

Title 223 WAC

FOREST PRACTICES APPEALS BOARD

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Chapter 223-08 WAC

RULES OF PROCEDURE

WAC

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WAC 223-08-005 Background information. (1) **Members.** The Forest Practices Appeals Board (hereinafter appeals board) is an independent agency of the State of Washington, composed of three members appointed by the governor (with the advice and consent of the senate) for a term of six years (after the original appointments). The members are to be qualified by experience or training in pertinent matters pertaining to the environment and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(a) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(b) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(c) Each member of the appeals board:

(i) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(ii) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter.

(2) **Function and Jurisdiction.** (a) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis,

each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his duties: *Provided*, That such compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel and other expenses incurred in the discharge of his duties in accordance with the provisions of chapter 43.03 RCW.

(b) The appeals board may appoint, discharge, and fix the compensation of an executive secretary, a clerk, and such other clerical, professional, and technical assistants as may be necessary. As specified in RCW 41.06.073, such employment shall be in accordance with the rules of the state civil service law, chapter 41.06 RCW.

(c) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(d) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(e) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(f) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(g) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(h) (i) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his request with the department and the attorney general. The attorney general

may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(ii) The review proceedings authorized in subparagraph (i) of this subsection are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases.

(3) **Appeals.** (a) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(b) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions but such powers shall be exercised in conformity with chapter 34.04 RCW.

(c) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to an agency by those provisions of chapter 34.04 RCW relating to contested cases.

(d) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(e) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and 34.04.140.

(4) **Caution.** This section is intended to be general and informational only, and failure herein to list matters over which the appeals board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction. Wherever the provisions of this WAC 223-08-005 conflict with other rules of this agency, such other rules shall prevail. [Order 004, § 223-08-005, filed 11/10/75.]

WAC 223-08-010 Board administration—Office. The headquarters and principal office of the appeals board shall be in Olympia, Washington. [Order 004, § 223-08-010, filed 11/10/75.]

WAC 223-08-015 Board administration—Meetings. The appeals board shall meet in formal sessions at its principal office on the first Friday of each month at 9:30 a.m., and shall meet at such other times and places as the appeals board may designate. [Order 004, § 223-08-015, filed 11/10/75.]

WAC 223-08-020 Board administration—Quorum. Two members of the appeals board shall constitute a quorum for making final orders or decisions, or for

promulgating rules and regulations relating to its procedures, and may act although one position on the appeals board be vacant (RCW 76.09.220). One member or designated hearing examiner may hold hearings and take testimony when designated by the appeals board to do so, but all proceedings and testimony shall be reported to the appeals board, and ultimate decisions shall be by the appeals board. [Order 004, § 223-08-020, filed 11/10/75.]

WAC 223-08-025 Board administration—Executive secretary. The office of the executive secretary of the appeals board shall be located at the headquarters and principal office of the appeals board. [Order 004, § 223-08-025, filed 11/10/75.]

WAC 223-08-030 Board administration—Procedures applicable. The appeals board shall be guided in procedural matters before it by these Rules of Procedure. These Rules of Procedure specifically replace the Uniform Procedural Rules, chapter 1-08 WAC, except where specifically noted. [Order 004, § 223-08-030, filed 11/10/75.]

WAC 223-08-035 Board administration—Definitions. As used in this chapter the following terms shall have the following meaning:

(1) "Appeals Board" refers to and means Forest Practices Appeals Board described in WAC 223-08-005. Where appropriate, the term "Appeals Board" also refers to the staff and employees of the Forest Practices Appeals Board.

(2) "Department" refers to and means the Department of Natural Resources.

(3) "Presiding officer(s)" shall mean one or more persons, each of whom is either a member of the appeals board or a hearing examiner, assigned to conduct a hearing or a conference by the appeals board.

(4) "Hearing Examiner" shall mean an agent of the appeals board authorized to conduct conferences or hearings.

(5) "Continuance" shall mean the extension of an initial hearing, actually held, by scheduling a subsequent, supplementary hearing.

(6) "Postponement" shall mean rescheduling a hearing, before its occurrence, to a later time. [Order 004, § 223-08-035, filed 11/10/75.]

WAC 223-08-040 Board administration—Presiding officer, powers. It shall be the duty of the presiding officer(s) to conduct conferences or hearings in an impartial and orderly manner, and presiding officer(s) have the authority, subject to the other provisions of these rules:

(1) To administer oaths and affirmations;

(2) To issue subpoenas as provided in RCW 34.04.105. A subpoena may also be issued by the attorney of record, or any person making an appearance as authorized by WAC 223-08-050(3) as provided in RCW 34.04.105;

(3) To rule on all procedural matters, objections and motions;

(4) To rule on all offers of proof and receive relevant evidence;

(5) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(6) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he deems necessary to fairly and equitably decide the appeal;

(7) To take appropriate disciplinary action with respect to representatives of parties appearing before the appeals board;

(8) To issue orders joining other parties, on motion of any party, or on his own motion when it appears that such other parties may have an interest in, or may be affected by, the proceedings;

(9) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(10) To hold conferences for the settlement or amplification of the issues at such times as set by the chairman;

(11) To take or cause to be taken depositions and interrogatories pursuant to these rules and to procedures available to litigants in civil cases in superior courts in the State of Washington;

(12) To regulate the course of the hearing;

(13) To take any other action necessary and authorized by these rules and the law. [Order 004, § 223-08-040, filed 11/10/75.]

WAC 223-08-045 Board administration—Computation of time. The time in which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, a Sunday, nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. [Order 004, § 223-08-045, filed 11/10/75.]

WAC 223-08-050 Appearance and practice—Persons who may appear. Any person may appear personally before the appeals board. No person may appear in a representative capacity before the appeals board or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the Supreme Court of the State of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.

(3) A bona fide officer, partner or full-time employee of an individual, firm, association, partnership, corporation or local government unit who appears for such individual, firm, association, partnership, corporation or local government unit.

(4) Legal interns admitted to practice under APR 9 of the Rules of Court may appear before the appeals board under the conditions and limitations therein specified.

(5) No former employee of the department or member of the attorney general's staff may, at any time after severing employment with the department or the attorney general, appear, except with the written permission of the department, in a representative capacity on behalf of other parties in a proceeding wherein he previously took an active part as a representative of the department in the same case or proceeding. [Order 004, § 223-08-050, filed 11/10/75.]

WAC 223-08-055 Appearance and practice—
Notice of appearance. (1) Appearance may be made on behalf of any party by an attorney or other duly authorized representative as defined in WAC 223-08-050, by

(a) Filing a written notice of appearance containing the name of the party to be represented, and the name and address of the representative, and the relationships found in WAC 223-08-050 allowing representation, or by

(b) Entering an appearance at the time and place of a conference or hearing on the appeal, and notifying the presiding officer conducting the same of the party to be represented and the name and address of the representative, and the relationships found in WAC 223-08-050 allowing representation.

(c) Copies of every written notice of appearance shall be furnished to all other parties or their representatives of record at the time the original is filed with the executive secretary of the appeals board.

(d) Unless the attorney general notifies the appeals board otherwise, the attorney general shall, in all appeals from decisions and orders of the department and director, be deemed to have entered appearance for the department, and shall be exempt from the requirements herein relating to the filing of written notices of appearance and to the furnishing of copies of same to other parties and their representatives.

(2) Thereafter all future notices and orders shall be served by the appeals board upon such representative. Service upon the representative shall constitute service upon the party. [Order 004, § 223-08-055, filed 11/10/75.]

