville Tribal Code, within twenty (20) days of the decision of the Colville Environmental Quality Commission. Unless declared invalid upon judicial review, a final order, final decision, or other final action of the Colville Environmental Quality Commission shall be binding upon all parties.

4-7-22 Cooperation with Public Agencies—Grants and Gifts

Subject to approval of the Colville Business Council the Department is authorized to accept, receive, disburse and administer grants or other funds or gifts from any source, for the purpose of carrying out the provisions of this Chapter and to consult and cooperate with federal and state agencies in matters pertaining to this Chapter. Subject to approval by the Business Council, the Department is further authorized to negotiate inter-governmental agreements which may create, modify, or change duties established by this Chapter; Provided, That no regulatory changes shall be valid unless made in accordance with the Colville Administrative Procedure Act.

4-7-23 Statutes and Trust Responsibility Not Modified

Nothing in this Chapter as now or hereafter amended shall modify or waive any requirement to comply with applicable federal laws and regulations. Nothing in this Chapter as now or hereafter amended shall be construed to modify, waive or impair the trust responsibility of the United States.

4-7-24 Waiver of Regulations

Whenever a strict interpretation of this Chapter, or the regulatory program established pursuant to this Chapter, would result in extreme hardship, the Department may waive or modify such regulatory requirements or portion thereof; Provided, that such waiver or modification shall be consistent with the intent of this Chapter and; Provided further, that no such waiver shall be granted where material damage to Reservation resources, or adverse impact upon health and welfare of the Reservation population, shall result therefrom. The Department shall report in writing all such waivers to the Natural Resource Director, Natural Resource Managers, and Cultural Preservation Administrator within 90 days of granting the waiver.

4-7-25 Severability

If any provision of this Chapter, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are declared to be severable.

BEST MANAGEMENT PRACTICES

4-7-60 Roads Location, Design, and Water Crossings

The Department shall apply these standards considering resource values and function, degree of risk to affected resources, and practicality of alternatives.

(a) Location - road locations shall incorporate the following standards to best protect water quality and Reservation resources. Roads shall only be constructed in locations approved by the Department.

(1) Roads shall be located outside Riparian Management Zones, wetlands, channel migration zones, floodplains, and unstable slopes or landforms unless all other feasible alternatives have been eliminated. When road location within such areas is necessary, the road length used or constructed shall be minimized.

(2) Road density shall be minimized:

(A) Use existing roads whenever practical and where resource protection standards can be accomplished.

(B) Construct new roads only where the existing road system does not allow cable yarding of harvest areas with sustained slopes exceeding 35%, or for other areas does not allow ground-based harvest with maximum skid distances less than 1500 feet.

(C) Abandon roads not needed for future management activities or which cannot be upgraded or maintained to prevent damage to Reservation resources, in accordance with section 4-7-61 (c).

(3) Road locations shall minimize:

(A) The number of water crossings;

(B) Loss of riparian function;

(C) Overall excavation; and

(D) Road length with grades exceeding 10%.

(4) Stream crossings shall be located where the channel is straight and can be crossed at right angles.

(b) Design:

(1) Road width shall be the minimum necessary for the logging system used, to meet safety requirements and minimize impacts to Reservation resources.

(2) Road shall be aligned to:

(A) Minimize excavation and balance cuts and fills. Use waste excavation in fills to minimize sidecast whenever feasible.

(B) Avoid risk of diverting stream flows down the road grade.

(C) Minimize road runoff draining to waters.

(3) Cut and fill slopes shall be designed to prevent further movement or erosion of soil or fill.

(A) Construct fill slopes not exceeding the following ratios unless otherwise approved by the Department:

| | |
|--------------------|------------------|
| Excavated material | Fill slope ratio |
| Common earth | 1:1 |
| Rock | 1-1/2:1 |
| Sandy Soil | 2:1 |

(B) Construct cut slopes not exceeding the following ratios unless otherwise approved by the Department:

| | |
|-----------------------------------|-----------------|
| Excavated material | Cut slope ratio |
| Common earth (on slopes over 70%) | 3/4:1 |
| Common earth (on slopes to 50%) | 1/2:1 |
| Hardpan, broken or soft-rock | 1/2:1 |
| Rock | 1/4:1 |

(C) Provide additional measures if necessary to prevent erosion of cut and fill slopes.

(4) Road drainage shall be provided to maintain natural surface and subsurface drainage patterns, prevent erosion, and minimize delivery of road runoff to waters.

(A) Provide road surface drainage by a combination of outsloping, insloping, or crowning of the road surface, rolling the grade, ditches or cross drainage.

(B) Disperse road runoff and relieve ditches at intervals no greater than the following:

| <u>Road Gradient</u> | <u>Maximum Drainage Spacing</u> |
|----------------------|---------------------------------|
| 0 to 8% | 600 feet |
| 9% to 15% | 400 feet |
| 15% and over | 250 |

Additional cross drains may be needed due to factors such as soils, topography, precipitation levels, proximity to waters or unstable slopes, and drainage patterns. Less frequent spacing may be approved by the Department.

(C) Relief culverts installed on forest roads shall:

(i) Have culvert diameter of at least eighteen (18) inches in diameter or the equivalent.

(ii) Have adequate catch basins and headwalls to minimize the risks of culvert siltation and “by-pass” of the culvert from erosion of the headwall.

(iii) Slope downward toward the outside shoulder of the road at a minimum gradient of 3% to keep the culvert clean.

(D) Provide adequate outfall protection at all drainage improvements to prevent erosion and sedimentation.

(c) Water Crossings:

(1) All crossings shall have structures installed to keep water within its natural watercourse.

- (2) Crossing structures for permanent roads shall be capable of passing 100 year flows and associated bedload and woody debris during runoff events.
 - (3) Where waters provide fish habitat, crossings shall provide passage for all fish life stages.
 - (4) Ditches and road surface shall be drained away from water crossings at the nearest location feasible to minimize entry of road runoff to waters. Slope approaches away from crossings where possible.
 - (5) Crossing fills and approaches to crossings or water withdrawal sites shall be protected using vegetation, rock or other means to prevent erosion and entry of sediment to streams.
 - (6) Temporary bridges or culverts shall be sized to pass all anticipated flows during their period of installation. Unless installed and removed during a single low flow period, generally between July 15 and October 15, crossings shall be sized in accordance with section 4-7-60 (c)(2).
 - (7) Removal of water crossings shall include stabilization of crossing approaches by resloping and revegetating, or other means if necessary.
- (d) Roads constructed or reconstructed during emergency fire suppression action shall be abandoned in accordance with section 4-7-61(c) upon completion of suppression activities, or upgraded to comply with all standards of sections 4-7-60 and 4-7-61 prior to the first subsequent spring runoff season, subject to approval of the Department.

