

WSR 24-09-078

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed April 17, 2024, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-102.

Title of Rule and Other Identifying Information: Title 390 WAC, Public disclosure commission; chapters 390-16 and 390-18 WAC. Implementation of chapter 42.62 RCW regarding the use of synthetic media in election campaign-related activities.

Hearing Location(s): On May 23, 2024, at 9:30 a.m., at the Public Disclosure Commission (PDC) Office, 711 Capitol Way South, Olympia, WA 98504. Remote access available; contact pdcpdc@pdc.wa.gov.

Date of Intended Adoption: May 23, 2024.

Submit Written Comments to: Sean Flynn, 711 Capitol Way South, Olympia, WA 98504, email pdcpdc@pdc.wa.gov, fax 360-753-1112, by May 20, 2024.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, fax 360-753-1112, email pdcpdc@pdc.wa.gov, by May 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will assist in furthering the purpose of SB [ESSB] 5152 (2023), codified under chapter 42.62 RCW, regarding the recognition and disclosure of synthetic media (deepfakes) used in election campaigning activity. The proposal will include specific requirements within existing reporting systems for disclosing the use of synthetic media in campaign-related communications.

Reasons Supporting Proposal: Under RCW 42.62.040, the legislature instructed PDC to adopt rules in furtherance of the purpose of chapter 42.62 RCW, regarding the use of synthetic media in election campaign-related communications.

Statutory Authority for Adoption: RCW 42.17A.110, 42.62.040.

Statute Being Implemented: Chapter 42.62 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Flynn, 711 Capitol Way South, Olympia, WA 98504, pdcpdc@pdc.wa.gov; Enforcement: 711 Capitol Way South, Olympia, WA 98504, pdcpdc@pdc.wa.gov.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. PDC is not required to prepare a cost-benefit analysis under RCW 34.05.328 (5) (b).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Under RCW 42.62.040, PDC is required to adopt rules in furtherance of purpose of SB [ESSB] 5152 (2023), codified at chapter 42.62 RCW.

Scope of exemption for rule proposal:

Is fully exempt.

April 17, 2024

Sean Flynn
General Counsel

OTS-5353.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-037 Purpose of campaign expenditures—How to report.

(1) Any person required to report the "purpose" of an expenditure under RCW 42.17A.240(6), or 42.17A.255 (5)(b), must identify any candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure (~~((unless such candidate(s) or ballot proposition(s) have been previously identified in a statement of organization of the person))~~ as required to be filed under RCW 42.17A.205 (2)(f) and (g);

(2) Whenever an expenditure is made to a candidate or a political committee pursuant to an agreement or understanding of any kind regarding how the recipient will use the expenditure, the report must describe in detail that agreement or understanding and the goods and/or services to be provided.

Example A: If an expenditure is made directly to a vendor for get-out-the-vote (GOTV) phone calls or robocalls, the purpose must include the following details:

Vendor Name	Purpose	Amount
ABC Robocall	GOTV—phone bank 28th and 29th Legislative districts	\$1,000

Example B: If an expenditure is made directly to a vendor for printing, the purpose must include the following details:

Vendor Name	Purpose	Amount
ABC Printing	5,000 brochures	\$3,000

(3) Any expenditure using "synthetic media," as defined under RCW 42.62.020, in the creation or distribution of any political advertising or other expenditure, must identify:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising, if any;
and

(c) The description of any audience targeting information provided as a service for any digital communication by a digital communication platform, or other vendor.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of chapter

42.17A RCW to disclose an independent expenditure of \$1,000 or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of \$2,000 or more that is presented to the public within 21 days of an election, that supports or opposes a ballot proposition, or that qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$2,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$2,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed, including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320 and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form the sources of any funds received by the committee for an electioneering communication, unless the committee received funds that were earmarked or otherwise designated for the communication.

(3) An out-of-state political committee must report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication as defined in RCW 42.17A.005.

(4) The sponsor of an electioneering communication must report pursuant to RCW 42.17A.305 and these rules regarding electioneering

communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

(5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005, must also file pursuant to RCW 42.17A.305 and these rules regarding electioneering communications. The report filed pursuant to RCW 42.17A.305 must identify the grass roots campaign.

(6) In addition to any other reporting requirements on the C-6 form, any political advertising that supports or opposes a ballot proposition or that supports or opposes a candidate and qualifies as an independent expenditure, or any electioneering communication, must identify any "synthetic media," as defined under RCW 42.62.020, that was used in the advertising or communication, and further report:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising or communication, if any; and

(c) The description of any audience targeting information provided for any digital communication by a digital communication platform, or other vendor.

OTS-5354.2

NEW SECTION

WAC 390-18-035 Synthetic media—Application of disclosure statements in electioneering communications. For purposes of chapter 42.62 RCW, any disclosure statement regarding the use of "synthetic media" in an electioneering communication is in addition to any required disclosure statements under chapter 42.17A RCW and Title 390 RCW, and may not substitute, replace, or otherwise interfere with such disclaimer requirements.

AMENDATORY SECTION (Amending WSR 22-05-021, filed 2/4/22, effective 3/7/22)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) "Commercial advertiser" as that term is used in the act and these rules is defined under RCW 42.17A.005.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when sell-

ing digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

(5) A commercial advertiser may have, to the extent necessary, up to three business days to update its books of account upon receiving notice regarding any missing political advertising or electioneering communication, if:

(a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication;

(b) The purchaser did not provide such information; and

(c) The order was not reasonably identifiable to the commercial advertiser as political advertising or an electioneering communication.

(6) The information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345 are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(c) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employer identification number, or other verifia-

ble identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

(d) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and

(e) Date(s) the commercial advertiser rendered service, including the dates, where applicable, that the advertising or communication was presented to the public.

(7) In addition to subsection (6) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms:

(i) A description of the demographic information((~~7~~));

(ii) The statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business((~~7~~and));

(iii) The total number of impressions generated by the advertisement or communication; and

(iv) Any generative adversarial network techniques, artificial intelligence, or other digital technology, provided by the commercial advertiser to produce any "synthetic media," as defined under RCW 42.62.020, for the advertisement or communication.

(8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.