WAC 223-08-060 Appearance and practice—No formal admission. Duly authorized representatives shall be permitted to appear in proceedings before the appeals board without a formal request or admission to practice before the appeals board. [Order 004, § 223-08-060, filed 11/10/75.]

WAC 223-08-065 Appearance and practice—
Withdrawal. An attorney or other representative withdrawing from a case shall immediately so notify the executive secretary of the appeals board and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or other representative shall be accomplished in the same manner except that an affidavit confirming the

substitution shall be executed by the party and filed with the executive secretary and all parties of record or such substitution shall be confirmed, in person, by the party upon the record. [Order 004, § 223-08-065, filed 11/10/75.]

WAC 223-08-070 Appearance and practice—
Conduct. All persons appearing in a representative capacity in proceedings before the appeals board shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standard, a presiding officer may, in his discretion and depending on all the circumstances, admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or report the matter to the appeals board which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, and refusal to permit such person to appear in a representative capacity in any proceeding before the appeals board.

Where a majority of the appeals board is conducting a proceeding, such majority may take appropriate disciplinary action against a representative without convening a separate hearing. [Order 004, § 223-08-070, filed 11/10/75.]

WAC 223-08-075 Commencing an appeal—Filing and service. All written communications relating to a proceeding and directed to the appeals board or its chairman shall be filed with the executive secretary at the principal office of the appeals board. Filing shall be effective upon receipt by the appeals board. The stamp of the appeals board placed upon any written communication shall be prima facie evidence of the date of receipt. The executive secretary shall acknowledge receipt of each notice commencing a proceeding filed under WAC 223-08-085.

Copies of all written communication relating to a proceeding and directed to the appeals board shall, concurrently with filing, be served upon all other parties: *Provided*, That in any event:

(1) Copies of notices commencing any of the proceedings described in WAC 223-08-085(2), (6) or (7) shall, concurrently with filing, be served upon the attorney general who may intervene to protect the public interest and insure that the provisions of the Forest Practices Act are complied with. (See RCW 76.09.050(9) and RCW 76.09.220(9))

(2) Copies of notices commencing any of the proceedings described in WAC 223-08-080(2), (6) or (7) shall likewise be served, concurrently with filing, upon the applicant under the challenged application, who shall be a responding party in the proceeding unless already an appealing party.

Whenever under these rules service is required to be made upon a represented party, the service shall be made upon the representative unless service upon the party himself is ordered by the appeals board. Service upon the representative or upon a party shall be made by delivering a copy to him or by mailing it to him at his

last known address. Delivery of a copy within this rule means: Handing it to the representative or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be complete on the first day other than a Saturday, Sunday or legal holiday, following the third day. Originals of written communications filed with the appeals board shall bear a notation of the names and dates of persons served with copies. Such notation shall be signed by the party authorizing the communication or his representative.

There shall be substantial compliance with the requirement that service be concurrent with filing but failure of literal compliance shall not alone impair commencement of any proceeding. All parties shall be served with the notice commencing a proceeding at least twenty days before hearing. All parties shall be served with motions and notices of motion hearings at least five days before the time specified for the motion hearing unless a different period is fixed by these rules or by order of the appeals board. [Order 004, § 223-08-075, filed 11/10/75.]

WAC 223-08-080 Commencing an appeal—Forms. The following forms shall be used in proceedings before the appeals board. The forms, instructions thereon, and descriptive captions are each components of this rule of procedure.

Where any written communication directed to the appeals board is found not to be in conformity with this or another rule of procedure or the requirements of any statute, the appeals board may require the party directing such communication to correct, clarify or amend the same so as to conform. The appeals board may refuse to schedule any conference or hearing hereon until compliance with such requirements, or may issue an order providing for the dismissal of any proceeding upon failure to comply within a specified time.

INDEX TO FORMS

- Form 1 – PETITION FOR CHAIRMAN'S ORDER
- Form 2 – COUNTY APPEAL OF DEPARTMENT APPROVAL
- Form 3 – APPEAL OF STOP-WORK ORDER
- Form 4 – APPEAL OF NOTICE TO COMPLY
- Form 5 – APPEAL OF PENALTY

- Form 6 – DEPARTMENT APPEAL OF COUNTY OBJECTIONS
- Form 7 – APPEAL OF DEPARTMENT APPROVAL OR DISAPPROVAL
- Form 8 – PETITION FOR A DECLARATORY RULING
- Form 9 – PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF RULE

The above forms are neither printed nor furnished by the appeals board but are set out here for copying by those wishing to commence a proceeding. Underlined portions of these forms are instructional, and the matter called for must be supplied by the party commencing the proceeding or his representative.

FORM 1 – For commencing the proceeding described in WAC 223-08-085(1):

NOTICE

COMMENCING A PROCEEDING Before the FOREST PRACTICES APPEALS BOARD State of Washington

Date

Department of Ecology

PETITION FOR
CHAIRMAN'S
ORDER

Represented by:

Name of Representative(s)

Mailing Address

1. This proceeding is authorized by RCW 76.09.100.
2. A short and plain statement identifying the forest practice regulations violated, the violator, and how and when such violations occurred.
3. The Department of Natural Resources has not issued a stop work order or notice to comply in the matter of this violation. The Department of Ecology has therefore notified the Department of Natural Resources of such violation. The Department of Natural Resources has failed to take authorized enforcement action, within twenty-four hours of such notice, under RCW 76.09-.080, 76.09.090, 76.09.120 or 76.09.130.
4. The chairman is respectfully requested to order the relief to which the Department of Ecology deems itself entitled.

A copy of this
Notice was served
upon the Department
of Natural Resources
on (date)

I/We have read the
above and believe the
contents to
be true.

Signed,
Representative(s)

Signed,
Representative(s)

FORM 2 – For commencing the proceeding described
in WAC 223-08-085(2):

COMMENCING A PROCEEDING
Before the
FOREST PRACTICES APPEALS BOARD
State of Washington

Date

Name of County

Represented by:

Name of Representative

Mailing Address

COUNTY APPEAL
OF DEPARTMENT
APPROVAL

1. This proceeding is authorized by RCW 76.09.050(8).

2. Name County hereby elects a formal/an informal hearing. (See WAC 223-08-155)

3. The attached forest practices application was approved by the Department of Natural Resources, and notice of such approval showing the (date) thereof is attached.

4. Lands within the jurisdiction of name County are affected by the said approval.

5. A short and plain statement of the grounds upon which the county believes the said approval is unlawful. Statutes, regulations or applications referred to shall be precisely cited.

6. A demand for the relief to which the county deems itself entitled.

Copies of this
Notice were served
upon:

(1) Department of
Natural Resources
(date)

(2) Attorney General Signed, County
(date) Representative(s)

(3) Applicant date
(See WAC 223-08-075)

Signed, County Representative(s)

ATTENTION: (Name of Applicant)

Upon receipt of this Notice you are a PARTY to this proceeding before the Forest Practices Appeals Board.

You will be notified of the time and place of hearing and you may argue in favor of your application under the Rules of Procedure found in chapter 223-08 WAC.

Your failure to participate in this proceeding may deprive you of a hearing altogether as the Forest Practices Appeals Board will not permit additional proceedings among the same parties concerning the same forest practices.