4-7-61 Road Construction, Maintenance, Abandonment, Pits and Quarries

(a) Road Construction:

- (1) Construction activities shall be performed when soil conditions are not likely to result in excessive erosion or soil movement, considering soil types, slopes, and climatic conditions.
- (2) Minimize soil and vegetation disturbance.
- (3) New road construction shall be initiated only as far as that road can be completely finished during the current construction season. When constructing road outside the dry season, install all erosion control and drainage improvements concurrently or closely following pioneering of the road grade.
- (4) Timber harvested within the right-of-way shall be decked at locations where the timber will not support or be covered by fill or sidecast.
- (5) Width of clearing for road construction within the Riparian Management Zone shall be minimized.
- (6) Spoils and woody debris shall be placed in stable locations outside of the Riparian Management Zone and floodplain. Embankments so formed shall drain uniformly without water ponding, and measures shall be provided to prevent subsequent erosion.
- (7) End haul, overhaul, or other special construction methods shall be required where:

- (A) sidecast material would rest within the Riparian Management Zone of Type 1 through 4 Waters; or

(B) sidecast material would rest on slopes over 50% which are terminated within five hundred (500) feet of waters; or

(C) slopes exceed 60%, unless waived by the Department; or

(D) there is a potential for mass slope failure as determined by the Department.

(8) Materials used in road construction shall be free of accumulations of slash or woody debris, and pieces of woody material larger than three (3) cubic feet.

(9) Borrow pits shall be located outside Riparian Management Zones and floodplain. Rock removal from streambeds or overflow channels is not permitted.

(10) During road construction, fills or embankments shall be built up in two-foot layers. Each layer shall be compacted by operating the tractor or other equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with sections 4-7-63 and 4-7-87.

(11) The amount of material displaced from road location by blasting shall be minimized.

(12) Cut and fill slopes shall be sloped back in accordance with section 4-7-60 (b)(3).

(13) Grade changes (concave vertical curve) shall be used to turn runoff off roads, particularly to protect fills at water crossings.

(14) All drainage improvements shall be installed during road construction and prior to haul. On existing roads, all required erosion control and drainage improvements shall be installed prior to haul. Clear drainage improvements of woody material deposited by construction or logging prior to removal of construction equipment from the vicinity or the winter season, whichever is first.

(15) All exposed soil, fill, spoils and sidecast shall be stabilized using seeding, or if necessary, geotextiles, armoring, or other effective means.

(b) Road Maintenance:

(1) The following maintenance requirements shall apply to forest roads except roads abandoned in accordance with section 4-7-61(c), to:

(A) minimize erosion,

(B) minimize delivery of sediment and road runoff to waters,

(C) maintain water crossings that pass 100 year flows and associated bedload and debris during runoff events,

(D) provide passage for all fish life stages where waters provide fish habitat, and

(E) protect reservation resources.

(2) During harvest or haul operations, perform measures to:

(A) Maintain fully functional drainage improvements.

(B) Maintain shape of the road prism to prevent erosion and minimize concentrations of runoff.

- (i) Maintain outslope, inslope, or crowned shape of road surface.
- (ii) Water the road surface or treat with chemicals to maintain cohesion of road surface material.
- (iii) During grading, pull graded material and berms onto the road surface. Leave berms only where necessary to protect fills.
- (iv) Pull (grade) ditches only when necessary and do not remove the toe of the cutslope.
- (v) Shut down operations temporarily when road shape or drainage improvements cannot otherwise be maintained.

(C) Place all material obtained during maintenance in stable locations that will not erode or compromise drainage improvements.

(D) Control roadside brush if needed to maintain road prism and drainage improvements.

(E) When plowing snow, prevent loss of road surface material. Provide drainage of the plowed roadway in accordance with section 4-7-60 (b)(4).

(3) Upon completion of harvest or haul operations, perform the following:

(A) Clear all drainage improvements of obstructions.

(B) Stabilize or remove unstable material and forest debris with potential to block drainage improvements.

(C) Repair or replace all damaged drainage improvements to fully restore their function.

(D) Leave road surface in a condition that will prevent subsequent erosion, and keep runoff within natural drainages, by outsloping, removing berms from the outside of roads, providing drain dips, waterbars, rolling grade or other methods.

(4) Thereafter, landowner shall strive to maintain drainage improvements as needed to achieve the goals of this section and prevent material damage to Reservation resources.

(A) If material damage to Reservation resources is occurring and the Department determines that additional road maintenance would prevent or reduce further damage from occurring, the Department shall notify the operator or landowner of the need for maintenance.

(B) If the operator or landowner fails to complete maintenance required in accordance with section 4-7-15, the Department is authorized to carry out the work and the landowner shall be liable for the expense, in accordance with section 4-7-17.

(c) Abandoned Roads: A landowner may choose to abandon any road, in accordance with the procedures of this section and conditions of an approved Forest Practice application for abandonment. The Department will determine whether a road has been adequately abandoned, and notify the landowner of its decision in writing. Following notification of adequate abandonment by the Department, no subsequent maintenance shall be required so long as the abandoned road remains blocked to traffic. Re-opening of an abandoned road shall be considered

reconstruction and may occur in accordance with an approved Forest Practice application.

- (1) Road prism shall be left in a stable condition suitable to prevent erosion, through outcropping or water bars, and other means if required by the Department.
- (2) Measures shall be provided to reestablish natural drainage patterns, and to prevent road runoff from entering waters.
- (3) Culverts, bridges, and fills at all water crossings shall be removed, unless otherwise approved by the Department.
- (4) Exposed soils associated with the road and abandonment work shall be reseeded in accordance with section 4-7-64 (d).
- (5) The road shall be permanently blocked to vehicular traffic.

(d) Gravel Pits and Quarries:

- (1) Gravel pits and quarries shall be located outside Riparian Management Zones and floodplains.
- (2) Runoff from gravel pits and quarries shall either be diverted to the forest floor or passed through one or more settling basins, as approved by the Department.
- (3) Cross drainage shall be provided on road approaches to gravel pits and quarries to minimize road runoff entering the sites.
- (4) If rock is to be washed provision shall be made for adequate settling basin(s) to prevent any stream siltation.
- (5) All rock quarries and gravel pits shall be reclaimed within two (2) years from the time the rock or gravel source is exhausted or abandoned. The landowner and/or operator are jointly responsible for reclamation. The Department may require posting of a reclamation bond to secure performance of reclamation work. Reclamation procedures include:
 - (A) Remove all deleterious material that has potential for damaging Reservation resources or that would prevent reforestation of an otherwise plantable area.
 - (B) Grade all cut and fill slopes to the fill slope ratios set forth in section 4-7-60(b) for material present, unless otherwise approved.
 - (C) Reforest to the extent practical.
 - (D) Reseed exposed soil in accordance with section 4-7-64 (d).
 - (E) Grade pit floor to provide uniform natural drainage and to prevent ponding.

4-7-62 Roadside Vegetation Control

- (a) Mechanical brush control shall be used if practical.
- (b) Chemicals shall only be used in accordance with sections 4-7-86 and 4-7-87.
- (c) Chemical control of roadside brush or noxious weeds shall not be done where any chemicals will directly enter natural waters, wetlands or runoff water.

4-7-63 Road Surface Treatment

(a) Chemicals shall only be used in accordance with sections 4-7-86 and 4-7-87.

(b) Chemicals shall be applied to road surface only. Construct a temporary berm alongside the road shoulder where needed to prevent runoff of the applied chemical.

(c) Chemicals shall not be allowed to enter any waters, or ditches where runoff drains to waters.

(d) Chemical loading, mixing, and tank cleanout shall be conducted outside of Riparian Management Zones. When cleaning out storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water, other fluids and solids on the road surface or in a place safe from potential contamination of water.

