

Title 223 WAC

FOREST PRACTICES APPEALS BOARD

Chapters	
223-08	Rules of procedure.
223-09	Statement of exemption from State Environmental Policy Act.
223-12	Rules, disclosure of public records.

223-08-257	Appeals to the courts—Certification of record.
223-08-260	Appeal—Superior court petition.
223-08-265	Appeal—Certification of record.
223-08-270	Declaratory ruling—Petition.
223-08-275	Rule making—Petition.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

Chapter 223-08 WAC RULES OF PROCEDURE

WAC

223-08-001	Purpose and applicability.
223-08-002	Commencement of adjudicative proceedings.
223-08-005	Background information.
223-08-010	Board administration and address of the board.
223-08-020	Board administration—Quorum.
223-08-030	Board administration—Procedures applicable.
223-08-035	Board administration—Definitions.
223-08-037	Board administration—Service of documents on representatives.
223-08-040	Board administration—Presiding officer, powers.
223-08-045	Board administration—Computation of time.
223-08-050	Appearance and practice—Persons who may appear.
223-08-055	Appearance and practice—Notice of appearance.
223-08-060	Appearance and practice—No formal admission.
223-08-065	Appearance and practice—Withdrawal.
223-08-070	Appearance and practice—Conduct.
223-08-072	Appearance and practice—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice.
223-08-075	Commencing an appeal—Filing and service.
223-08-080	Commencing an appeal—Forms.
223-08-085	Commencing an appeal—Types and time limits.
223-08-087	Commencing an appeal—Temporary suspension or discontinuance.
223-08-090	Commencing an appeal—Jurisdiction.
223-08-095	Commencing an appeal—Amendment of notice.
223-08-097	Intervention.
223-08-100	Prehearing conferences.
223-08-107	Prehearing procedures—Telephone.
223-08-148	Procedures—Motions.
223-08-150	Hearing—Types of hearings.
223-08-155	Hearing—Election of type.
223-08-160	Hearing—Notice of.
223-08-162	Hearing—Primary and secondary setting.
223-08-165	Hearing—Continuance.
223-08-171	Hearing—Dismissal or default.
223-08-175	Hearing—Procedures at.
223-08-177	Hearing—Standard and scope of review.
223-08-180	Hearing—Additional evidence.
223-08-185	Hearing—Rules of evidence.
223-08-190	Hearing—Admission of evidence and objections.
223-08-195	Hearing—Excerpts from documentary evidence.
223-08-200	Hearing—Official notice of law.
223-08-205	Hearing—Official notice of fact.
223-08-210	Hearing—Basis for finding of fact.
223-08-215	Hearing—Record.
223-08-220	Hearing—Transcripts.
223-08-235	Decision—Exceptions.
223-08-250	Decision—Final decision.
223-08-252	Decision—Preparation of findings, conclusions and orders.
223-08-255	Petition for reconsideration.

223-08-015	Board administration—Meetings. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-015, filed 4/13/82; Order 004, § 223-08-015, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-025	Board administration—Executive secretary. [Order 004, § 223-08-025, filed 11/10/75.] Repealed by 82-09-024 (Order 82-1, Resolution No. 82-1), filed 4/13/82. Statutory Authority: RCW 76.09.230(4).
223-08-105	Conferences—Informal conference, purpose. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-105, filed 4/13/82; Order 004, § 223-08-105, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-110	Conferences—Informal conference, when held. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-110, filed 4/13/82; Order 004, § 223-08-110, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-115	Conferences—Informal conference, agreements. [Order 004, § 223-08-115, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-120	Conferences—Prehearing conference, purpose. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-120, filed 4/13/82; Order 004, § 223-08-120, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-125	Conferences—Prehearing conference, when held. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-125, filed 4/13/82; Order 004, § 223-08-125, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-130	Conferences—Prehearing conference, documents. [Order 004, § 223-08-130, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-135	Conferences—Prehearing conference, information. [Order 004, § 223-08-135, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-140	Conferences—Prehearing conference, agreements. [Order 004, § 223-08-140, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
223-08-145	Hearing—Superior court rules before hearing. [Order 004, § 223-08-145, filed 11/10/75.] Repealed by 82-09-024 (Order 82-1, Resolution No. 82-1), filed 4/13/82. Statutory Authority: RCW 76.09.230(4).
223-08-147	Hearing—Assignment day—Time. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-147, filed 4/13/82.] Repealed by 90-