INSTRUCTIONS:

1. The application involved as well as the department's Notice of Approval shall be attached to this Notice.

2. Where only portions of an application are appealed, the county shall specify precisely the portions appealed.

3. Requests for the suspension of department approval pending an appeal shall be made separately by motion or affidavit. (See WAC 223-08-085(2))

FORM 3 – For commencing the proceeding described
in WAC 223-08-085(3):

NOTICE

COMMENCING A PROCEEDING
Before the
FOREST PRACTICES APPEALS BOARD
State of Washington

Date

Name of Appellant

Mailing Address

Residence or principal
place of business if
different from mailing
address

APPEAL OF
STOP-WORK
ORDER

Represented by:

Name of Representative

Mailing Address

1. This proceeding is authorized by RCW 76.09.080(2)(d).

2. The appellant hereby elects a formal/an informal hearing. (See WAC 223-08-155)

3. A short and plain statement of the grounds upon which the appellant believes the stop-work order is unlawful. Statutes, regulations or applications referred to shall be precisely cited.

4. A demand for the relief to which the appellant deems himself entitled.

Copies of this
Notice were served
upon:

(1) Department of
Natural Resources
(date)

(2) Others (dates)
(See WAC 223-08-075)

I/We have read the
above and believe the
contents to be true.

Signed,
Appellant and/or

Signed,
Representative

Signed,
Appellant and/or

Signed, Representative

INSTRUCTIONS:

1. Where the appealed stop-work order or this Notice cites a forest practices application, the same shall be attached to this Notice.

2. Requests for discontinuance of the stop-work order appealed, pending the outcome of the proceeding, shall be made separately by motion or affidavit. (See WAC 223-08-085(3))

3. Appellant shall sign where indicated except where unavailable to do so, and in any event petitioner's representative shall sign.

FORM 4 – For commencing the proceeding described in WAC 223-08-085(4):

NOTICE
COMMENCING A PROCEEDING
Before the
FOREST PRACTICES APPEALS BOARD
State of Washington
Date

Name of Appellant

Mailing Address:

Residence or Principal
Place of Business if
Different from Mailing
Address

APPEAL OF
NOTICE
TO COMPLY

Represented by:

Name of Representative
Mailing Address

1. This proceeding is authorized by RCW 76.09.090.

2. The appellant has had a hearing before the Department of Natural Resources on date and a copy of the final decision issued after such hearing is attached.

3. A short and plain statement of the grounds upon which the appellant believes the Notice to Comply is unlawful. Statutes, regulations or applications referred to shall be precisely cited.

4. A demand for the relief to which the appellant deems himself entitled.

Copies of this
Notice were served
upon:

(1) Department of
Natural Resources
(date)

(2) Others (dates)
(See WAC 223-08-075)

Signed,
Appellant and/or

Signed, Representative

I/We have read the
above and believe the
contents to be true.

Signed,
Appellant and/or

Signed,
Representative

INSTRUCTIONS:

1. A copy of the final decision of the department issued after a hearing before the department shall be attached to this Notice.

2. Where the appealed Notice to Comply, the department's final decision, or this Notice cites a forest practices application, the same shall be attached to this Notice.

3. Appellant shall sign where indicated except where unavailable to do so, and in any event appellant's representative shall sign.

FORM 5 – For commencing the proceeding described in WAC 223-08-085(5):

NOTICE
COMMENCING A PROCEEDING
Before the
FOREST PRACTICES APPEALS BOARD
State of Washington
Date

Name of Appellant

Mailing Address

Residence or Principal
Place of Business
if Different from
Mailing Address

APPEAL OF
PENALTY

Represented by:

Name of Representative
Mailing Address

1. This proceeding is authorized by RCW 76.09.170.

2. The appellant hereby elects a formal/an informal hearing. (See WAC 223-08-155)

3. The appellant has/has not applied in writing to the Department of Natural Resources.

4. A short and plain statement of the grounds upon which the appellant believes the penalty imposed is unlawful or excessive. Statutes, regulations or applications referred to shall be precisely cited.

5. A demand for the relief to which the appellant deems himself entitled.

Copies of this
Notice were served
upon:

(1) Department of
Natural Resources
(Date)

(2) Others (Dates)
(See WAC 223-08-075)

Signed,
Appellant and/or

Signed, Representative

I/We have read the
above and believe the
contents to be true.

Signed,
Appellant and/or

Signed,
Representative

INSTRUCTIONS:

1. A copy of the department's notice imposing the penalty appealed shall be attached to this Notice.

2. Where the appellant has applied to the department for remission or mitigation of the penalty appealed, copies of the appellant's application and the department's disposition shall be attached to this Notice.

3. Where the Notice or any document required to be attached cites a forest practices application, the same shall be attached to this Notice.

4. Appellant shall sign where indicated except where unavailable to do so, and in any event appellant's representative shall sign.

FORM 6 – For commencing the proceeding described in WAC 223-08-085(6):

NOTICE
COMMENCING A PROCEEDING
Before the
FOREST PRACTICES APPEALS BOARD
State of Washington

Date

Department of Natural Resources
Public Lands Building
Olympia, Washington 98504

Represented by:
Name of Representative
Mailing Address

DEPARTMENT
APPEAL OF
COUNTY
OBJECTIONS

1. This proceeding is authorized by RCW 76.09.050(7).

2. The Department hereby elects a formal/an informal hearing. (See WAC 223-08-155)

3. The attached objections, concerning the attached forest practices application, were received by the Department from name County on date.

4. A short and plain statement of the grounds upon which the department believes that the county objections are unfounded. Authority shall be precisely cited.

5. A demand for the relief to which the department deems itself entitled.

Copies of this
Notice were served
upon:

(1) Name of County
(date)

(2) Attorney
General (date)

(3) Applicant (date)
(See WAC 223-08-075)

I/We have read the
above and believe the
contents to be true.

Signed,
Representative(s)

Signed, Representative(s)

[Title 223 WAC—p 8]

ATTENTION: (Name of Applicant)

Upon receipt of this Notice you are a PARTY to this proceeding before the Forest Practices Appeals Board.

You will be notified of the time and place of hearing and you may argue in favor of your application under the Rules of Procedure found in chapter 223-08 WAC.

Your failure to participate in this proceeding may deprive you of a hearing altogether as the Forest Practices Appeals Board will not permit additional proceedings among the same parties concerning the same forest practices.

INSTRUCTIONS:

1. Copies of the appealed county objections and the forest practices application to which they pertain shall be attached to this Notice.

2. A copy of the appealed county objections shall accompany the copy of this Notice served upon the applicant pursuant to WAC 223-08-075.

FORM 7 – For commencing the proceeding described in WAC 223-08-085(7):

NOTICE
COMMENCING A PROCEEDING
Before the
FOREST PRACTICES APPEALS BOARD
State of Washington

Date

Name of Appellant
Mailing Address

Residence or principal
place of business if
different from mailing
address

APPEAL OF
DEPARTMENT
APPROVAL OR
DISAPPROVAL

Represented by:
Name of Representative
Mailing Address

1. This proceeding is authorized by RCW 76.09.220(9).

2. The appellant hereby elects a formal/an informal hearing. (See WAC 223-08-155)

3. The attached forest practices application was approved/disapproved by the Department of Natural Resources on date.

4. A short and plain statement of the grounds upon which the appellant believes the approval or disapproval is improper. Authority shall be precisely cited.

5. A demand for the relief to which the appellant deems himself entitled.

Copies of this
Notice were served
upon:

(1) Department of
Natural Resources
(date)

(2) Attorney
General (date)

(3) Applicant
(dates)
(See WAC 223-08-075)

I/We have read the
above and believe the
contents to be true.

Signed,
Appellant and/or

Signed,
Representative

Signed, Appellant and/or

Signed, Representative

ATTENTION: (Name of Applicant)

Upon receipt of this Notice you are a PARTY to this proceeding before the Forest Practices Appeals Board.

You will be notified of the time and place of hearing and you may argue in favor of your application under the Rules of Procedure found in chapter 223-08 WAC.