4-7-64 Site Productivity

(a) Forest practices shall leave soil and vegetation conditions conducive to sustained soil stability and hydrologic function, site productivity, and timber growth except where the lands are being converted to another use.

(b) Detrimental soil conditions shall not be caused on more than 25% of each practice or treatment area from the cumulative effects of forest practice operations and treatments. No more than 50% of each practice or treatment area shall be scarified, including portions where detrimental soil conditions have been caused. Areas outside the normal road prism including landings and skid trails shall be considered part of the practice or treatment area. Detrimental soil conditions include soil displacement, compaction, and fire damage as defined in section 4-7-3.

(c) When detrimental soil conditions have been caused on more than 25% of a practice or treatment area, the Department may require reclamation such as ripping of compacted soils or other appropriate measures. Additional protective measures or mitigation may be required for subsequent operations having potential to further increase detrimental soil conditions within the same area. If subsequent operations cannot be conducted without causing additional detrimental soil conditions, and a plan for mitigation is not approved by the Department, the operations shall halt.

(d) Preferred grass seed mixtures shall be sown on exposed soils associated with road construction, reconstruction, or abandonment, spoil and borrow areas, landings, skid trails, and fire trails the first sowing season (September to March) following completion of soil disturbing activities. The seed shall be applied at a rate of 28 pounds per acre. Any use of alternative seed mixtures and alternate rates of application shall be approved in writing by the Department. A preferred alternative seed mixture may be used if one or more of the following conditions are present:

(1) In dry habitat types, native bunchgrasses are absent in the surrounding plant communities; or

(2) Noxious weeds are present in significant numbers; or

(3) Heavy livestock grazing is expected.

4-7-65 Harvest System and Landings

(a) Logging System: The logging system shall be appropriate to sustain long-term productivity of soils, minimize erosion, and protect water quality and other Reservation resources. The Department may require seasonal restrictions or harvesting system limitations for specific harvest areas based upon soil conditions.

(b) **Landing Locations:** (1) Landings shall be located on stable ground so that all associated fill, sidecast, spoils, slash, and landing operations, remain outside unstable slopes and landforms,

wetlands and Riparian Management Zones and above the floodplain of any stream. Utilize existing landings where feasible. Locate new landings that will be suitable for future use.

(Amended 6/7/05, Resolution 2005-326)

(Certified 7/12/05)

(2) Landings shall be located where runoff coming from the landing and landing activities can be directed away from waters and unstable slopes.

(c) Landing Construction:

(1) Landings shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

(2) Where the average general slopes exceed fifty (50) percent, fill material used in construction of landings shall be free of accumulations of slash or woody debris, and pieces of woody material larger than three (3) cubic feet, and shall be mechanically compacted in two-to-three (2-3) foot layers where necessary and practical by tractor to prevent soil erosion and mass soil movement.

(3) Roads, skid or fire trails shall be outsloped or cross drained uphill of landings to divert runoff away from landings and away from the toe of any landing fills.

(4) Landings shall be sloped to minimize accumulation of runoff on the landing and direct runoff away from waters and wetlands.

4-7-66 Harvest Operations

(a) Felling.

(1) Trees shall not be felled into or across waters or the inner zone of Riparian Management Zones unless approved in writing by the Department.

(2) Reasonable care shall be taken to avoid felling trees into the outer zone of Riparian Management Zones, habitat patches or other areas designated to protect Reservation resources.

(3) Operator shall be required to use tree jacks, cable tree pulling systems or other recognized methods for directional falling when these methods are appropriate and their use would eliminate the need to fell trees into Type 1, 2, 3, or 4 Waters or the inner zone of Riparian Management Zones.

(4) Harvest operations shall be integrated so that:

(A) The amount of area traveled by ground-based equipment is minimized;

(B) Trees are felled to the lead of pre-planned skid trails to minimize the creation of detrimental soil conditions; and

(C) To minimize the number of turns or sets.

(b) Ground-based Harvest Systems.

(1) Ground-based harvest systems shall be used only on ground with sustained slopes not greater than 35% unless otherwise approved by the Department.

(2) Heavy equipment shall not enter the Riparian Management Zone or any waters unless approved by the Department.

(A) If use of heavy equipment within the Riparian Management Zone is approved by the Department, the amount of work within the zone shall be minimized.

(B) If water crossings are approved by the Department, the number of crossings shall be minimized. Crossing and approaches shall be aligned at right angles to the water.

(3) Machine trails shall be located:

(A) Away from low moist ground to avoid interception of subsurface water;

(B) To minimize sidecast; and

(C) To enable installation of cross drainage that will prevent erosion and direct runoff to the forest floor.

(4) Cross drainage of skid trails shall be provided to maintain natural drainage patterns and prevent erosion, using outsloping, waterbars, or other effective measures. Drain trails at fifty (50) foot intervals where trail gradient exceeds 8%.

(5) Operation of ground-based equipment shall stop during periods of high soil moisture or thawing, when excessive soil displacement, puddling or deep rutting would occur.

(c) Cable Yarding Systems

(1) Cable or other aerial yarding shall be used on ground with sustained slopes steeper than 35%, unless otherwise approved by the Department.

(2) The lead end of logs shall be lifted to minimize soil displacement and rutting.

(3) Timber shall not be yarded in or over waters unless approved by the Department.

(4) When yarding parallel to a Riparian Management Zone, reasonable care shall be taken to prevent logs from damaging leave trees within the Riparian Management Zone.

(5) Yarding across culverts, ditch lines, and roads shall be avoided.

4-7-67 Riparian Management Zones

(a) Riparian Management Zones (RMZ) shall be required along all waters except forested wetlands. Within Riparian Management Zones, only forest practices that maintain or enhance riparian function and Reservation resources shall be allowed.

(b) Unless approved in writing by the Department, the following activities shall not occur within Riparian Management Zones:

(1) Operation of heavy equipment, such as felling, skidding, site preparation, and fire trail construction;

(2) Landing construction, decking and loading of logs;

(3) Rock pits and quarries, borrow pits, and spoils disposal;

(4) Aerial, broadcast or mist application of chemicals.

(c) Road and skid trail construction and reconstruction shall not occur within Riparian Management Zones, except for water crossings, their approaches, or other road and trail segments that minimize loss of riparian function and provide the best overall protection to Reservation resources that shall be allowed if approved in writing by the Department.

(d) Within Riparian Management Zones, existing road segments causing material damage to Reservation resources shall be maintained, upgraded, closed, or abandoned as needed to prevent further resource damage. Where practical, existing roads within the Riparian Management Zone shall be abandoned, and road length within the zone shall be reduced to minimize loss of riparian function and provide the best overall protection to Reservation resources.

(e) Riparian Management Zones shall be measured horizontally from the ordinary high water mark, or when present, the outer edge of non-forested wetlands, channel migration zone, or associated seeps. The following Riparian Management Zone minimum widths shall be applied to each side of waters:

| Water Type | Minimum RMZ Width |
|------------|-------------------|
| 1 | 150' |
| 2 | 125' |
| 3 | 100' |
| 4 | 50' |

(f) Riparian Management Zones shall be comprised of an inner and outer zone.

