

Chapter 456-09 WAC

FORMAL HEARINGS—PRACTICE AND PROCEDURE

WAC		DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER
	INTRODUCTION	
456-09-001	Purpose and application of chapter.	456-09-150
	HEARING OPTIONS	
456-09-010	Distinction between formal and informal hearing and converting an appeal.	
	ADMINISTRATION	
456-09-110	Definitions.	456-09-160
456-09-120	Organization and office.	
456-09-130	Quorum.	
456-09-140	Meetings of the board.	
	PRACTICE BEFORE THE BOARD	
456-09-210	Appearance and practice before the board.	456-09-170
456-09-215	Notice of appearance by representatives.	
456-09-220	Rules of professional conduct.	456-09-320
456-09-230	Ex parte communication.	
	APPEAL PROCEDURE	
456-09-300	Commencing the appeal.	
456-09-310	Contents of notice of appeal.	
456-09-315	Deadlines for submitting the notice of appeal.	
456-09-325	Date and manner of submitting the notice of appeal.	
456-09-330	Amendments to notice of appeal.	
456-09-335	Response.	456-09-350
456-09-340	Intervention.	
	SERVICE OF PAPERS	
456-09-345	Service of papers on parties and proof of service.	456-09-355
	PREHEARING AND HEARING PROCEDURE	
456-09-510	Limitation on discovery.	
456-09-520	Subpoena.	
456-09-530	Settlement conference.	
456-09-540	Prehearing conference.	456-09-360
456-09-545	Summary judgment.	
456-09-550	Time in which evidence, briefs, and replies must be submitted.	
456-09-552	Amicus.	456-09-365
456-09-555	Motions.	
456-09-560	Postponement, continuance, and extensions of time.	
456-09-565	Teleconference proceeding.	
456-09-570	Notice of hearing.	
456-09-575	Notice of hearing to limited-English speaking parties.	
	HEARING PROCEDURE	
456-09-740	Testimony under oath.	456-09-410
456-09-742	Recording devices.	
456-09-745	Failure to attend and hearing on the record.	
456-09-750	Dismissal, stipulation, and withdrawal of actions.	
456-09-755	Rules of evidence and admissibility criteria.	
456-09-762	Hearings—Interpreters.	
456-09-765	Official notice.	456-09-420
	DISPOSITION OF CASES	
456-09-910	Assistance to board.	456-09-430
456-09-915	Presentation of posthearing evidence.	
456-09-920	Initial or final decision.	
456-09-925	Initial decision.	
456-09-930	Petition for review of an initial decision, replies, and disposition.	
456-09-955	Petition for reconsideration of a final decision.	
456-09-960	Record on appeal.	
	SEPA	
456-09-970	Applicability of SEPA guidelines.	456-09-440

- 90-11-105, § 456-09-440, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-440, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-610 Conferences—Two types. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-610, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-615 Settlement conference—Purpose. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-615, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-620 Settlement conference—When held. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-620, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-625 Settlement conference—Agreements. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-625, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-630 Prehearing conference—Purpose. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-630, filed 5/2/89.] Repealed by 05-19-091, filed 9/20/05, effective 10/21/05. Statutory Authority: RCW 82.03.170.
- 456-09-635 Prehearing conference—When held. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-635, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-640 Prehearing conference—Documentary evidence. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-640, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-645 Prehearing conference—Excerpts from documentary evidence. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-645, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-650 Prehearing conference—Failure to supply prehearing information. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-650, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-655 Prehearing conference—Agreements. [Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-655, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-655, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-705 Advance submission of evidence—Delivery to adverse party. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-705, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-705, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-710 Hearing—Setting of time and place. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-710, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-710, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-715 Continuance—Extensions of time. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-715, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-720 Teleconference proceeding. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-720, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-725 Briefs. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-725, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-725, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-730 Hearing—Notice of hearing—Time—Contents. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-730, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-730, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-730, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-732 Hearing—Notice to limited-English speaking parties. [Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-732, filed 5/22/90, effective 6/22/90.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-735 Hearing—Standard and scope of review. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-735, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-760 Rules of evidence—Admissibility criteria. [Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-760, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-760, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-770 Official notice—Material facts. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-770, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-775 Motions—Application—Requirements. [Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-775, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-935 Petition for review and replies. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-935, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-935, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-935, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-940 Finality of initial decision. [Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-940, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-940, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-945 Final decision following initial decision—Record. [Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-945, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-945, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-945, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.
- 456-09-950 Final decision—Precedential decisions. [Statutory Authority: RCW 82.03.170. 02-14-034, § 456-09-950, filed 6/25/02, effective 7/26/02; 89-10-056 (Order 89-02), § 456-09-950, filed 5/2/89.] Repealed by 05-13-141, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170.

