

**WSR 18-16-006**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed July 20, 2018, 7:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-095 on June 5, 2018.

Title of Rule and Other Identifying Information: WAC 220-413-200 Reducing the spread of hoof disease—Unlawful transport of elk hooves.

Hearing Location(s): On September 14-15, 2018, at 8:00 a.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: September 15, 2018.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email wildthing@dfw.wa.gov, fax 360-902-2162, <https://surveymonkey.com/r/ZN5J298>, by August 22, 2018.

Assistance for Persons with Disabilities: Contact Tami Lininger, phone 360-902-2267, TTY 800-833-6388, email [tami.lininger@dfw.wa.gov](mailto:tami.lininger@dfw.wa.gov), by September 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-413-200 Reducing the spread of hoof disease—Unlawful transport of elk hooves.

This rule is an attempt to reduce the potential risk of inadvertently spreading the causative agents of treponeme associated hoof disease (TAHD) in elk.

New game management units (GMU) are being proposed in which transport of elk hooves from harvested elk would be restricted. These new GMUs include 568, 572, 574, and 578. The rule does allow, under certain circumstances, the legal transport of elk hooves coming from GMUs with TAHD to facilitate research by the department.

Reasons Supporting Proposal: This proposal adds GMUs where transport of elk hooves will be restricted in order to reduce the potential risk of the disease spreading.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 600 Capitol Way North, Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 600 Capitol Way North, Olympia, WA 98501, 360-902-2373.

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. The rule proposal does not require a cost-benefit analysis.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

July 20, 2018

Scott Bird

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-17-088, filed 8/17/17, effective 9/17/17)

**WAC 220-413-200 Reducing the spread of hoof disease—Unlawful transport of elk hooves.** (1) It is unlawful to transport the hooves of harvested elk beyond the site where the animal was killed in Game Management Units 407, 418, 437, 454, 501 through 564, ~~568, 572, 574, 578,~~ 633, 636 and 642 through 699, except when specifically authorized by the department or when acting as an agent of the department in the limited capacity of cooperating with research or management actions regarding hoof disease as directed by the department.

(2) Violation of this section is an infraction under RCW 77.15.160 Infractions.

**WSR 18-16-011**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed July 23, 2018, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-038.

Title of Rule and Other Identifying Information: WAC 220-330-040 Crab—Areas and seasons—Personal use.

Hearing Location(s): On September 14, 2018, at 8:00 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

Date of Intended Adoption: September 14, 2018.

Submit Written Comments to: Heather Reed, P.O. Box 43200, email [Heather.Reed@dfw.wa.gov](mailto:Heather.Reed@dfw.wa.gov).

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, TTY 360-902-2207, email [Delores.Noyes@dfw.wa.gov](mailto:Delores.Noyes@dfw.wa.gov), by September 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to WAC 220-330-040 would revise the date when recreational anglers can use pot gear in coastal management areas (Marine Areas 1 through 3 and 4, west of the Bonilla-Tatoosh line). Currently, this recreational fishery is open year-round, however pot gear can only be used from December 1 through September 15. This change would allow recreational pot gear to be used two weeks earlier starting on November 15. This change would not affect the recreational Dungeness crab fishery in the Columbia River where pot gear is allowed year round.

Reasons Supporting Proposal: Currently, the recreational Dungeness crab fishery with pot gear opens in coastal marine areas on the same day that the commercial Dungeness

crab fishery is scheduled to open. In addition, the commercial fishery is allowed to set commercial crab pots on November 28, seventy-three hours prior to the December 1 opening. Opening the recreational crab pot fishery two weeks early would provide recreational anglers with some opportunity to access fishing areas that are common to both commercial and recreational fisheries prior to the date when commercial crab gear goes in the water. Effort in the recreational crab fishery on the coast [is] limited due to the timing of the fishery, which opens in December when weather is prohibitive for many recreational crabbers. As such, much of the coastal recreational crab fishing effort is focused in coastal bays such as Willapa Bay and Grays Harbor with recreational harvest representing a very small proportion of the total amount of Dungeness crab harvested each year. In recognition of the disparity between the recreational and commercial crab fisheries on the coast, measures have been implemented to provide some assurance that recreational fishermen have access to the coastal Dungeness crab resource. For example, recreational anglers are allowed to retain smaller crab (six inches) than allowed in the commercial fishery (6 1/4 inches). Revising the opening of the recreational pot fishery to open on November 15 would provide some additional opportunity to recreational anglers and, because of the lower minimum size allowance for the recreational fishery, would not adversely affect the commercial fishery.

Statutory Authority for Adoption: RCW 77.040.020 [77.04.020], 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Heather Reed, 1111 Washington Street S.E., Olympia, WA, 360-902-2487; Implementation: Dan Ayres, 48 Devonshire Road, Montesano, WA, 360-249-1209; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

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. This project does not affect hydraulics.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There is no impact on small business as a result of these rule changes. In fact, the proposed changes to the recreational fishery may marginally increase revenues for small business involved with the recreational fishery.

July 23, 2018  
Scott Bird  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-330-040 Crab—Areas and seasons—Personal use.** (1) It is unlawful to fish for or possess crab taken

for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 8-1, 8-2, 9, 10, 11, 12, and 13: Open 7:00 a.m., July 1 through Labor Day, Thursday through Monday of each week.

(b) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m., July 15 through September 30, Thursday through Monday of each week.

(c) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m. August 15 through September 30, Thursday through Monday of each week.

(2) It is unlawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Areas 1, 2, 3, and Area 4 west of the Bonilla-Tatoosh line except during the period from (~~December 1~~) November 15 through September 15. Open to gear other than shellfish pot gear year-round.

(3) The Columbia River upstream from a line projected from the outermost end of the north jetty to the exposed end of the south jetty is open to crab fishing for personal use year-round.

(4) It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.

(5) Violation of this section is a misdemeanor, punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty.

## WSR 18-16-026

### PROPOSED RULES

### EXECUTIVE ETHICS BOARD

[Filed July 24, 2018, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-027.

Title of Rule and Other Identifying Information: Agency organization—Public records.

Hearing Location(s): On September 14, 2018, at 9:00 a.m., at 2425 Bristol Court S.W., 4th Floor Conference Room, Olympia, WA.

Date of Intended Adoption: September 28, 2018.

Submit Written Comments to: Kate Reynolds, P.O. Box 40149, Olympia, WA 98504-0149, email kater[at]atg.wa.gov, fax 360-586-3955, by September 13, 2018.

Assistance for Persons with Disabilities: Contact Ruthann Bryant, phone 360-664-0871, fax 360-586-3955, email Ruthannb[at]atg.wa.gov, by September 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to adopt a rule that implements the new Public Records Act (PRA) requirements and provide the necessary findings so that the executive ethics board may use the amended statutory default fee schedule effective July 23, 2017, and explain the procedures for payment of copies and waiver of fees. This rule making will also update the rule to provide clarity to state employees and the public.

Reasons Supporting Proposal: The 2017 legislature amended RCW 42.52.120 to require that if an agency uses the amended statutory default copy fee schedule the agency must have a rule declaring the reason it is not calculating the actual costs is because to do so would be burdensome. The rule will make those findings. RCW 42.52.120 was also amended to allow an agency to waive any charge assessed for a public record pursuant to agency rule.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120, 42.56.360.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Executive ethics board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kate Reynolds, Olympia, 360-586-6759.

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.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

July 24, 2018  
Ruthann Bryant  
Administrative Officer

AMENDATORY SECTION (Amending WSR 16-16-075, filed 7/29/16, effective 8/29/16)

**WAC 292-130-020 Agency description—Contact information—Public records officer.** (1) The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and

employees in the executive branch, boards and commissions, and institutions of higher education.

~~((The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.))~~

(2) Any person wishing to request access to public records of the executive ethics board, or seeking assistance in making such a request, should contact the public records officer of the executive ethics board:

Executive Director  
Executive Ethics Board  
2425 Bristol Court S.W.  
P.O. Box 40149  
Olympia, WA 98504-0149  
360-664-0871  
360-586-3955 (fax)  
ethics[at]atg.wa.gov

Information and a request form is also available at the executive ethics board's web site at [www.ethics.wa.gov](http://www.ethics.wa.gov). ~~((The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.))~~

(3) The public records officer will oversee compliance with the act but another executive ethics board staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." ~~((The public records officer or designee and the executive ethics board will provide the "fullest assistance" to requestors; create and maintain for use by the public and executive ethics board officials an index to public records of the executive ethics board; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the executive ethics board.))~~

AMENDATORY SECTION (Amending WSR 16-16-075, filed 7/29/16, effective 8/29/16)

**WAC 292-130-050 Availability of public records.** (1) ~~((Hours for inspection of records.))~~ Public records are available for inspection and copying Monday through Friday, 9:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., excluding legal holidays and during scheduled board meetings. Records must be inspected at the offices of the executive ethics board. Many public records are also available for inspection and copying on [www.ethics.wa.gov](http://www.ethics.wa.gov) at any time, at no cost.

(2) ~~((Records index.))~~ An index of public records is available for use by members of the public, including final orders, stipulations and advisory opinions. The indices for these documents are available upon request.

(3) ~~((Organization of records.))~~ The executive ethics board will maintain its records in a reasonably organized manner. The executive ethics board will take reasonable

actions to protect records from damage and disorganization. A requestor (~~shall~~) must not take executive ethics board records from executive ethics board offices without the permission of the public records officer or designee. A variety of records is available on the executive ethics board web site at [www.ethics.wa.gov](http://www.ethics.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

~~(4) ((Making a request for public records.~~

~~(a)) Any person wishing to inspect or copy public records of the executive ethics board should make the request in writing on the executive ethics board request form or through an online portal, or by letter, fax, or email addressed to the public records officer at the email address publicly designated by the executive ethics board, or by submitting the request in person at the executive ethics board office and including the following information:~~

~~((i)) (a) Name of requestor;~~

~~((ii)) (b) Address of requestor;~~

~~((iii)) (c) Other contact information, including telephone number and ~~(any)~~ email address;~~

~~((iv)) (d) Identification of the public records adequate for the public records officer or designee to locate the records; and~~

~~((v)) (e) The date and time of day of the request.~~

~~((b)) (5) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 292-130-110, ~~((standard black and white and color photocopies will be provided at fifteen cents per page))~~ charges for copies are provided in a fee schedule available at the executive ethics board office or [www.ethics.wa.gov](http://www.ethics.wa.gov).~~

~~((e)) (6) A records request form is available for use by requestors at the executive ethics board office ~~((of the public records officer))~~ and online at [www.ethics.wa.gov](http://www.ethics.wa.gov).~~

~~((d)) (7) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.~~

(8) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.

AMENDATORY SECTION (Amending WSR 16-16-075, filed 7/29/16, effective 8/29/16)

**WAC 292-130-100 Processing of public records requests—General.** (1) ~~((Providing "fullest assistance." The executive ethics board is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.~~

~~(2) Acknowledging receipt of request.) Upon receipt of a request, the executive ethics board will assign it a tracking number and log it in.~~

(2) The public records officer or designee will evaluate the request according to the nature of the request, volume, and availability of requested records.

(3) Following the initial evaluation of the request under this subsection, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying(;

~~(b)) including:~~

(i) If the copies are available on the executive ethics board's web site, provide the internet address and link on the web site to the specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon, send the copies to the requestor(;

~~(e)).~~

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available; or

~~((d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or~~

(e)) (c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the executive ethics board will require to respond to the request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the executive ethics board need not respond to it. The executive ethics board will respond to those portions of a request that are clear; or

(d) Deny the request.

~~((3) Consequences of failure to respond.) (4) If the executive ethics board does not respond in writing within five business days of receipt of the request for disclosure, the requestor should ~~((consider contacting))~~ contact the public records officer or designee to determine the reason for the failure to respond.~~

~~((4) Protecting rights of others.) (5) In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.~~

~~((5) Records exempt from disclosure.) (6) Some records are exempt from disclosure, in whole or in part. If the executive ethics board believes that a record is exempt from~~

disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~((6) Inspection of records.~~

~~(a))~~ (7) Consistent with other demands, the executive ethics board ~~((shall))~~ will promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor ~~((shall))~~ must indicate which documents he or she wishes the executive ethics board to copy.

~~((b))~~ The requestor must claim or review the assembled records within thirty days of the executive ethics board's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the executive ethics board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

~~((7) Providing copies of records.)~~ (8) After inspection is complete, the public records officer or designee will make the requested copies or arrange for copying. Where executive ethics board charges for copies, the requestor must pay for the copies.

~~((8) Providing records in installments.)~~ (9) When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((9) Completion of inspection.)~~ (10) When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the executive ethics board has completed a ~~((diligent))~~ reasonable search for the requested records and made any located nonexempt records available for inspection.

~~((10) Closing withdrawn or abandoned request.)~~ (11) When the requestor either withdraws the request ~~((or))~~, fails to clarify an entirely unclear request, fails to fulfill his or her obligations to inspect the records ((or)), pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to

the requestor that the executive ethics board has closed the request.

~~((11) Later discovered documents.)~~ (12) If, after the executive ethics board has informed the requestor that it has provided all available records, the executive ethics board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 16-16-075, filed 7/29/16, effective 8/29/16)

WAC 292-130-110 Costs of providing copies of public records—Payments. (1) ~~((Costs for paper copies.))~~ There is no fee for inspecting public records~~((—A requestor may obtain standard black and white photocopies or color copies for fifteen cents per page. Copying fees will be waived for twenty-five or fewer photocopies.~~

~~Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The executive ethics board will not charge sales tax when it makes copies of public records.~~

~~(2) Costs for electronic records.~~ The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for emailing electronic records to a requestor.

~~(3) Costs of mailing.~~ The executive ethics board may also charge actual costs of mailing, including the cost of the shipping container.

~~(4) Payment.~~ Payment may be made by cash, check, or money order to the executive ethics board~~), including inspecting records on the executive ethics board's web site.~~

(2) The executive ethics board is not calculating actual costs for copying records because to do so would be unduly burdensome for the following reasons: The executive ethics board does not have the resources to conduct a study to determine its actual copying costs; to conduct such a study would interfere with other essential board functions; and the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act including RCW 42.56.120 and other laws. It is more cost efficient, expeditious and in the public interest for the executive ethics board to adopt the state legislature's approved fees and costs for most of the executive ethics board's records, as authorized in RCW 42.56.120 and as published in the executive ethics board's fee schedule.

(3) The executive ethics board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The executive ethics board will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the executive ethics board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The executive ethics board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The

charges for copying methods used by the executive ethics board are summarized in the fee schedule available on the executive ethics board's web site at [www.ethics.wa.gov](http://www.ethics.wa.gov).

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer or designee to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer or designee may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The executive ethics board will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the executive ethics board. The executive ethics board prefers not to receive cash.

(8) The executive ethics board will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 16-16-075, filed 7/29/16, effective 8/29/16)

**WAC 292-130-130 Exemptions.** (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. ~~((Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the executive ethics board for inspection and copying:))~~

~~Under RCW 42.52.420 the identity of a person filing a complaint under RCW 42.52.410(1) is exempt from public disclosure as provided for in RCW 42.56.240.~~

~~(2) The executive ethics board is prohibited by statute from disclosing lists of individuals for commercial purposes.~~

~~(3)) (2) During the course of an investigation, records generated or collected as a result of the investigation may be exempt from public inspection and copying under RCW 42.56.240.~~

(a) The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is

signed by all parties; or, when the board enters a final order after a public hearing.

(b) The following records are not considered part of the investigation file and are releasable upon request:

(i) Complaints, upon receipt by the respondent;

(ii) The board staff's investigation report;

(iii) The board's findings of reasonable cause or no reasonable cause; and

(iv) Stipulations and settlements, upon receipt by the board.

AMENDATORY SECTION (Amending WSR 16-16-075, filed 7/29/16, effective 8/29/16)

**WAC 292-130-140 Review of denials of public records request.** (1) ~~((Petition for internal administrative review of denial of access.))~~ Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer or designee for review of that decision. The petition should include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) ~~((Consideration of petition for review.))~~ The public records officer or designee will promptly provide the petition and any other relevant information to the chair of the board or the chair's designee. The chair or the chair's designee will immediately consider the matter and either affirm or reverse such denial within two business days following the executive ethics board's receipt of the petition, or within such other time as mutually agreed upon by the requestor and executive ethics board ~~((, or call a special meeting of the board as soon as legally possible to review the denial)).~~

(3) ~~((Review by the attorney general's office.))~~ Pursuant to RCW 42.56.530, if the executive ethics board denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) ~~((Judicial review.))~~ Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

**WSR 18-16-033  
PROPOSED RULES  
OFFICE OF THE**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2018-02—Filed July 24, 2018, 2:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-084.

Title of Rule and Other Identifying Information: Insurer corporate governance annual disclosure.

Hearing Location(s): On September 18, 2018, at 10:00 a.m., at the Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 19, 2018.

Submit Written Comments to: Jim Tompkins, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by September 17, 2018.

Assistance for Persons with Disabilities: Contact Lorie Villaflores, phone 360-725-7087, TTY 360-586-0241, email [LorieV@oic.wa.gov](mailto:LorieV@oic.wa.gov), by September 17, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules consistent with the National Association of Insurance Commissioners' (NAIC) corporate governance annual disclosure model rule.

