

WSR 21-22-092
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed November 2, 2021, 8:47 a.m., effective December 3, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Review and revision of existing rules were initiated because of the 2019 legislation making the board of registration for professional engineers and land surveyors an independent state agency, which lead to an overall review and update to Title 196 WAC. 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.

Citation of Rules Affected by this Order: New WAC 196-09-012, 196-09-015, 196-09-018, 196-09-150 and 196-09-160; and amending 196-09-010, 196-09-020, 196-09-050, 196-09-055, 196-09-060, 196-09-100, 196-09-110, 196-09-130, 196-09-131, and 196-09-135.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 21-16-027 on July 26, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 10, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 10, Repealed 0.

Date Adopted: October 21, 2021.

Ken Fuller
Director

OTS-3188.2

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-010 Declaration of purpose. This chapter contains rules and administrative procedures for regular and special meetings, adjudicative proceedings ((held by)) hearings and reviews, public records and other activities of the board, board members and board staff in executing ((its)) their responsibilities under chapters 18.43 and 18.210 RCW.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035. WSR 98-12-045, § 196-09-010, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-09-012 Definitions. The following definitions shall apply to this chapter:

(1) "Adjudicative proceedings" are processes of administrative review provided by the board and may be either a formal hearing before the full board including witness testimony or a simplified review by a single presiding officer without witness testimony.

(2) "Administrative review" means an objective review of an initial enforcement or licensing decision made by board staff, to which any person adversely affected by such a decision is entitled by law.

(3) "Board administrative staff" or "board staff" means staff who perform the day-to-day operations and administration for the board and who may make preliminary decisions on licensing and enforcement matters.

(4) "Case manager" means a board member who provides expertise and works with board staff on a specific licensing or enforcement matter and who will not participate in a judicial capacity on that matter.

(5) "Presiding officer" means a member of the board who may preside over a full board hearing, conduct prehearing conferences, or perform a brief adjudicative proceeding.

(6) "Respondent" means the person who has been named in a complaint and may request an administrative review of a board staff decision as described herein.

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NEW SECTION

WAC 196-09-015 Complaint processing approach. The board processes complaints as follows:

(1) Anyone may submit a complaint against a licensed or unlicensed person alleging unprofessional conduct, unlicensed practice, or any other violations of chapter 18.43 or 18.210 RCW. Complaints must be sworn to in writing and should include documentation of the alleged conduct.

(2) Upon receipt of the complaint, board staff will send an acknowledgment of the complaint to the complainant. If the subject of the complaint ("respondent") is a licensee, the board will notify the licensee respondent that a complaint was filed against them and include a copy of the complaint documents.

(3) Board staff will conduct an initial review of the complaint to determine whether the complaint raises a potential violation that would fall within the jurisdiction and purview of a potential board action.

(a) If board staff determines there are no violations, the complaint is administratively closed, and the parties are notified.

(b) If board staff determines there is a potential violation, a formal investigation is opened, and an investigator and case manager are assigned. The respondent is notified, and a response to the allegations is requested.

(4) The case manager will evaluate all documentation or comments received (the investigation file), may ask questions, or call for further investigation. When the case manager completes their review of the documentation, they will draft a written report, which will result in either case closure, remedial counseling, expedited resolution, or issuance of statement of charges.

(5) The board may resolve a complaint or investigation at any time during this process.

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NEW SECTION

WAC 196-09-018 Right to administrative review. When the board makes an enforcement or licensing decision that negatively affects a licensee, applicant, or unlicensed practitioner under chapters 18.43 and 18.210 RCW, that person is entitled to request administrative review of the decision pursuant to the Administrative Procedure Act, chapters 34.05 RCW and 10-08 WAC.

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AMENDATORY SECTION (Amending WSR 98-12-045, filed 5/29/98, effective 7/1/98)

WAC 196-09-020 Adjudicative proceedings. The Administrative Procedure Act, chapters 34.05 RCW and 10-08 WAC apply to all adjudicative proceedings under the jurisdiction of the board. ((The procedures described in Washington superior court civil rules 26 through 32, 34, 36 and 37 also apply.))