- 223-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
- 223-08-170 Hearing—Setting subsequent hearings. [Order 004, § 223-08-170, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
- 223-08-225 Decision—Proposed decisions. [Order 004, § 223-08-225, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
- 223-08-230 Decision—Additional evidence by appeals board. [Order 004, § 223-08-230, filed 11/10/75.] Repealed by 82-09-024 (Order 82-1, Resolution No. 82-1), filed 4/13/82. Statutory Authority: RCW 76.09.230(4).
- 223-08-240 Decision—Where no exceptions filed. [Order 004, § 223-08-240, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).
- 223-08-245 Decision—Final decision—Proposed decision. [Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-245, filed 4/13/82; Order 004, § 223-08-245, filed 11/10/75.] Repealed by 90-23-093, filed 11/21/90, effective 12/22/90. Statutory Authority: RCW 76.09.230(4).

WAC 223-08-001 Purpose and applicability. (1) The purpose of chapter 223-08 WAC is to provide comprehensive rules of practice and procedure before the forest practices appeals board.

(2) This chapter shall apply to all procedural matters before the appeals board and specifically replaces chapters 1-08 and 10-08 WAC, except where specifically noted.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-001, filed 11/21/90, effective 12/22/90.]

WAC 223-08-002 Commencement of adjudicative proceedings. An adjudicative proceeding before the appeals board shall be initiated as provided in WAC 223-08-075. Forms for notices of appeal are provided in WAC 223-08-080. The types and time limits for appeal are as provided in WAC 223-08-085.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-002, filed 11/21/90, effective 12/22/90.]

WAC 223-08-005 Background information. (1) **Members.** The forest practices appeals board is organized within the environmental hearings office, an independent agency of the state of Washington. The appeals board is composed of three members appointed by the governor (with the advice and consent of the senate) for a term of six years. 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.

(2) **Function.**

The function of the appeals board is to provide a forum for adjudicative proceedings in matters relating to forest practices.

(3) **Jurisdiction.**

The jurisdiction of the appeals board is state-wide. The types and time limits for appeal are as provided in WAC 223-08-085.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-005, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-005, filed 4/13/82; Order 004, § 223-08-005, filed 11/10/75.]

WAC 223-08-010 Board administration and address of the board. (1) The administrative business of the appeals board, except rule making, is performed by the environmental hearings office to the extent necessary for rule making, the appeals board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The appeals board is organized within the Environmental Hearings Office, 4224 - 6th Avenue S.E., Building No. 2 Rowesix, Lacey, Washington. The mailing address is:

Forest Practices Appeals Board
PO Box 40903
Olympia, Washington 98504-0903

(3) The telephone number of the board is (206) 459-6327. The telefacsimile number is (206) 438-7699.

[Statutory Authority: RCW 76.09.230(5). 94-12-030, § 223-08-010, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-010, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-010, filed 4/13/82; Order 004, § 223-08-010, filed 11/10/75.]

WAC 223-08-020 Board administration—Quorum. 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. An administrative appeals judge or one or more members may hold hearings and take testimony to be reported for action by the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-020, filed 11/21/90, effective 12/22/90; 83-03-005 (Order 82-1, Resolution No. 82-2), § 223-08-020, filed 1/7/83; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-020, filed 4/13/82; Order 004, § 223-08-020, filed 11/10/75.]

WAC 223-08-030 Board administration—Procedures applicable. Insofar as applicable, and not in conflict with these rules, the statutes and rules regarding 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.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-030, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-030, filed 4/13/82; 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, as appropriate, the forest practices appeals board described in WAC 223-08-005 or its presiding officer.

(2) "Department" refers to and means the department of natural resources.

(3) "Filing" of a document means delivery and is effective upon receipt. Filing may be made by mail, messenger or telefacsimile transmission, provided that originals of telefacsimile transmissions are simultaneously mailed or sent by messenger.

(4) "Party" means:

(a) A person to whom any agency decision is specifically directed;

(b) A person named as a party to the adjudicative proceeding, or allowed to intervene, or joined as a party by the appeals board.

(5) "Presiding officer" shall mean one person who is either an administrative appeals judge or a member of the appeals board assigned to conduct a hearing or a conference.