Reasons Supporting Proposal: During the 2018 legislative session, the legislature enacted chapter 30, Laws of 2018 (SB 6059) which requires that domestic insurers file an annual corporate governance disclosure with the commissioner. Section 4(2) of this law provides that the disclosure must be prepared consistent with NAIC's [NAIC's] corporate annual disclosure model rule. The proposed rules will consider the adoption of this model rule.

Statutory Authority for Adoption: RCW 48.02.060, sections 4(2) and 8, chapter 30, Laws of 2018.

Statute Being Implemented: Chapter 30, Laws of 2018.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7036; Implementation and Enforcement: Doug Hartz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-72140 [360-725-7214].

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. The proposed rule is a model rule adopted by NAIC as a national consensus establishing industry standards and therefore exempt under RCW 34.05.328 (5)(b)(iii).

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.

Explanation of exemptions: The domestic insurers that are affected by this rule are not small businesses as defined in RCW 19.85.020(3).

July 24, 2019 [2018]

Mike Kreidler  
Insurance Commissioner

## CORPORATE GOVERNANCE ANNUAL DISCLOSURE

### NEW SECTION

**WAC 284-07-700 Purpose.** The purpose of WAC 284-07-700 through 284-07-740 is to set forth the procedures for filing and the required contents of the corporate governance annual disclosure (CGAD), deemed necessary by the commissioner to carry out the provisions of chapter 30, Laws of 2018.

### NEW SECTION

**WAC 284-07-710 Definitions.** The definitions in this section apply throughout WAC 284-07-720 through 284-07-730 unless the context clearly requires otherwise.

(1) "Commissioner" means the insurance commissioner of this state.

(2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in RCW 48.31B.005.

(3) "Insurer" has the same meaning as set forth in RCW 48.31B.005, except that it does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(4) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (CEO), chief financial officer (CFO), chief operations officer (COO), chief procurement officer (CPO), chief legal officer (CLO), chief information officer (CIO), chief technology officer (CTO), chief revenue officer (CRO), chief visionary officer (CVO), or any other "C" level executive.

### NEW SECTION

**WAC 284-07-720 Filing procedures.** (1) An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by chapter 30, Laws of 2018, must annually, no later than June 1st, submit to the commissioner a CGAD that contains the information described in WAC 284-07-730.

(2) The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors (hereafter "board") or the appropriate committee thereof.

(3) The insurer or insurance group has discretion regarding the appropriate format for providing the information required by WAC 284-07-700 through 284-07-730 and is permitted to customize the CGAD to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate structure, policies and practices utilized by the insurer or insurance group.

(4) For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at either: (a) The ultimate controlling parent level; (b) an intermediate holding company level; or (c) the individual legal entity level, or any combination of (a), (b), or (c) of this subsection, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at

which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it must indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(5) Notwithstanding subsection (1) of this section, and as outlined in section 3, chapter 30, Laws of 2018, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

(6) An insurer or insurance group may comply with this section by referencing other existing documents (e.g., ORSA summary report, Holding Company Form B or F filings, Securities and Exchange Commission (SEC) proxy statements, foreign regulatory reporting requirement, etc.) if the documents provide information that is comparable to the information described in WAC 284-07-730. The insurer or insurance group must clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the commissioner.

(7) Annually following the initial filing of the CGAD, the insurer or insurance group must file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing must so state.

#### NEW SECTION

**WAC 284-07-730 Contents of corporate governance annual disclosure.** (1) The insurer or insurance group must be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

(2) The CGAD must describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(a) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group must describe and discuss the rationale for the current board size and structure; and

(b) The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer (CEO) and chairman of the board within the organization.

(3) The insurer or insurance group must describe the policies and practices of the most senior governing entity and

significant committees thereof, including a discussion of the following factors:

(a) How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group;

(b) How an appropriate amount of independence is maintained on the board and its significant committees;

(c) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance;

(d) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion must include, for example:

(i) Whether a nomination committee is in place to identify and select individuals for consideration;

(ii) Whether term limits are placed on directors;

(iii) How the election and reelection process function; and

(iv) Whether a board diversity policy is in place and if so, how it functions.

(e) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put into place).

(4) The insurer or insurance group must describe the policies and practices for directing senior management, including a description of the following factors:

(a) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their respective roles, including:

(i) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(ii) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(b) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(i) Compliance with laws, rules, and regulations; and

(ii) Proactive reporting of any illegal or unethical behavior.

(c) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description must include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not either encourage or reward, or both, excessive risk taking. Elements to be discussed may include, for example:

(i) The board's role in overseeing management compensation programs and practices;

(ii) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;



## WSR 18-16-036

## PROPOSED RULES

## PUBLIC DISCLOSURE COMMISSION

[Filed July 25, 2018, 8:32 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-069.

Title of Rule and Other Identifying Information: Concerning campaign finance law enforcement and disclosure. Amend Title 390 WAC to implement chapter 304, Laws of 2018, ESHB 2938.

Hearing Location(s): On September 27, 2018, at 11:00 a.m., at the Public Disclosure Commission (PDC), 711 Capitol Way South, Suite 206, Olympia, WA 98504.

Date of Intended Adoption: November 29, 2018.

Submit Written Comments to: Barbara Sandahl, PDC, 711 Capitol Way South, Suite 206, Olympia, WA 98504, email [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov), by September 2018.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, fax 360-753-7112, email [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule is being adopted in order to synchronize the rules with chapter 304, Laws of 2018.

Reasons Supporting Proposal: The 2018 legislature passed ESHB 2938, chapter 304, Laws of 2018, concerning campaign finance law enforcement and reporting. To comply with chapter 304, Laws [of] 2018, current Title 390 WAC must be amended, repealed and new sections added. The effective date of the bill was June 7, 2018.

Statutory Authority for Adoption: RCW 42.17A.110.

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

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Sandahl, PDC, 711 Capitol Way, Suite 206, Olympia, WA, 360-753-1111.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

July 5, 2018

B. G. Sandahl  
Deputy Director

(iii) How compensation programs are related to both company and individual performance over time;

(iv) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(v) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(vi) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine its risk management objectives are met by incentivizing its employees.

(d) The insurer's or insurance group's plans for CEO and senior management succession.

(5) The insurer or insurance group must describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including discussion of:

(a) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(b) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps senior management is taking to monitor and manage those risks;

(c) How reporting responsibilities are organized for each critical area. The description must allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the follow critical risk areas of the insurer:

(i) Risk management processes (an ORSA summary report filer may refer to its ORSA summary report pursuant to the Risk Management and Own Risk and Solvency Assessment Act, chapter 48.05A RCW);

(ii) Actuarial function;

(iii) Investment decision-making processes;

(iv) Reinsurance decision-making processes;

(v) Business strategy/finance decision-making processes;

(vi) Compliance function;

(vii) Financial reporting/internal auditing; and

(viii) Market conduct decision-making processes.

NEW SECTION

**WAC 284-07-740 Severability clause.** If any provision of WAC 284-07-700 through 284-07-730, or the application to any person or circumstance is held invalid, the remainder of WAC 284-07-700 through 284-07-730 or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

**WAC 390-05-002 Mission and purpose.** (1) The public disclosure commission was created by the passage of Initiative 276 in 1972 for the principal purpose of providing the public with accurate information about certain financial affairs of candidates and elected officials, about the financing of election campaigns and the sponsors of political advertising, and about expenditures made in the course of lobbying.

(2) The duties, responsibilities and powers of the commission, and provisions for establishing the commission and appointing the members thereof, are set forth in chapter 42.17A RCW.

NEW SECTION

**WAC 390-05-005 Definition—Public disclosure commission.** The "public disclosure commission" is the commission appointed by the governor pursuant to RCW 42.17A.100. The public disclosure commission shall hereinafter be referred to as the commission.

NEW SECTION

**WAC 390-05-007 Public disclosure commission—Description of organization.** (1) The public disclosure commission is a five-member commission appointed by the governor with the consent of the senate. The commission is assisted by a staff consisting of an executive director and such other employees as are necessary.

(2) Mailings to the commission should be addressed as follows: Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-010 Purpose.** The purpose of these (~~regulations~~) rules is to implement the provisions of chapter 42.17A RCW (Initiatives 276 and 134), (~~hereinafter~~) referred to throughout as the (~~Public Disclosure Act or~~) act, by declaring the policies of the commission, particularly with regard to the interpretation and enforcement of the act by the commission.

AMENDATORY SECTION (Amending Order 62, filed 8/26/75)

**WAC 390-05-020 General administrative policy.** Whereas the (~~Public Disclosure~~) act was adopted by the people for the general betterment of local and state government, it shall be the policy of the (~~public disclosure~~) commission to carry out and effectuate that policy to the full extent of its delegated powers, through efficient administration, appropriate regulations and rulings, and through strict, vigorous, uniform and fair enforcement of the provisions of the act.

AMENDATORY SECTION (Amending Order 77, filed 6/2/76)

**WAC 390-05-050 Commission status under SEPA.** (1) The public disclosure commission recognizes its responsibilities under RCW 43.21C.120 to adopt rules pertaining to the State Environmental Policy Act (SEPA) as that act relates to activities under the commission's jurisdiction. The commission has reviewed SEPA and its own programs and concludes that all actions which the commission is authorized to undertake are exempt (~~(by virtue of WAC 197-10-040(2), 197-10-150 through 197-10-190)~~). The commission, as an administrative agency, has statutory authority for information gathering, recordkeeping, and investigative and hearing procedures with respect to elected officials, candidates, political committees, and persons and entities involved in lobbying activities. None of these activities are potentially subject to the environmental impact statement requirements of RCW 43.21C.030.

(2) In accordance with WAC (~~(197-10-800)~~) 197-11-904(4), the commission adopts this statement in compliance with the requirements of chapter 43.21C RCW.

NEW SECTION

**WAC 390-05-100 Public disclosure commission—Organization and structure—Officers—Terms.** The officers of the public disclosure commission shall be chair and vice chair. Their terms shall be one year or until a successor is elected. Elections to fill commission offices shall be held annually at the regular June meeting of the commission, or at a special election called for that purpose between May 1st and June 30th of the calendar year in which the new terms will commence. Vacancies in said offices may be filled by a vote of the commission at any regular meeting or any special meeting called for that purpose.

NEW SECTION

**WAC 390-05-120 Public disclosure commission—Role of the executive director.** (1) The executive director acts as the commission's chief administrative officer and is accountable to the commission for agency administration. In addition, the executive director will:

(a) Act as the appointing authority for agency staff, including the authority to hire, set salaries, promote, assign work, evaluate, take corrective action and, where appropriate, terminate staff.

(b) Propose agency budgets for commission approval and oversee fiscal management of the agency.

(c) Exercise such other management oversight, decision-making and administrative action to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with and equitable enforcement of the act.

(d) Determine when appropriate and authorize enforcement alternatives set out in chapter 390-37 WAC to resolve complaints filed with the commission.

(e) Act as liaison between the commission and other public agencies.

(f) Research, develop, and draft policy positions, administrative rules, interpretations and advisory options for presentation to the commission.

(g) Enter into contracts and agreements on behalf of the commission.

(2) The executive director may delegate authority to subordinates, consistent with agency delegation of authority protocols as adopted by the commission, to act for the executive director as needed and appropriate.

(3) The executive director may perform other duties as authorized by chapter 42.17A RCW, Title 390 WAC, or as prescribed or delegated by the commission.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-190 ((Agent—))Definition—Agent.** "Agent," as that term is used in chapter 42.17A RCW and Title 390 WAC, means a person, whether the authority or consent is direct or indirect, express or implied, oral or written, who:

(1) Is authorized by another to act on ~~((his or her))~~ their behalf; or

(2) Represents and acts for another with the authority or consent of the person represented~~((or~~

~~(3) Acts for or in place of another by authority from him or her)).~~

**NEW SECTION**

**WAC 390-05-192 Definition—Aggregate.** The term "aggregate," as used in the act and in these rules, means, for purposes of:

(1) A candidate for state or local office subject to contribution limits under RCW 42.17A.405, the total amount of contributions received by the candidate, an agent of the candidate and any political committee affiliated with the candidate from the beginning of the election cycle;

(2) A candidate for local office not subject to contribution limits under RCW 42.17A.405 or judicial office, the total amount of contributions received by the candidate, an agent of the candidate and any political committee affiliated with the candidate from the beginning of the candidate's campaign;

(3) A bona fide political party or caucus political committee, the total amount of contributions received by the committee from January 1st of the current calendar year;

(4) A political committee, the total amount of contributions received by the committee from the date of organization;

(5) A continuing political committee, the total amount of contributions received by the committee from January 1st of the current calendar year;

(6) A contributor, the total amount of all contributions received from a person, and any person affiliated with the person, to any one candidate or political committee;

(7) A person making independent expenditures with respect to a candidate and the reporting and disclosure provisions of RCW 42.17A.255, 42.17A.630, and 42.17A.320, an independent expenditure made by a person in support of a candidate that shall be added to any independent expenditure

by the same person in opposition to one or more of the candidate's opponents; and, for purposes of a person making independent expenditures with respect to a ballot proposition, an independent expenditure made by a person in support of a ballot proposition that shall be added to any independent expenditure by the same person in opposition to the ballot proposition or in support of an alternative ballot proposition;

(8) The special reports required by RCW 42.17A.265 and 42.17A.625, the total amount of contributions received or expenditures made by a single person or entity during the special reporting period;

(9) An employer of a registered lobbyist, the total amount of all contributions made to a political committee supporting or opposing a candidate for state office, or to a political committee supporting or opposing a statewide ballot proposition during the preceding calendar year;

(10) The sponsor of a grass roots lobbying campaign, the total amount of contributions received since the beginning of the campaign and the total amount of expenditures made during the time frames specified in RCW 42.17A.640(1);

(11) RCW 42.17A.570, the total amount of all time and demand deposits in each financial institution on December 31st;

(12) RCW 42.17A.755, the total amount of monetary penalty that the commission may impose for multiple violations of the act.

**AMENDATORY SECTION** (Amending WSR 17-01-159, filed 12/21/16, effective 1/21/17)

**WAC 390-05-195 ((Application of RCW 42.17A.140(1)) Date of receipt of mailed items.** (1) While the commission strongly encourages the use of electronic filing to promote full and timely disclosure, in accordance with RCW 42.17A.140((+)), the date of receipt of any properly addressed mailed application, report, statement, notice, ~~((or))~~ payment, or other item required under the provisions of chapter 42.17A RCW is the date shown by the post office cancellation mark on the envelope. ~~((The commission frequently receives mailed items that do not bear a post office cancellation mark.))~~

(2) The commission frequently receives mailed items that do not bear a post office cancellation mark. Any ~~((report))~~ item mailed to the commission under the provisions of chapter 42.17A RCW is presumed to be filed timely if received within five business days of the due date provided for in chapter 42.17A RCW.

(3) A mailed ~~((report))~~ item may not be substituted for ~~((a report))~~ an item required to be electronically filed under the provisions of chapter 42.17A RCW.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-200 Definition—Candidates for public office—Time of filing.** The following circumstances shall give rise to presumption that an individual is a "candidate" as that term is defined in RCW 42.17A.005~~((7))~~:

(1) The existence of a political committee promoting the election of such individual for public office with the knowledge and consent of that individual; or

(2) A public declaration of candidacy by an individual even if the candidacy is conditioned on a future occurrence; or

(3) Meeting the requirements set forth in WAC 390-16-230 (~~((1) or (2))~~).

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-205 Definition (~~(of term " ")~~)—Consumable.** ~~((<sup>u</sup>))~~ In RCW 42.17A.005 (13)(a), the definition of contribution excludes the actual cost of consumables furnished at a ticketed fund-raising event. This exclusion applies to the amount paid for food, beverages, preparation, catering or entertainment furnished at the event. For ~~((the))~~ this purpose of RCW 42.17A.005 (~~((13)(a)(iv))~~) the term "consumable" includes the amount paid for food, beverages, event preparation, catering or entertainment cost furnished at the event.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-210 Definition—Contribution.** (1) The term "contribution" as defined in ~~((RCW 42.17A.005))~~ the act and these rules shall be deemed to include, among other things, furnishing services ~~((or))~~, property or rights on ~~((a discriminatory))~~ an unequal basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution ~~((of goods or services))~~ is provided, it shall be reported at its fair market value per WAC 390-05-235 and, pursuant to RCW 42.17A.405 and 42.17A.410, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) **Duplicating political advertising.** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, digital, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) **Consulting with a state, local or judicial candidate.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution (digital or otherwise), display or broadcast, of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's autho-

rized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) ~~((The))~~ An expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(4) **Consulting with a caucus political committee.** An expenditure ~~((;))~~ that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent, is a contribution to such caucus political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent, when:

(a) Any arrangement, coordination or direction by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that caucus political committee or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the caucus political committee's plans, projects or needs provided to the expending person by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the caucus political committee or another political committee financed, controlled or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent, when a person performs only ministerial functions for

two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(5) **Consulting with a bona fide political party.** An expenditure~~(s)~~ that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party or its agent, is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party, when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that bona fide political party or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the bona fide political party's plans, projects or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the bona fide political party or a political committee financed, controlled or operated by the bona fide political party; or

(d) ~~((The))~~ An expenditure is made by, through, or in consultation with, any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent or a political committee financed, controlled or operated by the bona fide political party. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of the bona fide political party, a political committee financed, controlled, or operated by a bona fide political party or their agents, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(6) **Consulting with other political committees.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination or direction by the political committee, its agent or another political committee financed, controlled or operated by the committee is given to the expending person prior to the publication, distribution (digital or otherwise), display or broadcast of political advertising or prior to an expenditure being made by that person benefiting that political committee; or

(b) An expenditure is made based on information about the political committee's plans, projects or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by, through, or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent or another political committee financed, controlled or operated by the committee. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee or its agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-215 Receipt of a campaign contribution.** "Receipt" of a campaign contribution, as that term is used in ~~((chapter 42.17A RCW))~~ the act and in these rules, shall be deemed to occur ~~((at the earliest of the following))~~ as follows:

(1) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(2) For all other contributions, receipt shall be deemed to occur at the earliest date of the following:

(a) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or ~~((similarly situated campaign official))~~ agent obtains possession of the contribution~~((s))~~; or

~~((2))~~ (b) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or ~~((similarly situated campaign official))~~ agent is informed of the contribution, or becomes aware that the campaign, or in the case of an earmarked contribution, the intermediary or conduit, has possession of the contribution~~((s))~~; or

~~((3))~~ (c) The date that the contribution becomes available for use by the candidate or committee.