Your failure to participate in this proceeding may deprive you of a hearing altogether as the Forest Practices Appeals Board will not permit additional proceedings among the same parties concerning the same forest practices.

INSTRUCTIONS:

1. A copy of the forest practices application involved shall be attached to this Notice.

2. The appellant shall sign where indicated except where unavailable to do so, and in any event the appellant's representative shall sign.

FORM 8 - For commencing the proceeding described in WAC 223-08-085(8).

NOTICE

COMMENCING A PROCEEDING Before the FOREST PRACTICES APPEALS BOARD State of Washington

Date

Name of Petitioner
Mailing Address

Residence or principal
place of business
within the state if
different from mailing
address

Represented by:

Name of Representative
Mailing Address

1. This proceeding is authorized by RCW 34.04.080.

2. State all rules or statutes brought into issue by this Notice.

3. State the facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of the state.

4. State the relief demanded.

Copies of this
Notice were served
upon:

(1) Department of
Natural Resources
(date)

(2) Others Verification
(dates)

(See WAC 223-08-075)

Signed, Petitioner and/or

Signed, Representative

INSTRUCTIONS:

1. The petitioner shall sign where indicated except where unavailable to do so, and in any event the petitioner's representative shall sign.

2. This Notice shall be verified in the manner prescribed for certification of complaints in the Superior Courts of this state.

3. This Notice shall be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

FORM 9 - For commencing the proceeding described in WAC 223-08-085(9).

NOTICE

COMMENCING A PROCEEDING Before the FOREST PRACTICES APPEALS BOARD State of Washington

Date

Name of Petitioner
Mailing Address

Residence or principal
place of business within
the state if different
from mailing address

Represented by

Name of Representative
Mailing Address

PETITION FOR
ADOPTION
AMENDMENT
REPEAL
OF RULE

1. This proceeding is authorized by RCW 34.04.060.

2. State whether petition is for rule adoption, amendment or repeal.

3. If adoption or amendment is sought, state the desired new rule in its entirety. Where amendment is sought, new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. If repeal is sought, the rule proposed to be repealed shall be set forth in its entirety or referred to by rule number.

4. State concisely the reasons for the action sought.5. State the interest of the petitioner in the subject matter of the rule.Signed, Petitioner and/orSigned, Representative

INSTRUCTIONS:

1. The petitioner shall sign where indicated except where unavailable to do so, and in any event the petitioner's representative shall sign.

2. This Notice shall be on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

[Order 004, § 223-08-080 and Forms 1 - 9, filed 11/10/75.]

WAC 223-08-085 Commencing an appeal—

Types and time limits. Every proceeding before the appeals board or its chairman shall be commenced by filing with the executive secretary a notice substantially in compliance with one of the forms numbered one through nine in WAC 223-08-080. Each such original notice shall be accompanied by four copies except that failure to file said copies shall not alone impair commencement of the proceeding.

There shall be the following types of proceedings before the appeals board or its chairman, and they shall be commenced within the following periods of time:

(1) The department of ecology may petition the chairman of the appeals board for an order directing the department to immediately issue a stop-work order or notice to comply or to impose a penalty. Upon receipt of the petition, the executive secretary shall notify both departments of the time and place of a hearing upon the petition.

After hearing, the chairman shall grant or deny the petition within forty-eight hours from the time of filing with the executive secretary or the service of a copy of the petition upon the department, whichever is later. Such action by the chairman shall be based solely on the hearing argument and shall be embodied in a written order setting out the conclusions upon which it is based. The order shall be filed at the principal office of the appeals board and copies shall be served upon the parties. (See RCW 76.09.100)

(2) The county may appeal within thirty days any department approval of an application with respect to any lands within its jurisdiction. The applicant shall be a party to all county appeals of department approvals.

Where any county so appealing seeks a temporary suspension of the department's approval, in whole or in part, pending such appeal, the following procedure shall apply:

(a) The county shall file with the executive secretary a motion setting forth specific facts supporting a conclusion that the department's approval has created a potential for immediate and material damage to a public resource. Such motion may be filed with the county notice commencing the appeal or at any time thereafter

prior to the final decision of the appeal by the appeals board.

(b) Upon receipt of said county's motion, the executive secretary shall schedule a hearing and serve notice of such hearing on all parties to the appeal.

(c) After hearing, the appeals board shall temporarily suspend the department's approval, in whole or in part, or shall decline to suspend. Such action shall be based solely on the hearing argument, and shall be embodied in a written order. Orders issued under this subsection (c) shall remain effective until the final decision of the appeals board unless sooner dissolved for good cause shown.

(d) In emergency situations, a temporary suspension in whole or in part may be granted without a hearing, only if it clearly appears from specific facts shown by the county's affidavit that there exists potential for immediate and material damage to a public resource before any adverse party can be heard in opposition. A temporary suspension granted without a hearing shall be embodied in a written order. Such order shall specify a place and time, not later than the second day after the order is signed, for a hearing. The hearing specified in the order issued under this subsection (d) shall occur at the time and place stated unless any adverse party requests postponement. Following such hearing, or upon failure of either the county or any adverse party to appear, the appeals board shall issue an appropriate order dissolving the order issued without hearing or extending it on the same or different terms until the final decision of the appeals board unless sooner dissolved for good cause shown.

(e) Every order temporarily suspending the department's approval of an application, whether issued before or after hearing, shall set forth the reasons for its issuance and shall describe in reasonable detail the scope of the approval which is suspended; and shall be signed by a majority of the appeals board and filed at its principal office; and shall be binding upon all parties to the appeal, their officers, agents, servants, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order. (See RCW 76.09.050(8))

(3) An operator, timber owner or forest land owner subject to a stop work order (RCW 76.09.080) may commence an appeal to the appeals board within fifteen days after service upon the operator.

Where any person so appealing seeks temporary discontinuance of the stop work order, in whole or in part, pending the outcome of the proceeding, the following procedures shall apply:

(a) The stop order appellant shall file with the executive secretary a motion setting forth specific facts supporting a conclusion that the discontinuance being sought would in no way create a potential for immediate and material damage to the public resource or result in other immediate and irreparable harm. Such motion may be filed with the appellant's notice commencing the appeal or at any time thereafter prior to the final decision of the appeal by the appeals board.

(b) Upon receipt of said appellant's motion, the executive secretary shall schedule a hearing and serve notice of such hearing on all parties to the appeal.

(c) After hearing, the appeals board shall temporarily discontinue the department's stop work order, in whole or in part, on such conditions as it may impose, or shall decline to discontinue. Such action shall be based solely on the hearing argument, and shall be embodied in a written order. Orders issued under this subsection (c) shall remain effective until the final decision of the appeals board unless sooner dissolved for good cause shown.

(d) In emergency situations, a temporary discontinuance in whole or in part on such conditions as the appeals board imposes may be granted without a hearing, only if it clearly appears from specific facts shown by the appellant's affidavit that no material damage to a public resource or other irreparable harm will result before any adverse party can be heard in opposition. A temporary discontinuance granted without a hearing shall be embodied in a written order. Such order shall specify a place and time, not later than the second day after the order is signed, for a hearing. The hearing specified in the order issued under this subsection (d) shall occur at the time and place stated unless the department requests postponement. Following such hearing, or upon failure of either the appellant or any adverse party to appear, the appeals board shall issue an appropriate order dissolving the order issued without a hearing or extending it on the same or different terms until the final decision of the appeals board unless sooner dissolved for good cause shown.