(6) "Service" means posting in the United States mail, properly addressed, postage prepaid; telefacsimile transmission; or personal service. Service by mail is complete upon deposit in the United States mail. Service by telefacsimile transmission is effective only where copies are simultaneously mailed or sent by commercial service delivery company.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-035, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-035, filed 4/13/82; Order 004, § 223-08-035, filed 11/10/75.]

WAC 223-08-037 Board administration—Service of documents on representatives. Service of any document required to be served on a party to a case, including final decisions of the board, may be made by serving the party's representative in the matter.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-037, filed 11/21/90, effective 12/22/90.]

WAC 223-08-040 Board administration—Presiding officer, powers. It shall be the duty of the presiding officer to conduct conferences or hearings in an impartial and orderly manner, and to rule upon all matters excepting the final decision. The presiding officer has the authority, subject to the other provisions of these rules:

(1) To administer oaths and affirmations;

(2) To issue subpoenas as provided in RCW 34.05.446. A subpoena may also be issued by the attorney of record. Service and costs of the subpoena shall be the responsibility of the party seeking the attendance of the witness;

(3) To rule on all procedural matters, objections, motions, and requests for suspension or stays;

(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 *sua sponte* 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;

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

(12) To cause to be submitted, written sworn direct testimony;

(13) To regulate the course of the hearing;

(14) To take any other action necessary and authorized by these rules and the law.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-040, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-040, filed 4/13/82; 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 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 party who appears for such individual, firm, association, partnership, corporation or local government.

(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.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-050, filed 11/21/90, effective 12/22/90; 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 and telephone number 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 and telephone number 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.

(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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-055, filed 4/13/82; 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 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 appeals board and all parties of record or such substitution shall be confirmed, in person, by the party upon the record.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-065, filed 4/13/82; 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, the presiding officer may admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-070, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-070, filed 4/13/82; Order 004, § 223-08-070, filed 11/10/75.]

WAC 223-08-072 Appearance and practice—Parties not represented by legal counsel—Waiver of rules to prevent manifest injustice. The presiding officer may waive any of these rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel where necessary to avoid manifest injustice.

[Statutory Authority: RCW 76.09.230(5). 94-12-030, § 223-08-072, filed 5/24/94, effective 6/24/94.]

WAC 223-08-075 Commencing an appeal—Filing and service. (1) An appeal is commenced by the filing of a notice of appeal at the office of the appeals board. Filing shall be effective upon receipt. The appeals board shall acknowledge receipt of each notice of appeal.

(2) Concurrently with filing at the appeals board, copies of notices commencing any of the proceedings described in WAC 223-08-085 (2), (6), or (7) shall be filed with the department and the attorney general.

(3) Concurrently with filing at the appeals board, copies of notices commencing any of the proceedings shall be served upon the permit applicant if that person is not the appellant, and all other parties.

(4) Failure to file or serve under subsections (2) and (3) of this section within the time for commencement of a proceeding shall not impair the timeliness of the appeal, provided that such filing and service is in substantial compliance with the requirement that it be done concurrently with filing at the appeals board. No issue, except matters which may be heard *ex parte*, shall be heard until filing or service under subsections (2) and (3) of this section and appropriate notice has occurred.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-075, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-075, filed 4/13/82; 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
Form 10 -	APPEAL OF HAZARD REDUCTION PLAN

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
Telephone Number

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
Telephone Number

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 filed with
(1) and (2) and served
upon (3):

I/We have read the
contents to be true.

(1) Department of
Natural Resources
(date)

(2) Attorney General
(date)

Signed, County
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

Telephone Number

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. The relief which the appellant believes is warranted.

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

Telephone Number

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. The relief which the appellant believes is warranted.

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. 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

Department of Natural Resources
Public Lands Building
Olympia, Washington 98504

DEPARTMENT
APPEAL OF
COUNTY
OBJECTIONS

Represented by:

Name of Representative
Mailing Address
Telephone Number

Represented by:

Name of Representative
Mailing Address
Telephone Number

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.

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)

5. The relief which the appellant believes is warranted.

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. The relief which the appellant believes is warranted.

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. 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.

Copies of this Notice were filed with (1) and (2) and served upon (3):

- (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)

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

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

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

Telephone Number

1. This proceeding is authorized by RCW 76.09.220(8).
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. The relief which the appellant believes is warranted.