(1) The inner zone shall begin at the ordinary high water mark, or outer edge of non-forested wetland, channel migration zone, or associated seep, and shall extend landward for half the minimum Riparian Management Zone distance.

(2) The outer zone shall be comprised of the remaining portion of the Riparian Management Zone, located landward of the inner zone.

| Water Type | Inner Zone Width | Outer Zone Width |
|------------|------------------|------------------|
| 1 | 75' | 75' |
| 2 | 62.5' | 62.5' |
| 3 | 50' | 50' |
| 4 | 25' | 25' |
| | | |
| | | |

(g) Timber harvest within the Riparian Management Zone shall be allowed, subject to the following limitations:

(1) Harvest within the inner zone shall only occur if approved in writing by the Department, and:

(A) where necessary to construct road or yarding corridors, or

(B) as approved in an alternate plan according to section 4-7-7 (i).

(2) Harvest operations within the outer zone, if conducted, shall leave well distributed dominant trees from the existing stand comprising not less than the following basal area per acre:

(A) 60 square feet per acre for dry habitat types, which include all ponderosa pine, Douglas-fir/Idaho fescue, Douglas-fir/ninebark/heartleaf arnica phase and all Douglas-fir/snowberry habitat types.

(B) 100 square feet per acre for moist habitat types, which include all forest habitat types of the Reservation not listed as dry.

(C) Habitat type for each site shall be determined based upon field observation, or mapped Reservation habitat types which the Department shall make available.

(3) Harvest operations within the Riparian Management Zone shall be conducted to minimize disturbance to soils, root systems, leave trees and other vegetation.

(4) When roads lie within the Riparian Management Zone, the following changes in Riparian Management Zone requirements shall be made:

(A) Where the road prism occupies part of the outer zone, no harvest shall occur between the road and water, and the Riparian Management Zone shall not extend landward of the road.

(B) Where the road prism occupies part of the inner zone, requirements specified in section 4-7-67 shall apply throughout the total Riparian Management Zone width specified in section 4-7-67 (e).

(5) Salvage harvest within the Riparian Management Zone shall adhere to the requirements of this section. Harvest shall not be conducted within the inner zone. Where no live dominant trees exist in the outer zone, dead trees of the largest size classes present shall be left to achieve basal area requirements. Salvage harvest may alternatively be conducted in accordance with an alternate plan providing equal or higher levels of riparian function, if approved by the Department.

(6) Riparian Management Zones shall not be required for forested wetlands. Harvest within forested wetlands may be conducted in accordance with a plan preventing detrimental impact, rutting of soils and loss of functional wetland acreage, if approved by the Department.

4-7-68 Reserve Trees

(a) On all acres harvested outside of riparian management zones, a minimum of two (2) reserve trees per acre, well distributed, shall be left standing.

(b) No point within units of regeneration or overstory removal harvest shall be farther than 600 feet from a reserve patch, Riparian Management Zone, or fully stocked stand of merchantable timber. For the purposes of this section, adjacent land having different ownership shall be considered to be fully stocked with merchantable timber.

(c) Snags (standing dead or highly defective trees) shall be left standing unless they pose a safety hazard to workers or the public; except where salvage harvest is conducted, a minimum of two (2) snags per acre of the largest size classes present shall be left standing.

4-7-69 [Reserved]

4-7-70 [Reserved]

4-7-71 Landing Cleanup

Except as approved by the Department, the following rules shall be met within sixty (60) days after completion of hauling logs from any landing, or sooner if necessary to prevent erosion.

(a) Drainage:

- (1) Clean any ditches and culverts obstructed by dirt or woody debris during operations.
- (2) Establish a slope that will prevent water from accumulating on the landing or running from the landing down any erodible fill.

(b) Other Erosion Control Measures:

- (1) Cut slopes shall be cut back to an angle expected to remain stable.
- (2) Where landing surfaces, fill, sidecast or slash are unstable or erodible they shall be compacted, ripped, water barred, benched or mulched, or be treated by other means approved by the Department.

(Amended 6/7/05, Resolution 2005-326)
(Certified 7/12/05)

(c) Clean-up:

- (1) Slash accumulations which would prevent reforestation of otherwise plantable fills, sidecast or cut slopes of landings shall be disposed of or be piled on the landing floor for future disposal.
- (2) Slash shall not be buried in any filled portion of the landing in connection with landing cleanup operations.

4-7-72 Post-Harvest Site Preparation

Unless the application or notification indicates that the landowner or timber owner specifically agrees to assume responsibility for compliance with this section, the operator shall leave the site in a condition suitable for reforestation following any regeneration harvest or any partial cutting where the site is reduced below its minimum stocking level as determined by the Department. Lands being converted to another use are exempt.

(a) Site preparation shall be required when necessary to establish a condition suitable for reforestation.

(b) Heavy equipment shall not be used for site preparation or rehabilitation work:

- (1) In any water or Riparian Management Zones; or
- (2) On sites with sustained slopes exceeding 35%, unless approved by the Department.

(Amended 6/7/05, Resolution 2005-326)
(Certified 7/12/05)

(c) Mineral soil exposure following site preparation shall not exceed 50% of the practice or treatment area. Areas outside the normal road prism including landings and skid trails shall be considered part of the practice or treatment area.

(d) At least five pieces per acre of large dead wood, 15 inches in diameter and 10 feet long or larger, shall be left scattered and not piled. Where less than five pieces of large wood exist per

acre, all shall be left scattered and not piled but there is no requirement to create or place additional pieces.

4-7-73 Slash Disposal

(a) Slash Disposal Techniques:

(1) Except on sites where the Department determines that a particular method would cause unreasonable risk to either Reservation resources or the health, safety and welfare of the Reservation population, any conventional method of slash disposal may be used.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(2) Slash burning may requires a burning permit from the Department or BIA Fire Management. Reasonable care shall be taken to prevent damage to Riparian Management Zones, soil, residual timber, Reservation resources, and other property.

(3) Location of slash piles: Slash shall not be piled or windrowed using heavy equipment within the Riparian Management Zone or in locations from which it could be expected to enter any water.

(b) Slash disposal is required when abatement of extreme fire hazard is required, as determined by the Department or BIA Fire Management.

(c) Slash disposal is required where the forest land owner has applied for and been granted an extension of time for reforestation on the grounds that slash disposal is necessary or desirable before reforestation.

4-7-74 Fire Trails

Existing logging roads will be considered as the main fire trail system. However, additional fire trailing may be required to protect the Reservation resources.

(a) Fire trails shall have adequate dips, water bars, cross drainage and ditches to prevent erosion.

(b) Reasonable care shall be taken to minimize excavation. Sidecast and use of heavy equipment to build trail in advance of controlled burning shall not be permitted within the Riparian Management Zone of any waters unless approved by the Department.

(c) Fire trails shall be constructed to a minimum width needed to facilitate burning.

4-7-75 Housekeeping

During timber harvest and all other forest practices, contamination of Reservation resources shall be prevented. Refueling and repair work shall be conducted outside of Riparian Management Zones. Fuels, lubricants, coolants and other pollutants shall not be allowed to wash into any water or waterway, seep into the soil, or kill vegetation, fish or wildlife. Forest lands shall be kept clear of all trash, pollutants, and other inorganic refuse resulting from forest practices.

