Chapter 222-08 WAC

PRACTICES AND PROCEDURES

WACs in this chapter were in effect 7/2001 except some have been amended since 7/2001. The effective dates of the amended WACs are shown after the WAC headings.

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Note: Rules marked with an asterisk (*) pertain to water quality protection and have been adopted or amended by the Forest Practices Board with agreement from the Department of Ecology per WAC 222-12-010.

WAC 222-08-010 Purpose. *[Effective 12/22/08]*
The purpose of this chapter is to describe the forest practices board, its organization and administrative procedures, and to provide rules implementing RCW 34.05.220 and chapters 42.52 and 42.56 RCW. The purpose of this chapter is also to set out department procedures for administration of the forest practices regulatory program.

WAC 222-08-025 Definitions. *[Effective 4/8/18]*
(1) "Board" means forest practices board.
(2) "Board staff" means employees of the forest practices division of the department who work in support of the board.
(3) "Department" means department of natural resources.
(4) "Office" means the administrative office of the board in the forest practices division of the department.
(5) "Public record" as defined in RCW 42.56.010(3), means 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.
(6) "Writing" as defined in RCW 42.56.010(4), means handwriting, typewriting, printing, photographing, including, but not limited to, letters, words, pictures, sounds, and all papers,

maps, magnetic or paper tapes, photographic films and prints, video recordings, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

WAC 222-08-032 Function, organization, and office. *[Effective 4/8/18]*

(1) The forest practices board was created by chapter 76.09 RCW to adopt forest practices rules as described in WAC 222-12-010.

(2) The board's membership as described in RCW 76.09.030 (5), consists of thirteen members to include:
- (a) The commissioner of public lands or the commissioner's designee;
- (b) The director of the department of commerce or the director's designee;
- (c) The director of the department of agriculture or the director's designee;
- (d) The director of the department of ecology or the director's designee;
- (e) The director of the department of fish and wildlife or the director's designee;
- (f) An elected member of a county legislative authority appointed by the governor so long as that member serves as an elected official;
- (g) A member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and
- (h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(3) The governor-appointed members are appointed to four-year terms.

(4) The commissioner of public lands or designee shall chair the board.

(5) General public members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) Staff support is provided to the board as provided in RCW 76.09.030(6). Staff shall perform the following duties under the general authority and supervision of the board:
- (a) Act as administrative arm of the board;
- (b) Act as records officer to the board;
- (c) Coordinate the policies and activities of the board; and
- (d) Act as liaison between the board and other public agencies and stakeholders.

(7) The administrative office of the board is located at 1111 Washington Street S.E., Olympia, Washington. The board may sit or hold hearings anywhere in the state. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, except legal holidays and during board meetings. The board may be contacted at:
Forest Practices Board
c/o Department of Natural Resources
Forest Practices Division
P.O. Box 47012
Olympia, WA 98504-7012
Phone: 360-902-1400
Fax: 360-902-1428
E-mail: forest.practicesboard@dnr.wa.gov

(8) Any person may contact the board as indicated in subsection (7) of this section to obtain information on board activities.

WAC 222-08-040 Operations and procedures. *[Effective 4/8/18]*

(1) The board holds quarterly scheduled meetings on the second Wednesday of February, May, August, and November, at such times and places as deemed necessary to conduct board business. At regularly scheduled board meetings, agenda time is allotted for public comment on rule proposals and board activities, unless the board has already set public hearings on the rule proposals. Special and emergency meetings may be called anytime by the chair of the board or by a majority of the board members. Notice of special and emergency meetings will be provided in accordance with RCW 42.30.070 and 42.30.080. All meetings are conducted in accordance with chapter 42.30 RCW and RCW 76.09.030(3). A schedule of meetings shall be published in the *Washington State Register* in January of each year. Minutes shall be taken at all meetings.

(2) Each member of the board is allowed one vote on any action before the board; pursuant to RCW 42.30.060(2), secret voting is not allowed. All actions shall be decided by majority vote. A majority of the board shall constitute a quorum for making decisions and promulgating rules necessary for the conduct of its powers and duties. When there is a quorum and a vote is taken, a majority vote is based upon the number of members participating. The chair, designee, or majority of the board may hold hearings and receive public comment on specific issues such as rule making that the board will consider in its actions.

(3) Rules marked with an asterisk (*) pertain to water quality and are adopted or amended with agreement from the department of ecology. See WAC 222-12-010.

(4) The chair or majority of board members shall set the meeting agenda. Public requests for topics to be included in the board's quarterly public meeting agenda must include the name of the requestor, and be received at the office at least fourteen days before the scheduled meeting. Topics requested may be added to the meeting agenda at the chair's discretion or by a majority vote of the board members. Pursuant to RCW 42.30.077 agendas of each regular meeting will be available online no later than twenty-four hours in advance of the published start time of the meeting.