Administrative review is performed by one of the following types of adjudicative proceedings:

(1) A formal adjudicative hearing before the entire board with the presentation of witness testimony and/or documentary evidence; or

(2) A brief adjudicative proceeding (BAP) before a single presiding officer, which may be used for the review of simple matters where no witness testimony is needed.

(3) An emergency adjudicative proceeding under RCW 34.05.479, which may be used when there is an immediate danger to the public health, safety, or welfare requiring immediate board action.

[Statutory Authority: RCW 18.43.035. WSR 98-12-045, § 196-09-020, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

WAC 196-09-050 Brief adjudicative proceedings. (1) The board ~~((will))~~ may conduct brief adjudicative proceedings as provided ~~((for))~~ in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. ~~((Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.43, 18.210, and 18.235 RCW, administrative rules in Title 196 WAC or any statutes or rules that specifically govern the defined practices of engineering, land surveying and on-site wastewater treatment system designs. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.))~~

(2) Brief adjudicative proceedings may only be ~~((used to determine))~~ allowed when a respondent challenges the following ~~((issues, including, but not limited to))~~ categories of board decisions:

(a) ~~((Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;))~~ A denial of application for licensure, including renewal, reinstatement, or denial of eligibility to take examinations;

(b) ~~((Whether an applicant is eligible to sit for a professional licensing examination;~~

~~(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;~~

~~(d) Whether an applicant meets minimum requirements for an initial or renewal application;~~

~~(e) Whether an applicant has failed the professional licensing examination;~~

~~(f) Whether))~~ A finding that a licensee has ((sufficient)) failed to meet continuing ((education credits when the licensee submits a renewal application)) professional development requirements;

~~((g) Whether an applicant or licensee failed to cooperate in an investigation by the board;~~

~~(h) Whether an application or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;~~

~~(i) Whether an applicant or))~~ (c) A finding that a licensee has violated the terms of a final order or agreed order issued by the board or the board's designee;

~~((j) Whether))~~ (d) A finding that a person has engaged in false, deceptive, or misleading advertising((;)) or ((k) Whether a person has) engaged in unlicensed practice.

~~((3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.))~~

[Statutory Authority: RCW 46.01.110 and 2018 c 199. WSR 18-21-028, § 196-09-050, filed 10/5/18, effective 11/5/18. Statutory Authority: RCW 18.43.035 and chapter 18.235 RCW. WSR 06-11-121, § 196-09-050, filed 5/19/06, effective 6/19/06. Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-050, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

WAC 196-09-055 Records required for brief adjudicative proceeding. The records for the brief adjudicative proceeding (~~shall~~) may include, but are not limited to:

(1) (~~Renewal or reinstatement of~~) License related denials:

(~~(*)~~) (a) All correspondence, including emails, between the applicant or respondent and the board (~~about the renewal or reinstatement;~~

~~(*)~~) staff regarding an initial determination including copies of applications, renewal notice(s) (~~sent by the department of licensing to the licensee;~~

~~(*)~~), denials, or appeals;

(b) All documents received by the board from or on behalf of the applicant, licensee or respondent relating to information, payments, or explanations that have been provided to the board (~~(-)~~);

(~~(2)~~) Applicants for certification/licensing:

~~(*)~~ Original complete application with all attachments as submitted by the applicant;

~~(*)~~) (c) Copies of all supplementary information related to application or complaint review by staff or board member;

(~~(*)~~) (d) All documents relied upon by board staff in reaching the initial determination (~~of ineligibility;~~

~~(*)~~ All correspondence between the applicant and the board about the application or appeal.

(~~(3)~~);

(e) Any other information that may be of assistance to the presiding officer in deciding the case.

(2) Determination of compliance with previously issued board order:

(~~(*)~~) (a) The previously issued final order or agreement;

(~~(*)~~) (b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(~~(*)~~) (c) All correspondence between the license holder and the (~~program~~) board regarding compliance with the final order or agreement; and

(~~(*)~~) (d) All documents relied upon by the (~~program~~) board showing that the license holder has failed to comply with the previously issued final order or agreement.