AMENDATORY SECTION (Amending WSR 85-15-020, filed 7/9/85)

**WAC 390-05-220 Definition—Consideration.** ~~((The term))~~ "Consideration" as that term is used in the act and in these rules shall be deemed to include anything of value promised or paid or transferred in return for a person's prop-

erty or services rendered or to be rendered, including but not limited to reimbursement for traveling or other expenses.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-222 Definition—Domestic partner**~~((—~~  
**Definition**~~)).~~ "Domestic partner" or "domestic partners," as those terms are used in ~~((chapter 42.17A RCW and Title 390 WAC))~~ the act and in these rules, means "state registered domestic partners" as defined in RCW 26.60.020~~((+))~~.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-225 Registered voters—Count or number of.** In accordance with RCW 29A.08.130, ~~((for purposes of chapter 42.17A RCW and Title 390 WAC;))~~ the count or number of registered voters, as used in the act or in these rules, shall not include inactive voters.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-235 Definition—Fair market value.** (1) "Fair market value" in this act and in these rules means the amount of money which a purchaser willing, but not obliged, to buy would pay a seller willing, but not obligated, to sell, for property, goods or services.

(2)(a) In reference to real property "fair market value" or "value," ~~((when used))~~ in the act ~~((or))~~ and in these rules is the amount in cash which a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and which a well-informed seller, or lessor, willing but not obligated to sell or lease it, would accept, taking into consideration all uses to which the property is adapted and might in reason be applied.

(b) If, in determining "fair market value" or "value," the amount a buyer would pay and the amount a seller would accept would be based on varying standards, then the fair market value of the contribution shall be based on the amount the contributor would ordinarily accept for selling the property, rather than the amount the candidate or political committee would ordinarily pay. For example, if a contributor who sells property in the ordinary course of ~~((this or her))~~ their business at a wholesale price donates such property to a candidate or political committee who would ordinarily pay the retail price as a consumer, then the fair market value of the contribution shall be the wholesale price.

~~((2))~~ (3)(a) Any person who donates an item for sale, raffle, auction or awarding at a fund-raising event is making a contribution to the recipient candidate or political committee in an amount equal to the fair market value of the item donated.

(b) Any person who buys a donated item makes a contribution equal in value to the difference between the purchase or auction price and the fair market value of the donated item.

(c) If the purchase or auction price is the same as the fair market value, the buyer's contribution is zero. If the purchase or auction price is less than the fair market value, the buyer's

contribution is zero and the donor's contribution is reduced to the amount of the sale or auction price.

~~((3))~~ (4) The value of any in-kind contribution donated to any candidate or political committee subject to contribution limits pursuant to RCW 42.17A.405 or 42.17A.410 shall not, when combined with other contributions to that candidate or political committee, exceed the donor's applicable contribution limit as set forth in RCW 42.17A.405 or 42.17A.410. The value of an in-kind contribution donated as an exempt contribution to a bona fide political party committee or other political committee eligible to receive exempt funds is only subject to the limit imposed by RCW 42.17A.-420.

~~((4))~~ (5)(a) Except as provided in WAC 390-16-207, if a person permits a candidate, a candidate's authorized committee or a political committee to use the telephones of a business, union, organization or other entity without charge for the purpose of making local campaign-related calls, the telephone usage is an in-kind contribution and shall be valued at its fair market value or, if no fair market value is ascertainable, \$1 per telephone per calendar day or part thereof.

(b) If toll calls are permitted, the toll charges are also an in-kind contribution unless the candidate, the candidate's authorized committee or the political committee reimburses the person in full within ~~((30))~~ thirty days of making the toll calls.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-243 Ministerial functions by persons holding administrative offices.** ~~((For the purposes of RCW 42.17A.005 and 42.17A.205:))~~ As used in the act and in these rules:

(1) "Ministerial functions" means the activities and duties of an administrative office that satisfy RCW 42.17A.-005 ~~((13) and (33))~~ and require:

- (a) Data entry for a candidate or political committee;
- (b) Filing reports that have been reviewed and approved for filing by the candidate or political committee officer;
- (c) Maintaining campaign finance and other similar records including making them available for inspection upon direction by the candidate or political committee officer;
- (d) Writing and depositing checks at the direction of the candidate or political committee officer;
- (e) Communications related to ministerial functions (to respond to questions about data entry, to discuss or review a candidate or committee's bank account balance, to schedule times to receive contribution checks at events, to review reports with the candidate or committee prior to filing, and similar communications) but do not involve attending strategy or campaign planning meetings or portions of meetings with candidates or political committee officers or their agents; or
- (f) Other similar campaign finance activities and duties.

(2) "Administrative office" means a person performing campaign finance related clerical support or recordkeeping activities on behalf of candidates and political committees, when, for the purposes of RCW 42.17A.005 ~~((13) and (33))~~, those activities:

(a) Are directed by the candidate or political committee officer and require performance of activities by the administrative office in a prescribed manner;

(b) Are approved by the candidate or political committee officer for whom the services are performed;

(c) Do not involve the exercise of personal judgment or discretion, including authorizing expenditures;

(d) Do not involve the disclosure, except as required by law, of any information regarding a candidate or committee's plans, projects, activities or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available, or otherwise engage in activity that is a contribution; and

(e) Do not involve the performance of functions other than ministerial functions.

(3) A person performing only ministerial functions on behalf of two or more candidates or political committees is not:

(a) Considered an agent so long as ~~((he or she has))~~ they have no authority to authorize expenditures or make decisions on behalf of the candidate or committee; or

(b) An officer pursuant to WAC 390-05-245. However, that person's name, address and title must be reported on the C-1 or C-1pc registration form.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-245 Definition—Officer of a candidate's committee or of a political committee**~~((—Definition)).~~ ~~((For purposes of chapter 42.17A RCW and Title 390 WAC))~~ As used in the act and in these rules, "officer of a candidate's authorized committee," or "officer of a candidate's committee" or "officer of a political committee" includes the following persons: Any person designated by the committee as an officer on the C-1 or C-1pc registration statement and any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee.

AMENDATORY SECTION (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

**WAC 390-05-255 Definition ((of terms—))—"Day" and "business day."** (1) "Day" as that term is used in ~~((chapter 42.17A RCW and Title 390 WAC))~~ the act and in these rules, unless otherwise specified, means a calendar day, including Saturday, Sunday and legal holidays.

(2) "Business day" as used in ~~((chapter 42.17A RCW and Title 390 WAC))~~ the act and in these rules, means a calendar day, excluding Saturday, Sunday and legal holidays defined in WAC 357-31-005.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-271 General applications of RCW 42.17A.555.** (1) RCW 42.17A.555 does not restrict the right of any individual to express ~~((his or her))~~ their own personal views concerning, supporting, or opposing any candidate or

ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

(2) RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-273 Definition ((of))—Normal and regular conduct.** Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-274 Party affiliation, party preference, etc.** (1) "Party affiliation," as ~~((that term is used in chapter 42.17A RCW and Title 390 WAC))~~ used in the act and in these rules, means the candidate's party preference as expressed on ~~((his or her))~~ their declaration of candidacy. A candidate's preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate.

(2) A reference to "political party affiliation," "political party," or "party" on disclosure forms adopted by the commission and in Title 390 WAC refers to the candidate's self-identified party preference.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-275 Definition—Party organization.** "Party organization," as that term is used in ~~((chapter 42.17A RCW and Title 390 WAC))~~ the act and in these rules, means a bona fide political party as defined in RCW 42.17A.005 and applied in WAC ~~((390-05-196))~~ 390-05-210.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

**WAC 390-05-290 Political advertising definitions.** (1) "Mass communication," as that term is used in the act and in these rules, means a communication, digital or otherwise, intended to reach a large audience through any of the following methods:

(a) Advertising displays, newspaper advertising, billboards, signs;

(b) Brochures, articles, tabloids, fliers, periodicals;

- (c) Radio or television presentations;
- (d) Sample ballots (see WAC 390-17-030);
- (e) Online or other electronic transmission methods;
- (f) One hundred or more letters, emails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and

(g) Other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or ~~((commission rule))~~ Title 390 WAC.

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet web sites, ~~((web-based social media (such as Facebook, Twitter, and other electronic publishing platforms)))~~ social media and other digital platforms, emails, and text messages.

(3) "Political advertising" is defined under RCW 42.17A.005 to include a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(4) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the space or time is not normally required.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-300 Suspension of reporting requirements.** From the effective date of RCW 42.17A.135, the following reporting requirements are suspended in jurisdictions with ~~((less))~~ fewer than one thousand registered voters as of the date of the most recent general election in the jurisdiction:

(1) The F-1 financial reports of public officials required by RCW 42.17A.700 and WAC 390-24-010, 390-24-020 and 390-24-025;

(2) The L-5 public agency lobbying reports required by RCW 42.17A.635 and WAC 390-20-120;

(3) The C-1 through C-4 campaign finance reports required for ballot issues by RCW 42.17A.205 through 42.17A.240 and 42.17A.425, and WAC 390-16-011, 390-16-031, 390-16-036, 390-16-041, and independent campaign expenditure reports (C-6) required for ballot issues by RCW 42.17A.255 and WAC 390-16-050: Provided, that reporting requirements shall be reinstated by order of the commission at its next regular or special meeting if:

(a) A certified "petition for disclosure" containing the valid signatures of fifteen percent of the number of registered voters of the jurisdiction as of the date of the most recent general election in the jurisdiction is filed with the commission; or

(b) The jurisdiction has by ordinance, resolution or other official action petitioned the commission to void the suspension with respect to elected officials, candidates and ballot propositions for the jurisdiction.

If reporting requirements are reinstated by petition, the commission shall promptly notify all known affected candidates and incumbent elected officials of their duty to file disclosure reports. Such individuals and committees shall be ordered to file the required statements within thirty days of the commission order.

AMENDATORY SECTION (Amending WSR 92-05-080, filed 2/18/92, effective 3/20/92)

**WAC 390-05-305 Petition for disclosure—Form.** (1)

A petition for disclosure shall be filed electronically using the means provided by the commission, or shall be legible, on 8-1/2 x 11" paper, and shall include the following information:

(a) The name of the jurisdiction;

(b) A request that public disclosure be required;

(c) The names and addresses of all known candidates and ballot proposition committees in the jurisdiction who will be required to report;

(d) The legibly printed name and address and the legal signature of at least fifteen percent of the number of registered voters in the jurisdiction as of the date of the most recent general election in the jurisdiction.

(2) The petition shall be verified and certified by the auditor or elections officer of the county or counties in which the jurisdiction is located. The signatures shall be verified by comparing the signatures on the petition to the signatures on the voter registration roll. The auditor shall place his seal on each verified page of the petition in order to certify it to the commission.

(3) A suggested form for petition is:

"We, the undersigned citizens and registered voters of (name of jurisdiction), request that the Public Disclosure Commission order disclosure in (name of jurisdiction)."

(4) A suggested form for the petition of a jurisdiction by ordinance, resolution or other official action is:

"We, the (governing board) of (name of jurisdiction) request that the Public Disclosure Commission order disclosure in (name of jurisdiction). This request is made pursuant to RCW ~~((42.17.405))~~ 42.17A.135 and WAC 390-05-305~~((4))~~."

AMENDATORY SECTION (Amending WSR 16-04-080, filed 1/29/16, effective 2/29/16)

**WAC 390-05-400 Changes in dollar amounts.** Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the ~~((following revisions))~~ current amounts are ~~((made))~~:



Code Section	Subject Matter	((Amount Enacted or Last Revised))	((2016 Revision))
		<u>Previous</u>	<u>Current</u>
.005	Definition of "Independent Expenditure"	\$950	<del>(\$1,000)</del> *
.445(3)	Reimbursement of candidate for loan to own campaign	\$5,500	\$6,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$19,000  \$950	\$20,000  \$1,000
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office Candidates for school board office Candidates for hospital district	\$950 \$950 \$1,900 \$1,900 \$950 \$950 \$950 \$950	\$1,000 \$1,000 \$2,000 \$2,000 \$1,000 \$1,000 \$1,000 \$1,000
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$950  \$1,900	\$1,000  \$2,000
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.95 per voter .50 per voter .50 per voter	\$1.00 per registered voter .50 per registered voter .50 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.95 per voter .50 per voter .50 per voter	\$1.00 per registered voter .50 per registered voter .50 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees To caucus committee	\$950	\$1,000

Code Section	Subject Matter	((Amount Enacted or Last Revised))	((2016 Revision))
		Previous	Current
	To political party	\$5,000	\$5,500
.410(1)	Candidates for judicial office	\$1,900	\$2,000
.475	Contribution must be made by written instrument	\$95	\$100

\* Chapter 304. Laws of 2018 amended the definition of independent expenditure, changing the dollar-threshold element of that definition to one-half the contribution limit from an individual per election.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-500 Definition—Debate or forum.** "Debate or forum" means qualifying events under RCW 42.17A.005 ~~((19)(b)(ii))~~ where candidates are invited based upon predefined objective criteria, including where only one candidate in an uncontested race participates.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-505 Electioneering communication exclusions.** (1) "Electioneering communication," as used in the act and in these rules, does not include communications listed in RCW 42.17A.005 ~~((19))~~ (22)(b).

(2) "Electioneering communication" also does not include:

(a) Letters to the editor or comparable communications to news media described in RCW 42.17A.005 ~~((19))~~ (22)(b)(iii);

(b) Communications conveyed through web sites, emails, telephone calls, or in-person leaflet/pamphlet drops at street addresses; or

(c) Communications conveyed in a manner not specified in RCW 42.17A.005~~((19))~~ (22).

**NEW SECTION**

**WAC 390-05-507 Definition—Funding sources for electioneering communications.** (1) "Source of funds" means a person who contributes anything of value for the communication, including a loan, gift, advance, payment, pledge, or personal or professional services for less than full consideration.

(2) Goods, services, property or rights other than money or its equivalent are deemed to have a monetary value equivalent to their fair market value.

(3) "Source of funds" does not include those things of value specified in RCW 42.17A.005 (16)(a)(i).

**AMENDATORY SECTION** (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-05-510 Definition—General treasury funds.** "General treasury funds," as used in the act and in these rules, means a collective designation of all of the assets of an organization which furnish the means for defraying the necessary, usual, ordinary running and incidental expenses of

an organization. General treasury funds are typically not derived from a special solicitation, effort, or receipt, but derive from regular, planned for, and ongoing revenue streams or sources.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-515 Member.** In determining whether a communication is to a "member" as that term is used in RCW 42.17A.005 and 42.17A.255, and for the purposes of RCW 42.17A.405, 42.17A.410 and 42.17A.420:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization including whether members have the right to vote for:

- (a) Election of directors or officers; or
- (b) Changes to the articles or bylaws; or
- (c) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution.

A required payment of a predetermined amount of membership dues is also a factor; however, an organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."

(3) If a membership organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g), the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17A.005 ~~((13))~~ (16)(b)(v) and ~~((19))~~ (22)(b)(vii), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-05-522 Definition—Place of business**~~((—Definition))~~. "A place of business in the state of Washington" as that term is used in RCW 42.17A.250 (1)(f) means the business is headquartered in or has a primary place of business in Washington state.

For example, if a national corporation headquartered outside of Washington state has retail outlets in Washington and that national corporation contributes two hundred fifty dollars to an out-of-state political committee that is subject to reporting under RCW 42.17A.250, the out-of-state committee is not required to disclose the national corporation as a contributor under RCW 42.17A.250 (1)(f).

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-05-525 Definition—Public service announcement.** (1) "Public service announcement," as used in the act and in these rules, means a communication that meets all the following criteria. The communication is:

- (a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
- (b) Not selling a product or service;
- (c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
- (d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;
- (e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
- (f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and
- (g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities ~~((such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters))~~.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 390-05-040 Public Disclosure Act—Violation of other law.
- WAC 390-05-250 Definition—Public disclosure commission.
- WAC 390-05-295 Definition—Promise or promise to pay.
- WAC 390-05-530 Funding sources for electioneering communications.