INTRODUCTION

WAC 456-09-001 Purpose and application of chapter. (1) This chapter concerns administrative matters of the board of tax appeals (board) and explains how adjudicative proceedings are conducted before the board in accordance with the Administrative Procedure Act, chapter 34.05 RCW. This chapter augments but does not supplant the provisions of chapter 82.03 RCW.

(2) The rules of practice and procedure contained in this chapter govern the conduct of formal hearings before the

board and will be construed to secure the just, speedy, and economical determination of every action.

(3) To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and found in chapter 10-08 WAC, these rules shall prevail.

(4) Where procedures are not covered by this chapter and chapter 10-08 WAC, the board may, upon its own motion or upon written application by any party, refer to and apply any rule provided for in the superior court civil rules.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-001, filed 6/21/05, effective 8/1/05.]

HEARING OPTIONS

WAC 456-09-010 Distinction between formal and informal hearing and converting an appeal. (1) In all appeals over which the board has jurisdiction, a party making an appeal may elect in writing, with its notice of appeal, either a formal or informal hearing. Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of this chapter. Informal hearings are conducted pursuant to chapter 456-10 WAC. Failure to elect in writing a formal or informal hearing at the time of submitting the notice of appeal shall result in the proceeding being conducted as informal.

(a) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted thereto.

(b) Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

(c) Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

(2) The appeal may be converted from a formal to an informal proceeding as provided below.

(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.

(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a

(9/20/05)

notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-010, filed 6/21/05, effective 8/1/05; 94-07-044, § 456-09-010, filed 3/10/94, effective 4/10/94; 89-10-056 (Order 89-02), § 456-09-010, filed 5/2/89.]

ADMINISTRATION

WAC 456-09-110 Definitions. As used in this chapter, the following terms shall have the following meaning:

(1) "Board" means the board of tax appeals as described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers or agents of the board of tax appeals.

(2) "Presiding officer" or "hearing officer" shall mean any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer shall have authority as provided by WAC 10-08-200 and chapter 34.05 RCW.

(3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.

(4) "Respondent" means a person, natural or otherwise, who is named as a responding party in any appeal before the board of tax appeals.

(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and this chapter.

(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.

(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.

(8) "Party" means any person who in a proceeding before the board is an appellant, respondent, or an intervenor as allowed in WAC 456-09-340.

(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.

(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-110, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-110, filed 5/2/89.]

WAC 456-09-120 Organization and office. The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.

The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal

office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915. The phone number of the board office is 360-753-5446; its fax number is 360-586-9020; its electronic mail address is bta@bta.state.wa.us. Information about the board is available at its web site at <http://bta.state.wa.us>.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-120, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-120, filed 5/2/89.]

WAC 456-09-130 Quorum. Two members of the board shall constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures and may act although one position on the board may be vacant. One member or designated hearing officer may hold hearings and take testimony. The findings of such member or hearing officer shall not become final until approved by a majority of the board in accordance with WAC 456-09-925 and 456-09-930.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-130, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-130, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-130, filed 5/2/89.]