(5) Written materials for the board which are not provided in advance of the meeting date will not be distributed during the meeting unless fifteen copies are provided to staff.

WAC 222-08-050 Public records--Availability. *[Effective 4/8/18]*

The board's public records are available for inspection and copying except as otherwise exempted under RCW 42.56.210 through 42.56.470, any other law, and this chapter.

WAC 222-08-060 Public records officer. *[Effective 3/20/04]*

The public records officer or designee for the board shall be the board's rules coordinator. The public records officer shall be responsible for responses to requests for public records. All requests for public records shall be directed to: Public Records Officer, Forest Practices Board, c/o Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012.

WAC 222-08-070 Public records index. *[Effective 3/20/04]*
The board's rules coordinator maintains the board files, including in part, meeting minutes, correspondence, rule-making documents, contracts, and other board business. A filing system is utilized at the board's office that consists of rule-making dockets, board meeting files, contracts, and petitions for rule making. These files are indexed by subject and date. Correspondence files are indexed by date. All files are available for inspection by contacting the board's rules coordinator in the administrative office of the board.

WAC 222-08-080 Protection of public records. *[Effective 3/20/04]*
(1) No person shall knowingly alter, deface, or destroy public records of the board, except as allowed by law.
(2) Original public records or portions thereof shall not be removed from the premises by the public, except board members may retain their individual notes.
(3) Records furnished for inspection shall be returned in their original condition and in the same sequence or organization as when furnished.

WAC 222-08-090 Disclosure of public records. *[Effective 4/8/18]*
Public records may be inspected or copies of such records obtained, upon compliance with the following procedure:
(1) A request shall be made in writing, by fax or electronic mail, to the public records officer or designee. The request shall include the following information:
  (a) The name of the person requesting the record;
  (b) The calendar date of the request; and
  (c) A description of the record(s) requested.
(2) Within five business days of receiving a public records request, as required by RCW 42.56.520, the office shall respond by:
  (a) Providing the record; or
  (b) Acknowledging that the office has received the request and providing a reasonable estimate of time required to respond; or
  (c) Denying the request.
(3) The office may request additional time to provide the records based upon the need to:
  (a) Clarify the intent of the request;
  (b) Locate and assemble the information requested;
  (c) Notify third persons or agencies who may be affected by the request; or
  (d) Determine whether any of the information requested is exempt and that a denial should be made for all or part of the request.
(4) The public records officer may, if it deems the request is unclear, ask the requestor to clarify the information the requestor is seeking. If the requestor fails to clarify the request, the office need not respond to it.
(5) Public records shall be available for inspection in the office from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and during board meetings.
(6) No fee shall be charged for the inspection of public records. The board's charges for producing public records shall follow the fee schedule established in RCW 42.56.120, because calculating the actual costs associated with records production would be unduly burdensome. The public records officer may waive the fees for de minimus requests. Before releasing the copies, the public records officer may require a deposit not to exceed 10 percent of the estimated cost.

(7) The public records officer may determine that all or a portion of a public record is exempt under the provisions of chapter 42.56 RCW. Pursuant to RCW 42.56.070(1) and 42.56.210(1), the public records officer may redact portions of public records. The public records officer will explain the reasons for such redaction in writing, including the exemption that applies.

(8) Any denial of a request for public records shall be in writing, specifying the reason for the denial, including the specific exemption authorizing the nondisclosure of the record, and a brief explanation of how the exemption applies to the records withheld.

(9) Any person who objects to a denial of a request for a public record may request review of such decision by submitting a written request to the public records officer. The written request shall specifically refer to the written statement by the public records officer or designee which constituted or accompanied the denial.

(10) Immediately after receiving a written request for review of a decision denying disclosure of a public record, the public records officer or designee denying the request shall refer it to the chair of the board. The chair shall consider the matter and either affirm or reverse such denial.

(11) Administrative remedies shall not be considered exhausted until the chair of the board or designee has returned the request for review with a decision or until the close of the second business day following receipt of the written request for review of the denial of the public record, whichever occurs first.

WAC 222-08-100 Petitions for adoption, repeal or amendment of a rule. *[Effective 3/20/04]*

(1) Any person may submit a petition to the board requesting the adoption, amendment, or repeal of any rule pursuant to RCW 34.05.330 and the process set forth in chapter 82-05 WAC as further supplemented by these rules. The petition should be clearly identified as such and contain sufficient information so the board and public can understand the proposal.

(2) Any petition for rule making, amendment or repeal shall be submitted no later than fourteen days before the next regularly scheduled board meeting to be included on the agenda. Petitions shall be sent to the rules coordinator for the board at the following address: Forest Practices Board, c/o Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012. If the petition is more than twenty pages in length (including any supplementary materials), it shall be accompanied by fifteen copies.