Copies of this Notice were filed with (1) and (2) and served upon (3):

- (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

PETITION FOR A DECLARATORY RULING

Represented by:

Name of Representative

Mailing Address

Telephone Number

1. This proceeding is authorized by RCW 34.05.240. The petition shall comply with the requirements set forth in RCW 34.05.240(1).

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
Telephone Number

PETITION FOR
ADOPTION
AMENDMENT
REPEAL
OF RULE

1. This proceeding is authorized by RCW 34.05.330.
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/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 on white paper, either 8-1/2" x 11" or 8-1/2" x 13" in size.

FORM 10 - For commencing the proceeding described in WAC 223-08-085(10).

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

Date

Name of Party
Mailing Address

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

APPEAL OF
FINAL HAZARD
REDUCTION PLAN

Represented by

Name of Representative
Mailing Address
Telephone Number

1. This proceeding is authorized by RCW 76.09.310(6).
2. The relief which the appellant believes is warranted.

This Notice was
transmitted to
Department of Natural Resources
on date.

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

Signed
Appellant and/or
Representative

INSTRUCTIONS:

1. ATTACH THE FINAL HAZARD REDUCTION PLAN TO THE NOTICE OF APPEAL IF THE PLAN IS AVAILABLE.

2. APPELLANT SHALL SIGN WHERE INDICATED EXCEPT WHERE UNAVAILABLE TO DO SO, AND IN ANY EVENT APPELLANT'S REPRESENTATIVE SHALL SIGN.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-080, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-080, filed 4/13/82; 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 appeals board 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. This petition shall be filed at the principal office of the appeals board and the appeals board shall notify both departments of the time and place of a hearing upon the petition.

After opportunity for hearing, the chairman shall grant or deny the petition within forty-eight hours from the time of filing with the appeals board 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 record and 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. (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. (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(8))

(8) See WAC 223-08-270.

(9) See WAC 223-08-275.

(10) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal a final hazard reduction plan to the appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the appeals board and to the department.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-085, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-085, filed 4/13/82; Order 004, § 223-08-085, filed 11/10/75.]

WAC 223-08-087 Commencing an appeal—Temporary suspension or discontinuance. Any county appealing under RCW 76.09.050(8) or any person aggrieved appealing under RCW 76.09.220(8) may seek a temporary suspension of the department's approval, in whole or in part, pending such appeal. Any operator, timber owner, or forest land owner appealing under RCW 76.09.080 may seek temporary discontinuance of the stop work order, in whole or in part, pending such appeal. The following procedure shall apply:

(1) The appellant shall file with the appeals board a motion, supported by affidavit setting forth specific facts supporting a temporary suspension or discontinuance. Such motion may be filed with the notice commencing the appeal

or at any time thereafter prior to the final decision of the appeal by the appeals board.

(2) Upon receipt of said motion, the presiding officer shall schedule a hearing and serve notice of such hearing on all parties to the appeal. Before or after the commencement of said hearing the presiding officer may order the hearing of the merits to be consolidated with said hearing.

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

(4) In emergency situations, a temporary suspension or discontinuance in whole or in part may be granted by the presiding officer without a hearing, only if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party before any adverse party can be heard in opposition. A temporary suspension or discontinuance granted without a hearing shall be embodied in a written order and shall expire by its terms within such time after entry, not to exceed fourteen days, as provided therein unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. On two days' notice to the party who obtained the temporary suspension or discontinuance without notice or on such shorter notice to that party as the presiding officer may prescribe, the adverse party may appear and move its dissolution or modification and in that event the presiding officer shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(5) Every order temporarily suspending the department's approval of an application, or temporarily discontinuing a stop work order, whether issued before or after hearing, shall set forth the reasons for its issuance and shall describe in reasonable detail the scope of suspension or discontinuance and shall be filed at the principal office of the appeals board and shall be binding upon all parties to the appeal, their officers, agents, servants, employees, and attorneys and upon those persons in active concert of participation with them who receive actual notice of the order.

(6) Except as otherwise provided by statute, no temporary suspension or discontinuance shall issue except upon the giving of security by the moving party, in such sum as the presiding officer deems proper, for payment of such costs and damages as may be incurred or suffered by any party who is found to have wrongfully obtained the suspension or discontinuance. No such security shall be required of the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-087, filed 11/21/90, effective 12/22/90.]

