Chapter 390-28 WAC
HARDSHIP EXEMPTIONS—HEARING EXAMINER SYSTEM

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

390-28-010 Statement of policy. [Order 62, § 390-28-010, filed 8/26/75; Order 24, § 390-28-010, filed 2/21/74.] Repealed by 85-22-029 (Order 85-04), filed 10/31/85. Statutory Authority: RCW 42.17.370(1).

390-28-021 Definition—Hearing officer. [Order 62, § 390-28-021, filed 8/26/75.] Repealed by 85-22-029 (Order 85-04), filed 10/31/85. Statutory Authority: RCW 42.17.370 (1).

390-28-030 Hearing to modify reporting—Form—Right to by applicants. [Order 62, § 390-28-030, filed 8/26/75; Order 24, § 390-28-030, filed 2/21/74.] Repealed by 85-22-029 (Order 85-04), filed 10/31/85. Statutory Authority: RCW 42.17.370(1).

390-28-050 Hearing to modify reporting—Alternate forms. [Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-050, filed 10/31/85; Order 62, § 390-28-050, filed 8/26/75; Order 24, § 390-28-050, filed 2/21/74.] Repealed by 91-21-030, filed 10/9/91, effective 11/9/91. Statutory Authority: RCW 42.17.370.

WAC 390-28-020 Definition—Applicant. The term applicant for the purposes of chapter 390-28 WAC shall mean any person as defined in RCW 42.17.020 that seeks a modification pursuant to RCW 42.17.370(10) and these rules.

[Statutory Authority: RCW 42.17.370. 07-14-117, § 390-28-020, filed 7/3/07, effective 8/3/07; 91-22-083, § 390-28-020, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-020, filed 10/31/85; Order 62, § 390-28-020, filed 8/26/75; Order 24, § 390-28-020, filed 2/21/74.]

WAC 390-28-025 Hearing to modify reporting requirements. (1) Any person who considers compliance with any of the reporting requirements of chapter 42.17 RCW to be a manifestly unreasonable hardship in a particular case may apply for a modification of such reporting requirements pursuant to RCW 42.17.370(10) and further pursuant to these rules.

(2) A hearing to modify the reporting requirements shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC) shall be followed unless otherwise modified by chapter 390-28 WAC.

[Statutory Authority: RCW 42.17.370. 92-05-080, § 390-28-025, filed 2/18/92, effective 3/20/92; 91-22-083, § 390-28-025, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-025, filed 10/31/85; Order 62, § 390-28-025, filed 8/26/75; Order 24, § 390-28-025, filed 2/21/74.]

WAC 390-28-040 Hearing to modify reporting—Prehearing procedure and requirements. (1) An applicant must file with the commission a written request for hearing for suspension or modification of reporting requirements. The request should be submitted by the tenth day of the month preceding the month in which the report is due so that action on the request can be completed before the filing deadline.

(2) The request should contain (a) the required report completed to the extent possible, (b) the applicant's evidence to be submitted at the hearing, (c) a statement of reasons why the reporting of required information would cause a manifestly unreasonable hardship, with as much detail as possible. (A general statement, such as "violates right of privacy" shall not be deemed as sufficient compliance with this requirement.) The applicant is encouraged to also include a proposed modification to the required reporting which, in the applicant's opinion, will relieve the perceived hardship.

(3) The filing of a request for modification shall not suspend the reporting requirement of any portion of chapter 42.17 RCW.

[Statutory Authority: RCW 42.17.370. 91-22-083, § 390-28-040, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). 85-24-020 (Order 85-05), § 390-28-040, filed 11/26/85; 80-03-089 (Order 80-03), § 390-28-040, filed 3/4/80; Order 62, § 390-28-040, filed 8/26/75; Order 24, § 390-28-040, filed 2/21/74.]

WAC 390-28-060 Hearing to modify reporting—Administrative law judge proceedings. (1) The commission may request through the office of administrative hearings the appointment of an administrative law judge to hear individual applicants.

(2) After such hearing is concluded, the administrative law judge shall prepare and distribute to the applicant and each commissioner a proposed decision determining the issue. The applicant shall have five days to file with the commission specific objections to the administrative law judge's **proposed** decision and to request an opportunity to present additional evidence to the commission. When written objections are timely filed, the commission, at the time of review and ratification, shall consider the whole record or such portions as may be cited by the administrative law judge, applicant or executive director. The commission may also hear additional testimony.

(3) If the applicant files objections to the administrative law judge's proposed decision, the filing requirement from which the applicant has sought modification shall not be suspended unless the commission, upon notice of the filing of objections, determines that a temporary suspension is justifiable pursuant to the criteria set out in RCW 42.17.370(10). Such suspension of filing requirements shall be granted only

until the decision is finalized by formal action of the commission.