AMENDATORY SECTION (Amending WSR 06-07-001, filed 3/1/06, effective 4/1/06)

**WAC 390-12-010 Public disclosure commission—((Regular)) Meetings.** (1) Pursuant to RCW 42.30.075, regular meetings of the public disclosure commission are scheduled to be held monthly on the fourth Thursday of each month at ~~((9:00))~~ 9:30 a.m. unless a different time is noted on an agenda, except November and December when a combined meeting ~~((is))~~ may be scheduled to be held during the first or second week of December. ~~((The meetings shall be held in the commission meeting room, second floor, Evergreen Plaza Building, 711 Capitol Way, Olympia, Washington, unless circumstances require relocating to another site. If relocating is required, the meeting shall be held at a place designated by the executive director of the commission.))~~

(2) Commissioners meet monthly to consider and act on policy matters, enforcement matters, rule makings and interpretations, adjudicative proceedings, modification requests, agency management, budget, legislative matters, public and stakeholder input, education and assistance, and other matters consistent with its oversight responsibilities to ensure the agency's mission is fulfilled and to ensure compliance with, and equitable and effective enforcement of, the act. All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW) the Administrative Procedure Act (chapter 34.05 RCW), and Sturgis Standard Code of Parliamentary Procedure. The passage of any motion adopting, amending or repealing any rule, or recommending changes to the act shall require a majority vote of the members of the commission as distinguished from a quorum of the commissioners.

AMENDATORY SECTION (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

**WAC 390-12-250 Declaratory order—Petition requisites—Consideration—Disposition.** (1) Any person may submit a petition for a declaratory order pursuant to RCW 34.05.240 in any form so long as it:

- (a) Clearly states the question the declaratory order is to answer; and
  - (b) Provides a statement of the facts which raise the question.
- (2) The executive director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The executive director will present the petition to the commission at the first meeting when it is practical to do so and will provide the petitioner with at least five business days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The commission may issue either a binding or a non-binding order or decline to issue any order.

(6) The commission may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five business days notice of such meeting shall be provided to the petitioner.

(7) If an order is to be issued, the petitioner shall be provided a copy of the proposed order and invited to comment.

(8) The declaratory order cannot be a substitute for a compliance action and is intended to be prospective in effect.

(9) The commission will decline to consider a petition for a declaratory order or to issue an order when (a) the petition requests advice regarding a factual situation which has actually taken place, or (b) when a pending investigation or compliance action involves a similar factual situation.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 390-12-040 Public disclosure commission—  
Description of central and field organization.
- WAC 390-12-050 Operations and procedures.
- WAC 390-12-170 Public disclosure commission—Organization and structure—Officers—  
Terms.
- WAC 390-12-190 Public disclosure commission—Elections—Vacancies.
- WAC 390-12-200 Public disclosure commission—Role of the executive director.

#### Chapter 390-16 WAC

#### **((FORMS FOR)) CAMPAIGN ((FINANCING)) FINANCE REPORTING((—CONTRIBUTIONS))**

#### NEW SECTION

**WAC 390-16-001 Campaign finance disclosure.** Pursuant to chapter 42.17A RCW, candidates, political committees and other persons participating in elections are subject to reporting requirements with the public disclosure commission. This chapter provides information on how to meet those requirements. To provide the public with full and immediate disclosure, electronic filing is preferred and sometimes required. The executive director may waive the electronic filing requirement and allow for the use of another written format on the basis of hardship. Links to electronic filing sys-

tems, forms and the instructions for filing can be found on the PDC web site.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-011 ((Forms—))Registration statement for political committees.** The official form for providing the statement of organization by political committees for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1pc." ~~((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any attachments shall be on 8-1/2" x 11" white paper.))~~

AMENDATORY SECTION (Amending WSR 12-01-047, filed 12/14/11, effective 1/14/12)

**WAC 390-16-011A ((Sponsor of a)) Sponsored political committee.** (1) "Sponsored political committees," "sponsors of political committees," and "authorized committees," as those terms are used in the act and these rules, are defined in RCW 42.17A.005. This rule applies to political committees that are not authorized ~~((committees. This rule does not apply to political committees that filed final C-4 reports as of December 31, 2011.~~

~~(2) "Sponsor" of a political committee is defined under RCW 42.17A.005 (42)(b).~~

~~(3)) by a candidate, or by the public official against whom recall charges have been filed.~~

~~(2) A sponsored political committee ((that registers on or after January 1, 2012,)) shall include on its C-1pc the name of at least one sponsor in the committee's name.~~

~~((4) A political committee registered before January 1, 2012, shall amend its registration by January 31, 2012. A sponsored political committee shall include on its amended C-1pc the name of at least one sponsor in the committee's name.~~

~~(5)) (3) To determine if a political committee received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders under RCW 42.17A.005 ((42)(b)(i):~~

~~(a) A political committee not organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received January 1, 2011, through the date of filing the amended C-1pc.~~

~~(b) A political committee organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.~~

~~(6)) (46), the political committee organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received by the committee in the previous twelve months.~~

(4) A sponsored political committee must amend its C-1pc sixty days before an election in which it participates if the committee's name on its most recently filed C-1pc does not include at least one current sponsor. To determine if the committee received eighty percent or more of its contributions from a person or from the person's members, officers,

employees, or shareholders under RCW 42.17A.005 ((42)(b)(i)) (46) at the time of the amendment:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition ((will)) shall consider all contributions received in the previous twelve months through the date of filing the amended C-1pc.

(b) A committee organized to support or oppose a particular candidate or ballot proposition ((will)) shall consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-012 ((Forms—))Registration statement for candidates.** The official form for providing the statement of organization by candidates and ((candidate's)) candidate committees, for designating a campaign treasurer and depository, and for reporting information required to qualify for mini campaign finance reporting is designated "C-1." ((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any attachments shall be on 8 1/2" x 11" white paper.))

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-031 ((Forms for)) Statement of contributions deposit.** The official form for statement of contributions deposit, as required by RCW 42.17A.235, is designated "C-3." ((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any paper attachments shall be on 8 1/2" x 11" white paper.))

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-032 ((Forms—))Auction report.** The official form for reporting items donated and sold at auctions, as required by RCW 42.17A.240(2)((b)), is designated "Attachment Au." This attachment shall accompany each C-3 which reports the receipt of funds from an auction. ((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington.))

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-033 Earmarked contributions—((Reporting Form)) How to report.** The official form for reporting the details surrounding an earmarked contribution, as required by RCW 42.17A.270, is designated "Special Report E." This report shall be filed within two business days of receiving a contribution earmarked for another candidate or committee. ((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington.))

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-034 Additional contribution reporting requirements.** Pursuant to RCW 42.17A.240, each report required under RCW 42.17A.235 shall disclose, in addition to the name and address of each person who has made one or more contributions in the aggregate amount of more than one hundred dollars, ((the)) their occupation, and the name and address of ((the person's)) their employer.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-037 Purpose of campaign expenditures—((Reporting)) 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) shall 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 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 shall describe in detail that agreement or understanding((; and

(3) Describe in detail) and the goods and/or services to be provided ((by the recipient of the expenditure)).

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

Vendor Name	Purpose	Amount
((XYZ Consulting))	GOTV—phone bank 28th and 29th Legislative districts	\$1,000
<u>ABC Robocall</u>		

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

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

((Example C: If an expenditure is for broadcast political advertisements, the purpose shall include the following details:

Vendor Name	Purpose	Amount
Media King	Television ads	\$50,000
	WZUB-TV	\$30,000
	WXXX-TV	\$10,000
	WCRB-TV	\$10,000))

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-039 Total contributions and expenditures—((Reporting)) How to report.** (1) A continuing political committee which is not organized to support or oppose a particular candidate or ballot proposition shall report total contributions and expenditures based on a calendar year, or upon the basis of a fiscal year if the commission expressly authorizes this method. The report filed by such a continuing political committee covering January (or the first month thereafter for which a report would be required by RCW 42.17A.225 and 42.17A.235) shall contain in summary the following items remaining at the end of the year:

- (a) Funds on hand;
- (b) The total of outstanding pledges;
- (c) Unpaid loans and outstanding obligations;
- (d) Pledges given to others but not yet paid.

(2) Each candidate, each political committee and each continuing political committee organized to support or oppose a particular candidate or ballot proposition shall report total contributions and expenditures for the period beginning at the time the person becomes a candidate or when the committee is organized, whichever is earlier, and ending when the candidacy or committee is terminated.

(3) This rule shall not require a report unless such report would otherwise be required by chapter 42.17A RCW.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-041 ((Forms—))Summary of total contributions and expenditures.** ((+)) The official form for reports of contributions and expenditures by candidates and political committees who use the "full" reporting option is designated "C-4," and includes Schedule A, Schedule B, Schedule C, and Schedule L.

~~((2) Copies of these forms are available on the commission's web site, [www.pdc.wa.gov](http://www.pdc.wa.gov), and at the Commission Office, Olympia, Washington. Any paper attachments shall be on 8-1/2" x 11" white paper.))~~

AMENDATORY SECTION (Amending WSR 89-20-068, filed 10/4/89, effective 11/4/89)

**WAC 390-16-042 Debts and obligations—Continuing liabilities—((Reporting)) How to report.** (1) Pursuant to RCW 42.17A.240 and 42.17A.005, "promise," "promise to pay," "debt" and "obligations" mean:

- (a) Any oral or written order or agreement placed for goods, services, or anything else of value;
- (b) Any offer to purchase advertising space, broadcast time, or other written, broadcast or digital advertising-related product or service;
- (c) Any contractual contingent liability; or
- (d) Provided that the amount of the debt or obligation in (a), (b), or (c) of this subsection owed to a vendor is more than seven hundred fifty dollars, and the vendor has not been paid in full for the goods received, invoices submitted, or services performed within the time periods specified below:

(i) For reports due within thirty days of an election, debts or obligations of more than seven hundred fifty dollars must be reported if the debt or obligation has been outstanding for more than five business days as of the last day of the reporting period.

(ii) For reports due during any other reporting period, debts or obligations of more than seven hundred fifty dollars must be reported if the debt or obligation has been outstanding for more than ten business days as of the last day of the reporting period.

(2) A contractual contingent liability (e.g., an additional fee to be paid to a political consultant or other person (~~whose services are used by a candidate who wins~~)) conditioned upon the candidate winning the election is reportable as a debt or obligation (~~on Form C-4, Schedule B,~~) from the time the contract or agreement is entered into until the liability is voided, paid or otherwise satisfied.

(3) Regularly recurring expenditures, of the same type and same or similar amount that have been reported at least once, need not be reported as debt unless they are past due as of the last day of the reporting period. Examples of recurring obligations that can be reported as recurring expenditures rather than debt include rent, utilities, insurance, cellular phone costs, and payments to campaign staff.

(4) There is no requirement for a candidate or political committee to report any debt owed by a third party such as a consultant or vendor provided that the obligation or expenditure to the third party has already been reported by the candidate or political committee.

#### NEW SECTION

**WAC 390-16-043 Candidates and political committees—Public inspection of books of account.** (1) RCW 42.17A.005 defines "books of account" for candidates and political committees as "a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day."

(2) RCW 42.17A.225 and 42.17A.235 require that candidates and political committees participating in an election as defined in RCW 42.17A.005, must make their books of account available for public inspection. The public inspection of books of account is not intended to be an exhaustive audit of all contributions received and expenditures made.

(3) Any individual who requests to publicly inspect the books of account of a candidate or political committee, must make the request during the period beginning ten calendar days before a primary, general, or special election, by contacting the filer's email address listed on the C-1 report for a candidate, or the C-1pc report for a political committee.

(4) The inspection of the books of account may occur on weekdays, unless the treasurer for the candidate or committee agrees otherwise, beginning on the eighth day before the election, excluding legal holidays, for at least two consecutive hours between 9:00 a.m. and 5:00 p.m. at a location that is agreed upon by the treasurer and the individual requesting the inspection. The inspection must be allowed within forty-eight hours of the date and time the request was made at the agreed-upon location, provided that if the request is not made

by 3:00 p.m. on the third day preceding an election, the candidate or political committee need only make best efforts to accommodate the request.

(5) The treasurer for the candidate or committee may make the books of account available electronically, in lieu of scheduling an in-person inspection, or if a location cannot be agreed upon by both parties. If the campaign's only copy of its books of account is maintained electronically with security protections, the person requesting the inspection must be given sufficient instruction to allow the inspection to proceed.

(6) The books of account, ledger and other supporting documentation must be maintained by the treasurer and kept current within one business day. The books of account of a candidate or political committee include the following: A ledger, spreadsheet, or similar listing of contributions, expenditures, loans, debts and obligations to substantiate the information disclosed on the PDC campaign finance reports. If a ledger is not sufficiently kept, the books of account must include the underlying source documents such as receipts, invoices, copies of contribution checks, copies of canceled checks for expenditures, notes or other documentation concerning expenditures, orders placed, and loans. In the absence of those types of source documents, the campaign or committee must make the check register available. The campaign or committee is not required to provide the name and address of contributors who gave twenty-five dollars or less in the aggregate in total contributions.

(7) The candidate or political committee is not required to make copies of its books of account for the requestor. Videotaping, photographing or photocopying of the records is not required to be permitted but may be agreed to by both parties during or in advance of the inspection.

(8) At the time of making the appointment, the person requesting to inspect the books of account must provide the name(s) and contact information for all individuals who will be in attendance for the inspection. The requestor(s) must show photo identification prior to the inspection beginning, and the candidate or political committee may deny the inspection from occurring if photo identification is not provided.

(9) The records required by this section shall be available for audit or examination by the PDC at any time upon request from the PDC.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-049 Out-of-state political committees**~~((Implementation of RCW 42.17A.250))~~. (1) RCW 42.17A.250 governs campaign reporting in Washington state by committees located outside of Washington. ~~((The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17A.250 on a C5 form (WAC 390-16-050).))~~ The committee begins reporting ~~((on a C5 form))~~ when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) of this subsection must be satisfied:

(a) **Out-of-state.** First, the committee must be located out-of-state. It must ~~((be maintaining))~~ maintain its office or headquarters in another U.S. state or the District of Columbia, and ~~((has))~~ have no office, street address or corporate registered agent in Washington state. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington state, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational purpose and campaign activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and

(iii) Have spent less than twenty percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria in subsection (2) of this section shall file as an in-state committee under chapter 42.17A RCW, including RCW 42.17A.205 through 42.17A.240.

(4) Out-of-state political committees reporting under RCW 42.17A.250 are also subject to reporting pursuant to RCW 42.17A.260 (political advertising independent expenditures) and RCW 42.17A.305 through 42.17A.315 (electioneering communications).

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees.** The official form for the report required by RCW 42.17A.250 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state, that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240, is designated "C-5." ~~((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any paper attachments shall be on 8 1/2" x 11" white paper.))~~

NEW SECTION

**WAC 390-16-058 Independent expenditure—Definition and application.** (1) "Independent expenditure," as that term is used in chapter 42.17A RCW and in these rules, except RCW 42.17A.255, means an "expenditure" as defined in RCW 42.17A.005 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for public office subject to the filing requirements in chapter 42.17A RCW, by a person who is not:

- (i) A candidate for that office;
- (ii) An authorized committee of that candidate for that office;
- (iii) A person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office.

(b) It is made in support of any or in opposition to a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(c) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name;

(d) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value equal to or greater than one-half the contribution limit from an individual per election. A series of expenditures, each of which is under one-half the contribution limit from an individual per election, constitutes one independent expenditure if their cumulative value is equal to or greater than one-half the contribution limit from an individual per election; and

(e) The expenditure is not a contribution as defined in RCW 42.17A.005 and clarified by WAC 390-05-210.

(2) Exempt activities. The following activities are not considered independent expenditures for purposes of RCW 42.17A.255, 42.17A.630, or 42.17A.320:

- (a) Ordinary home hospitality;
- (b) A news item, feature, commentary, or editorial, or communications with journalists or editorial staff designed to elicit the same, in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;
- (c) Participation in the creation of a publicly funded voters' pamphlet statement in written or video form;
- (d) An internal political communication primarily limited to:
  - (i) The members of or contributors to a political party organization or political committee;
  - (ii) The officers, management staff or stockholders of a corporation or similar enterprise; or
  - (iii) The members of a labor organization or other membership organization.

(e) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or the property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made shall be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the person providing the facility; or

(f) The rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of two hundred fifty dollars personally paid by the worker.

#### NEW SECTION

**WAC 390-16-059 Electioneering communication reporting threshold.** (1) A "sponsor" of an electioneering communication is defined in RCW 42.17A.005(46).

(2) For the purposes of RCW 42.17A.005(22), an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

- (a) Identifies the same candidate in one or more communications satisfying RCW 42.17A.005 (22)(a)(i) and (ii) or these rules;
- (b) Is made by the same sponsor of one or more of the communications;
- (c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of one thousand dollars or more; and

(d) Is not a communication exempted from reporting under RCW 42.17A.005(23) or commission rule.

(3) When the electioneering communication or communications (including radio or television transmissions, mailings, billboards, newspapers and/or periodicals) reach the one thousand dollar threshold, the sponsor shall electronically report to the commission as required by RCW 42.17A.305 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

(4) Once the one thousand dollar threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17A.305 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the one thousand dollar threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration shall be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-060 (~~Forms for report of~~) Independent expenditures and electioneering communications**—



**How to report.** ~~((H))~~ The official form for reports of independent expenditures and electioneering communications as required by RCW 42.17A.255, 42.17A.260 and 42.17A.305 is designated "C-6." ~~((Copies of this form are available at the Commission Office, Olympia, Washington and online at www.pdc.wa.gov. Any paper attachments shall be on 8 1/2" x 11" white paper.~~

~~(2) The C-6 report may be filed electronically consistent with WAC 390-19-040 by using an electronic filing alternative provided or approved by the commission. C-6 reports of electioneering communications shall be filed electronically as provided in RCW 42.17A.305.)~~

AMENDATORY SECTION (Amending WSR 14-12-012, filed 5/22/14, effective 6/22/14)

**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 one hundred dollars 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 one thousand dollars or more that is presented to the public within twenty-one days of an election, that supports or opposes a candidate or ballot measure, and that qualifies as an independent expenditure.