(3) Submission of a petition is defined as receipt of a complete petition by the board staff. Petitions requiring additional copies as described in subsection (2) of this section will not be considered complete until copies have been provided to staff.

(4) Within five business days of submission, the board staff will send the petitioner acknowledgment of receipt of the petition, including the name and telephone number of a contact person. If the petition is incomplete, board staff will notify the petitioner what additional information is required.

(5) Information required for proposed new rule adoption:

(a) Text of the proposed rule or description of its provisions and rationale for a new rule.

(b) Authority for the proposed rule.

(c) Reason the rule is needed, including what or who is benefited or otherwise affected by the rule.

(6) Information required for amendment of an existing rule: Rule title and chapter number, text, or description of the proposed amendment, and rationale for amendment.

(7) Information required for repeal of existing rule: Rule title and chapter number, and description of the rationale and effects of the proposed repeal.

(8) Other information to include, if applicable, to proposed rule amendments or repeals:
- (a) How the rule harms or otherwise affects public resources or public health, safety, or general welfare.
- (b) What alternatives to the rule exist that will serve the same purpose at less cost.
- (c) If the rule is not clearly and simply stated, suggestions on how to state the rule clearly and simply.
- (d) Whether the rule imposes unreasonable costs and to whom.
- (e) How the rule conflicts with or duplicates other federal, state, or local laws.
- (f) How the rule differs, without adequate justification, from a federal law that applies to the same activity or subject matter.

(9) No later than sixty days after receipt of a complete petition, the board will:
- (a) Initiate rule-making proceedings in accordance with chapter 34.05 RCW; or
- (b) Deny the petition in writing, stating its reasons for the denial and specifically addressing the concerns stated in the petition. Where appropriate, the board will indicate alternative means by which the board will address the concerns raised in the petition.

(10) If the board denies the petition, the petitioner may appeal the denial to the joint administrative rules review committee, the governor, or superior court pursuant to RCW 34.05.330 (2) and (3) and 34.05.570(4).

WAC 222-08-120 Inapplicability of model rules adopted by the chief administrative law judge. *[Effective 3/20/04]*

The board does not have adjudicative authority nor does the board enter declaratory orders. Therefore, the model rules adopted by the chief administrative law judge under RCW 34.05.250 and found in chapter 10-08 WAC do not apply to the board.

WAC 222-08-130 Ethics standards. *[Effective 3/20/04]*

This rule implementing the Ethics in Public Service Act, chapter 42.52 RCW, applies to the board.

(1) The following definitions apply to this section:
- (a) "Beneficial interest" has the meaning ascribed to it under the Washington case law.
- (b) “Gift" means anything of economic value for which no consideration is given.
- (c) “Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the board member in question believes, or has reason to believe:
  - (i) Is, or will be, the subject of board action; or
  - (ii) Is one to which the board is or will be a party; or
  - (iii) Is one in which the board has a direct and substantial proprietary interest.
- (d) "Transaction involving the board" does not include the following:
  - (i) Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a board member; or
  - (ii) A claim, case, lawsuit, or similar matter if the board member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit.

  Rule making is not a transaction involving the board.
- (e) "Board action" means any action on the part of the board, including, but not limited to:
  - (i) A decision, determination, finding, ruling, order; or

(ii) A grant, payment, award, license, contract, transaction, sanction, approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(f) "Recusal" involves the following actions:

(i) Recuse himself or herself from discussions by the board regarding the related action(s);

(ii) Recuse himself or herself from any vote by the board on the related action(s); and

(iii) Refrain from attempting to influence any other member in any discussion or vote regarding the related action(s).

(2) No board member may accept honoraria under the circumstances set forth in RCW 42.52.130. Board members may receive honoraria if all of the following are met:

(a) The board member will not be carrying out their board duties nor engaging in activity which focuses specifically on the board's responsibilities, policies or programs;

(b) The honorarium is not being offered because of the board member's official position on the board;

(c) The topic is such that it does not appear that the board member could have used information acquired in the course of membership on the board;

(d) The honorarium is not being offered by a person or entity which does business with or can reasonably be expected to seek business with the board; and

(e) No use of government time or resources was used by the board member to produce the materials or prepare for the article, appearance, or item for which the honorarium is being given.

(3) "Gifts":

(a) No board member shall receive or solicit, directly or indirectly, any gift if it could be reasonably perceived that the gift would influence the vote, action, or judgment of the board member, or be perceived as part of a reward for action or inaction.

(b) Notwithstanding the exceptions specified in RCW 42.52.150 (2) and (5), a board member may receive only the items specifically listed in RCW 42.52.150 (4) from a person regulated by the board or from a person who seeks to provide goods or services to the board.

