

AMENDATORY SECTION (Amending WSR 17-03-123, filed 1/18/17, effective 2/18/17)

**WAC 51-04-020** ~~Rules~~~~Policies~~ **for the consideration of proposed state-wide amendments.** (1) All petitions for statewide amendments to the building code must be compliant with the requirements set forth in WAC 51-04-025.

**Commented [BR(1):** Under the Admin. Procedures Act (APA), "policies" are non-binding; this is a binding rule.

**Commented [BR(2):** This identifies where the requirements for petitions for statewide amendments are found.

(2) The council will accept and consider compliant petitions for emergency statewide amendments to the building code at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW.

**Commented [BR(3):** "Compliant" refers to amendments that "comply" with WAC 54-04-025 as reference in subsection (1).

(3) The council will accept and consider all-compliant petitions for statewide amendments that are submitted within the time periods the council posts for petitions relating to Group 1 and Group 2 amendments that meet the complete application requirements as set by the council to be made in conjunction with the state building code update cycle., ~~in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020 as follows:~~

**Commented [BR(4):** Clarifies that petitions must be received within the Group 1 or Group 2 timelines, as applicable. Deleted references are not directly relevant or needed.

(a) For the purpose of review and adoption of new model code editions and statewide amendment submission, the state building code shall be divided into two groups as follows, unless otherwise directed by the council:

(i) Group 1: International Building Code (IBC); International Existing Building Code (IEBC); International Fire Code (IFC); Washington state energy code-commercial (WSEC-C); and Wildland Urban Interface Code (WUIC).

(ii) Group 2: International Residential Code (IRC); International Mechanical Code (IMC); International Fuel Gas Code (IFGC); standards liquefied petroleum gas are National Fire Protection Association (NFPA) standards

58 and 54; Uniform Plumbing Code (UPC); Washington state energy code-residential (WSEC-R).

(b) During August of the year before the year of the model code, the council will post a timeline for Group 1 and Group 2 code update processes, including providing separate periods of at least 60 days for the submission of petitions for statewide amendments for each group. The council reserves the right to modify its timeline as it determines necessary and appropriate. ~~adoption period of new model codes commences when new editions of the model codes are available to the public. Within sixty days, the council shall publish a~~

**Commented [BR(5):** Change requested by the SBCC Executive Committee

**Commented [BR(6):** Allows the council flexibility to modify timelines.

(c) The timeline shall to include deadlines for committee transmittal to council of separate reports for Group 1 and Group 2 that identify (i) the a report of significant changes contained in the new model codes from the prior model codes, (ii) amendments and applicability of the existing state amendments to prior model codes that are proposed to be modified or eliminated, and (iii) all committee proposed amendments to the new model codes. The reports shall be posted on the council web site, followed by a submission period for new proposed statewide amendments.

**Commented [BR(7):** Clarifies the contents of the reports.

~~(i) The council shall review Group 1 model codes and approve a report on significant changes and applicability of existing state amendments. The Group 1 report shall be posted on the council web site and a submission period of at least ((two months)) sixty calendar days shall be allowed for new proposed statewide amendments.~~

(d) The council shall direct council staff to submit a CR 102 to the Code Reviser's Office containing any proposed rules that the Council has approved and shall conduct at least two public hearings for each group (one in western Washington and one in eastern

**Commented [BR(8):** Same as before---just moved to this location.

Washington) following the filing of the proposed rules with the code reviser's office.

(~~ei~~) Upon completion of the council's review of Group 1 amendments(not including Group 1 amendments the council directs be kept open for consideration during the Group 2 period), the council will commence review of Group 2 amendments following the timeline.  
~~((report)), public meetings, council actions and posting of the actions on the state building code council's web site and provided new editions of Group 2 model codes are available to the public, the council shall re-view the Group 2 codes and approve a report on significant changes and applicability of existing state amendments. The Group 2 report shall be posted on the ((council)) state building code council's web site and a submission period of at least ((two months)) sixty calendar days shall be allowed for new proposed statewide amendments~~

**Commented [BR(9):** This change gives the council authority to hold Group 1 amendments open for determination in the Group 2 period.

(4) The council will accept and consider compliant petitions for all other statewide amendments to the building code if one or more of the following criteria are met: (i) the amendment is directed by the legislature; (ii) the amendment is necessary for code correlation, correction of errors, language clarification, or section update, or (iii) the council determines that the amendment would serve an importantcritical public interest and requires immediate/accelerated action-and, considering the relative importance of the amendment to other work, council will be able to accommodate the amendment within its workload.