(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 \$1,000; 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 \$1,000.

(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. Include 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~~((26))~~ must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320~~((2))~~ 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 ~~((itemized information concerning its))~~ the sources of any funds ~~((giving in excess of two hundred fifty dollars))~~ received by the committee for an electioneering communication, unless the committee received funds that were ~~((requested or))~~ earmarked or otherwise designated for the communication.

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

(4) The sponsor of an electioneering communication shall report pursuant to RCW 42.17A.305 and ~~((commission))~~ 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, shall file pursuant to RCW 42.17A.305 and ~~((commission))~~ these rules regarding electioneering communications.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

**WAC 390-16-071 Annual report of major contributors and persons making independent expenditures.** RCW 42.17A.630 requires that:

(1) Any person, other than an individual (a) who made contributions to state office candidates and statewide ballot proposition committees totaling more than the aggregate amount during the preceding calendar year for contributions referenced in WAC 390-05-400, ~~((code section 180(1)),~~) or (b) who made independent expenditures regarding state office candidates and statewide ballot propositions totaling more than the aggregate amount during the preceding calendar year for independent expenditures referenced in WAC 390-05-400, ~~((code section 180(1)),~~) shall file with the commission an annual report ~~((required pursuant to RCW 42.17A.630)).~~ This report shall not be required of a lobbyist employer filing an annual L-3 report pursuant to RCW 42.17A.630 or of a candidate's authorized committee or a political committee provided the information has been properly reported pursuant to RCW 42.17A.235 and 42.17A.240.

(2) The report is entitled "Special Political Expenditures" and is designated "C-7." ~~((Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any attachments shall be on 8-1/2" x 11" white paper.))~~

AMENDATORY SECTION (Amending WSR 14-12-010, filed 5/22/14, effective 6/22/14)

**WAC 390-16-105 Mini campaign reporting—Eligibility.** (1) A candidate or candidate's authorized committee, as those terms are defined in RCW 42.17A.005, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 ~~((when)), if the committee selects the mini reporting option on its registration and meets~~ both of the following conditions ~~((are present))~~:

(a) Neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed five thousand dollars; and

(b) No contribution or contributions from any person other than the candidate exceed five hundred dollars in the aggregate. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW 42.17A.005, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 ~~((when)), if the committee selects the mini reporting option on its registration and meets~~ both of the following conditions ~~((are present))~~:

(a) Neither aggregate contributions nor aggregate expenditures exceed five thousand dollars; and

(b) No contribution or contributions from any person exceed five hundred dollars in the aggregate.

(3) A continuing political committee, as that term is defined in RCW 42.17A.005, is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240, except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 ~~((when)), if the committee selects the mini reporting option on its registration and meets~~ both of the following conditions ~~((are present))~~:

(a) Neither aggregate contributions nor aggregate expenditures during a calendar year exceed five thousand dollars; and

(b) No contribution or contributions from any person exceed five hundred dollars in the aggregate.

(4) A candidate or political committee that exceeds one or both of the thresholds set out in either subsection (1), (2), or (3) of this section after registering as a mini reporting campaign shall no longer qualify for the mini reporting option and shall comply with the provisions of chapter 42.17A RCW, including, but not limited to, disclosure of contributions and expenditures, disclosure of last minute contributions, applicable contribution limits, false political advertising, sponsor identification and public inspection of campaign books of account.

(5) Candidates and political committees eligible for mini campaign reporting are required to comply with all applicable provisions of chapter 42.17A RCW including, but not limited to, false political advertising, sponsor identification and public inspection of campaign books of account unless specifically exempted under subsections (1) through (3) of this section.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-111 Mini campaign reporting—Special fund-raising events.** The term "any person" as used in WAC 390-16-105 does not mean a fund-raising activity conducted pursuant to RCW 42.17A.225. Candidates and committees using mini reporting as ~~((provided in chapter 390-16 WAC))~~ permitted under WAC 390-16-105 shall not be limited to receiving five hundred dollars from a fund-raising event provided that the payments from any person do not exceed five hundred dollars from all fund raising conducted during a campaign or calendar year ~~((as provided in WAC 390-16-105)).~~

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-115 Mini campaign reporting—~~((Conditions for granting use))~~ Registration and recordkeeping.** The exemptions allowed in WAC 390-16-105 shall be granted to a candidate or political committee, including a continuing political committee, only upon compliance with the following conditions~~((:))~~:

(1) A candidate shall~~((:))~~ file a C-1 registration with the commission within fourteen days of first:

(a) Receiving contributions, making expenditures, reserving space or facilities or purchasing commercial advertising space or broadcast time to promote his or her candidacy;

(b) Giving his or her consent to another person to take on behalf of the candidate any of the action in (a) of this subsection; or

(c) Announcing publicly or filing a declaration of candidacy with the appropriate elections official~~((: file the C-1 registration statement with the commission. The statement must declare that the candidate will not exceed the contribution or expenditure limits set out in WAC 390-16-105)).~~

(2) A political committee shall~~((:))~~ file a C-1pc registration with the commission within fourteen days after its organization or after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier~~((: file the C-1pc registration statement with the commission)).~~

(3) The statement filed under subsections (1) and (2) of this section shall declare that the political committee will not exceed the contribution or expenditure limits set out in WAC 390-16-105.

(4) In addition to complying with subsections (2) and (3) of this section, a continuing political committee shall also file a C-1pc between January 1<sup>st</sup> and January 31<sup>st</sup> for each year in which the committee intends to use the mini reporting system. Failure to file a new registration statement during Janu-

ary will automatically terminate the committee's entitlement to use the mini reporting system until such time as a new C-1pc is filed.

(5) A candidate or political committee using the mini reporting option shall keep current records in sufficient detail to allow the candidate or political committee to make reports otherwise required by RCW 42.17A.205 through 42.17A.240 in the event that the filing of such reports becomes necessary as a result of exceeding the contribution or expenditure limitation pursuant to the provisions of WAC 390-16-125.

(6) ~~((A)) The candidate or political committee treasurer shall, during the eight days immediately preceding the date of the election, maintain records of contributions and expenditures current within one business day. These records shall be open for public inspection during the hours designated on the registration statement at the principal campaign headquarters or, if there is no campaign headquarters, at a local address of the campaign treasurer or such other place as may be authorized by the commission.~~

~~(7) The records of contributions and expenditures shall be available for audit or examination by representatives of the public disclosure commission at any time upon request from the commission)) comply with the requirements for public inspection of campaign books pursuant to WAC 390-16-043.~~

AMENDATORY SECTION (Amending WSR 89-20-068, filed 10/4/89, effective 11/4/89)

**WAC 390-16-121 Mini reporting committees—Last minute committee(s) registration.** For purposes of compliance with WAC 390-16-115 ~~((and 390-16-120))~~, a political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election, shall file the registration statement within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

AMENDATORY SECTION (Amending WSR 14-12-010, filed 5/22/14, effective 6/22/14)

**WAC 390-16-125 Mini campaign reporting—Exceeding limitations.** (1) A candidate or political committee wishing to change from mini to full reporting must apply in electronic writing to the ~~((commission))~~ PDC for authorization to change reporting options before the limitations specified in WAC 390-16-105 are exceeded. A complete application shall include all of the following documents:

(a) An amended registration statement (Form C-1 for candidates, Form C-1pc for political committees) selecting the full reporting option as provided in RCW 42.17A.225 through 42.17A.240;

(b) PDC forms C-3 and C-4 with relevant schedules and attachments disclosing all contributions and expenditures to date reportable under RCW 42.17A.240 for the election campaign, or in the case of continuing political committees, for the calendar year; and

(c)(i) If the applicant is a candidate, a statement affirming that all candidates registered with the ~~((commission))~~

PDC for the office being sought have been notified personally in writing of the application, and the manner and date of such notification;

(ii) If the applicant is the treasurer of a political committee supporting or opposing a ballot proposition, a statement affirming that all treasurers of all political committees registered with the commission as supporting or opposing the proposition have been notified personally in writing of the application, and the manner and date of such notification; or

(iii) If the applicant is the treasurer of a county or legislative district party committee, a statement affirming that the treasurer of that party committee's counterpart in any other major political party has been notified personally in writing of the application, and the manner and date of such notification.

(2) An application that is submitted without the required documents described in subsection (1) of this section is incomplete and will not be processed or approved. If the applicant provides the missing documents, the application will be determined to be complete on the date the documents are received by the commission.

(3) If a complete application is received by the ~~((commission))~~ PDC on or before August 31st for the general election or thirty business days prior to the date of ~~((an election other than the general))~~ other elections, the executive director will approve the application. ~~((An application to change reporting options before the general election must be received by the commission on or before August 31.))~~

(4) If a complete application is received by the commission ~~((on or))~~ after the deadlines set out in subsection (3) of this section, the executive director will approve the application only if one or more of the following factors are present:

(a) ~~((The applicant's campaign had its respective C-1 or C-1pc on file with the commission when notice of the upcoming application deadline to change reporting options was sent and the commission staff did not send to the applicant's campaign in a timely and proper manner, either electronically or by other mail delivery service, a notice that the deadline for unrestricted changes in reporting options is approaching. To be timely and proper, this notice must be sent at least two weeks before the application deadline to the campaign's electronic mail address or postal service mailing address specified on the registration statement;~~

~~((b)))~~ The applicant is a candidate and, after the application deadline, a write-in opponent has filed for office in accordance with chapter 29A.24 RCW;

~~((c))~~ (b) After the application deadline, an independent expenditure as defined in RCW 42.17A.005 is made in support of the applicant's opponent or in opposition to the applicant; or

~~((d))~~ (c) When a candidate or political committee on one side of an election campaign or proposition has been approved to change reporting options under this section, each opponent of that candidate or political committee is approved to change options as of the date that opponent's complete application is received by the ~~((commission))~~

~~(5) Exceeding the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 without complying with the provisions of this section constitutes one or more violations of chapter 42.17A RCW or 390-17 WAC.~~

~~(6))~~ PDC.

(5) The executive director may approve an application to change reporting options after the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 have been exceeded only if the applicant (a) meets the deadlines provided in subsection (3) of this section; ~~((and))~~ (b) acknowledges the violation and demonstrates compliance with WAC 390-16-105(4) ~~((Approval of an application under this subsection does not absolve a candidate or political committee from liability for any violation or violations of subsection (5) of this section)); and (c) takes any other action required by the PDC to address the violation.~~

AMENDATORY SECTION (Amending WSR 04-01-128, filed 12/18/03, effective 1/18/04)

**WAC 390-16-205 Expenditures by agents ~~((employees—Reporting))~~ and agents' subvendors—How to report.**

(1) Expenditures made on behalf of a candidate or political committee by any person, agency, consultant, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate's or committee's efforts shall be deemed expenditures by the candidate or committee. In accordance with WAC 390-16-037, such expenditures shall be reported by the candidate or committee as if made or incurred by the candidate or committee directly.

(2) If any person, agency, consultant, firm, organization, etc., employed or retained by the candidate or political committee, subcontracts or otherwise has an agreement with a subvendor or other third party to provide or perform services, the expenditures paid to that subvendor or other third party must also be disclosed.

(3) Fees paid to consultants or other agents must be disclosed by candidates or political committees as an expenditure. In addition, when subvendors are used, the candidate or political committee must disclose any portion of the expenditure retained by the consultant or other agent.

Example A: If a ~~((campaign))~~ candidate or political committee pays a consultant \$5,000 to prepare and mail a political advertising brochure, all costs associated with the project shall be itemized by identifying each service provided, ~~((vendor utilized))~~ subvendor(s) used and amount attributable to each:

Vendor Name	Purpose	Amount
Jones Consulting	<u>Jones Consulting (fee)</u>	<del>\$(5,000)</del> <u>5,500</u>
	ABC Graphics	\$1,200
	XYZ Printing Co. (5,000 pieces)	\$3,000
	Your Mailhouse	\$800

Or, if Jones Consulting completes the project through a combination of services provided by its principals or employees and ~~((subcontractors))~~ its subvendors:

Vendor Name	Purpose	Amount
Jones Consulting	<u>Jones Consulting (fee)</u>	<del>\$(5,000)</del> <u>5,500</u>
	<u>Jones Consulting (graphic design)</u>	\$1,200
	XYZ Printing Co. (5,000 pieces)	\$3,000
	Your Mailhouse	\$800

Example B: If a ~~((campaign))~~ candidate or political committee pays a consultant or other agent directly to perform tasks such as fund-raising, survey design or campaign plan development, and the consultant does not ~~((subcontract with other vendors))~~ use subvendors, the expense shall be reported as follows:

Vendor Name	Purpose	Amount
Jones Consulting	Fund-raising, survey design, campaign plan development	\$5,000

Example C: If an expenditure is made directly to a vendor to purchase broadcast political advertisement, the purpose shall include the following details for both the vendor and commercial advertiser:

Vendor Name	Purpose	Amount
<u>Media King</u>	<u>Television ads</u>	<u>\$51,000</u>
	<u>WZUB TV</u>	<u>\$30,000</u>
	<u>WXXX TV</u>	<u>\$10,000</u>
	<u>WCRB TV</u>	<u>\$10,000</u>
	<u>Media King (fee)</u>	<u>\$1,000</u>

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-206 Ratings and endorsements.** (1) Any person making a measurable expenditure of funds to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition shall report such expenditure including all costs of preparation and distribution in accordance with chapter 42.17A RCW. However, rating, endorsement or recommendation expenditures governed by the following provisions are not reportable: The news media exemptions provided in RCW 42.17A.005 ~~((13))~~ (16)(b)(iv) and ~~((19))~~ (22)(b)(iii), and WAC 390-16-313 ~~((2)(b))~~, and the political advertising exemption in WAC 390-05-290.

(2) A candidate or sponsor of a ballot proposition who, or a political committee which, is the subject of the rating, evaluation, endorsement or recommendation shall not be required to report such expenditure as a contribution unless the candidate, sponsor, committee or an agent thereof

advises, counsels or otherwise encourages the person to make the expenditure.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-207 In-kind contributions—Explanation and reporting.** (1) An in-kind contribution must be reported on the C-3 report. An in-kind contribution, as that term is used in the act and these rules, occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW 42.17A.005 or WAC 390-17-405.

~~((2))~~ An in-kind contribution ~~((also occurs when a person makes))~~ includes an expenditure that:

- Supports or opposes a candidate or a ballot measure;
- Meets the definition of contribution in RCW 42.17A.005 or WAC 390-05-210; ~~((and))~~
- Is an electioneering communication that is a contribution as provided in RCW 42.17A.310; and
- Is other than a monetary contribution made directly to a candidate or political committee.

For example, an in-kind contribution occurs when a person, after collaborating with a candidate or a candidate's agent, purchases space in a newspaper for political advertising supporting that candidate or opposing that candidate's opponent.

~~((3)) An in-kind contribution also occurs when a person makes an electioneering communication that is a contribution as provided in RCW 42.17A.310.~~

~~((4))~~ (2) According to RCW 42.17A.430 and WAC 390-16-238, a candidate may not use his or her campaign funds to make a contribution, including an in-kind contribution, to another candidate or a political committee. However, under RCW 42.17A.430, a candidate may use surplus funds as defined in RCW 42.17A.005 to make a contribution to a political party or caucus political committee.

~~((5))~~ (3) **Valuing in-kind contributions.**

(a) For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235 Definition—Fair market value.

(b) If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

**(4) In-kind contributions to recipients who have limits under RCW 42.17A.405 or 42.17A.410.**

(a) If a candidate receives in-kind contributions from any person valued at more than ~~((25))~~ twenty-five dollars in the aggregate for an election, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17A RCW and is subject to the applicable contribution limit provided in RCW 42.17A.405 or 42.17A.410.

(b) If a bona fide political party or legislative caucus committee receives in-kind contributions from any person valued at more than ~~((25))~~ twenty-five dollars in the aggregate

during a calendar year, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17A RCW and is subject to the applicable contribution limit provided in RCW 42.17A.405.

(c) If an elected official against whom recall charges have been filed or a political committee supporting the recall of an elected official receives in-kind contributions from any person valued at more than ~~((25))~~ twenty-five dollars in the aggregate during a recall campaign, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17A RCW and is subject to the applicable contribution limits provided in RCW 42.17A.405 or 42.17A.410.

~~((6))~~ (5) **Political committees that make in-kind contributions.** Except as provided for in subsection (5) of this section, a political committee that makes in-kind contributions to a candidate or political committee totaling more than ~~((50))~~ fifty dollars in the aggregate during a reporting period must identify the recipient and the amount of the contribution as part of its C-4 report covering that period.