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 or during the prehearing 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 presiding officer may prescribe, in accordance with the prehearing order.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-095, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-095, filed 4/13/82; Order 004, § 223-08-095, filed 11/10/75.]

WAC 223-08-097 Intervention. (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor pursuant to Civil Rule 24.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-097, filed 11/21/90, effective 12/22/90.]

WAC 223-08-100 Prehearing conferences. (1) The purpose of a prehearing conference shall be:

(a) To determine the feasibility of a settlement of the appeal or, failing settlement;

(b) To prepare the case for hearing by identification of issues, witnesses, exhibits, stipulations, admissions, and scheduling for incorporation in a prehearing order.

(2) The presiding officer may convene a prehearing conference in each appeal upon seven days' notice mailed to each party.

(3) Any agreement concerning final disposition of the appeal reached at a prehearing conference shall be noted by the presiding officer. Counsel shall then present an agreed order implementing the agreement. If the agreement is in accordance with law, the appeals board shall enter the agreed order disposing of the appeal.

(4) If any party fails to appear at a prehearing conference, the presiding officer may suspend setting a hearing or may continue or deny continuance of a hearing already set or may otherwise restrict the time or location of hearing.

(5) At the conclusion of a prehearing conference which has not resulted in settlement, the presiding officer shall enter a prehearing order. This shall include a statement of issues and lists of witnesses and exhibits or provision for filing such lists and any other matters which may bear on the preparation for hearing. The issues stated in the prehearing order shall control the subsequent course of the proceedings, unless modified for good cause by subsequent order.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-100, filed 11/21/90, effective 12/22/90; Order 004, § 223-08-100, filed 11/10/75.]

WAC 223-08-107 Prehearing procedures—Telephone. Any conference or motion hearing, or any part thereof, may be conducted by telephone conference call. Upon a timely request, or on its own motion, the board or its presiding officer may schedule such conference or hearing if it appears to promote the fair, speedy, and economical processing of a matter compatible with this procedure.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-107, filed 11/21/90, effective 12/22/90.]

WAC 223-08-148 Procedures—Motions. (1) An application to the board for an order shall be by motion which, unless made during a hearing, shall be in writing, state with particularity the grounds therefor and set forth the relief sought. Dispositive motions will be filed and briefed in accordance with CR 56 unless a scheduling letter or order varies that procedure. Each written motion shall have appended to it the order which the motion seeks. The moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible. If the motion is contested, the moving party shall note the motion for hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for hearing shall then be filed and served. Where the clerk specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call.

(2) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) Except dispositive and ex parte motions, all motions and notice of the hearing thereof shall be filed and served not later than five days before the time specified for the hearing on the motion.

(b) All dispositive motions shall be filed and served not later than twenty-eight days before the hearing on the motion. Any party opposing the motion may file and serve a response not later than eleven days before the hearing on the motion. The moving party may file and serve a reply to the response not later than five days before the hearing on the motion.

(c) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the board.

(3) Where a scheduling letter or order so provides, or by stipulation, a motion will be decided on the written record.

[Statutory Authority: RCW 76.09.230(5). 94-12-030, § 223-08-148, filed 5/24/94, effective 6/24/94.]

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 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 34.05.510 through 34.05.598.

Judicial review of an appeals board's final decision entered after an informal hearing shall be *de novo*.

[Statutory Authority: RCW 76.09.230(4), 90-23-093, § 223-08-150, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-150, filed 4/13/82; 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 appeals board shall serve a written notice of hearing on appeal to all parties not less than seven days prior to the date thereof unless otherwise provided by law.

[Statutory Authority: RCW 76.09.230(4), 90-23-093, § 223-08-160, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-160, filed 4/13/82; Order 004, § 223-08-160, filed 11/10/75.]

WAC 223-08-162 Hearing—Primary and secondary setting. (1) Each case shall be assigned a primary hearing date. A case has first priority for hearing on that date.

(2) Each case may be assigned a secondary hearing date. That date will precede the primary hearing date. A case has second priority for hearing on the secondary date, and will proceed to hearing only if the primary case does not proceed. The parties to a primary case shall inform the clerk of the board as soon as any settlement occurs. The parties to a secondary case may contact the clerk of the board to learn whether or not the primary case will proceed. The parties to a secondary case may also contact directly the parties to a primary case to learn whether or not the primary case will proceed.