WAC 456-09-140 Meetings of the board. Regular public meetings of the board will be held at its principal office or such other place as the board designates at 9:30 a.m. on the second Friday of each month.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-140, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-140, filed 5/2/89.]

PRACTICE BEFORE THE BOARD

WAC 456-09-210 Appearance and practice before the board. Practice before the board in formal proceedings shall be limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;
- (3) An authorized officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;
- (4) County assessors or their duly authorized representatives;
- (5) Certified public accountants licensed in Washington; and
- (6) Other persons permitted by law.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-210, filed 6/21/05, effective 8/1/05; 91-07-038 (Order 91-01), § 456-09-210, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-210, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-210, filed 5/2/89.]

WAC 456-09-215 Notice of appearance by representatives. Persons who represent parties in their appeal before the board must submit a notice of appearance to the other parties and an original and three copies to the board. The notice must include the name of the parties, the docket number if

known, the representative's name, address, phone number, fax number, and e-mail address.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-215, filed 6/21/05, effective 8/1/05.]

WAC 456-09-220 Rules of professional conduct. All persons appearing in proceedings before the board, whether on their own behalf or in a representative capacity, shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of Washington.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-220, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-220, filed 5/2/89.]

WAC 456-09-230 Ex parte communication. (1) No one shall make or attempt to make any ex parte communications prohibited by the Administrative Procedure Act. The board, in conducting a formal proceeding governed by the Administrative Procedure Act, may not make or attempt to make ex parte communications prohibited by such act. Attempts by anyone to make such prohibited ex parte communications shall subject such person to the sanctions of WAC 456-09-220 and 456-09-750.

(2) The requirements and procedures of RCW 34.05.455 apply to ex parte communications.

[Statutory Authority: RCW 82.03.170. 95-05-033 (Order 95-01), § 456-09-230, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-230, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-230, filed 5/2/89.]

APPEAL PROCEDURE

WAC 456-09-300 Commencing the appeal. (1) Persons wishing to make an appeal must submit to the board an original notice of appeal and a copy of the order or determination that is being appealed. The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.

(2) The board will acknowledge to the appellant in writing receipt of a notice of appeal.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-300, filed 6/21/05, effective 8/1/05.]

WAC 456-09-310 Contents of notice of appeal. (1) For all appeals, an appellant must submit to the board a notice of appeal that substantially contains the following:

(a) Appellant's name, mailing address, telephone number, and that of the representative, if any.

(b) Name of the respondent together with respondent's mailing address.

When the respondent is a government agency or agencies, the board may add respondents in order to ensure that all necessary persons are a party to the appeal.

(c) The date of the order or determination from which the appeal is taken together with a copy of the order, decision, or application appealed from.

(d) The nature of the tax.

(i) In excise tax cases, the amount of the tax in controversy and the period covered thereby;

(ii) In property tax cases, the parcel number of the property under appeal, the year for which the valuation has been determined, the full value as determined by the local board of equalization, and a declaration of true and fair value as alleged by the appellant; and

(iii) In property tax exemption cases, the parcel number of the property under appeal, the year(s) for which the exemption is at issue, the basis under which exempt status should be granted or denied, and the use of the property.

(e) Specification of the issue to be decided by the board.

(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.

(g) A notice of intention that the hearing be held pursuant to the Administrative Procedure Act.

(h) The relief sought.

(i) The signature of the appellant or the appellant's representative.

(2) The board may, upon motion of a party or upon its own motion, require a more complete statement of the claim or defense or any matter stated in any notice of appeal.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-310, filed 6/21/05, effective 8/1/05; 98-22-039, § 456-09-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-310, filed 5/2/89.]

WAC 456-09-315 Deadlines for submitting the notice of appeal. (1) The jurisdiction of the board to hear an appeal is limited to those appeals submitted within the deadlines stated in this section. Any appeal to the board shall be submitted within the time required by the statute governing the respective agency or proceeding involved. All time periods set forth below are expressed in calendar days including, but not limited to the following:

(a) Appeals taken pursuant to RCW 82.03.190, thirty days from the mailing of the determination.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130, thirty days from the mailing of the decision.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, thirty days from the mailing of the determination.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapters 84.12 and 84.16 RCW, thirty days from the mailing of the order.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, fifteen days after the mailing of the certification.