(e) Every order temporarily discontinuing a stop work order, whether issued before or after a hearing, shall set forth the reasons for its issuance and shall describe in reasonable detail the elements of the stop work order which are discontinued; and shall be signed by a majority of the appeals board and filed at its principal office; and shall be binding on all parties to the appeal, their officers, agents, servants, employees and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order. (See RCW 76.09.080(2)(d))

(4) An operator, timber owner or forest landowner subject to a notice to comply (RCW 76.09.090) shall first request, within fifteen days after the date of service of such notice, a hearing thereon before the department. The final order of the department issued after such hearing may then be appealed to the appeals board within thirty days after such final order takes effect. (See RCW 76.09.090)

(5) All persons subject to a penalty under RCW 76.09.170 may appeal such penalty to the appeals board within thirty days of receipt of notice imposing any penalty, unless an application for remission or mitigation is made to the department. When such an application is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application. (See RCW 76.09.170)

(6) The department may appeal county objections to the appeals board within thirty days of notice to the department of such objections. The applicant shall be a party to all department appeals of county objections. (See RCW 76.09.050(7))

(7) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. The applicant shall be a party to this proceeding. (See RCW 76.09.220(9))

(8) See WAC 223-08-270.

(9) See WAC 223-08-275. [Order 004, § 223-08-085, filed 11/10/75.]

WAC 223-08-090 Commencing an appeal—Jurisdiction. Any party may challenge the jurisdiction of the appeals board to hear an appeal on jurisdictional grounds, and the appeals board may, on its own motion, raise the jurisdictional issue. The appeals board may, when satisfied that it does not have jurisdiction, dismiss an appeal. [Order 004, § 223-08-090, filed 11/10/75.]

WAC 223-08-095 Commencing an appeal—Amendment of notice. Prior to the scheduling of the first conference, the party appealing may amend the notice commencing a proceeding at any time; thereafter, such amendment may be made on such terms as the appeals board or presiding officer may prescribe, and the presiding officer may, when deemed necessary, in justice to all parties, require correction, clarification or amendment of a notice of appeal before allowing any hearing thereon to proceed or may issue an order requiring such correction, clarification or amendment to be made within a specified time, and if such requirement is not complied with, the appeals board may dismiss the appeal. [Order 004, § 223-08-095, filed 11/10/75.]

WAC 223-08-100 Conferences—Two types. Conferences shall be of two types: informal and pre-hearing. [Order 004, § 223-08-100, filed 11/10/75.]

WAC 223-08-105 Conferences—Informal conference, purpose. The purpose of an informal conference shall be to determine the feasibility of a settlement of the appeal. The presiding officer shall be present at the opening and closing of a scheduled informal conference, but since the absence of the presiding officer may facilitate, on occasion, the achievement of an agreement or a settlement, he may, on the request of either party, or on his own volition, absent himself from the conference from time to time. [Order 004, § 223-08-105, filed 11/10/75.]

WAC 223-08-110 Conferences—Informal conference, when held. At any time prior to hearing on an appeal, any party thereto may file a written application with the executive secretary of the appeals board, requesting an informal conference. The appeals board may thereupon, at its discretion, or any time on its own motion, order an informal conference on not less than seven

days' notice mailed to each party to the appeal, at a time and place fixed by the appeals board. At any time prior to hearing, the presiding officer to whom the case is assigned, may, pursuant to agreement of all parties, convene and preside at an informal conference at a time and place agreed upon. [Order 004, § 223-08-110, filed 11/10/75.]

WAC 223-08-115 Conferences—Informal conference, agreements. (1) All agreements reached at informal conferences shall be stated on the record by the presiding officer and the parties shall indicate their concurrence on the record.

(2) If an agreement concerning final disposition of the appeal is reached by all the parties present or represented at a conference, an order may be issued in conformity therewith, providing the appeals board finds said agreement is in accordance with the law.

(3) If the appeals board decides that the agreement is not in accordance with the law, it may schedule another informal conference, or direct that a pre-hearing conference be held.

(4) If no agreement is reached by the parties as to final disposition of an appeal, a pre-hearing conference may thereupon be held. [Order 004, § 223-08-115, filed 11/10/75.]

WAC 223-08-120 Conferences—Prehearing conference, purpose. The purpose of a prehearing conference shall be to obtain a stipulation of facts to show the appeals board's jurisdiction in the matter; to obtain agreement as to the issues of law and fact presented and the simplification or limitation thereof; to determine the necessity of amendments to the notice of appeal or other pleadings; to determine the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; to determine the admissibility of exhibits; to obtain stipulation as to all or part of the facts in the case; to determine the limitation of the number of witnesses; to obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible; to determine the approximate time necessary for the presentation of the evidence of the respective parties; and to obtain all other information which may aid in the prompt disposition of the appeal. [Order 004, § 223-08-120, filed 11/10/75.]

WAC 223-08-125 Conferences—Prehearing conference, when held. At any time prior to hearing on an appeal, any party thereto may file a written application with the appeals board requesting a prehearing conference. The appeals board may, thereupon, at its discretion, or at any time on its own motion, order a prehearing conference on not less than seven days' notice mailed to each party to the appeal, at a time and place fixed by the appeals board. At any time prior to hearing, the presiding officer to whom the case is assigned, may, pursuant to agreement of all parties, convene and preside at a pre hearing conference at a time and place agreed upon. Such pre hearing conference may also be

held immediately at the conclusion of an informal conference if time permits, or, at the discretion of the presiding officer, may be held at a later time on seven days' written notice to each party to the appeal. [Order 004, § 223-08-125, filed 11/10/75.]

WAC 223-08-130 Conferences—Prehearing conference, documents. (1) The appeals board or its presiding officer may require:

(a) That all documentary evidence which is to be offered during the taking of evidence be submitted prior to any pre hearing conference. The evidence shall be submitted sufficiently in advance of the prehearing conference to permit study and preparation for the conference.

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

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

(2) The presiding officer may, upon findings on the record, limit the documentary evidence to that presented at any prehearing conference. For good cause shown any party may submit additional documentary evidence at the time of hearing.

(3) All documentary evidence filed at a prehearing conference shall be returned to the party submitting such evidence, and all evidence in such a conference shall be treated by the appeals board and the parties in a confidential manner. [Order 004, § 223-08-130, filed 11/10/75.]

WAC 223-08-135 Conferences—Prehearing conference, information. If any party fails to supply the presiding officer at a prehearing conference the information reasonably necessary to aid the appeals board in properly scheduling hearings, the appeals board or the presiding officer may suspend setting a hearing pending receipt of the required information, or may refuse to grant such party a continuance of the original hearing, or may otherwise restrict the time or location of hearing for receipt of such party's evidence. [Order 004, § 223-08-135, filed 11/10/75.]

WAC 223-08-140 Conferences—Prehearing conference, agreements. At the conclusion of a prehearing conference, the presiding officer conducting the same shall state for the record the results thereof. The statement shall include the agreements of the parties concerning issues, admissions, witnesses, time and location of hearings, the issues remaining to be determined and other matters that may expedite the subsequent hearing. The statement of agreement and issues, and ruling of the presiding officer, shall control the subsequent course of

the proceedings, unless modified for good cause by subsequent order. [Order 004, § 223-08-140, filed 11/10/75.]

WAC 223-08-145 Hearing—Superior court rules before hearing. Insofar as applicable, and not in conflict with these rules, the statutes and rules regarding pre-trial procedures in civil cases in the superior courts of this state shall be followed. Such rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions. [Order 004, § 223-08-145, filed 11/10/75.]