(a) In the event that a spill occurs the Environmental Trust Department shall be notified immediately by the operator.

(b) The Department may require all measures necessary to clean up contaminated sites.

4-7-76 Reforestation Policy

All harvested forest land not being converted to another use shall be regenerated with approved commercial species within specified time periods. The regenerated forest shall be protected and managed to insure optimum productivity of the forest lands.

4-7-77 Reforestation Requirements

(a) Unless the harvest application indicates that the land will be converted to another use, or the lands are identified as having a likelihood of conversion to urban uses, reforestation is required for forest lands harvested where the remaining trees do not fully utilize the timber growing capacity of the site as determined by the Department.

(b) Reforestation is not required where:

- (1) Individual dead, dying, down or windthrown trees are salvaged, or
- (2) A tree or trees not constituting a merchantable stand are removed from lands in actual use for other purposes; for example, removal of individual trees from lands used for farming or grazing.
- (3) Trees are harvested from land within 200 feet of an occupied residence or the right-of-way or easement of paved roads improved and maintained to provide general public transportation.

(c) Satisfactory reforestation -regeneration harvests:

- (1) Satisfactory reforestation of a regeneration harvest occurs if:
 - (A) Within four (4) years of completion of initial harvest or subsequent relogging, the site is artificially restocked by seeding or planting alone, or in combination with natural regeneration, such that restocking meets specifications established by the Department.
 - (B) Within ten (10) years, in the case of a natural regeneration plan, the site is restocked to at least the minimum acceptable stocking established by the Department.

Provided that the regeneration failures from causes beyond the applicant's control will not result in a violation of this paragraph.

- (2) In the event that acceptable stocking is not achieved within the time limits specified, site preparation and supplemental planting or seeding may be required.
- (3) The Department may grant an extension of time for planting or seeding if suitable seedlings or seeds are not available, or if weather conditions or other circumstances beyond the forest landowner's control require delay in planting or seeding.

(d) Satisfactory Reforestation-Partial Cuts: Where reforestation is required in connection with a partial cut, the harvest application shall include a plan for stocking improvement. The plan shall be approved unless the Department determines that it will not reasonably utilize the timber growing capacity of the site to the extent practical.

(e) Natural Regeneration Standards: A natural regeneration plan may be approved as acceptable reforestation if:

- (1) A seed source of well-formed trees of commercial tree species capable of seed production is available.
- (2) The owner of the seed source agrees in writing not to harvest the seed source for the time period specified in the plan, or until issuance of a satisfactory reforestation inspection report.
- (3) For purposes of this paragraph, a "natural seedling" shall be defined as a thrifty,

vigorous tree firmly rooted in mineral soil or decayed duff, that is at least six (6) inches in height measured to the highest point above the root collar.

(4) The seed source must consist of:

(A) Seed block of sizes and locations shown on the plan and satisfactory to the Department, or

(B) An average of at least five to ten (5 – 10) well distributed, healthy, undamaged, vigorous, windfirm seed trees per acre of plantable area and no inadequately stocked area 32 (July 2005 version of Chapter 4-7) is more than one hundred fifty (150) feet from the nearest seed tree.

(5) Competing vegetation shall be controlled to the extent necessary to allow survival and growth by approved commercial species.

(f) Alternate Plan: Any alternate plan for natural reforestation may be approved if it provides a practical method of achieving acceptable stocking levels as established by the Department within ten (10) years.

4-7-78 Reforestation—Species—Stocking—Standards

(a) Reforestation Species: The Department may approve the use of species which differ from the removed stand where the reforestation plan reveals that the proposed species is preferable from any of the following standpoints.

(1) Site data indicates better potential production for the proposed species;

(2) Control of forest insects or disease;

(3) Greater economic return;

(4) Development of special environmental, recreational or aesthetic conditions.

(b) Acceptable Stocking: Stocking levels are acceptable if three hundred (300) well-distributed, vigorous seedlings per acre of commercial tree species have survived on the site at least two growing seasons. “Welldistributed” means that more than 20% of the harvested area has from 240 to 300 trees per acre. Lesser number of trees per acre may be acceptable if the Department determines that the timber growing capacity of the site will be fully utilized.

(c) Except as approved by the Department, to qualify as acceptable reforestation:

(1) The seedling and seed must be from an appropriate seed zone

(2) Competing vegetation shall be controlled to the extent necessary to allow survival and growth of the regenerated trees.

4-7-79 Reforestation: Plans—Report—Inspections

(a) Reforestation Plans: Reforestation plans must be submitted with the application except where no reforestation is required.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(b) Reforestation Reports: The landowner, forest landowner or his designee shall file a report with the Department either at the time of completion of planting or at the end of the normal planting seasons. When artificial seeding is used, the report shall be filed two (2) growing seasons after seeding.

(c) The reports in section 4-7-79(b) above, must contain at least the following:

- (1) The original Forest Practice application or notification number.
- (2) Species planted or seeded.
- (3) Age of stock planted and seed zone.
- (4) Description of actual area planted or seeded.

(d) Inspection—Supplemental Planning Directives:

(1) Within twelve (12) months after a reforestation report is received, the Department shall inspect the reforested lands; and within seven (7) years on the case of natural regeneration, the Department shall inspect the reforested lands.

(2) If the inspection shows that acceptable stocking levels have not been achieved, the Department shall direct the forest owner to perform supplemental regeneration in accordance with the Department's reforestation standards.

(A) In lieu of such supplemental planting, the Department and the forest landowners may agree on a supplemental reforestation plan.

(B) Supplemental planting shall not be required if the Department determines that there is little probability of significantly increasing the stocking level.

(C) Except where stocking improvement is necessary to protect Reservation resources and is feasible, further supplementary planting shall not be required where acceptable stocking levels have not been achieved after two (2) properly performed supplemental plantings.

(3) Evidence of compliance: If the Department determines on inspection that acceptable reforestation has been achieved, on the request of the forest landowner the Department shall confirm in writing that no further reforestation obligations remain. If no supplemental planting directive has been issued within thirty (30) days after the deadline for the inspection, reforestation shall be deemed satisfactory unless the Department has informed the landowners prior to the deadline that further inspections by the Department on the area are needed.

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

(5) Prior to the sale or transfer of land subject to a reforestation obligation, the seller shall provide written notification of the obligation to the buyer, and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge and assumption of the obligation.

4-7-80 Urban and Other Lands Exempted from the Reforestation Requirements

(a) Those lands which an applicant has declared are to be converted and are in fact converted within three years, and where:

(1) The development is for urban or other use incompatible with commercial timber production, and

(2) The development contemplated would be consistent with any applicable land use plans or ordinances.

(b) Utility Rights-of-Way: Reforestation is not required for initial clearing or reclearing of utility rights-of-way in actual use for utility purposes or scheduled for construction of utility facilities within ten (10) years from the date of completion of harvest. Provided, that if the scheduled facility is not completed, the area shall be reforested within one (1) year.

(c) Other lands: Reforestation is not required on the following lands unless required by regulation of the agency owning or acquiring the lands:

(1) Lands owned in fee by a public agency that has budgeted for construction within ten (10) years a specific project inconsistent with commercial timber production.