(f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, thirty days from the mailing of the notification.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by government-

(9/20/05)

tal ordinances pursuant to RCW 39.88.060, thirty days from the mailing of the ordinance.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, thirty days after the publication of the rate.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the sixtieth day after the date of final adoption.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, thirty days from the mailing of the determination.

(2) If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday, the submission shall be considered timely if performed on the next business day.

(3) Any party may, by motion, challenge the jurisdiction of the board in any appeal. The board may, upon its own motion, raise such jurisdictional issues.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-315, filed 5/2/89.]

WAC 456-09-325 Date and manner of submitting the notice of appeal. (1) The date of submitting a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is hand delivered. The board's date stamp placed thereon shall be evidence of the date of receipt. If the notice of appeal is mailed, the postmark will control and shall be evidence of the date of submission.

(2) All documents may be submitted with the board via fax machine or electronic mail transmission. However, the submission will not be deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-09-300 unless the following procedures are strictly observed:

(a) Documents received by fax machine or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax machine or computer shall be evidence of the date and time of receipt of transmission.

(b) The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.

(c) All fax or electronic transmissions are sent at the risk of the sender.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-325, filed 6/21/05, effective 8/1/05; 98-22-039, § 456-09-325, filed 10/29/98, effective 11/29/98; 95-05-033 (Order 95-01), § 456-09-325, filed 2/8/95, effective 3/11/95; 94-07-044, § 456-09-325, filed 3/10/94, effective 4/10/94; 91-07-038 (Order 91-01), § 456-09-325, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-325, filed 5/2/89.]

WAC 456-09-330 Amendments to notice of appeal. A notice of appeal may be amended as a matter of right within thirty days from the date the notice of appeal was received by the board. Thereafter, a party may amend the notice of appeal upon agreement in writing by the adverse party or when granted by the board. Motions to amend the notice of appeal shall be freely granted and may be denied only upon a showing by the adverse party of unreasonable and unavoidable hardship. Motions to amend must comply with WAC 456-09-555 and 456-09-345.

Amendments to the notice of appeal shall not extend any applicable jurisdictional deadline for appeal to the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-330, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-330, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-330, filed 5/2/89.]

WAC 456-09-335 Response. The respondent may submit an original and three copies of a response to the notice of appeal with the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-09-345.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-335, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-335, filed 5/2/89.]

WAC 456-09-340 Intervention. (1) Any person or agency whose interest may be substantially affected by an appeal may petition the board to be granted status as an intervenor in the appeal.

(2) In determining whether a petitioner qualifies as an intervenor, the presiding officer shall apply the rules of the superior courts of this state.

(3) If the 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. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The presiding officer may timely grant or deny each petition and specify conditions, if any.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-340, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-340, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-340, filed 5/2/89.]

SERVICE OF PAPERS

WAC 456-09-345 Service of papers on parties and proof of service. (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board shall be served upon all counsel and representatives of record and to unrepresented parties or upon their agents designated by them or by law.

[Ch. 456-09 WAC—p. 6]

(a) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial delivery company.

(b) Service by mail shall be regarded as completed upon deposit in the United States mail, as evidenced by the postmark, properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission and deposit on the same day in United States mail. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(2) Where proof of service is required by statute or rule, receipt of the papers by the board, together with one of the following, shall constitute proof of service:

(a) An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-345, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-345, filed 5/2/89.]

PREHEARING AND HEARING PROCEDURE

WAC 456-09-510 Limitation on discovery. (1) Insofar as applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

(2) The board may limit discovery upon motion by any party.