If the in-kind contribution is in the form of an expenditure that has been obligated, but not yet paid, the identity of the recipient candidate or political committee, along with a good faith estimate of the value of the contribution, must be disclosed in part 3 of Schedule B, in addition to the other information required by the ~~((form))~~ C-4 report. When the expense is paid, the recipient's name and the amount of the contribution must be disclosed on Schedule A, ~~((along with))~~ in addition to the other information required by the ~~((form))~~ C-4 report.

If a political committee provides equipment, property or anything else of value owned, leased or controlled by it to a candidate or political committee, the contributing committee must attach a statement to its C-4 report showing the name of the candidate or political committee to whom the contribution was made and the date, description and fair market value of the in-kind contribution.

~~((7))~~ (6) **Reporting by recipients.** Except as provided in subsection (5) of this section, in-kind contributions from one source are not reportable by the recipient candidate or political committee until the aggregate value of all in-kind contributions received from that source during a reporting period is more than ~~((50))~~ fifty dollars. If this threshold is met, the in-kind contributions must be reported in part 1 of Schedule B to the C-4 report covering that reporting period.

~~((8))~~ **Valuing in-kind contributions.**

~~((a))~~ For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235, Definition—Fair market value.

~~((b))~~ If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

~~((9))~~ (7) **Application of RCW 42.17A.420—Last-minute contributions.**

(a) If an expenditure that constitutes an in-kind contribution is made no later than twenty-two days before a general election and written notice of the in-kind contribution is in the possession of the recipient candidate committee or political committee twenty-two or more days before that general election, the contribution is not subject to the respective

~~(\$5,000 or \$50,000)~~ five thousand dollars or fifty thousand dollars maximum amounts specified in RCW 42.17A.420.

(b) If an in-kind contribution is in the form of personal services donated to a campaign for the duration of the twenty-one days before a general election, and if written notice of the value of this donation is in the possession of the recipient candidate or political committee twenty-two or more days before the election, that in-kind contribution is not subject to the respective ~~(\$5,000 or \$50,000)~~ five thousand dollars or fifty thousand dollars maximum amounts specified in RCW 42.17A.420.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-226 Loans.** (1) Only loans which are recorded in a written loan agreement executed at the time of the loan and properly reported may be repaid by a candidate or political committee. Surplus campaign funds under RCW 42.17A.005 and 42.17A.430 may only be used to return a contribution to the candidate if the contribution was properly reported as a loan from the candidate, as described in subsections (2) and (3).

(2) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. See WAC 390-17-305. Such funds are considered a contribution from the original source of the contribution under chapter 42.17A RCW *and*, unless the loan meets the exemption provided in RCW 42.17A.465(3) and this subsection, the contribution is subject to the contribution limits provided in chapter 42.17A RCW.

(a) If a candidate or candidate's own political committee or campaign or authorized committee receives a loan from a commercial lending institution, the loan is exempt from the contribution limits of RCW 42.17A.405 and WAC 390-16-310 only if all the following criteria are met:

- (i) The loan is not guaranteed by any other person;
- (ii) The loan is made in the regular course of business; and,
- (iii) The loan is made on the same terms ordinarily available to the public.

(b) A commercial loan to a candidate's own committee or campaign or authorized committee is presumed to be guaranteed by the candidate. The presumption is rebuttable by clear, cogent and convincing evidence.

(3) The amount of campaign contributions which may be used to repay a loan made by the candidate to the candidate's own political committee or campaign, or to repay a commercial loan to a candidate's own political committee or campaign where the candidate is the borrower or guarantor, is limited to the loan repayment limit in RCW 42.17A.445(3) as adjusted by WAC 390-05-400. For purposes of the loan repayment limit, these loans are aggregated for each primary, general, special or recall election and must be designated accordingly by the candidate at the time the loan is made.

(4) If a candidate makes documented out-of-pocket campaign expenditures on behalf of ~~(his or her)~~ their campaign expecting repayment (not intending to make an in-kind contribution), the campaign committee must repay the candidate within ~~((2+))~~ twenty-one days of the expenditure or the can-

didate will be deemed to have made a loan to his or her campaign committee which must qualify for repayment under subsections (1) and (2) in order for the candidate to be repaid. Undocumented out-of-pocket campaign expenditures by the candidate are in-kind contributions not eligible for repayment.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-230 Surplus campaign funds—Use in future.** (1) If ~~((at any time in the future or))~~ after the last day of the election cycle for candidates as defined in RCW 42.17A.005~~((7))~~ any contribution is received or an expenditure is made from surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or political committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or political committee shall file (a) a final report for the previous campaign as provided in RCW 42.17A.235 and 42.17A.240; and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17A.205, 42.17A.235 and 42.17A.240. The surplus funds may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." All augmentations to and all expenditures made from the retained surplus funds after the last day of the election cycle shall be reported in detail as to source, recipient, purpose, amount and date of each transaction.

(2) For candidates as defined in RCW 42.17A.005~~((7))~~, if at any time after the last day of the election cycle, any contribution is received or expenditure is made from such surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or authorized committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or authorized committee shall file (a) a final report for the previous campaign as provided in RCW 42.17A.235 and 42.17A.240; and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17A.205, 42.17A.235 and 42.17A.240. The surplus funds as of the last day of the election cycle may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." "Funds from previous campaign" carried forward by a candidate to his or her new campaign are not subject to contribution limits set forth in RCW 42.17A.405.

(3) A political committee formed to support or oppose a particular ballot proposition or particular candidates which retains surplus funds to use in support or opposition of other candidates or of other ballot propositions has become a con-

tinuing political committee and must thereafter register and report in accordance with chapter 42.17A RCW.

**AMENDATORY SECTION** (Amending WSR 17-01-160, filed 12/21/16, effective 1/21/17)

**WAC 390-16-236 Surplus funds accounts—Disclosure. (1) Registering a surplus funds account.**

(a) Any person who opens an account into which surplus funds will be deposited shall register the account by filing PDC Form C-1, Candidate Registration with the ~~((public disclosure))~~ commission. The committee name on the C-1 will be the name used by the campaign committee that raised the surplus funds followed by the designation, "surplus funds account." The C-1 must identify by name the treasurer of the account and the bank or depository where the account is held.

(b) The C-1 must be filed within two weeks after the date the account is opened.

**(2) Depositing surplus funds.**

(a) After a surplus funds account is established, a candidate may deposit into the account all surplus funds from subsequent campaigns.

(b) Only surplus funds may be deposited in a surplus funds account.

(c) A candidate who deposits surplus funds into a surplus funds account discloses an expenditure of campaign funds with the description "transfer to surplus funds account," the amount transferred, and the date the transfer occurred.

**(3) ~~((Disclosing))~~ Reporting surplus funds expenditures.**

(a) The treasurer shall file with the commission a report on the tenth day of each month detailing expenditures made in the preceding calendar month. This report need only be filed if the total expenditures made since the last such report exceeded two hundred dollars. The report shall be on PDC Form C-4, Campaign Summary Receipt & Expenditures.

(b) The treasurer shall file reports as required by (a) of this subsection until the account is closed, at which time a final report shall be filed.

(c) All reports filed disclosing expenditures from the surplus funds account shall be certified as correct by the treasurer.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-238 Personal use of contributions—Standard.** (1) Except as specifically allowed by chapter 42.17A RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17A.445.

(2) An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

(3) If an activity or expenditure is both personal and campaign-related, the campaign may pay no more than the fair market value of its share of the activity or expenditure. For example, if a candidate uses a personal vehicle for cam-

aign purposes, the campaign may reimburse the candidate for:

(a) The prorated share of documented gasoline, maintenance and insurance costs directly related to the campaign's usage of the vehicle; or

(b) The standard mileage rate established by the Internal Revenue Service for those documented miles directly related to the campaign's usage.

(4) Examples of expenditures presumed to be for personal use include, but are not limited to:

(a) Mortgage, rent, utility, telephone, or maintenance expenses for personal living accommodations;

(b) Clothing purchases and maintenance expenses not related to the campaign;

(c) Automobile expenses not related to the campaign;

(d) Travel expenses not related to the campaign;

(e) Household food items;

(f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;

(g) Tuition payments not related to the campaign;

(h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;

(i) ~~((Country))~~ Club membership fees, dues and payments;

(j) Health club or recreational facility membership fees, dues and payments;

(k) Social, civic, fraternal, or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;

(l) Home or business internet service provider costs;

(m) Home or business newspaper and periodical subscriptions;

(n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

**AMENDATORY SECTION** (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

**WAC 390-16-240 Earmarked contributions—Definition and use.** (1) Earmarked contributions, as that term is used in RCW 42.17A.270 and 42.17A.460, means any contribution given to an intermediary or conduit, either a political committee, candidate or third party, with a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which is intended to result in or which does result in all or any part of the contribution being made to or for the promotion of a certain candidate, state official, or ballot proposition.

(2) For purposes of RCW 42.17A.405 and 42.17A.410, an earmarked contribution is deemed to be for the promotion of, and attributable to any limit applicable to the candidate, authorized committee, bona fide political party, caucus of the state legislature or political committee designated by the original contributor.

(3) If an earmarked contribution is given to an intermediary or conduit to be spent on behalf of a candidate and the

entire amount given is not used for this purpose, the remainder of the contribution shall be given to the designated candidate unless its use is redesignated by the original contributor. If the conduit or intermediary exercises any direction or control over the use of the remainder of the contribution, then the amount of the remainder shall be considered a contribution from the original contributor and the conduit or intermediary to the recipient.

(4) The intermediary or conduit receiving the earmarked contribution shall notify the candidate or political committee for whose use or benefit the contribution is designated within two business days after receipt of the contribution.

(5) If an earmarked contribution is refused by the designated recipient candidate or political committee, the earmarked contribution must be returned by the intermediary or conduit to the original contributor within five business days of refusal.

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-245 Pledges.** (1) "Pledge," as that term is used in the act and these rules, means a promise to make a future contribution. A pledge shall not be made or redeemed within twenty-one days of an election specified in RCW 42.17A.420 if the amount of the pledge or redemption exceeds the maximum amount provided in RCW 42.17A.420. However, if payment of a pledge is in the possession of the recipient twenty-two or more days before the election, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220.

(2) If a pledge is made in an election campaign subject to the contribution limits provided in RCW 42.17A.405 and 42.17A.410:

(a) Except as provided in WAC 390-17-302, a pledge made with respect to the primary election shall not be made or redeemed after the date of the primary; however, if the payment of a pledge is made on or before the date of the primary, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220; and

(b) A pledge made with respect to the general election shall not be made or redeemed after the final day of the applicable election cycle; however, if the payment of a pledge is made on or before the final day of the election cycle, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220.

(3) During the time limit specified in RCW 42.17A.560, a state official or a person employed by or acting on behalf of a state official shall not solicit or accept a pledge or the redemption of a pledge for any purpose specified in RCW 42.17A.560.

**AMENDATORY SECTION** (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-16-307 Contributions by controlled entities.** (1) **Corporations.** Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary,

branch or department of a corporation that is participating in an election campaign or making contributions.

(2) A corporation is participating in an election campaign if it:

(a) Makes either a monetary or an in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication;

(c) Endorses a candidate prior to contributions being made by a subsidiary, branch or department of the corporation with respect to a candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary, branch or department of the corporation; or

(e) Directly or indirectly collaborates or consults with its subsidiary, branch or department on matters relating to the support of or opposition to a candidate, including the amount of a contribution, when a contribution should be given, or what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(3) **Trade associations, labor unions, collective bargaining organizations.** Two or more entities are treated as a single entity if one of the two or more entities is a local unit or branch of a trade association, labor union or collective bargaining association that is participating in an election campaign or making contributions.

(4) A trade association, labor union or collective bargaining organization is participating in an election campaign if it:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication;

(c) Endorses a candidate prior to contributions being made by a local unit or branch of the association, union or organization with respect to a candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a local unit or branch of the association, union or organization; or

(e) Directly or indirectly collaborates or consults with its local unit or branch on matters relating to the support of or opposition to a candidate, including the amount of a contribution, when a contribution should be given, or what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

**AMENDATORY SECTION** (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-16-308 Identification of source of contribution.** Any person who makes a contribution shall inform the candidate or treasurer, at the time the contribution is made, of the true and actual source of funds from which the contribution is made. To identify the source of a contribution received by check or other written instrument in the absence



of other information, a candidate or treasurer shall apply the following:

Provided, that in cases where the source of the contribution is known and differs from the guidelines set forth below, the known source of the contribution shall be reported;

Provided further, that contributions made through an intermediary or conduit or transmitted by an intermediary shall identify the true and actual source of the funds.

(1) A contribution drawn upon a single account shall be attributed to the account holder as identified by the name printed on the face of the check or negotiable instrument.

(2) A contribution drawn upon a joint account shall be attributed in equal proportion to each of the account holders as identified by the names printed on the face of the check or negotiable instrument unless the candidate or treasurer is notified in writing that the contribution should be allocated in different proportions.

(3) A contribution made by a sole proprietor or drawn upon the account of a business which is a sole proprietorship shall be attributed to the owner of the business entity.

(4) A contribution drawn upon the account of a partnership shall be attributed to the partnership as a separate entity except that ~~(the)~~ any check drawn upon the partnership account but which is to be paid from the capital account of one or more individual partners shall identify at the time of transmittal to the candidate or treasurer the name(s) of the contributing partner(s) and shall be attributed to the contributing partner(s).

(5) A contribution drawn upon the account of a corporation, union, association or other organization shall be attributed to the corporation, union, association or other organization as a separate entity unless that entity is affiliated with another entity pursuant to WAC 390-16-309 in which case a contribution from one of those entities is attributed to both entities.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-309 Identification of affiliated entities.**

(1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17A.405 and 42.17A.410 if one of the entities is:

(a) A corporation and the other is a subsidiary, branch or division of the corporation;

(b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;

(c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;

(d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;

(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17A.405 and 42.17A.410, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to ~~((paragraph (1) above))~~ subsection (1) of this section, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17A.405 and 42.17A.410 if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one or more of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity; and (ii) the entity has an active or significant role in the formation of the other entity; and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-310 Limitations on contributions.** The limitations on contributions as provided in RCW 42.17A.-420, 42.17A.405, and 42.17A.410 shall be as follows:

(1)(a) The limitation on contributions in RCW 42.17A.-405 or 42.17A.410 shall not apply to a "candidate" as that term is defined in RCW 42.17A.005 when the candidate is contributing to his or her own campaign using his or her own personal funds as defined in WAC 390-17-305.

(b) The limitation on contributions in RCW 42.17A.420, 42.17A.405, or 42.17A.410 shall apply to contributions to the candidate from the candidate's spouse, domestic partner or other immediate family members.

(2) Contributions by ~~((a husband and wife))~~ spouses are considered separate contributions. Contributions by domestic partners are considered separate contributions.

(3) Emancipated minor children (children under 18 years of age) may make contributions which do not exceed the limitations on contributions and the contribution is properly attributed to the emancipated minor child if:

(a) The decision to contribute is made knowingly and voluntarily by the emancipated minor child;

(b) The funds, goods, or services contributed are owned or controlled exclusively by the emancipated minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

Contributions by emancipated minor children which do not meet these requirements and contributions by unemancipated minor children shall be considered contributions by the child's parents. Fifty percent of the contributions will be attributed to each parent, or in the case of a single custodial parent, the total amount is attributed to that parent.

(4) Contributions from a business organized as a sole proprietorship and contributions from the owner of the sole proprietorship shall be aggregated for purposes of determining the limitations of contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410.

(5) The limitations on contributions shall apply separately to the contributions made by a partnership, limited liability partnership and limited liability corporation from the contributions made by an individual partner or member. However, contributions made from or charged against the capital account of an individual partner, or member of a limited liability partnership or limited liability corporation shall be aggregated with the partner's or member's individual contributions for purposes of determining the limitations on contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410.

(6) The limitations on contributions in RCW 42.17A.420, 42.17A.405, and 42.17A.410 shall apply separately to the contributions made by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units and other organizations and their local units) unless the criteria in RCW 42.17A.455 and WAC 390-16-309 are met.

AMENDATORY SECTION (Amending WSR 17-03-028, filed 1/6/17, effective 2/6/17)

**WAC 390-16-312 Handling contributions of uncertain origin.** No contribution shall be deposited by any candidate or treasurer who believes, from the face of the contribution instrument or for any other reason, the contribution was made in a fictitious name, by one person through an agent, relative, political committee, or any other person so as to conceal the source of the contribution or to exceed the contribution limits provided in RCW 42.17A.420, 42.17A.405, or 42.17A.410 or otherwise violate the act. The candidate or treasurer shall return such contributions within ten days to the original contributor if his or her identity is known. Otherwise, the contribution instrument shall be endorsed and made payable to "Washington state treasurer" and the contribution sent to the ~~((public disclosure))~~ commission for deposit in the state's general fund.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-16-320 Candidates in small political subdivisions—Reporting.** (1) According to RCW 42.17A.200 and 42.17A.135(7), a candidate for election in any political subdivision must report pursuant to chapter 42.17A RCW and Title 390 WAC if the candidate receives five thousand dollars or more in contributions or expects to receive five thousand dollars or more in contributions during an election cycle.