**Commented [BR(10):** Items (i) and (ii) were in the prior rule.

**Commented [BR(11):** Item (iii) allows for off-cycle amendments that the council finds (1) advance an important public interest and (2) the council has sufficient time and resources to accommodate. This conforms to the council's past practice in adopting off-cycle amendments.

**Commented [BR(12):** Changes requested by the SBCC Executive Committee.

(~~5~~) The council shall review proposed new statewide amendments, and approve those meeting the appropriate criteria to file as proposed rules in accordance with chapter 34.05 RCW. The proposed rules filing shall

include a small business economic impact statement in accordance with chapter 19.85 RCW.

~~(3) The council shall conduct at least two public hearings for each group (one in western Washington and one in eastern Washington) following the filing of the proposed rules with the code reviser's office.~~

**Commented [BR(13):** This provision was moved to above.

~~(4) Amendments to Group 1 codes during the Group 2 adoption shall be limited to legislative direction, code correlation, correction of errors, language clarification and updated section references.~~

(56) The code development period shall conclude with formal adoption of the state building code as amended by the council. As required by RCW 19.27.074, all decisions to adopt or amend the state building code shall be made prior to December 1<sup>st</sup> and shall not take effect before the end of the regular legislative session in the next year. Provided, the December 1<sup>st</sup> deadline shall not apply to emergency rules or expedited adoption of rules under the administrative procedures act, RCW title 34.05.7 or decisions on final rules that were made prior to December 1<sup>st</sup> but subject to timely requests for reconsideration under WAC 51-04-040. Group 1 and 2 codes shall be filed with the code reviser at the same time. ~~((Amendments to Group 1 codes during the Group 2 adoption shall be limited to code correlation, errors, language clarification and updated section references.~~

**Commented [BR(14):** This new language recognizes two statutory exceptions: emergency rulemaking and expedited rulemaking under the APA. The council has recognized those exceptions in past rulemakings which occurred after the December 1<sup>st</sup> deadline but took effect immediately or within months.

(67) State amendments as approved by the council shall be submitted to the appropriate model code organization, at the direction of the council, except those adopted for consistency with state statutes or regulation and held for further review during the adoption period of those model codes by the council. ~~The effective date of any statewide amendments shall be the same as the effective date of the new edition of the model codes, except for emergency amendments adopted in accordance with chapter 34.05 RCW and deemed appropriate by the council.~~

**Commented [BR(15):** This language is inconsistent with council's practice of allowing off-cycle rulemaking, since off-cycle rules are not effective on only the date that rules adopting new model codes are effective. Further the term "the effective date of the new edition of the model codes" is more accurately stated as "the effective date of the rules adopting the new editions of the model codes."

February 18, 2020

**WAC 51-04-040 Reconsideration.** (1) When the council approves, denies or modifies a ~~statewide or~~ local amendment to the building code, any party with written or oral testimony to the council related to the amendment on the record may file a petition for reconsideration. The petition must be received by the Washington State Building Code Council, 1500 Jefferson Avenue S.E., P.O. Box 41449, Olympia, Washington 98504-1449, within twenty calendar days ~~of the date of notification~~ of the council action on the amendment. The petition must give specific reasons for why the council should reconsider the amendment for approval or denial.

(2) Within sixty calendar days of receipt of a timely petition for reconsideration, the council shall in writing:

(a) Grant the petition for reconsideration and enter rule-making to revise the amendment;

(b) Deny the petition for reconsideration, ~~giving reasons for the denial~~; or

(c) Request additional information and extend the time period for not more than thirty calendar days to either grant or deny the petition for reconsideration.

(3) The council's denial of a ~~proposed statewide or~~ local government amendment, or the council denial of a petition for reconsideration under this section, is subject to judicial review under chapter 34.05 RCW.

**Commented [BR(1):** Statewide amendments are deleted because there is often insufficient time after the initial action for reconsideration to occur before the December 1 deadline in RCW 19.27.74(5)(c). The deadline is even more difficult to meet if the Council grants a petition for reconsideration and must issue a new CR-102, hold a new public hearing, and take final action on a new statewide rule -- all by December 1.

Persons who object to the council's rulemaking decisions already have two remedies available under the APA. They may appeal a rule to Superior Court under RCW 34.05.570, or petition the Council to amend or repeal a rule under RCW 34.05.330.

**Commented [BR(2):** The council action occurs at a public meeting with official notice. Additional notice is not practical or necessary.

**Commented [BR(3):** The Council has 15 members who may have different reasons for a particular vote. It is not realistic, practical, or advisable to have either a single Council statement or to have 15 separate statements.