



STATE OF WASHINGTON
BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS
P.O. Box 9025, Olympia, WA 98507-9025

Washington Administrative Code
Notice of Permanent Rules for WAC 196-09
Board Practices and Procedures

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rulemaking.

Adoption of WAC:

- 196-09-010 Declaration of purpose
- 196-09-012 Definitions
- 196-09-015 Complaint processing approach (New Section)
- 196-09-018 Right to administrative review (New Section)
- 196-09-020 Adjudicative proceedings
- 196-09-050 Brief adjudicative proceedings
- 196-09-055 Records required for brief adjudicative proceeding
- 196-09-060 Procedures for brief adjudicative proceedings
- 196-09-100 Investigative costs reimbursement
- 196-09-110 Cooperation with board investigation
- 196-09-130 Board member limitations – Contract selection
- 196-09-131 Board member limitations – Board actions
- 196-09-135 Reporting of board member recusal
- 196-09-150 Public records (New Section)
- 196-09-160 Change of address – Board notification (New Section)

Effective date: These rule changes will become effective 31 days after filing (approximately December 4, 2021).

What are the agency's reasons for adopting this rule?

Initially, review and revision of existing rules was necessitated by the 2019 legislative update to Chapter 18.43 RCW which made the Board of Registration for Professional Engineers and Land Surveyors an independent state agency. This led to a more comprehensive review of the Board's rules.

Updates to Chapter 196-09 WAC Board practices and procedures include amendments to current language, such as adjudicative proceedings and Board member limitations. New language for various agency processes such as, Definitions, Complaint processing approach, Right to Administrative Review, Public records and change of address were added to the current language.

Summary of all public comments received on this rule proposal and the agency's response to those comments:

Comment:

Regarding Complaint Processing, please make sure the State's rules allow the complainant to be heard more than just at the very start of the investigation. I don't see how it is fair to close an investigation without the complainant being allowed an opportunity to participate in the process after the initial complaint is made.

Response:

There is nothing in the complaint process that prohibits the complainant from submitting additional information, while there is an active open complaint or investigation. You may submit any information that you deem relevant to the Board staff at any time during the investigation process. You may also be asked by the investigation staff to provide more information or answers to specific questions.

The agency process for notification is at, a minimum, both the beginning and conclusion of the complaint process. If you are notified that your complaint has been closed, the notification will also explain that you can resubmit your complaint if you have additional information to present. If the case investigation or hearing process is ongoing, the complainant will be notified of the status of the complaint on a routine basis. While this information is not all contained in administrative rule, it is standard Board process.

Comment:

These comments are submitted on behalf of the Administrative Law Section of the Washington State Bar Association. They concern subsection (2) of the Board's proposed new WAC 196-09-150:

(2) Records index. An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the board's office.

While making the public aware of the existence of the Board's records retention schedule is somewhat informative and useful, it is not sufficient to comply with the requirements of the Public Records Act (1) for creating, maintaining and making available to the public indexes of four types of records and (2) for enacting a rule describing the indexing system.

In short, in addition to maintaining pre-July 1, 1990, indexes for any type of record that state agencies might have had, the statute requires state agency indexes for these types of post-June 30, 1990, records (as defined in the Administrative Procedure Act) –

- Final orders in adjudicatory cases “that contain an analysis or decision of substantial importance to the agency in carrying out its duties” [often called “significant decisions”]³;
- Declaratory orders;
- Interpretive statements;
- Policy statements.

The agency's rule that establishes and implements the required indexing system must set forth, at a minimum –

- requirements for the form and content of the index,
- the index's location and availability to the public, and
- the schedule for revising or updating the index.

Response:

This is an excellent comment and bears further investigation. The Board will begin work on understanding and complying with the indexing requirement and rulemaking around that requirement. Since this work is outside of the CR 101 for this rulemaking hearing, the Board will finish this rulemaking process, and then will file a new CR 101 to address the indexing issue.

Changes made to the proposed WAC resulting from public comment:

None. However, the Board will start the rulemaking process to address the Indexing of Records issue.

The Board appreciates your involvement in this rule making process. If you have any questions, please contact Shanan Gillespie, Board Rules Coordinator, at (360) 664-1570 or e-mail at Shanan.Gillespie@brpels.wa.gov.