(2) It is presumed the candidate "expects to receive" five thousand dollars or more when any one of the following first occurs:

(a) The candidate or candidate's authorized committee receives at least five thousand dollars in aggregate contributions, including contributions from the candidate;

(b) The candidate is seeking the same office last sought, the candidate's election is in the current calendar year, and his or her campaign contributions in the previous election for the same office were five thousand dollars or more in the aggregate;

(c) The contributions received on or before March 31<sup>st</sup> of the election year total one thousand two hundred fifty dollars or more;

(d) The contributions received on or before June 30<sup>th</sup> of the election year total two thousand five hundred dollars or more;

(e) The contributions received on or before September 30<sup>th</sup> of the election year total three thousand seven hundred fifty dollars or more; or

(f) The candidate otherwise anticipates that five thousand dollars or more will be received during the election cycle.

(3) Surplus funds carried over from a candidate's previous campaign are not contributions to the candidate's new campaign and do not count toward the five thousand dollar reporting threshold.

(4) A candidate or candidate's authorized committee that receives, or expects to receive, five thousand dollars or more shall:

(a) Within two weeks of the date the reporting obligation begins under subsection (1) or (2) of this section, file:

(i) A candidate registration, PDC form C-1;

(ii) A personal financial affairs statement, PDC form F1 and, if relevant, the F1 Supplement; and

(iii) Contribution and expenditure reports, PDC forms C3 and C4 with appropriate attachments and schedules; and

(b) Otherwise comply with the campaign finance reporting and other provisions of chapter 42.17A RCW and Title 390 WAC.

NEW SECTION

**WAC 390-16-325 Dissolution of committees.** (1) Dissolution is the process by which a committee officially ceases doing business, pursuant to RCW 42.17A.225 and 42.17A.235. Dissolution does not relieve the candidate, elected official, or officers from any obligations to address violations that occurred before the committee was dissolved.

(2) To initiate dissolution, the committee must file a notice of intent to dissolve.

(3) The official form for filing a notice of intent to dissolve a committee is designated "D-1." The D-1 must be filed using the electronic filing system provided by the commission. The commission is required to post each committee's notice of intent to dissolve on the commission web site upon receipt.

(4) On the D-1 form, the candidate or authorized committee officer must attest to the following:

(a) The committee has concluded its activities in all respects and has ceased to function and intends to dissolve;

(b) The committee has no outstanding debts or obligations, will not make any expenditure other than those related to the dissolution process, and will not engage in any political activity or any other activity that generates additional reporting requirements;

(c) The committee has filed a final report;

(d) No complaint or court action under chapter 42.17A RCW is pending against the committee and it has not been informed by the commission of any possible violations or technical corrections which remain unresolved;

(e) The committee has no outstanding penalties under chapter 42.17A RCW as assessed by the commission or a court;

(f) The committee accepts an ongoing obligation to maintain compliance with these conditions and an affirmative duty to notify the commission of any noncompliance;

(g) The committee understands that the committee's bank account may not be closed before the political committee has dissolved; and

(h) The treasurer is obligated to preserve books of account, bills, receipts, and all other financial records for five years, or as otherwise required by chapter 42.17A RCW.

(5) If, sixty days after a committee has filed its D-1, the committee is in compliance with the above requirements and has not notified the commission in writing that it revokes its intent to dissolve, the committee shall be deemed to be dissolved.

(6) The executive director will promptly acknowledge by electronic writing the committee's dissolution. The acknowledgment of dissolution will be posted on the commission's web site when sent to the committee.

(7) If the committee has not met the requirements for dissolution, the executive director will promptly notify the committee by electronic writing that it is not eligible to dissolve, and explain the reasons for its ineligibility. The committee may initiate the process again once it has come into compliance with the requirements.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 390-16-038 Definition—Aggregate.

WAC 390-16-313 Independent expenditure—Definition and application.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-015 Conduit—Definition.** (1) "Conduit," as that term is used in (~~chapter 42.17A RCW~~) the act and these rules, is defined as a person, other than an individual, (~~who~~) that receives and spends earmarked contributions on behalf of a designated candidate, bona fide political party, caucus of the state legislature or other political committee.

(2) Pursuant to RCW 42.17A.470, a conduit may not make or transmit contributions on behalf of another.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-017 Definition—Facilities**(~~—Definition~~). "Facilities," as that term is used (~~in RCW 42.17A.005(7);~~) to define candidate in the act and in these rules means that which facilitates or makes some campaign activity possible(~~;~~) including, but not limited to: Use of (~~stationery~~) stationery, postage, machines and equipment, use of employees of an entity during working hours, vehicles, office space, room or building, publications of an entity or client list of an entity.

AMENDATORY SECTION (Amending WSR 16-10-080, filed 5/3/16, effective 6/3/16)

**WAC 390-17-019 Contribution limits to affiliated committees.** (~~(1) Intent. The public disclosure commission enforces campaign contribution limits and other provisions of chapter 42.17A RCW. The commission finds that persons subject to contribution limits may establish, maintain, or control multiple political committees.~~) This rule sets out which committees, excluding ballot measure committees, are affiliated for the purpose of receiving contributions.

(~~(2)~~) Persons subject to contribution limits who establish, maintain, or control multiple political committees may not circumvent those contribution limits through contributions made to the various committees (~~(controlled by that person)~~).

(~~(3)~~) (1) The following committees are affiliated for purposes of this rule:

(a) The authorized committee of a candidate subject to contribution limits set out in RCW 42.17A.405 or 42.17A.410 and any other political committee established, maintained, or controlled primarily by that candidate are affiliated for the purpose of receiving contributions.

(b) A caucus campaign committee and any other political committee established, maintained, or controlled primarily by the same legislative caucus as a whole or the officers of that caucus are affiliated for the purpose of receiving contributions.

(~~(4)~~) (2) As used in this rule, the terms "established, maintained, or controlled" means the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-030 Sample ballots and slate cards. (1)**

~~Intent. ((The commission finds that,))~~ Under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17A.405(15) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17A RCW and subject to the political advertising provisions of the ~~((law))~~ act.

The purpose of this exemption from the contribution limits is to allow political parties, political committees, and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements ~~((by undertaking any degree of significant campaigning on behalf of candidates))~~.

(2) For purposes of RCW 42.17A.005~~((19))~~ (22) and 42.17A.405(15), "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

~~((3))~~ Sample ballots constitute political advertising for a slate or list of candidates and must ~~((be properly identified))~~ include sponsor identification and otherwise be in compliance with the provisions of RCW 42.17A.320 through 42.17A.340.

~~((4))~~ (3)(a) A bona fide political party may use contributions it receives pursuant to RCW 42.17A.405(15) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17A RCW and chapter 390-17 WAC.

~~((5))~~ (4) Any person, as defined by RCW 42.17A.005, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

~~((6))~~ (5) An in-state political committee, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17A RCW and chapter 390-17 WAC.

~~((7))~~ (6) An out-of-state committee, when disclosing expenditures for sample ballots on a C-5 report, is not required to ~~((allocate))~~ attribute a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the 10th day

of the month following the month in which the expenditure was made.

~~((8))~~ (7) If a lobbyist or lobbyist employer makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be ~~((allocated))~~ attributed to individual candidates listed on the sample ballot.

~~((9))~~ (8) The candidates listed on a sample ballot are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

~~((10))~~ (9) Qualifying criteria for sample ballots, slate cards and other candidate listings. In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17A.405(15), a sample ballot must satisfy all of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. ~~((On Web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.))~~

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-060 Exempt contributions and activities—Definitions, reporting.** (1)(a) "Exempt contributions" are contributions made to a political committee which are earmarked for exempt activities as described in RCW 42.17A.405. Such contributions are required to be reported under RCW 42.17A.240, are subject to the restrictions in RCW 42.17A.420, but are not subject to the contribution limits in RCW 42.17A.405. Any written solicitation for exempt contributions must be so designated. Suggested designations are "not for individual candidates" or "for exempt activities."

(b) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for voter registration, absentee ballot information, get-out-the-vote campaigns, or sample ballots are presumed to be for the purpose of promoting individual candidates and therefore not exempt contributions and are subject to the contribution limits in RCW 42.17A.405.

(c) Contributions made to a caucus political committee, to a candidate or candidate's authorized committee which are earmarked for internal organization expenditures or fund-raising are presumed to be with direct association with individual candidates and therefore not exempt contributions and are subject to the contribution limits in RCW 42.17A.405.

(2) "Exempt contributions account" is the separate bank account into which only exempt contributions are deposited and out of which only expenditures for exempt activities shall be made.

(3) "Exempt activities" are those activities referenced in RCW 42.17A.405 as further clarified by subsections (4), (5), and (6) of this section. Only exempt activities are eligible for payment with exempt contributions.

(4)(a) Activities referenced in RCW 42.17A.405 (15)(a) that do not promote, or constitute political advertising for, one or more clearly identified candidates qualify as exempt activities. For example, get-out-the-vote telephone bank activity that only encourages persons called to "vote republican" or "vote democratic" in the upcoming election may be paid for with exempt contributions regardless of the number of candidates who are benefited by this message. Expenditures or contributions for electioneering communications made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent do not qualify as exempt activities, under WAC 390-05-210.

(b) Except as permitted under WAC 390-17-030, Sample ballots and slate cards, activities referenced in RCW 42.17A.405 (15)(a) that promote or constitute political advertising for one or more clearly identified candidates do not qualify as exempt activities.

(c) A candidate is deemed to be clearly identified if the name of the candidate is used, a photograph or likeness of the candidate appears, or the identity of the candidate is apparent by unambiguous reference.

(5)(a) "Internal organization expenditures" referenced in RCW 42.17A.405 (15)(b) are expenditures for organization purposes, including legal and accounting services, rental and purchase of equipment and office space, utilities and telephones, postage and printing of newsletters for the organiza-

tion's members or contributors or staff when engaged in organizational activities such as those previously listed, all without direct association with individual candidates.

(b) "Fund-raising expenditures" referenced in RCW 42.17A.405 (15)(b) are expenditures for fund-raising purposes, including facilities for fund-raisers, consumables furnished at the event and the cost of holding social events and party conventions, all without direct association with individual candidates.

(c) If expenditures made pursuant to (a) and (b) of this subsection are made in direct association with individual candidates, they shall not be paid with exempt contributions.

(6) For purposes of RCW 42.17A.405 and this section, activities that oppose one or more clearly identified candidates are presumed to promote the opponent(s) of the candidate(s) opposed.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-070 Trade association—Definition.** "Trade association," as that term is used in RCW 42.17A.455 and in these rules, means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and for which no part of net earnings inures to the benefit of any member.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-071 Collective bargaining association—Definition.** "Collective bargaining association" and "collective bargaining organization" as those terms are used in RCW 42.17A.455 and in these rules means any organization which negotiates, on behalf of labor or management, with respect to wages, hours or conditions of employment.

AMENDATORY SECTION (Amending WSR 13-12-016, filed 5/24/13, effective 6/24/13)

**WAC 390-17-100 Contribution withholding authorizations for payroll deductions.** (1) Each employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington shall have on file the individual's written authorization before withholding or diverting the individual's wages or salary for:

(a) The purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240; or

(b) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office.

(2) Forms used for payroll deduction may either conform to the suggested format below or be in a different format including an electronic format if it provides the following information:

- (a) The name of the individual authorizing the withholding or diversion;
- (b) The name of the individual's employer;
- (c) The name of each political committee or candidate for which contributions are to be withheld;
- (d) If more than one political committee or candidate is specified, the total dollar amount per pay period (or per week, month or year) to be withheld for each committee or candidate;
- (e) A statement specifying that the authorization may be revoked at any time and such revocation shall be in writing;
- (f) A statement that reads: "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee"; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW 42.17A.495;

- (g) The individual's signature or other reliable and secure verification that the individual is authorizing the withholding or diversion; and
- (h) The date on which the form was completed.
- (3) Forms used for payroll deduction may have information in addition to that listed in subsection (2) of this section. A form that satisfies subsection (2) of this section constitutes the written authorization of the individual authorizing the withholding or diversion.
- (4) Employers and other persons who withhold or divert wages or salaries must:
  - (a) Maintain the completed forms, with the individual's signature or verification, for as long as the withholding or diversion continues;
  - (b) Keep the forms and other documents described in RCW 42.17A.495(4) open for public inspection for three years after the last disbursement of wages or salaries; and
  - (c) Provide the forms and other documents described in RCW 42.17A.495(4) to the commission upon request.

**Political Contribution Withholding Authorization**

**No employer or other person may withhold a portion of a Washington State resident's earnings (or that of a nonresident whose primary place of work is in Washington) in order to make contributions to a political committee that must report to the Public Disclosure Commission or to a candidate for state or local office without written permission from that individual. Completion of this form entitles the entity specified to make such a withholding. This authorization form remains in effect until revoked in writing by the employee.**

I, \_\_\_\_\_, authorize \_\_\_\_\_

First Name	Middle Initial	Last Name	Name of Employer or Other Person
to withhold \$			per/pay period/week/month/year/
Amount			Circle One

from my earnings in order to make political contributions to \_\_\_\_\_

Name of \_\_\_\_\_

political committee(s) and/or candidate(s) to receive deductions

If more than one recipient is indicated, each is to receive the following portion of the deduction made: \_\_\_\_\_.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

*According to state law, no employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.*

**AMENDATORY SECTION** (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-105 Payroll deductions for small contributors of twenty-five dollars or less.** (1) To comply with RCW 42.17A.495(4), each person or entity who withholds contributions of individuals shall, in lieu of disclosing the names and signatures, substitute unique numerical identifiers for persons making contributions in the amount of twenty-five dollars or less during a calendar or fiscal year on the

signed withholding authorization form or on other documents (such as payroll deductions) subject to RCW 42.17A.495(4).

(2) Contribution withholding authorization forms or payroll deduction documentation of contributors whose annual aggregate contribution is twenty-five dollars or less during any calendar or fiscal year are not required by the commission to be made available for public inspection or copying when such records display the names, signatures, home addresses, Social Security numbers, or other information capable of personally identifying those contributors ((whose

annual aggregate contribution is twenty-five dollars or less during any calendar or fiscal year)).

(3) The names, signatures, home addresses, Social Security numbers or other information capable of personally identifying contributors whose annual aggregate contribution to a person or entity is twenty-five dollars or less during any calendar or fiscal year shall not be provided by the ~~((commission to the public or made available for public inspection or copying))~~ PDC.

(4) Each person or entity who withholds contributions under RCW 42.17A.495 shall, upon request, deliver to the ~~((commission))~~ PDC documents of books and accounts described in RCW 42.17A.495(4).

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-110 Employee notification of payroll deduction withholding provisions.** (1)(a) By June 30, 2003, and at least annually by June 30 thereafter, employees from whom funds are being withheld for contributions to a candidate or political committee under RCW 42.17A.495 shall be notified, in writing, of the nondiscriminatory provisions of RCW 42.17A.495(2). Employee notification shall include the following language:

"No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for:

- (i) The failure to contribute to;
- (ii) The failure in any way to support or oppose; or
- (iii) In any way supporting or opposing a candidate, ballot proposition, political party, or political committee."

(b) The written notification shall be provided by the employer or labor organization. The employer or labor organization may agree on which entity shall send the notification.

(2)(a) Pursuant to RCW 42.17A.495(3), ~~((by June 30, 2003, and))~~ at least annually by June 30<sup>th</sup> ~~((thereafter))~~, each employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries shall ensure written notification is directly provided to the employees from whom funds are being withheld for contributions to a candidate or political committee stating that the employee authorization for withholding of wages or salary for such contributions may be revoked at any time. The employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries and the candidate, political committee, or sponsor of the political committee may agree on which of them shall send the notification.

(b) The written notification shall identify where an employee can submit the revocation, which shall be either:

- (i) The name and address of employer's contact; or
- (ii) The name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries.

(c) The employee withholding authorization is revoked as of:

- (i) The date specified in the revocation; or
- (ii) If no date is specified, as of the date the written notification is received by the employer or other person or entity

responsible for the disbursement of funds in payment of wages or salaries pursuant to RCW 42.17A.495.

(3) "Written notification" means notice provided by mail, email, newsletter, payroll insert or other similar direct communication in writing that is addressed to the employee. Posting information on web sites, bulletin boards and other passive communication vehicles shall not constitute notification under RCW 42.17A.495. If the written notification appears in a newsletter or similar publication, the notice shall be prominently displayed or announced on the first page of the written communication.

(4) Each employer or other person who provides notice pursuant to subsection (1) or (2) of this section shall maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.

AMENDATORY SECTION (Amending WSR 02-23-001, filed 11/6/02, effective 12/7/02)

**WAC 390-17-200 Major political party organizations.** (1) With respect to a major political party, each of the following is considered a separate organization for purposes of making and receiving contributions: Governing body of the state organization, county central committee, and legislative district committee.

(2) Each major political party is restricted to one state central committee, one county central committee per county, and one legislative district committee per legislative district for making and receiving contributions.

(3) Each major political party shall designate each county central committee and each legislative district committee and shall notify the commission in writing of the names, addresses, telephone numbers, and email addresses of each committee officer within two weeks following the designation.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-302 Contributions after the primary election.** (1) Pursuant to RCW 42.17A.405 and 42.17A.410, the date of the primary is the last day for making primary-related contributions unless a candidate subject to contribution limits loses in the primary, that candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary, and the contributions are used to satisfy this outstanding debt.

(2) For purposes of the contribution limit in RCW 42.17A.405 and 42.17A.410, any contribution made up to thirty days after the primary election pursuant to RCW 42.17A.405 and 42.17A.410 is aggregated with contributions made on or before the date of the primary from the same contributor and any person with whom that contributor shares a limit under RCW 42.17A.455 and WAC 390-16-309.