[Statutory Authority: RCW 76.09.230(5), 94-12-030, § 223-08-162, filed 5/24/94, effective 6/24/94.]

WAC 223-08-165 Hearing—Continuance. (1) **Continuance.**

Continuance of a hearing is within the discretion of the appeals board whether contested or uncontested by the parties. The appeals board may continue a hearing upon its own motion.

(2) The continuance of a hearing shall be sought by written motion. Each such motion shall have appended to it the continuance order which the motion seeks. The moving party shall: Contact the clerk of the board to determine available dates; affirmatively seek the stipulation of all parties; and set forth the continued date in the order. If the continuance is contested, the moving party shall set forth in the order the continued date being requested and shall note the motion for telephonic hearing on a date deemed by the clerk to be available for that purpose. The motion, order and note for telephonic hearing shall then be filed and served.

The moving party shall originate the telephonic hearing conference call.

[Statutory Authority: RCW 76.09.230(5), 94-12-030, § 223-08-165, filed 5/24/94, effective 6/24/94. Statutory Authority: RCW 76.09.230(4), 90-23-093, § 223-08-165, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-165, filed 4/13/82; Order 004, § 223-08-165, filed 11/10/75.]

WAC 223-08-171 Hearing—Dismissal or default.

(1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests before appellant rests are mandatory and afterwards are permissive.

[Statutory Authority: RCW 76.09.230(5), 94-12-030, § 223-08-171, filed 5/24/94, effective 6/24/94.]

WAC 223-08-175 Hearing—Procedures at. (1) **Presiding officer.** All hearings shall be conducted by one presiding officer who shall conduct the hearing in an orderly manner and rule on all matters except the final decision.

(2) **Order of presentation of evidence.** The 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, or by order.

(3) **Opening statements.** Unless the presiding officer rules otherwise, all parties shall present an oral opening statement setting out briefly 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 may offer into evidence at hearing a written statement of the qualifications, experience, and expertise of each such expert witness. Such written statements may be required by the presiding officer.

(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.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-175, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-175, filed 4/13/82; Order 004, § 223-08-175, filed 11/10/75.]

WAC 223-08-177 Hearing—Standard and scope of review. Unless expressly provided to the contrary by law, both the standard of review and scope of evidence under review shall be de novo in cases before the appeals board.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-177, filed 4/13/82.]

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, application shall be made 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-180, filed 4/13/82; Order 004, § 223-08-180, filed 11/10/75.]

WAC 223-08-185 Hearing—Rules of evidence. (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-185, filed 11/21/90, effective 12/22/90; 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 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-190, filed 4/13/82; 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. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-195, filed 4/13/82; Order 004, § 223-08-195, filed 11/10/75.]

WAC 223-08-200 Hearing—Official notice of law. The appeals board, 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-200, filed 4/13/82; 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, 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 brief or proposed decision 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 from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-205, filed 4/13/82; 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 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. The record is described within RCW 34.05.476.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-215, filed 11/21/90, effective 12/22/90; Order 004, § 223-08-215, filed 11/10/75.]

WAC 223-08-220 Hearing—Transcripts. The appeals board will not pay for transcription of the oral record when the same is to be transmitted to the superior court upon appeal of the appeals board's decision. It shall be the obligation of the party appealing to superior court to order a transcript from the appeals board reporter and to assume the cost of same. The appeals board will transmit to the superior court a transcript thus prepared and made available.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-220, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-220, filed 4/13/82; Order 004, § 223-08-220, 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

[Title 223 WAC—page 14]

party, from the date of receipt of the proposed decision to the parties or their attorneys of record, any party aggrieved thereby may file with 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 or such further time as the appeals board may order, 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-235, filed 4/13/82; Order 004, § 223-08-235, filed 11/10/75.]

WAC 223-08-250 Decision—Final decision. (1) 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 hear or read the evidence and the third member shall render a decision thereon except where that member is disqualified or the position is vacant: *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 in those cases where the appealing party has the burden of proof.

(2) Every final decision rendered by the appeals board shall contain findings and conclusions as well as the appeals board order based thereon.

(3) 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.

(4) Copies of every final decision rendered by the appeals board shall be mailed by the appeals board to each party to the appeal. Service upon the attorney or other representative, of record, shall constitute service upon the party.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-250, filed 11/21/90, effective 12/22/90; 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-250, filed 4/13/82; Order 004, § 223-08-250, filed 11/10/75.]