(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules. The board may condition use of discovery on a showing of necessity and unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-510, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-510, filed 5/2/89.]

WAC 456-09-520 Subpoena. Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. Parties wishing to issue a subpoena must comply with the rules in WAC 10-08-120.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-520, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-520, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-520, filed 5/2/89.]

WAC 456-09-530 Settlement conference. (1) At any time prior to hearing, the board may, upon its own motion or upon written application by a party, order a settlement conference. The conference shall be scheduled with not less than fourteen days' notice to each party at a time and place fixed by the board and conducted in a form and manner prescribed by the board with notice to the parties.

(2) In the event the appeal does not settle, hearing on the matter shall be set. The presiding officer of the hearing will not be the person who conducts the settlement conference.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-530, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-530, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-530, filed 5/2/89.]

WAC 456-09-540 Prehearing conference. (1) The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Dates by which the parties must provide documentary evidence to the board and to other parties;
- (g) The method for identifying exhibits and other attachments to briefs, motions, and other pleadings;
- (h) The number of copies of documentary evidence, briefs, motions and other pleadings to be submitted to the board; and
- (i) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by teleconference or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the board shall issue an order reciting the action taken at the conference, and the agreements made by the parties concerning all of the matters considered. The order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) Documentary evidence not submitted in accordance with the prehearing conference order may not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to comply with the order.

(5) Nothing in this rule shall be construed to limit the right of the parties to attempt settlement at any time.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-540, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-540, filed 2/8/95, effective 3/11/95; 89-10-056 (Order 89-02), § 456-09-540, filed 5/2/89.]

(9/20/05)

WAC 456-09-545 Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-09-555.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-545, filed 6/21/05, effective 8/1/05.]

WAC 456-09-550 Time in which evidence, briefs, and replies must be submitted. In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board within the times stated below.

(1) Documentary evidence which is to be introduced at hearing shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten business days prior to hearing. Each page of documentary evidence shall indicate whether it is submitted by the appellant or respondent and shall be numbered. Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-09-750.

(2) An original and three copies of briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least fifteen calendar days prior to hearing.

(3) An original and three copies of reply briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten calendar days prior to hearing.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-550, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-550, filed 5/2/89.]

WAC 456-09-552 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before the board may by motion request status as an amicus in the case. The motion must comply with WAC 456-09-555 and 456-09-345.

(2) The motion requesting amicus status must include a statement of the following:

(a) Applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) Applicant's familiarity with the issues involved in the proceeding before the board and with the scope of the arguments presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues.

(3) The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus curiae from any person deemed to be substantially affected by a proceeding before the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-552, filed 6/21/05, effective 8/1/05.]

WAC 456-09-555 Motions. (1) Any application for an order or ruling or a request for relief from any provision of this chapter is a motion. Every motion, unless made during hearing, shall be in writing and shall include the following:

- (a) A statement of the relief or order sought;
- (b) The reason for the relief or order;
- (c) A statement that the moving party has made a good faith effort to confer with the other party to resolve the subject matter of the motion;
- (d) The amount of time needed for argument;
- (e) Whether court reporting services are requested; and
- (f) Shall include proof of service pursuant to WAC 456-09-345.

(2) All motions shall be properly captioned and signed by the party or their representative.

(3) At the discretion of the board, the hearing on motion may be by teleconference or in person.

(4) A response to the motion shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 within ten business days following the date of service of the motion.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-555, filed 6/21/05, effective 8/1/05.]

WAC 456-09-560 Postponement, continuance, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date.

(3) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and 456-09-345. The board shall promptly schedule a conference to hear argument and rule on the request. Requests for continuance will not be granted absent a showing of good cause.

(4) This section shall not extend any applicable time for appeal to this board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-560, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-560, filed 5/2/89.]

WAC 456-09-565 Teleconference proceeding. (1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing, prehearing, or settlement conference may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence to be submitted sufficiently in advance of the proceeding.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-565, filed 6/21/05, effective 8/1/05.]