WAC 223-08-150 Hearing—Types of hearings. The statute creating the appeals board contemplates two kinds of hearings, informal and formal, without any indication as to what the distinction should be, but with very different provisions for the judicial review of the final decision of the appeals board. The procedure in conducting these two types of hearings shall be the same. The final decision of the appeals board entered after an informal hearing shall be no less binding upon the parties than a final decision entered after a formal hearing.

Judicial review of an appeals board's final decision entered after a formal hearing shall be pursuant to RCW 34.04.130.

Judicial review of an appeals board's final decision entered after an informal hearing shall be pursuant to terms of RCW 34.04.130 *except* that such review shall be *de novo*. [Order 004, § 223-08-150, filed 11/10/75.]

WAC 223-08-155 Hearing—Election of type. In all appeals over which the appeals board has jurisdiction, the party taking the appeal may elect a formal or informal hearing. If different parties appeal from the same order and one elects a formal hearing, the hearing will be formal. If no party taking an appeal of an order makes an election, the hearing will be formal. [Order 004, § 223-08-155, filed 11/10/75.]

WAC 223-08-160 Hearing—Notice of. The executive secretary shall serve a written notice of hearing on appeal to all parties not less than twenty days prior to the date thereof. [Order 004, § 223-08-160, filed 11/10/75.]

WAC 223-08-165 Hearing—Postponement and dismissal/default. (1) Continuance.

(a) **Pursuant to agreements at pre-hearing conference.** If agreement is reached at a pre-hearing conference, continuances shall be granted in accordance with such agreement and no written application therefor shall be required.

(b) **Requests prior to hearing.** If, prior to the hearing date, a party finds that he will not be able to present all such evidence at the scheduled hearing, such party shall file a written request for continuance with the executive secretary of the appeals board setting forth the reasons therefor as soon as such reasons are known. Copies of such requests shall be simultaneously furnished to all

other parties to the proceeding, any of whom may controvert the need of a continuance by filing a writing with the executive secretary prior to the hearing.

(c) **Requests at time of hearing.** If reasons requiring continuance of a hearing are not known in time to permit compliance with subsection (b) of this section, application thereof may be made orally at the hearing. Any other party to the proceeding may then controvert the need of a continuance.

(2) **Hearing postponement.** Every request for postponement of a hearing shall state precisely the reasons therefor, and may be decided by the appeals board with or without hearing at the appeals board's election. Any party may request a postponement of hearing within twelve days of his receipt of the notice of hearing. Such request shall be made in writing filed with the appeals board. If the request is granted, all parties shall be notified of the postponement by the appeals board.

Requests for postponement made after the twelve-day period shall also be in writing unless time is insufficient to allow service upon all other parties prior to the hearing sought to be postponed. In that event only may the appeals board and all other parties be informed of the request orally. Requests made after the twelve-day period, whether written or oral, shall be granted only in exceptional circumstances to prevent manifest injustice.

The appeals board may postpone a hearing upon its own motion and shall notify all parties.

In all cases of postponement, subsequent hearings shall be scheduled in accordance with WAC 223-08-170.

(3) Dismissal, Default.

(a) The appealing party may voluntarily withdraw his appeal orally at any conference or hearing and at any other time by filing a written request with the executive secretary and serving a copy simultaneously upon all persons entitled to service of the notice commencing the proceeding.

(b) Whenever an appealing party fails to appear at a scheduled hearing without voluntarily withdrawing or obtaining a postponement, the appeal shall be dismissed except to prevent manifest injustice. The appealing party may request that the appeals board vacate such order of dismissal by filing a writing with the executive secretary, within ten days of such order, showing good cause for his failure to appear. Upon a finding that good cause has been shown, the appeals board shall vacate the dismissal and set a subsequent hearing.

(c) Whenever a respondent fails to appear at a scheduled hearing without obtaining a postponement, the appeals board shall enter a default order granting the relief requested by the appealing party except where manifest injustice would result. The respondent may request that the appeals board vacate such default order by filing with the executive secretary, within ten days of such order, a writing showing good cause for his failure to appear. Upon a finding that good cause and a meritorious argument have been shown, the appeals board shall vacate the default order and set a subsequent hearing. [Order 004, § 223-08-165, filed 11/10/75.]

WAC 223-08-170 Hearing—Setting subsequent hearings. Any further hearings shall be scheduled in due course at such time and place as deemed proper by the appeals board or the chairman. [Order 004, § 223-08-170, filed 11/10/75.]

WAC 223-08-175 Hearing—Procedures at. (1) Presiding officer. All hearings shall be conducted by one or more presiding officers who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Order of presentation of evidence.** A presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce all evidence in his case-in-chief, except that in case of an appeal from an order assessing a penalty the department shall initially introduce all evidence necessary to their cases-in-chief. The responding parties may then introduce the evidence necessary to their case-in-chief. Rebuttal evidence will then be received.

Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) **Opening statements.** Unless a presiding officer rules otherwise, all parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes, and issues of the case.

(4) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit to the appeals board and all parties at the outset of the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(5) **Former employee as an expert witness.** No former employee of the department shall, at any time after severing employment with the department, appear, except with the written permission of the department, as an expert witness on behalf of other parties in a proceeding wherein he previously took an active part in the investigation as a representative of the department.

(6) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon, and the transcript shall not include extended argument or debate. [Order 004, § 223-08-175, filed 11/10/75.]

WAC 223-08-180 Hearing—Additional evidence. A presiding officer may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably. Any such evidence secured and presented by a presiding officer shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by a presiding officer, he shall make application therefor immediately following the conclusion of such evidence. Such application shall be granted by assignment of a time and place for presentation of such rebuttal evidence. [Order 004, § 223-08-180, filed 11/10/75.]

WAC 223-08-185 Hearing—Rules of evidence. Subject to the other provisions of these rules, a presiding officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The rules of privilege recognized by law shall be given effect. Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded. [Order 004, § 223-08-185, filed 11/10/75.]

WAC 223-08-190 Hearing—Admission of evidence and objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. [Order 004, § 223-08-190, filed 11/10/75.]

WAC 223-08-195 Hearing—Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts to the presiding officer and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding. [Order 004, § 223-08-195, filed 11/10/75.]

WAC 223-08-200 Hearing—Official notice of law. The appeals board and its hearing examiners, upon request made before or during a hearing, will officially notice:

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

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

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

(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar. [Order 004, § 223-08-200, filed 11/10/75.]

WAC 223-08-205 Hearing—Official notice of fact. In the absence of controverting evidence, the appeals board and its hearing examiners, upon request made before or during a hearing, may officially notice:

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

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

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority;

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

(5) **Request or suggestion.** Any party may request, or a presiding officer may suggest, that official notice be taken of a material fact. Such request or suggestion may be made on the record at a hearing or recorded in a pre-hearing conference statement or by written notice, pleading, motion, memorandum or brief served upon all parties at any time prior to a final decision.

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

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

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the appeals board or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Order 004, § 223-08-205, filed 11/10/75.]

WAC 223-08-210 Hearing—Basis for finding of fact. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. [Order 004, § 223-08-210, filed 11/10/75.]

WAC 223-08-215 Hearing—Record. The record before the appeals board shall consist of the decision or order appealed from, the notice commencing the proceeding, responsive pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations, requests, briefs or exceptions duly filed by any party and written reports or orders of the presiding officer. Such record shall also include all depositions, if they are admitted at the hearing, a record of every oral proceeding, together with all exhibits admitted. No part of the department's record or other documents shall be made part of the record of the appeals board unless admitted in evidence. [Order 004, § 223-08-215, filed 11/10/75.]

