

WSR 23-17-021

AGENDA

PUBLIC DISCLOSURE COMMISSION

[Filed August 7, 2023, 3:37 p.m.]

Rules Development Agenda for July - December 2023

The Administrative Procedure Act requires state agencies to prepare a biannual rules development agenda that includes the issues under consideration for rule making for the upcoming six-month period. RCW 34.05.314. Agendas are published in the State Register at the end of January and July each year. Staff proposes the following rule-making agenda for the period from July through December 2023:

Updating the rules for lobbying reporting, including inflationary adjustments and implementation of HB 1317 regarding grassroots lobbying (chapter 390-20 WAC): The public disclosure commission (PDC) initiated rule making under WSR 23-12-001 (filed June 13, 2023) and plans to propose rules and hold a public hearing this fall. Final rules may be ready for adoption by the beginning of next year.

Implementation of ESSB 5152 regarding the use of synthetic media in electioneering communications: The legislature passed ESSB 5152, which becomes effective on July 23, 2023. The law creates a private cause of action against a sponsor of an electioneering communication using synthetic media (deepfake), unless a disclaimer is included in the communication that it has been manipulated. The law requires PDC to adopt rules in furtherance of the law. The law will be administered through legal cases filed in state court, and does not create any direct regulatory authority for PDC. However, the required rule making presumably is intended to draw upon PDC's expertise in regulating campaign activity, particularly in regards to electioneering communications.

The law has two main aspects. First, the law defines the scope of activity that is subject to judicial enforcement, namely the use of synthetic media in electioneering communications, and the use of disclaimers with the communication. Second, the law sets out the procedure for filing an action in court, including the level of proof required, as well as the injunctive relief and damages that can be sought.

A judicial procedure will govern the second aspect of this law, the PDC rule making should focus on the first aspect in helping to identify the scope of activity covered under the law, including the definition of synthetic media and the determination of sponsorship and publication, particularly in regards to the dissemination through digital platforms and the use of artificial intelligence.

Implementation of E2SHB 1715 regarding an exemption for address confidentiality program (ACP) participants from personal financial affairs reporting of residential home address: The legislature passed E2SHB 1715, regarding protections for domestic violence victims, which becomes effective July 23, 2023. The law includes a provision adding participants of ACP, within the office of the secretary of state, from required disclosure of a primary residential address under the personal financial affairs (F-1) report. The change in law warrants a complimentary rule amendment to add the ACP exemption to the list of other exempted positions (judges, prosecutors, sheriffs) referenced under WAC 390-24-200.

Update PDC Interpretation 07-04 regarding online campaign activities, including digital advertising: The continuing development of new digital technology and internet consumer products requires an update

to existing PDC guidance on the use of websites, social media, and digital advertising. Over the past several years, PDC has reviewed and analyzed the policy and mechanisms for improving disclosure in the evolving area of digital political advertising. PDC will look to expand upon this work to analyze the broader use of social media, including influencers, websites, and other forms of communication in relation to disclosure requirements and the regulation of campaign expenditure activity.

Further need for rule making may generate from this work, particularly regarding the campaign reporting of expenditure details for digital advertising. Such rule making would connect with the previous work of PDC adopting rules on the responsibilities of commercial advertisers to maintain records of the digital advertising they sell.

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