(2) Lands being acquired by public agency for construction of a project, within ten (10) years, that is inconsistent with timber production, if at the time of completion of harvest, the public agency has entered into a binding contract for the purchase of the lands or initiated legal proceedings for the condemnation of the lands.

4-7-81 Archaeological, Historical, and Cultural Resources

(a) Within 200 feet of burials or archaeological/historical sites, heavy equipment use, timber falling and yarding, and chemical application shall only be conducted in accordance with a protection plan approved by the Tribal Historic Preservation Officer.

(b) When burials or archaeological/historical resources are discovered during a forest practice, operations shall be halted within 1320 feet of the discovery site and the Tribal archaeologist shall be notified immediately. The operation may be resumed following development of a protection plan approved by the Tribal Historic Preservation Officer, and shall proceed in accordance with the provisions of the plan.

(c) When forest practices including application of chemicals are proposed on or around sites containing significant occurrences of cultural plants or resources, the Department may require measures for their protection or enhancement, and forest practices shall be conducted in accordance with such requirements.

4-7-82 Unstable Slopes or Landforms

(a) Forest practices conducted on or around unstable slopes or landforms shall incorporate measures to avoid increasing the rate and magnitude of soil movement.

(b) The Department may require appropriate measures, including:

(1) Avoiding or minimizing operations on specific sites;

(2) Road and landing construction that minimize excavation and utilize additional drainage and stabilization measures;

(3) Temporary use and subsequent abandonment of roads;

(4) Harvest methods that minimize site disturbance, or maintain specified levels of tree stocking, canopy cover, or rooting strength;

(5) Stabilization of landing woody debris accumulations; or

(6) Restricted use of heavy equipment off roads.

4-7-83 [Reserved]

4-7-84 Threatened, Endangered or Protected Species' Habitats

(a) The Department may require reasonable constraints on the time and/or method of forest

practice operations, when, in the opinion of the Department, such constraints are necessary to protect listed species consistent with the Federal Endangered Species Act. Forest practices shall be conducted in accordance with such requirements.

(b) Forest practices within one half (1/2) mile of a known nest for one of the following species, or a bald eagle winter roost, shall only be conducted in accordance with a protection plan approved by the Fish & Wildlife Department. The protection plan shall be based on site specific circumstances of individual nest or roost sites, and will typically include specific limitations on harvest and road construction within 1/8 mile of the nest or roost, and seasonal restrictions on operations within 1/2 mile, as needed to protect the integrity and function of the nest or roost site:

- (1) bald eagle;
- (2) golden eagle;
- (3) peregrine falcon;
- (4) osprey;
- (5) great blue heron.

(c) Natural Salt Licks. Operation of heavy equipment off road shall be minimized within 50 feet of natural salt licks.

4-7-85 Threatened and Endangered Plants

When forest practices are proposed on or around sites containing occurrences of federally listed threatened or endangered plants, the Department may require measures for their protection or enhancement. Such forest practices shall only be conducted in accordance with a protection plan approved by the Tribal Vegetation Specialist/Ecologist.

4-7-86 Forest Chemicals

(a) Chemicals shall be applied only when soil and climatic conditions favor accurate delivery, infiltration and adsorption. Avoid wet soils or soils with high water table to minimize potential for contamination of surface or ground waters.

(b) Chemicals shall be applied only in accordance with all limitations and instructions:

- (1) Printed on the Environmental Protection Agency container registration label, and
- (2) Established by the Federal Occupational Safety and Health Administration, as they relate to safety and health of operating personnel and the public.

(c) Chemical treatment zone shall be posted by the landowner by signing at all significant points of regular access at least five (5) days prior to treatment. Posting shall remain at least fifteen (15) days after the spraying is complete. Extended posting periods may be required by the Department in areas where human use or consumption of plant materials is probable. The landowner shall be responsible to maintain signs during the required posting periods. Signs shall be made of suitably durable material and contain the name of the product used, identify what was treated, date of treatment, a contact name and telephone number, and any applicable restrictions. The requirement to post signs shall not apply to roadside spraying.

(d) The operator shall be required to hold a Washington State applicator or public operator certificate when applying restricted use pesticides.

(e) The operator shall comply with requirements of the Federal Insecticide, Fungicide, and Rodenticide Act pertaining to the handling and application of pesticides.

(f) During application, the operator shall keep a copy of the pesticide label on site.

(g) Daily Records

(1) Certified applicators and all persons applying pesticides to forest lands including public entities engaged in roadside spraying shall keep records for each application which shall include the following:

(A) The name and address of the person for whom the pesticide was applied.

(B) The address or exact location of the land where the pesticide was applied.

(C) The year, month, day and start and stop time the pesticide was applied.

(D) The product name used on the registered label and the United States Environmental Protection Agency registration number, if applicable, of the pesticide which was applied.

(E) The direction from which the wind is blowing and estimated velocity of the wind in miles per hour (mph) and the temperature in degrees Fahrenheit at the time the pesticide was applied:

(F) The total amount of pesticide applied such as pounds, gallons, ounces, etc.

(G) The amount of pesticide applied per acre or other appropriate measure.

(H) The concentration of pesticide that was applied. Liquid applications may be recorded as amount of product per one hundred gallons of liquid spray or other appropriate measure. (I) Specific target to which pesticide was applied.

(J) Apparatus license plate number.

(K) The licensed applicator's name, certified pesticide applicator license number, address, telephone number, and the name and license number(s) if applicable of the individual or individuals making the application.

(L) The number of acres or other appropriate measure to which the pesticide was applied.

(2) Application records shall be completed and available to the Department within seven (7) days following the application of pesticide.

(3) Application records shall be kept for a period of seven years from the date of the application of the pesticide to which such records refer. The Department shall, upon request in writing, be furnished with a copy of such records forthwith by the applicator.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

4-7-87 Chemical Handling—Storage--Application

(a) Leakage:

(1) No contamination of water or soil by chemicals is permitted from any equipment used for their transportation, storage, mixing or application.

(2) The Department may suspend further use of any equipment responsible for contamination, until the deficiency has been corrected to the satisfaction of the Department.

(b) Mixing: When water is used in mixing of chemicals:

- (1) Provide an air gap or reservoir between the water source and the mixing tank.
- (2) Use uncontaminated pumps, hoses and screens.

(c) Mixing, Loading and Storage Areas:

- (1) Mix, store, and load chemicals and clean tanks and equipment outside of Riparian Management Zones where any spills would not enter any waters or wetlands.
- (2) If any chemical is spilled, immediate appropriate procedures should be taken to contain or neutralize it.