WAC 223-08-220 Hearing—Transcripts. The following shall be the policy of the appeals board with regard to transcription of the record:

(1) If two or more members of the appeals board are present at the hearing, it shall be discretionary for the appeals board to cause a transcript to be printed.

(2) If less than two members of the appeals board are present at the hearing, the appeals board shall cause a transcript to be printed. Any party may obtain a transcript copy upon payment of the reasonable cost thereof.

(3) In any case when the appeals board shall not cause a transcript to be printed, it shall be the obligation of the party wishing a transcript to order the same from the appeals board reporter and assume the cost of printing same. [Order 004, § 223-08-220, filed 11/10/75.]

WAC 223-08-225 Decision—Proposed decisions. Whenever a majority of the appeals board has not heard or read the evidence, or when the appeals board shall otherwise elect to do so, a written proposed decision shall thereafter be prepared which shall contain findings and conclusions as to each contested issue of fact and law as well as the appeals board's order based thereon. Copies of such proposed decision shall be mailed by the appeals board to each party to the appeal.

The provisions of WAC 223-08-235, 223-08-240, and 223-08-245 shall apply to such proposed decision. [Order 004, § 223-08-225, filed 11/10/75.]

WAC 223-08-230 Decision—Additional evidence by appeals board. After the parties have rested or upon review of the record, the appeals board may present such evidence, in addition to that contained in the record, as deemed necessary to decide the appeal fairly and equitably. Any evidence secured and presented by the appeals board shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the appeals board, he must make application therefor immediately following the conclusion of such evidence. Such application will be granted by assignment of a time and place for taking of such rebuttal evidence. [Order 004, § 223-08-230, filed 11/10/75.]

WAC 223-08-235 Decision—Exceptions. (1) **Time for filing.** Within twenty days, or such further period as the appeals board may allow on written application of a party, from the date of communication of the proposed decision to the parties or their attorneys of record, any party aggrieved thereby may file with the executive secretary of the appeals board, a written statement of exceptions thereto in original and three copies. Copies thereof shall be furnished to all other parties. In the event such statement of exceptions is filed, the failure of any party not aggrieved by the proposed decision to file a statement of exceptions shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **Contents.** Such statement of exceptions shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein. A general exception to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the exception shall refer to the evidence relied upon in support thereof. If legal issues are involved, the statement of exceptions shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The statement of exceptions should also contain the exceptor's proposed findings of fact and/or conclusions of law covering the factual and legal issues to which exceptions are being taken.

(3) **Reply to exceptions.** Any party may, within ten days, submit a reply to exceptions, a written brief or a statement of position regarding the matters on which exceptions were taken, or the appeals board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which exceptions were taken, within such time and on such terms as may be prescribed.

(4) **Action by appeals board on exceptions.** The appeals board shall, in a case in which it determines that a statement of exceptions does not properly conform to provisions of subsection (2) above, issue an order requiring the party to amend such statement of exceptions to conform to that rule, within a specified time. Failure of the party to comply with such order may result in the appeals board issuing an order adopting the proposed decision of the appeals board as the final decision of the appeals board on the ground that no legally sufficient statement of exceptions had been taken to said proposed decision.

(5) **Exceptions to rulings on admissibility of evidence.** If an exception is taken to a ruling or rulings of a presiding officer sustaining an objection to admissibility of evidence, or denying a continuance for the presentation of further evidence, and the appeals board determines that said ruling or rulings were erroneous, the appeals board may:

(a) Return the case to the presiding officer with appropriate instructions, or

(b) Open the matter for further argument and decision by the appeals board itself. [Order 004, § 223-08-235, filed 11/10/75.]

WAC 223-08-240 Decision—Where no exceptions filed. In the event no statement of exceptions is filed as provided herein by any party, the proposed decision of the presiding officer may be adopted by the appeals board and become the final decision of the appeals board. Such adoption of the proposed decision shall be the final decision of the appeals board for purposes of judicial review. [Order 004, § 223-08-240, filed 11/10/75.]

WAC 223-08-245 Decision—Final decision—Proposed decision. After the filing of a statement or statements of exceptions, if any, and reply, if any, the filing of briefs or presentation of oral argument thereon, if required, and the obtaining of additional evidence, if any, as provided for in WAC 223-08-230, the record before the appeals board shall be considered by a majority of the members of the appeals board: *Provided*, That if two members cannot agree on a decision, the third member must consider the record before the appeals board. [Order 004, § 223-08-245, filed 11/10/75.]

WAC 223-08-250 Decision—Final decision—No proposed decision. Whenever a majority of the appeals board has heard or read the evidence, and upon submission of the issues for decision, a written decision may be agreed to and signed by two or more members. Such decision shall be the final decision of the appeals board: *Provided*, That when two members of the appeals board have heard or read the evidence and those members cannot agree upon a decision, the third member shall read the evidence which shall include a hearing transcript, at appeals board expense, and he shall render his decision thereon: *And provided further*, That if two members cannot agree on a decision in any case the action reviewed by the appeals board shall be affirmed. [Order 004, § 223-08-250, filed 11/10/75.]

WAC 223-08-255 Decision—Final decision. (1) Every final decision rendered by the appeals board shall be agreed upon and signed by at least two members and shall contain findings and conclusions as to each contested issue of fact and law as well as the appeals board order based thereon.

(2) Every final decision rendered by the appeals board shall be effective upon filing at the appeals board's principal office and shall be open to public inspection at all reasonable times.

(3) Copies of every final decision rendered by the appeals board shall be mailed by the appeals board to each party to the appeal. [Order 004, § 223-08-255, filed 11/10/75.]

WAC 223-08-260 Appeal—Superior court petition. Upon a appeal from the decision of the appeals board to a superior court pursuant to RCW

76.09.230(5), the appealing party shall serve the executive secretary of the appeals board with a copy of the petition to the superior court, and shall keep the appeals board informed concerning the outcome of the appeal. [Order 004, § 223-08-260, filed 11/10/75.]

WAC 223-08-265 Appeal—Certification of record. Upon a receipt of a copy of the notice of appeal, the executive secretary shall certify the record made before the appeals board in accordance with RCW 34.04.130(4). [Order 004, § 223-08-265, filed 11/10/75.]

WAC 223-08-270 Declaratory ruling—Petition. (1) **Right to petition for declaratory ruling.** As prescribed by RCW 34.04.080, any interested person may petition the appeals board for a declaratory ruling.

(2) **Form of petition.** See Form 8, WAC 223-08-080.

(3) **Consideration of petition.** The entire appeals board shall consider the petition, and within a reasonable time shall:

(a) Issue a nonbinding declaratory ruling; or

(b) Notify the person that no declaratory ruling is to be issued; or

(c) Set a reasonable time and place for a hearing or for submission of written evidence on the matter, and give reasonable notification to the person of the time and place for such hearing or submission, and of the issues involved.

(4) **Disposition of petition.** If a hearing is held or evidence is submitted as provided in subsection (3)(c) above, the appeals board shall, within a reasonable time:

(a) Issue a binding declaratory ruling; or

(b) Issue a nonbinding declaratory ruling; or

(c) Notify the person that no declaratory ruling is to be issued. [Order 004, § 223-08-270, filed 11/10/75.]

WAC 223-08-275 Rule making—Petition. (1) **Right to petition for rule making.** As prescribed by RCW 34.04.060, any interested person may petition the appeals board for the promulgation, amendment, or repeal of any rule.

(2) **Form of petition.** See Form 9, WAC 223-08-080.

(3) **Consideration of petitions.** All petitions shall be considered by the entire appeals board within thirty days after submission or at the next meeting of the appeals board if it does not meet within thirty days. The appeals board may hold public hearings on the necessity or desirability of the rule changes petitioned.