[Statutory Authority: RCW 46.01.110 and 2018 c 199. WSR 18-21-028, § 196-09-055, filed 10/5/18, effective 11/5/18. Statutory Authority: RCW 18.43.035 and chapter 18.235 RCW. WSR 06-11-121, § 196-09-055, filed 5/19/06, effective 6/19/06. Statutory Authority: Chapters 18.43 and

18.235 RCW. WSR 04-04-001, § 196-09-055, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-060 Procedures for brief adjudicative proceedings. A

brief adjudicative proceeding (~~(shall be held under the supervision of)~~) is conducted by a presiding officer as designated by the board chair. The presiding officer shall have knowledge and experience in the administrative processes of the board and the requirements of the provisions for a brief adjudicative proceeding as provided (~~(for)~~) in chapter 34.05 RCW and WAC 196-09-050 through 196-09-060, but shall not have participated in the determination or action under review. Except as may be otherwise required by the presiding officer, the following procedures shall apply:

(1) (~~(The petitioner)~~) Both parties shall (~~(present petitioner's position in writing in accordance with the process and schedule established)~~) provide any written statements, explanations, documents, emails, and other information they feel might be relevant as instructed by the presiding officer.

(2) In unique circumstances, during the administrative review, the presiding officer may (~~(accept oral)~~) ask questions and take testimony (~~(and/or argument)~~) of the respondent and the board staff, as necessary to supplement the record.

(3) No other witnesses may appear to testify. If the presiding officer determines that witnesses are needed to make a decision, the proceeding will be converted into a formal hearing.

(4) (~~(In addition to the written record,)~~) The presiding officer may (~~(employ agency expertise as a basis for the decision)~~) convert the brief adjudicative proceeding into a formal hearing if they determine, for any reason, that a formal hearing is needed.

(5) At the time any unfavorable action is taken, the presiding officer (~~(will not issue an oral order at the time of the brief adjudicative proceeding)~~) may serve upon each party a preliminary brief statement of the reasons for the decision. Within ten days of the (~~(final date established by)~~) preliminary statement, the presiding officer (~~(for receipt of additional materials and/or oral arguments, if any, the presiding officer will enter)~~) shall give the parties a written (~~(initial)~~) order containing the findings and conclusions supporting the decision and information about any internal administrative review available.

(6) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-060, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-100 Investigative cost reimbursement. The reimbursement of investigative costs may be ordered by the board if the adjudicative process has resulted in a ~~((finding by the board that identifies conduct which is considered misconduct or malpractice and has resulted in the suspension or revocation of the license to practice))~~ board order. Costs subject to reimbursement are those expenses paid by the board during the investigation process, such as expert or consultant witness contracts.

In addition, the disciplinary authority may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which a person engaged in the unlicensed practice of a profession or operation of a business for which a license is required by one or more of the chapters specified in RCW 18.235.020; chapters 18.43 and 18.210 RCW.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-100, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-110 Cooperation with board investigation. In the course of an investigation and request by the board under its authority in chapter 18.43 RCW, a licensee or registrant must provide access to any papers, records, or documents in their possession or accessible to them that pertain to the allegations in a complaint or investigation, and may provide a written explanation addressing such complaint/investigation or other information requested by the board. A facility related to a complaint or investigation shall be made accessible by the licensee during regular business hours.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-09-110, filed 1/21/04, effective 2/21/04.]

AMENDATORY SECTION (Amending WSR 06-22-032, filed 10/25/06, effective 11/25/06)

WAC 196-09-130 Board member limitations—Contract selection.

(1) When a member of the board of registration for professional engineers and land surveyors (Board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member must:

(a) Exclude him or herself from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Exclude him or herself from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

~~((3) Under subsection (1), "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.~~

EXAMPLE:

~~The board is composed of licensed professional engineers (PE) and professional land surveyors (PLS). A licensed PE member of the board is employed by a company, which conducts forensic evaluations for the purpose of determining whether an engineering design was properly performed. The board is in the process of selecting a contractor to conduct an evaluation of said engineering design for the board's use during disciplinary activities. The company that employs the PE member of the board has responded to the board's RFP.~~

~~The PE member of the board may use his general expertise regarding the performance of forensic evaluations to educate the board as to the general elements of such review. The member is prohibited from participating in the board's discussion, decision and vote for selecting a contractor.)~~

[Statutory Authority: RCW 18.43.035. WSR 06-22-032, § 196-09-130, filed 10/25/06, effective 11/25/06.]