(d) Aerial Application:

- (1) Chemicals shall not be allowed to enter waters, wetlands, or riparian management zones. To ensure that no entry occurs, additional buffer distances shall be maintained by the operator as needed, taking into account factors such as nozzle type, height of aircraft, and wind.
- (2) The initial application pass adjacent to the untreated zones in (1) above shall be flown parallel to the untreated zones unless otherwise approved by the Department.
- (3) A bucket or spray device capable of immediate shutoff shall be used.
- (4) Shut off application during turns and over open water.
- (5) The landowner shall identify for the operator the units to be sprayed and any untreated areas within the units with appropriately marked aerial photos or detailed maps. Before application begins, an over-flight of the area shall be made. Waters, wetlands, riparian management zones and treatment zone boundaries must be clearly visible from the air, or additional marking shall be required to determine any no spray areas.
- (6) Because aerial application of chemicals is the least discriminate method available, hand application or ground application with power equipment should be evaluated and utilized in whole or in part to the extent feasible.
- (7) Aerial application shall not be conducted when wind conditions will cause drifting into the Riparian Management Zone and other waters or wetlands or where such drifting may damage Reservation resources, harm the health, safety or welfare of the Reservation population, or drift to lands other than those included within the Forest Practices application.
- (8) All access entry points on roads or developed trails shall be posted "No entry-- Chemical Spraying Operation" and blocked during the period of aerial application of restricted use chemicals.

(e) Ground-based Application with Power Equipment:

- (1) Within Riparian Management Zones, power equipment shall not be used for mist applications of chemicals, and application shall be onto specific targets only.
- (2) Keep chemicals out of all waters and wetlands.

(f) Hand Application:

- (1) Within Riparian Management Zones, apply chemical only onto specific targets.
- (2) Keep chemicals out of all water and wetlands.

(g) Container Disposal: Chemical containers shall be either:

- (1) Removed and cleaned for reuse in accordance with any applicable label requirements, regulations of the State Department of Agriculture or the state or local health departments, or
- (2) Disposed of in a landfill certified to receive such materials and in a manner approved on the label and by the State Department of Agriculture.

(h) Reporting of Spills and Misapplications: All potentially damaging chemical spills and misapplications shall be immediately reported to the Department and to the Colville Emergency Services Department. This report shall contain notification of the volume spilled or leaked, the type(s) of chemical(s), the location of the spill, distance from the spill to the nearest water, and when the spill occurred.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

4-7-88 Fire Control Policy

It is the policy of the Department and BIA Fire Management to require all reasonable precautions be taken during forest practices to prevent wildfires or minimize the severity of wildfires.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

4-7-89 Fire Plan

When requested by the Department or BIA Fire Management, the Operator shall prepare, in cooperation with the Department or BIA Fire Management, a plan for the prevention and suppression of fires on the area encompassed by the forest practice. The plan shall fully reflect the Operator's fire protection obligations. Neither the approval of the plan nor anything contained therein shall relieve the Operator from any responsibility under the terms of any contract.

4-7-90 Fire Precaution

The Operator shall furnish and maintain in good and serviceable condition such fire fighting tools and equipment, provide such fire protection personnel and take such fire prevention measures as may be required by the Department or BIA Fire Management to meet the fire protection requirements for the existing fire danger.

(a) Definitions Concerning Fire Tools and Equipment:

- (1) "An operation" means the use of equipment and supporting activities that are involved in the process of the management of forest land that may cause a forest fire to start. Such activities may include, but are not limited to, any phase of logging, land clearing, road and utility right-of-way clearing. The operating period shall be that time period when the activity is taking place.
- (2) "Currently with the logging" and "current with the felling of live timber" or "current with logging operation" means during the logging operation on any landing, setting or similar part of the operation unless modified.

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

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

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

(6) “An approved exhaust system” means a well-mounted exhaust system, free from leaks and equipped with a spark arrester rated and accepted under U.S.D.A. Forest Service Current Standard, and shall include:

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

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

(C) Portable power saws purchased after January 1, 1978, and used in forest land must meet the performance levels set forth in the Society of Automotive Engineers “multipositioned small engine exhaust fire ignition standard, SAE recommended practice J 335B.” Requirements to obtain SAE J 335B specifications are as follows:

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

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

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

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

(v) The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as part of routine maintenance shall have a service life of not less than fifty (50) hours. Cleaning of parts shall not be required more frequently than

once for each eight (8) hours of operation. The spark arrester shall be designed so that it may be readily inspected and cleaned.

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

(D) Portable power saws purchased prior to January 1, 1978 that do not meet the Society of Automotive Engineers Standards must meet the following requirements:

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

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

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

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

(v) The arrester shall be capable of operating, under normal conditions, a minimum of eight (8) hours before cleaning is needed.

(vi) The screen shall carry a manufacturer's warranty of a minimum 50-hour life when installed and maintained in accordance with the manufacturer's recommendations.

(vii) The arrester shall be of good manufacturer and made so that the arrester housing and screen are close fitting.

(viii) The arrester shall be at least ninety (90%) percent efficient in the destruction, retention or attrition of carbon particles over 0.023 inch.

(ix) Efficiency to be measured as described in Power Saw Manufacturers Association Standard Number S3-65.

(x) Construction of the arrester shall permit easy removal and replacement of the screen for field inspection and cleaning.

(7) "Shovel" means a serviceable long-handled or "D" handled round point shove of at least "0" size with a sharpened, solid and smooth blade, and the handle shall be hung solid, smooth and straight.

(8) "Axe" means a serviceable, double-bitted or single-bitted swamping axe of at least a three pound head and thirty-two (32) inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(9) "Pulaski" means a serviceable axe and hoe combination tool with not less than 3-1/2 pound head and thirty-two (32) inch handle. The blades shall be sharpened, solid and smooth and the handle shall be hung solid, smooth and straight.

(10) “Adze eye hoe” means a serviceable fire fighting hoe with a blade width of at least 5-3/4 inches and a rectangular eye. The blade shall be sharpened, solid and smooth, and the handle shall be hung solid with no more than 3/4 inch or less than 1/8 inch extending beyond the head, smooth, aligned, and at least thirty-two (32) inches long.

(11) “Fire tool box” means a box or compartment of sound construction, with a waterproof lid, provided with hinges and hasps, and so arranged that the box can be properly sealed. It shall be red in color and marked “Fire Tools” in letters at least an inch high. It shall contain a minimum of:

(A) Two axes or Pulaskis;

(B) Three adze eye hoes, providing that one Pulaski may be substituted for one adze eye hoe; and

(C) Three shovels.

(12) “Pump truck or pump trailer” means a serviceable truck or trailer that must be able to perform its functions efficiently, equipped with a water tank of not less than three hundred (300) gallon capacity, filled with water. The complete pump truck or pump trailer shall be kept ready for instant use for suppressing forest fires. If a trailer is used, it shall be equipped with a hitch to facilitate prompt moving, and a serviceable tow vehicle must be available throughout the operating and watchman periods. The pump may be a portable power pump or a suitable power take-off pump. It shall be plumbed with a bypass or pressure relief valve. The pump shall develop, at pump level, pressure sufficient to discharge a minimum of twenty (20) gallons per minute, using a 1/4 inch nozzle tip, through a fifty (50) foot length of one inch or 1-1/2 inch rubber lined hose. The pump truck or trailer shall be equipped with the following:

(A) A minimum of five hundred (500) feet of one or 1-1/2 inch cotton or synthetic jacket hose;

(B) A fire tool box.

The tank shall be plumbed so that water can be withdrawn by one man by gravity feed. This outlet shall be adapted to accept the hose used and located for easy fitting of pump cans. The pump truck or trailer must be equipped with appropriate tools, fuel, accessories, and fittings to perform its functions for a continuous period of four (4) hours. A recommended list of tools, fittings, and accessories may be obtained from the Department or BIA Fire Management office.