[Ch. 456-09 WAC—p. 8]

WAC 456-09-570 Notice of hearing. (1) Notice of a hearing will be mailed to all parties and to all persons having submitted written petitions to intervene not less than twenty calendar days before the hearing date unless a different period is required by law. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(2) The notice shall state that if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired; or to describe the reasonable accommodations requested.

(3) Defects in notice may be waived if the waiver is knowing and voluntary.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-570, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-570, filed 5/2/89.]

WAC 456-09-575 Notice of hearing to limited-English speaking parties. (1) When an agency is notified or otherwise made aware that a limited-English-speaking person is a party, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, either:

(a) Shall be written in the primary language of the party; or

(b) Shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-575, filed 6/21/05, effective 8/1/05.]

HEARING PROCEDURE

WAC 456-09-740 Testimony under oath. (1) All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of chapter 5.28 RCW.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the board, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-740, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-740, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-740, filed 5/2/89.]

(9/20/05)

WAC 456-09-742 Recording devices. (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-742, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-742, filed 5/22/90, effective 6/22/90.]

WAC 456-09-745 Failure to attend and hearing on the record. (1) When a party to these proceedings has, after notice, failed to attend a hearing, a motion for default or dismissal may be sought by any party to the proceedings or raised by the board upon its own motion. Any such order shall include a statement of the grounds for the order and shall be served upon all parties to the proceeding.

Within ten business days after service of the default order or dismissal under this section, the party against whom the order was entered may submit to the board together with proof of service pursuant to WAC 456-09-345 a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an entry of dismissal, default, or final order.

(2) Upon stipulation by both parties, an appeal may be submitted to the board on the record and the attendance of a party may be excused. However, the board in its discretion may require attendance for argument.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-745, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-745, filed 5/2/89.]

WAC 456-09-750 Dismissal, stipulation, and withdrawal of actions. Any action may be dismissed by the board for any of the following reasons.

(1) When all parties so stipulate. Stipulations on the value of property shall contain the parcel number, assessment year, the agreed upon value of the subject property, and a brief statement supporting the agreed upon value.

(2) As a matter of right when the appellant requests in writing to withdraw the appeal prior to the scheduled hearing.

(3) Upon motion of the appellant at the hearing prior to the presentation of the respondent's case.

(4) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

(5) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-750, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-750, filed 5/2/89.]

WAC 456-09-755 Rules of evidence and admissibility criteria. (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the board, the offered evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The board may exclude evidence that is excludable on consti-

(9/20/05)

tutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The board may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the board may refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-755, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-755, filed 5/2/89.]

WAC 456-09-762 Hearings—Interpreters. The provisions of WAC 10-08-150 are incorporated by reference herein.

[Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-762, filed 5/22/90, effective 6/22/90.]

WAC 456-09-765 Official notice. (1) The board may take official notice of the following:

- (a) Any judicially cognizable facts;
- (b) Any matter of public record;
- (c) Technical or scientific facts within the agency's specialized knowledge; and
- (d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by petition for review if such notice is taken in an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-09-955. Such controversion shall concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-765, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-765, filed 5/2/89.]

DISPOSITION OF CASES

WAC 456-09-910 Assistance to board. (1) The board may obtain assistance concerning the appeal of any case within the scope of RCW 82.03.130 (1)(b) (appeals from a county board of equalization) from the staff of the department of revenue as provided by RCW 82.03.160. The board will notify the parties of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue. Parties may recommend an alternative to the board to achieve the same objectives without contacting the department of revenue.

[Ch. 456-09 WAC—p. 9]

(2) Any evidence from the department of revenue concerning assistance requested under this section shall only be presented in open hearing after notice to all parties.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-910, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-910, filed 5/2/89.]

WAC 456-09-915 Presentation of posthearing evidence. Unless requested by the board, no posthearing evidence will be accepted unless such evidence could not reasonably have been anticipated or discovered prior to hearing. The board may request that the parties submit posthearing briefing or proposed findings of fact and conclusions of law.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-915, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-915, filed 5/2/89.]