AMENDATORY SECTION (Amending WSR 06-22-032, filed 10/25/06, effective 11/25/06)

WAC 196-09-131 Board member limitations—((Transactions)) Board actions. (1) When a member of the board of registration for professional engineers and land surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is ~~((engaged in a transaction involving the))~~ subject to a board action, the member must:

(a) ~~((Exclude))~~ Recuse him or herself from the board discussion regarding the specific ~~((transaction))~~ action;

(b) ~~((Exclude))~~ Recuse him or herself from the board vote on the specific ~~((transaction))~~ action; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific ~~((transaction))~~ action.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) may not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) ~~((a))~~ "Transaction" involving the board means a) "Board action" may include any of the following:

(a) An investigation or adjudicative proceeding((7));

~~(b) Application((r)) or submission((r));~~

~~(c) Request for a ruling or other determination((r-contract, claim, case, or other similar matter that the 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.~~

~~(b) "Transaction" involving the board does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the 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" as described in this subsection.~~

~~(4) "Board action" means any action on the part of the board including, but not limited to:~~

~~(a) A) decision, ((determination,)) finding, ruling, or order;~~

~~((and~~

~~(b) A) or~~

~~(d) Monetary grant, payment, or award((r-license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.~~

EXAMPLE:

~~The board may discipline engineers or land surveyors for incompetence in their practice in Washington. The board is conducting an investigation involving questionable surveying services provided by a county engineer's office. One of the members of the board sits on that county's planning commission. The member must exclude him or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the investigation)).~~

[Statutory Authority: RCW 18.43.035. WSR 06-22-032, § 196-09-131, filed 10/25/06, effective 11/25/06.]

AMENDATORY SECTION (Amending WSR 06-22-032, filed 10/25/06, effective 11/25/06)

WAC 196-09-135 Reporting of board member recusal. ~~((+1))~~ If exclusion or recusal occurs pursuant to WAC 196-09-130 or 196-09-131, the member of the board should disclose to the public the reasons for his or her exclusion or recusal from any board action whenever ~~((recusal))~~ it occurs. The board staff should record each instance of exclusion or recusal and the basis for ~~((the exclusion))~~ it in the minutes of the board meetings.

[Statutory Authority: RCW 18.43.035. WSR 06-22-032, § 196-09-135, filed 10/25/06, effective 11/25/06.]

NEW SECTION

WAC 196-09-150 Public records. All public records of the board are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) Inspection of records. Public records are available for inspection and copying during normal business hours of the office of the Washington state board of registration for professional engineers and land surveyors. Records may be inspected at the board's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(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.

(3) Organization of records. The board maintains its records in a reasonably organized manner. The board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the board's office. A variety of records are also available on the board's website at <https://brpels.wa.gov/>. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request using the board's public records request form available on the board's website or in writing by letter or email addressed to the public records officer. Written request must include the following information:

(i) Date of the request.

(ii) Name of the requestor.

(iii) Address of the requestor and other contact information, including telephone number and any email addresses.

(iv) Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, he or she will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should make that preference clear in the request. Copies will be made by the board's public records officer or designee.

(e) When fulfilling public records requests, the board will perform its public records responsibilities in the most expeditious manner consistent with the board's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explana-

tion of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the board's anticipated installment delivery timetable.

(h) In certain instances, the board may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within fifteen days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the fifteen-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations: In order to obtain a list of individuals under the provisions of RCW 42.56.070(8), educational organizations and professional associations must provide sufficient information to satisfy the board that the requested list of individuals is primarily for educational and professionally related uses.

Board forms are available on the board's website or upon request.

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NEW SECTION

WAC 196-09-160 Change of address—Board notification. All licensees in this state must notify the board in writing within thirty days of any change of mailing address or email address. Corporations and LLCs licensed in this state must notify the board of any opening, closing, or relocation of the main office or a branch office in this state.

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