(13) “Fire watch” means an employee(s) who is on site, vigilant, capable and who performs the following described actions for one hour following each time a power-driven, spark-emitting or electric motor ceases operations for the day or any part thereof; moving through areas of the day's activities, constantly looking for and reporting fires, and taking suppression action on any fire detected; and after each cable line road change, an employee in conjunction with his regular duties, shall check line locations and report friction points to the operator or other user.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(14) “Loading site” means a place where any product or material (including but not limited to logs, firewood, slash, rock, poles) is placed in or upon a truck or other vehicle.

(b) Fire Protection Equipment: The following tools and equipment are required on all forest practice operations on the Reservation during the “closed” fire season which is from May 1 to November 1, or as amended by the responsible BIA Fire Management official:

- (1) At each logging or forest road construction operation there shall be:
 - (A) One pump truck or pump trailer;
- (2) Any tractor or other mobile machine shall have:
 - (A) One fire extinguisher of at least a 5 B.C. rating;
 - (B) An approved exhaust system; and
 - (C) An appropriately mounted shovel.
- (3) Any fixed position machine shall have:
 - (A) Two fire extinguishers of at least 5 B.C. rating;
 - (B) An approved exhaust system; and
 - (C) An appropriately mounted shovel.
- (4) Any portable power saw shall have:
 - (A) One fire extinguisher of at least 1 B.C. rating;
 - (B) An approved exhaust system; and
 - (C) One shovel, one Pulaski, and one fire extinguisher of at least 5 B.C. rating, which shall be kept within two minutes round trip of the operator.
- (5) Any passenger vehicle used for industrial or commercial operations shall have:
 - (A) One fire extinguisher of at least a 5 B.C. rating;
 - (B) An approved exhaust system; and
 - (C) One shovel.
- (6) Each tail, corner, or haulback block used during cable yarding shall be equipped with one serviceable five gallon backpack pump can filled with water, one shovel and one Pulaski. Operations with multiple blocks must have this complement of tools and water within one hundred feet of each block.
- (7) Each helicopter used for yarding timber shall comply and be equipped with the following:
 - (A) A VHF radio, maintained in operational use, at frequency 122.9 MHz;
 - (B) A portable water bucket of the following capacities, with necessary cargo hooks and tripping mechanism for dropping water on a fire, shall be located at the heliport serving the operation;

| <u>External Payload of Helicopter</u> | <u>Minimum Required Bucket Size</u> |
|---|---|
| 780 pounds or less | 50 gallons |
| 781 – 1600 pounds | 100 gallons |

| | |
|--------------------|-------------|
| 1601 – 3900 pounds | 200 gallons |
| 3901 or more | 300 gallons |

(C) A water source of sufficient capacity readily accessible to allow the bucket to be filled three times without refilling the source. The water source must be located within five minutes round-trip flying time of every part of the operation.

(D) The following sized fire tool kit packaged for ready attachment to the cargo hook and located at the heliport serving the operation:

- (i) Two axes or pulaskis;
- (ii) Three shovels;
- (iii) Three adze eye hoes.

(E) Two fire extinguishers of at least 20 B.C. rating shall be kept with refueling equipment. They shall be appropriately mounted, suitably marked and available for immediate use.

(c) General requirements during the closed season:

(A) When blasting operations are conducted, a fire watch is required at the completion of blasting;

(B) During cable yarding operations:

(i) The operator shall be responsible to identify points of line rub, and shall take immediate action to stop, alleviate or control the line rub in order to prevent fires at these points.

(ii) The area around tail, corner and haul back blocks must be kept clean of all flammable woody debris under four inches in diameter for a distance of six feet in all directions.

(C) Smoking is permitted only on roads, cleared landings, gravel pits or any similar area free of flammable material;

(D) Warming fires are not permitted.

(d) Industrial Fire Precaution Levels

(1) Level One - Closed season: Fire protection equipment requirements are in effect. A fire watch is required at this and all higher precaution levels unless otherwise waived by BIA Fire Management.

(Amended 6/7/05, Resolution 2005-326) (Certified 7/12/05)

(2) Level Two - Partial Hoot Owl: The following may operate only between the hours of 8:00 PM and 1:00 PM local time.

- (A) Power saws except at loading sites and landings;
- (B) Cable yarding;
- (C) Blasting;

(D) Welding or cutting of metal.

(3) Level Three- Partial Shutdown:

(A) The following are prohibited except as indicated:

(i) Cable yarding, except that gravity operated logging systems employing non-motorized carriages may operate between 8:00 PM and 1:00 PM when all blocks and moving lines are suspended 10 feet above the ground except the lines between the carriage and the chokers.

(ii) Power saws, except power saws may be used at loading sites and on tractor or skidding operations between the hours of 8:00 PM and 1:00 PM local time.

(B) The following are permitted to operate between the hours of 8:00 PM and 1:00 PM:

(i) Tractor, skidder, feller-buncher, forwarder, shovel or excavator operations where the equipment in use is capable of quickly reaching and effectively attacking a fire start, and constructing fireline;

(ii) Mechanized loading or hauling of any product or material;

(iii) Blasting;

(iv) Welding or cutting of metal;

(v) Any other spark emitting operation not specifically mentioned.

(4) Level Four - General Shutdown: All operations are prohibited.

(5) Where hauling involves transit through more than one shutdown zone/regulated use area, the precaution level at the woods loading site shall govern the level of haul restrictions, unless otherwise prohibited by other than the industrial fire precaution level system.

(6) Waivers amending the precaution requirements for specific operations and locations may be issued by the Department or BIA Fire Management. Requests for waivers shall be received and waivers issued in advance of operations.

4-7-91 Fire Suppression

The operator shall take immediate and independent initial fire suppression action on all fires in the area encompassed by the forest practice and shall use all necessary manpower and equipment at his disposal, including the employees and equipment of his subcontractors engaged in or near the area. When called upon, the operator shall make available any or all of his manpower and equipment, including that of his subcontractors, for hire by the Bureau of Indian Affairs and to work under the direction of any authorized employees of the Bureau of Indian Affairs in the suppression of any fire on or threatening Reservation lands.

(Chapter 4-7 Amended 6/16/05, Resolution 2005-275)
(Chapter 4-7 Adopted 1/18/85, Resolution 1985-20)

Legislative History: Pursuant to Resolution 2005-486, the Colville Business Council has stayed the 2005 amendments to Chapter 4-7, Forest Practices Water Quality, which were adopted by Resolution 2005-272 on June 16, 2005 with technical corrections approved by Resolution 2005-

276 on July 16, 2005 until October 1, 2006. All forest practices applications submitted prior to the June 16, 2005 effective date shall be processed in accordance with Chapter 4-7 as adopted by Resolution 1985-20 on January 18, 1985 and Resolution 2005-148 on March 17, 2005. Resolution 2005-148 transferred administration of Chapter 4-7 from Tribal Forestry to the Environmental Trust Department. The October 2005 version of Chapter 4-7 shall reflect administration to Environmental Trust Department. This October 2005 version of Chapter 4-7 shall remain in effect until October 1, 2006. On November 5, 2015 Resolution 2015-668 transferred approving and enforcement authority to the Natural Resource Program, with the Natural Resource Director as the approving official.