(4) If a board member receives or solicits gifts prohibited in subsection (3) of this section, the board member is in violation of the Ethics in Public Service Act and shall return the gift or donate it to charity within thirty days. In addition, the board member shall recuse himself or herself in accordance with subsection (1)(f) of this section.

(5) Board members shall recuse themselves in compliance with subsection (1)(f) of this section when the following circumstances apply or it is reasonably foreseeable that they will apply:

(a) The member is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or under the supervision of the board in whole or in part; or

(b) The member accepts, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested in a contract, sale, lease, purchase, or grant that may be made by, through, or under the supervision of the board, in whole or in part; or

(c) The member either owns a beneficial interest in, or is an officer, agent, employee, or member of, an entity which is engaged in a transaction involving the board.

(6) Under subsection (5)(b) of this section, "any other person" has a beneficial interest in a contract, sale, lease, purchase, or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase, or grant.

(7) The circumstances contained in subsection (5) of this section do not limit the member from using his or her general expertise to educate and provide general information on the subject area to other board members.

(8) If recusal occurs pursuant to chapter 42.52 RCW, or rules adopted pursuant to that law or this chapter, the board member must disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff must record each such recusal and basis for the recusal.

EXAMPLE: The board includes members appointed by the governor who are employed in the private sector. Board members are appointed because they have general knowledge of forestry and are often recommended by interest groups, such as the timber industry and environmental organizations. A board member is employed by a company that provides economic analysis. The board is in the process of selecting a contractor to provide small business economic impact statements for several proposed rules. The company that employs the board member has bid for the contract. The board member may use his or her general expertise to educate the other board members about the requirements for a good small business economic impact statement. However, the board member is prohibited from participating in the board discussion establishing criteria for selecting a contractor and is prohibited from participating in the vote to select a contractor. The board member would publicly announce his or her recusal and the reasons for it, and the board staff would record this information as part of the public record.

(9) No board member shall divulge state agency or board information or proprietary information in the board's possession, whether labeled confidential or not, to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise make use of, or permit others to make use of, information not available to the general public.

(10) No board member shall use his or her position with the board, or use board facilities, equipment, or supplies to obtain or attempt to obtain private gain or advantage, either for themselves or for other persons.

(11) No board member shall use his or her position with the board, or use board facilities, equipment, or supplies to assist another in a transaction involving the board, or use his or her influence over the board to obtain or attempt to obtain gain or advantage for the person or entity seeking to transact business with the board.

(12) No board member shall accept employment that will adversely affect the performance of that member's official duties, discredit the board, or result in a conflict of interest.

WAC 222-08-140 Orientation and training. The department shall be responsible for a continuing program of orientation and training, relating to forest practices and rules thereof, pursuant to RCW 76.09.250. Such program shall include:

(1) Investigation of current developments in and practical applications of forest resources and related technology.

(2) Continuing training of department personnel in the current status of forest resources technology and related disciplines.

(3) Dissemination of information on current forest practice technology to the public, in a manner determined by the department to be effective.

WAC 222-08-151 Reporting procedures. The department shall:

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

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

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

WAC 222-08-160 Continuing review of forest practices rules. *[Effective 12/22/08]*

*(1) Annual evaluations. The department, after consulting with affected state agencies, Indian tribes, forest landowners, fish and wildlife, natural resources, and environmental interest groups, shall report annually to the forest practices board. This reporting will be an assessment of how the rules and voluntary processes, including the Cultural Resources Protection and Management Plan, as committed in the *1999 Forests and Fish Report*, Appendix O (O.3), are working.

*(2) Adaptive management program. The adaptive management program will be used to determine the effectiveness of forest practices rules in aiding the state's salmon recovery effort and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery. The program provides assurances that rules and guidance not meeting aquatic resource objectives will be modified in a streamlined and timely manner. The board may also use this program to adjust other forest practices rules and guidance in order to further the purposes of chapter 76.09 RCW. The specific components of the adaptive management program are set forth in WAC 222-12-045.

(3) Resource management plans. The department is directed to develop a method for cooperative voluntary resource management planning among forest landowners, governmental agencies, affected Indian tribes, and environmental groups which would result in the development of plans which might be used as an alternative to the forest practices rules in achieving the purposes and policies set forth in the act. This should be done through pilot projects, at least one of which should be located on the east side of the Cascade summit and one on the west side of the Cascade summit.

(4) Compliance monitoring. The department shall conduct compliance monitoring that addresses the following key question: "Are forest practices being conducted in compliance with the rules?" The department shall provide statistically sound, biennial compliance audits and monitoring reports to the board for consideration and support of rule and guidance analysis. Compliance monitoring shall determine whether forest practices rules are being implemented on the ground. An infrastructure to support compliance will include adequate compliance monitoring, enforcement, training, education and budget.