WAC 223-08-252 Decision—Preparation of findings, conclusions and orders. Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by counsel. The same shall be based upon the oral or memorandum opinion. The board or presiding officer may adopt said findings, conclusions and orders in part or in whole or may prepare their own findings, conclusions and orders.

[Statutory Authority: RCW 76.09.230(5). 94-12-030, § 223-08-252, filed 5/24/94, effective 6/24/94.]

WAC 223-08-255 Petition for reconsideration. (1) When the hearing on the appeal has been concluded, a written final decision and order shall issue.

(2) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed within ten days of mailing of the final decision. The board may require an answer to the petition. Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.

(3) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(4) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within twenty days from the date the petition is filed, the board does not act on the petition or serve the parties with a written notice specifying the date by which it will act on the petition.

(5) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-255, filed 11/21/90, effective 12/22/90; Order 004, § 223-08-255, filed 11/10/75.]

WAC 223-08-257 Appeals to the courts—Certification of record. Upon receipt of a copy of the notice of appeal to the superior court, the appeals board will certify the record. This will not include a transcript until the appealing party arranges printing of the transcript and assumes its cost.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-257, filed 11/21/90, effective 12/22/90.]

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 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-260, filed 4/13/82; Order 004, § 223-08-260, filed 11/10/75.]

WAC 223-08-265 Appeal—Certification of record. Upon receipt of a copy of the notice of appeal, the appeals board shall transmit the record made before the appeals board in accordance with RCW 34.04.130(4) and WAC 223-08-215 and 223-08-220.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-08-265, filed 4/13/82; 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 34.05.240, any interested person may petition the appeals board for a declaratory ruling.

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

(3) **Notice of the petition.** Within fifteen days of filing a petition the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) **Consideration and disposition.** Within thirty days after receipt of a petition for a declaratory order the appeals board, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(5) **Extension of time.** The time limits of subsection (4)(b) and (c) of this section may be extended by the appeals board for good cause.

(6) **Consent.** The appeals board may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(7) A declaratory order has the same status as any other order entered in an adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusions.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-270, filed 11/21/90, effective 12/22/90; 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 34.05.330, 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) **Notification of disposition of petition.** Within sixty days after submission of a 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 chapter 34.05 RCW.

[Statutory Authority: RCW 76.09.230(4). 90-23-093, § 223-08-275, filed 11/21/90, effective 12/22/90; 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.
223-12-030	Organization and operation of forest practices appeals board.
223-12-040	Public records available.
223-12-050	Public records officer.
223-12-060	Office hours.
223-12-070	Request for public records.
223-12-080	Copying.
223-12-090	Exemptions.
223-12-100	Review of denials of public records request.
223-12-110	Protection of public records.
223-12-120	Records index.
223-12-130	Communication with the appeals board.
223-12-140	Adoption of form.

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 environmental hearings office.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-020, filed 4/13/82; 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 is that of the Environmental Hearings Office, 4224 6th Avenue S.E. Building 2 Rowsix, MS: PY-21 Lacey, 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, when necessary, 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-030, filed 4/13/82; 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 administrative officer shall be in charge of the public records. Such person 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-050, filed 4/13/82; 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 Lacey. 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-070, filed 4/13/82; 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 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 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-100, filed 4/13/82; 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 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 by a designated employee;

(5) Access to file cabinets, shelves, vaults, etc., is restricted to the appeals board personnel.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-110, filed 4/13/82; 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 (if any) 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.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-120, filed 4/13/82; 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: Environmental Hearings Office, 4224 6th Avenue S.E., Building 2 Rowesix, MS: PY-21, Lacey, Washington 98504. Telephone No. (206) 459-6327.

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-130, filed 4/13/82; 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 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:

Environmental Hearings Office
4224 6th Avenue S.E.
Building 2 Rowesix, MS: PY-21
Lacey, Washington 98504
(Telephone No. 206-459-6327)

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 be used for purposes consistent with RCW 42.17.260(5) relating to requests for commercial purposes.

.....
Signature

Number of copies

Number of pages

Per page charge \$

Total charge \$

[Statutory Authority: RCW 76.09.230(4). 82-09-024 (Order 82-1, Resolution No. 82-1), § 223-12-140, filed 4/13/82; Order 004, § 223-12-140, filed 11/10/75.]