(4) At the next meeting at which the matter can be lawfully considered, the commission shall review and either ratify or modify or revise the proposed order.

[Statutory Authority: RCW 42.17.370. 91-22-083, § 390-28-060, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-060, filed 10/31/85; Order 67, § 390-28-060, filed 1/16/76; Order 62, § 390-28-060, filed 8/26/75; Order 24, § 390-28-060, filed 2/21/74.]

WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement. (1) An applicant may choose to waive a personal appearance at a hearing conducted pursuant to chapter 390-28 WAC. In the event that an applicant chooses to waive such appearance, that person shall submit a written, sworn statement setting out in detail the rationale for requesting modification or suspension.

(2) The commission, or the administrative law judge, shall proceed to decide the application in the same manner as if an appearance were made. However, in the event the commission or the administrative law judge is not able to reach a conclusion on the request because of an insufficiency of the evidence, the hearing may be adjourned for the purposes of gathering further evidence, or the application may be denied.

[Statutory Authority: RCW 42.17.370. 07-14-117, § 390-28-070, filed 7/3/07, effective 8/3/07. Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-070, filed 10/31/85; Order 64, § 390-28-070, filed 11/25/75; Order 62, § 390-28-070, filed 8/26/75; Order 24, § 390-28-070, filed 2/21/74. Formerly WAC 390-28-080.]

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17.370(10) shall be considered to be a public record. There is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17.370(10), the commission may close the hearing or a portion of the hearing or hearing record. The commission may close a hearing or portion of a hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17.370(10); or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(2)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (1)(a) or (b) of this section;

(ii) An open hearing or record to report the information would work a manifestly unreasonable hardship on the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17 RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules shall be considered confidential by the commission pursuant to a protective order which shall be entered by the commission unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge determines that testimony in private may be necessary, the judge shall immediately adjourn the hearing and refer the matter to the commission.

(3) Any decision or order adverse to an applicant rendered by the commission or the administrative law judge shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

[Statutory Authority: RCW 42.17.370. 07-14-117, § 390-28-080, filed 7/3/07, effective 8/3/07; 91-22-083, § 390-28-080, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-080, filed 10/31/85; Order 62, § 390-28-080, filed 8/26/75; Order 24, § 390-28-080, filed 2/21/74. Formerly WAC 390-28-070.]

WAC 390-28-090 Hearing to modify reporting—Required findings. The commission, after hearing as provided in these rules, may suspend the applicable reporting requirement of chapter 42.17 RCW if it finds that the literal application of such requirement works a manifestly unreasonable hardship in the case under consideration and if it also finds that such suspension or modification will not frustrate the purposes of the act. The commission shall suspend or modify such reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof to support such claim.

[Statutory Authority: RCW 42.17.370(1). 85-22-029 (Order 85-04), § 390-28-090, filed 10/31/85; Order 62, § 390-28-090, filed 8/26/75; Order 24, § 390-28-090, filed 2/21/74.]

WAC 390-28-100 Reporting modifications—Possible qualifications—Statement of financial affairs. (1) One or more of the following may be considered by the commission as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** A candidate or official may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17.241 (1)(b) if:

(i) The financial institution or other entity in which the candidate or official held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by such candidate or official;

(ii) Such reporting would present a manifestly unreasonable hardship to the candidate or official; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** A candidate or official may be exempted from reporting the information otherwise required by RCW 42.17.241 (1)(f) and (g), if:

(i) Public disclosure would violate any legally recognized confidential relationship;

(ii) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the candidate or official in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the candidate or official including but not limited to adversely affecting the competitive position of an entity in which the filer had an interest of ten percent or more as described in RCW 42.17.370(10); and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** A candidate or official may be exempted from reporting the information otherwise required by RCW 42.17.241 for members of the immediate family of a candidate or official, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest does not constitute a present or prospective source of income to such candidate or official or to any other person who is dependent upon such candidate or official for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17.370(10).

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17.241 (1)(h) through (k):

(i) Under WAC 390-24-200, the filer shall list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description shall be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety situation.

(e) **Other.** A candidate or official may be exempted from reporting information otherwise required under RCW 42.17.241 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of members of professions often seeking modifications, and examples of other frequent situations that may result in modification requests, are described in commission interpretive statements.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

[Statutory Authority: RCW 42.17.370(1). 09-20-081, § 390-28-100, filed 10/6/09, effective 11/6/09; 85-22-029 (Order 85-04), § 390-28-100, filed 10/31/85; 80-02-106 (Order 80-02), § 390-28-100, filed 1/24/80; Order 64, § 390-28-100, filed 11/25/75; Order 62, § 390-28-100, filed 8/26/75; Order 24, § 390-28-100, filed 2/21/74.]