(4) **Notification of disposition of petition.** Within thirty days after its consideration of the petition, the appeals board shall either deny the petition in writing (stating its reasons for the denial) or initiate rule-making proceedings in accordance with RCW 34.04.025. [Order 004, § 223-08-275, filed 11/10/75.]

Chapter 223-09 WAC

STATEMENT OF EXEMPTION FROM STATE ENVIRONMENTAL POLICY ACT

WAC

223-09-001 Statement of exemption.

WAC 223-09-001 Statement of exemption. The Forest Practices Appeals Board has reviewed its authorized activities and found them all to be exempt under the provisions of chapter 197-10 WAC. This section is adopted for compliance with the State Environmental Policy Act, chapter 43.21C RCW. [Order 006, § 223-09-001, filed 7/9/76.]

Chapter 223-12 WAC

RULES, DISCLOSURE OF PUBLIC RECORDS

WAC

223-12-010	Purpose.
223-12-020	Definitions.
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223-12-110	Protection of public records.
223-12-120	Records index.
223-12-130	Communication with the appeals board.
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WAC 223-12-010 Purpose. The purpose of this chapter shall be to insure compliance by the Forest Practices Appeals Board with the provisions of chapter 1, Laws of 1973, Disclosure-Campaign-Finances-Lobbying-Records (chapter 42.17 RCW), and in particular sections 25 through 32 of that Act, dealing with public records. [Order 004, § 223-12-010, filed 11/10/75.]

WAC 223-12-020 Definitions. The following definitions shall apply:

(1) "Public Record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

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

(3) The Forest Practices Appeals Board is a quasi-judicial body created pursuant to chapter 76.09 RCW. The Forest Practices Appeals Board shall hereinafter be referred to as the "appeals board." Where appropriate,

the term "appeals board" also refers to the staff and employees of the Forest Practices Appeals Board. [Order 004, § 223-12-020, filed 11/10/75.]

WAC 223-12-030 Organization and operation of Forest Practices Appeals Board. (1) Organization. The appeals board principal office and its entire staff are located at 521 Security Building, Fourth and Washington, Olympia, Washington, 98504. The appeals board may sit or hold hearings at any place in the state. The three members are qualified by experience and training in pertinent matters pertaining to the environment, and at least one member is admitted to the practice of law in this state, and was engaged in the legal profession at the time of his appointment. The members serve for a term of six years and are appointed by the governor with the advice and consent of the senate.

(2) Operation. The appeals board has authority to hear proceedings specified in the Forest Practices Act of 1974. These proceedings are enumerated in the appeals board Rules of Procedure which are published in chapter 223-08 WAC. The appeals board conducts regular meetings on the first Friday of every month at its principal office. Special meetings may also be convened and advance notice may be obtained according to the procedures of chapter 42.30 RCW. [Order 004, § 223-12-030, filed 11/10/75.]

WAC 223-12-040 Public records available. All public records of the appeals board as defined in WAC 223-12-020(1) are deemed to be available for public inspection and copying pursuant to these Rules, except as otherwise provided by section 31, chapter 1, Laws of 1973 (RCW 42.17.310) and other laws. [Order 004, § 223-12-040, filed 11/10/75.]

WAC 223-12-050 Public records officer. The public records officer for the appeals board shall be the executive secretary. The executive secretary shall be responsible for the following: The implementation of appeals board rules regarding release of public records, and general insurance of compliance by the staff that the public records disclosure requirements of chapter 1, Laws of 1973 (chapter 42.17 RCW) are fully complied with. [Order 004, § 223-12-050, filed 11/10/75.]

WAC 223-12-060 Office hours. Public records shall be available for inspection and copying during the customary office hours of the appeals board. For the purpose of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. [Order 004, § 223-12-060, filed 11/10/75.]

WAC 223-12-070 Request for public records. In accordance with the requirements of chapter 1, Laws of 1973 (chapter 42.17 RCW), which states that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or

copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the appeals board which shall be available at the appeals board principal office in Olympia. The form shall be presented to the public records officer, or a designated substitute if the public records officer is not available. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization he represents;

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

(c) A description of the material requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or a staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested. [Order 004, § 223-12-070, filed 11/10/75.]

WAC 223-12-080 Copying. No fee shall be charged for the inspection of public records. For printed, typed and written materials, maximum size 8-1/2" inches by 14 inches, the appeals board shall charge a reasonable fee for providing copies of public records and for use of the appeals board's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the appeals board for its actual costs incident to such copying. [Order 004, § 223-12-080, filed 11/10/75.]

WAC 223-12-090 Exemptions. (1) The appeals board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 223-12-070 is exempt under the provisions of section 31, chapter 1, Laws of 1973 (RCW 42.17.310). Exemptions shall also include, but are not limited to the following:

(a) Pursuant to section 26, chapter 1, Laws of 1973 (RCW 42.17.260), the appeals board reserves the right to delete identifying details when it makes available or publishes any public record, in all cases when there is reason to believe the disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973 (chapter 42.17 RCW). The public records officer will justify such deletion in writing.

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

(2) All denials of request for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the records and a brief explanation of how the exemption applies to the records withheld. [Order 004, § 223-12-090, filed 11/10/75.]

WAC 223-12-100 Review of denials of public records request. (1) Any person who objects to the denial of the request for public records may petition for prompt

review of such decision by submitting a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Following receipt of a written request for review of a decision denying a public record, the public records officer or other authorized staff member denying the request shall refer it to the chairman of the appeals board. The chairman or his designee shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with the final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the request has been returned with a decision or until the close of the second business day following denial of inspection, whichever occurs first. [Order 004, § 223-12-100, filed 11/10/75.]

WAC 223-12-110 Protection of public records. In order to properly protect the public records in the custody of the appeals board, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the office of the appeals board;

(2) Inspection of any public records shall be conducted in the presence of a designated appeals board employee;

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

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

(5) Access to file cabinets, shelves, vaults, etc., is restricted to the appeals board personnel. [Order 004, § 223-12-110, filed 11/10/75.]

WAC 223-12-120 Records index. (1) The appeals board has available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since its inception:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The current index promulgated by the appeals board shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection. [Order 004, § 223-12-120, filed 11/10/75.]

WAC 223-12-130 Communication with the appeals board. All communications with the appeals board regarding the administration or the enforcement of chapter 1, Laws of 1973 (chapter 42.17 RCW), and these rules, requests for decisions by the appeals board and other matters, shall be addressed as follows: Forest Practices Appeals Board, c/o Executive Secretary, 521 Security Building, Fourth and Washington, Olympia, Washington, 98504. [Order 004, § 223-12-130, filed 11/10/75.]

WAC 223-12-140 Adoption of form. The appeals board hereby prescribes for use by all persons requesting inspection and/or copying or copies of its records, the form set out below, entitled "Request for Public Records."

We have received your request for copies of our public records. Please complete the form on the right and return it with the amount required. We will forward the requested copies to you as soon as we receive this form.

Thank you.

Return to:

Forest Practices Appeals Board
c/o Executive Secretary
521 Security Building
4th and Washington
Olympia, Washington 98504

FOREST PRACTICES APPEALS BOARD REQUEST FOR PUBLIC RECORDS

Date ----- Time -----

Name -----

Address -----

Description of Records (see index):

I certify that the information obtained through this request for public records will not be used for commercial purposes.

Signature

Number of copies -----

Number of pages -----

Per page charge \$-----

Total charge \$-----

[Order 004, § 223-12-140, filed 11/10/75.]