WAC 456-09-920 Initial or final decision. Every decision, whether initial or final, shall:

- (1) Be correctly captioned as to the name of the board and name of the proceeding;
- (2) Designate all parties and representatives participating in the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;
- (6) Contain an initial or final decision disposing of all contested issues; and
- (7) Contain a statement describing the available post-hearing remedies.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-920, filed 6/21/05, effective 8/1/05; 89-10-056 (Order 89-02), § 456-09-920, filed 5/2/89.]

WAC 456-09-925 Initial decision. (1) An initial decision shall be prepared when:

- (a) An appeal has been heard by only one member of the board;
- (b) An appeal has been heard by only two members of the board at a time when there is no vacancy on the board and the two members cannot agree on a conclusion;
- (c) An appeal has been heard by a hearing officer; or
- (d) The board shall otherwise elect to do so.

(2) If a petition for review as provided in WAC 456-09-930 is not submitted to the board within twenty calendar days of the date of mailing of the initial decision, the initial decision shall be deemed the final decision of the board unless the decision specifies otherwise.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-925, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-925, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-925, filed 5/2/89.]

WAC 456-09-930 Petition for review of an initial decision, replies, and disposition. (1) Any party to an adjudicative proceeding may make a petition for review of an initial decision.

(2) The petition for review shall be made, by mail or otherwise, with the board within twenty calendar days of the date of mailing of the initial decision unless the decision specifies otherwise together with proof of service pursuant to WAC 456-09-345.

(3) The petition for review shall specify the portions of the initial decision to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may make a reply to a petition for review. The reply shall be made, by mail or otherwise, with the board together with proof of service pursuant to WAC 456-09-345 within ten business days of the date of the letter acknowledging receipt by the board of the petition for review.

(5) The disposition may be in the form of a written order denying the petition and adopting the initial decision as the final decision, granting the petition and issuing a final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which review was sought, within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-930, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-930, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-930, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-930, filed 5/2/89.]

WAC 456-09-955 Petition for reconsideration of a final decision. (1) After a final decision has been issued, any party may submit a petition for reconsideration with the board as provided by RCW 34.05.470. Such petition must be made, by mail or otherwise, within ten business days from the mailing of the final decision, and shall state the specific grounds upon which relief is requested. The petition for reconsideration shall be submitted to the board and served upon all parties and representatives of record in compliance with WAC 456-09-345. The board may require or a party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response together with proof of service pursuant to WAC 456-09-345.

(2) The petition shall be deemed denied if, within twenty calendar days from the date the petition is received by the board, the board does not either dispose of the petition; or provide the parties with a written notice specifying the date by which it will act on the petition.

(3) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument within such time and on such terms as may be prescribed.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-955, filed 6/21/05, effective 8/1/05; 95-05-033 (Order 95-01), § 456-09-955, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170. 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-955, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-955, filed 5/2/89.]

WAC 456-09-960 Record on appeal. (1) When an appeal is taken to superior court from a decision of the board rendered in a formal proceeding, the appealing party is responsible for ordering and paying for the transcript of the testimony from the court reporter.

(2) If a petition for judicial review of a final order is made, by stipulation the parties may agree to shorten the record to be filed with the court. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved as allowed in RCW 34.05.-566.

[Statutory Authority: RCW 82.03.170. 05-13-141, § 456-09-960, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. 90-11-105, § 456-09-960, filed 5/22/90, effective 6/22/90.]

SEPA

WAC 456-09-970 Applicability of SEPA guidelines. The board has reviewed its authorized activities pursuant to WAC 197-11-800(12) and has found them all to be exempt from the provisions of chapter 197-11 WAC.

[Statutory Authority: RCW 82.03.170. 89-10-056 (Order 89-02), § 456-09-970, filed 5/2/89.]