(3) The day following the primary election is considered the first day of the thirty-day period during which contributions may be made to candidates subject to contribution limits who lose in the primary election and who have outstanding primary debts.

(4) For purposes of RCW 42.17A.405 and 42.17A.410, "outstanding primary debts," "outstanding debts" and "debts outstanding" all mean:

(a) Unpaid primary-election-related debts incurred on or before the date of the primary by the authorized committee of a candidate who lost the primary election for an office subject to contribution limits; and

(b) Reasonable costs associated with activities of the losing candidate's authorized committee necessary to retire the ~~((primary-related))~~ primary-election-related debts it incurred on or before the date of the primary. Examples of such reasonable costs include:

(i) Necessary administrative expenses (office space rental, staff wages, taxes, supplies, telephone and computer costs, postage, and the like) for activities actually and directly related to retiring the committee's debt; and

(ii) Necessary expenses actually and directly related to the fund-raising activities undertaken to retire the debt, as long as all persons solicited for contributions are notified that the contributions are subject to that contributor's primary election limit for that losing candidate.

(5) Nothing in this section is to be construed as authorizing contributors to make, or candidates subject to contribution limits who lose the primary to receive, contributions that are used for a purpose not specifically authorized by RCW 42.17A.405 or 42.17A.410, including use for some future election or as surplus funds.

(6) All contributions received in excess of the sum needed to satisfy outstanding primary debts shall be returned to the original contributors in an amount not to exceed the amount contributed in accordance with the first in, first out accounting principle wherein the most recent contribution received is the first to be returned until all excess funds are returned to contributors.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-303 Superior court candidates—Eligibility to receive contributions.** (1) Candidates for judicial office are subject to the contribution limits in RCW 42.17A.410 and the timing restriction on contributions of a candidate's personal funds in RCW 42.17A.420. Pursuant to Article 4, Section 29, Amendment 41 of the state Constitution and RCW 42.17A.410, candidates for the office of judge of the superior court may only receive contributions for each election in which the candidate is on the ballot or appears as a write-in candidate.

(2) For purposes of RCW 42.17A.410:

(a) Only superior court candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive contributions with respect to that primary; and

(b) Only superior court candidates who appear on the general election ballot or as write-in candidates in the general election may receive contributions with respect to that general election.

(3)(a) A superior court candidate who is issued a certificate of election before the primary election and whose name

does not appear on either the primary or general election ballot may receive contributions pursuant to RCW 42.17A.410:

(i) Through the last day for withdrawal of declarations of candidacy pursuant to RCW 29A.24.131; or

(ii) If there is a reopening of filing for the position and no other candidate files, the last day for reopening of filing pursuant to RCW 29A.24.171 and 29A.24.181.

(b) Contributions remaining in the account of such a superior court candidate who is issued a certificate of election must be returned to contributors within two weeks of certification. Primary-election-related contributions are to be returned using the first-in, first-out accounting method. Any contributions received with respect to the general election must be returned in full to contributors.

(4) A superior court candidate who is issued a certificate of election after the primary election and whose name does not appear on the general election ballot may receive contributions pursuant to RCW 42.17A.410. However, contributions received with respect to the general election must be returned in full to contributors within two weeks of certification.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-305 Personal funds of a candidate.** (1)

The personal funds of a candidate include:

(a) Assets which the candidate has legal access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(b) Income from employment;

(c) Dividends and proceeds from stocks and other investments;

(d) Income from trusts, if established before candidacy;

(e) Income from trusts established from bequests, even if established after candidacy;

(f) Personal gifts, if customarily received; and

(g) Proceeds from lotteries and similar games of chance.

(2) A candidate may also use, as personal funds, his or her portion of assets owned jointly with a spouse or domestic partner. If the candidate's financial interest is not specified, then the candidate's share is deemed to be half the value of the asset.

(3) If any person gives or loans the candidate funds in connection with ~~((his or her))~~ their campaign, the funds are not considered personal funds of the candidate. Such funds are considered a contribution under chapter 42.17A RCW unless the loan meets the exemption provided in RCW 42.17A.465(3).

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-310 Definition—Doing business in Washington.** A corporation or business entity is "doing business in Washington state" for purposes of RCW 42.17A.405 if it conducts continuous or substantial activities in Washington state of such character as to give rise to a legal obligation.

In determining whether a corporation or business entity is doing business in Washington state, the commission will



take into consideration the following nonexclusive list of indicators:

- Purposefully availing itself of the privilege of conducting business in the state by invoking both benefits and protections of state law.
- Appointing an agent for service of process in Washington state.
- Registering as a corporation in Washington.
- Operating business locations in Washington.
- Hiring employees to work in Washington.
- Purchasing or selling goods or services in Washington.
- Operating an interactive internet web site for the purpose of conducting business.

**AMENDATORY SECTION** (Amending WSR 16-04-081, filed 1/29/16, effective 2/29/16)

**WAC 390-17-400 Time limit to solicit or accept contributions.** The purpose of this rule is to clarify and implement the restriction period set forth in RCW 42.17A.560.

(1) "Campaign debt," as used in RCW 42.17A.560 and ~~((this))~~ these rules, means any debt incurred by a candidate seeking election to a Washington state nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) "Known candidates" means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) "Legislative session freeze period" means the period of time in RCW 42.17A.560 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends at 11:59 p.m. on the day the special session adjourns.

(c) If a special session is held other than within thirty days before a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17A.560 until sworn into office.

(5) A state official must comply with RCW 42.17A.560 until he or she no longer holds state office.

(6) Activities allowed during a freeze period. During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist ~~((his or her))~~ their own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,

- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund-raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Attending a fund-raiser held by a candidate who is not subject to RCW 42.17A.560, provided the state official does not solicit or accept any contributions in connection with the fund-raiser.

(i) The state official's planned attendance may be included in publicity for the fund-raiser.

(ii) The state official may receive complimentary admission from the candidate so long as the official attends to show support for the candidate and the attendance does not assist the official's own campaign.

(e) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17A.005, to their own campaign account, so long as the funds are properly reported;

(f) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(g) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(7) Activities not allowed during a freeze period. During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

(a) Go to an incumbent state official or known candidate;

(b) Go to a public office fund;

(c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(8) "Person employed by or acting on behalf of a state official" includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(a) During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (7) of this section.

(b) During a legislative session freeze period, a caucus political committee may solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or

with their own surplus funds, as defined in RCW 42.17A.005.

(c) During a legislative session freeze period, a caucus political committee may not solicit or accept contributions for any of the purposes specified in subsection (7) of this rule.

(9) Bona fide political parties. During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund-raising purposes.

(10) Segregating session freeze funds. During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW 42.17A.560, unless the contributions are deposited into a separate bank account and not spent for the benefit of incumbent state officials or known candidates.

~~((• Deposited into a separate bank account and  
• Not spent for the benefit of incumbent state officials or known candidates.))~~

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsection (7) or (8)(c) of this section.

(11) Session freeze solicitations. If a person is solicited for a contribution during the legislative session freeze period

~~((• By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and  
• The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and  
• The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject to RCW 42.17A.560 and subsection (12) of this section.))~~

by a state official, a caucus political committee, or another person employed by or acting on behalf of a state official; and the contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or

opposes candidates for state or local office; and the person makes a contribution during or after the freeze period in response to this solicitation; then the contribution is subject to RCW 42.17A.560 and subsection (12) of this section.

(12) Spending contributions to benefit incumbents or known candidates. For purposes of complying with subsections (6)(g), (7)(e) and (f), and (10) of this section, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes((-):

(a) Contributions to incumbent state officials or known candidates((-):

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period((-):

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates((-): or

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference((-):
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support((-):
- Whether respondents recognize the names of individuals who may decide to seek that elective office((-):
- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held((-):

- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote((s)); and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

(13) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(a) Any such contributions should be reported as received on the date the transfer is made from the merchant account to a candidate or political committee account.

(b) The PDC may request that the state official or legislator document that the contribution was received by the merchant account outside the restriction period.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

**WAC 390-17-405 Volunteer services.** (1) In accordance with RCW 42.17A.005 ~~((13))~~ (16)(b)(vi), an individual may perform services or labor for a candidate or political committee without ~~((incurring))~~ it constituting a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include:

- (a) Office staffing;
- (b) Doorbell ringing or leaflet drops;
- (c) Mail handling (folding, stuffing, sorting and postal preparation, processing emails to and from the campaign);
- (d) Political or fund-raising event staffing;
- (e) Telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);
- (f) Construction and placement of yard signs, hand-held signs or in-door signs;
- (g) Acting as a driver for candidate or candidate or committee staff;
- (h) Scheduling of campaign appointments and events;
- (i) Transporting voters to polling places on election day;
- (j) Except as provided in subsection (2) of this section, preparing campaign disclosure reports required by chapter 42.17A RCW and otherwise helping to ensure compliance with state election or public disclosure laws;
- (k) Campaign consulting and management services, polling and survey design, public relations and advertising (including online advertising), or fund-raising performed by any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service;

(l) Creating, designing, posting to and maintaining a candidate or political committee's official campaign web site or online forum, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; and

(m) All similar activities as determined by the ~~((commission))~~ PDC.

(2) An attorney or accountant may donate ~~((his or her))~~ their professional services to a candidate, a candidate's authorized committee, a political party or a caucus political committee, without ~~((making))~~ it constituting a contribution in accordance with RCW 42.17A.005 ~~((13))~~ (16)(b)(viii), if the attorney or accountant is:

- (a) Employed and ~~((his or her))~~ their employer is paying for the services rendered;
- (b) Self-employed; or
- (c) Performing services for which no compensation is paid by any person.

However, neither RCW 42.17A.005 ~~((13))~~ (16)(b)(viii) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a candidate's authorized committee, political party or caucus political committee and the conditions of RCW 42.17A.005 ~~((13))~~ (16)(b)(viii) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-17-410 Electioneering communications may constitute contributions and be subject to limit.** (1) Electioneering communications are contributions when they satisfy the definition of contribution in RCW 42.17A.005 ~~((13))~~ (16) or 42.17A.310.

(2) Contributions are subject to all applicable provisions of chapter 42.17A RCW and Title 390 WAC, including RCW 42.17A.405, 42.17A.410 and 42.17A.420.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-17-013 Committee—Definition.

AMENDATORY SECTION (Amending WSR 13-12-015, filed 5/24/13, effective 6/24/13)

**WAC 390-18-010 Sponsor identification of advertising, political advertising, electioneering communications, and independent expenditures.** (1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of ~~((an))~~ political advertising, electioneering communication, or independent expenditure ~~((or political advertising))~~ is, as used in the act and in these rules, and defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, ~~((electioneering communications, or))~~ independent expendi-

tures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) ~~((With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.~~

(3) ~~If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.~~

(4) ~~Printed))~~ All advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). Additional requirements apply for the following:

(a) Political committees that sponsor political advertising costing or having a fair market value of one thousand dollars or more supporting or opposing a ballot measure must clearly ((state)) identify the "top five contributors" to that political committee pursuant to WAC 390-18-025.

(b) ~~((Printed))~~ Advertising undertaken as an independent expenditure or electioneering communication shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320 ((and provide this information in an area set apart from any other printed matter)).

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to ~~((provide))~~ identify the "top five contributors" to that political committee pursuant to WAC 390-18-025((; however,)). This requirement does not apply to bona fide political parties sponsoring independent expenditures.

~~((5(a)))~~ (3) Required sponsor identification shall be displayed in printed advertisements:

(a) In an area set apart from other printed matter;

(b) On the first page or fold of advertising consisting of more than one page ((but)) that is intended to be presented as a single item (e.g., 3-page letter with return envelope) ((must identify the sponsor on the first page or fold of the advertising)). Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient ~~((; (b)))~~;

(c) By respective sponsor on advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously ((must show the respective sponsor on the respective items.

(6) ~~The name of the sponsor of all radio or television advertising shall be clearly spoken or identified as required in RCW 42.17A.320.~~

(a) ~~Political committees that sponsor political advertising costing one thousand dollars or more supporting or~~

~~opposing a ballot measure shall comply with the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320. The "top five" contributors shall be identified pursuant to WAC 390-18-025.~~

~~(b) All radio, telephone and television advertising undertaken as an independent expenditure as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.~~

~~(c) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.~~

~~(d) Political committees that sponsor independent expenditure or electioneering communication radio and television advertising are required to clearly speak or otherwise identify the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures).~~

(4) Required sponsor identification shall be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification shall be clearly identified, spoken or displayed on advertising on web sites, social media and other digital communication. Political committee web sites and other online forums created by a political committee must include sponsor identification.

(6) With advertising for which no payment is demanded or for which a cost or fair market value is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed, disseminated or broadcast.

(7) If more than one person sponsors specific advertising, the identity of each sponsor must be identified. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is not earmarked for the advertising and is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-18-020 Advertising—Political party identification.** (1) ~~((According to))~~ RCW 42.17A.320 ~~((;))~~ requires sponsors of electioneering communications identifying a candidate or advertising supporting or opposing a candidate ((who has expressed a party or independent preference on the declaration of candidacy must)) to clearly identify the candidate's political party or independent status in the advertising when the candidate has expressed a party or independent preference on the declaration of candidacy.

~~(2) ((According to RCW 42.17A.320, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.~~

~~(3)) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party.~~

AMENDATORY SECTION (Amending WSR 13-12-015, filed 5/24/13, effective 6/24/13)

**WAC 390-18-025 Advertising—Identification of "top five contributors."** (1) For purposes of RCW 42.17A.320 (2), (4), (5) and (6), "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

~~(2) ((For independent expenditure advertisements or electioneering communications, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees that make independent expenditures, including continuing political committees and out of state political committees subject to chapter 42.17A RCW other than a bona fide political party committee.~~

~~(3) For political advertisements supporting or opposing ballot measures costing one thousand dollars, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees.~~

~~(4)) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17A.320 and this section.~~

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-18-027 Definition—Medium that does not include a visual image.** (1) For electioneering communications identifying sponsors and top five contributors as required by RCW 42.17A.320, a "medium that does not include a visual image" means radio.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW 42.17A.320, a "medium that does not include a visual image" means radio or telephone transmissions.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

**WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising.** (1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers - size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less (excluding online ads), noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders, reader boards where message is affixed in ~~((moveable))~~ movable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers - size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local ~~((voters))~~ voter's pamphlets published pursuant to law, tickets to fund-raisers, water towers, whistles, yard signs - size 4' x 8' or smaller, yo-yos, and all other similar items.

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320.

(4) Political advertising created and distributed by an individual using ~~((his or her))~~ their own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than one hundred dollars to produce and distribute the advertising or less than fifty dollars to produce and distribute online ~~((political))~~ advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 ~~((13))~~ (16)(a)(ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

- A letter, flier, handbill, text ~~((or)),~~ email or other digital communications from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

- Disseminated on the individual's social media site, personal web site, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

AMENDATORY SECTION (Amending WSR 15-12-058, filed 5/28/15, effective 6/28/15)

**WAC 390-18-050 Commercial advertisers—Public inspection of records.** (1) RCW 42.17A.005(11) defines "commercial advertiser" as any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise. This includes communications such as paid internet or digital advertisements, brochures, fliers and any other means of mass communications used for the purpose of appealing, directly or indirectly for votes or for financial or other support in any election campaign.

(2) RCW 42.17A.005 (8)(b) defines "books of account," in the case of a commercial advertiser, as details of political advertising or electioneering communications provided by the advertiser, including the names and addresses of persons from whom it accepted political advertising or electioneering

communications, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, as defined in RCW 42.17A.005(39), or electioneering communications, as defined in RCW 42.17A.005(22), must maintain documents and current books of account. Such information must be available for public inspection:

(a) In person during normal business hours;

(b) Provided electronically promptly upon request; or

(c) Available online on the advertiser's web site in machine-readable format.

(4) Any person, without reference to or permission from the ~~((public disclosure))~~ commission, is entitled to inspect a commercial advertiser's political advertising or electioneering communications documents and books of account.

~~((2) No commercial advertiser shall be required to make available for public inspection))~~ (5) Information regarding political advertising or electioneering communications ~~((prior to))~~ must be made available as of the time when the advertisement or communication has initially received public distribution or broadcast. Such records must be maintained for a period of no less than three years after the date of the applicable election.

~~((3))~~ (6) The ~~((documents))~~ information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;

(b) The name and address of the ~~((person))~~ person(s) who sponsored the advertising or electioneering communication;

(c) The total cost of the advertising or electioneering communication, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

~~((4))~~ (7) In addition to subsection ~~((3))~~ (6) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include the advertisement or communication itself, and a description of the major work components or tasks, as specified in (a) through ~~((f))~~ (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: An approximate description of the geographic locations and audiences targeted, and total number of impressions generated by the advertisement of communication.

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

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 390-18-015 Online political advertising.

WAC 390-18-060 Electioneering communication reporting threshold and sponsors.

AMENDATORY SECTION (Amending WSR 01-22-052, filed 10/31/01, effective 1/1/02)

**WAC 390-19-010 Intent of electronic filing.** (1) The public disclosure commission (PDC) was created and empowered by initiative of the people to provide timely and meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to insure compliance with contribution limits and other campaign finance restrictions.

(2) Full and prompt access to the political finance data filed by persons subject to the law is best realized through wide-spread use of electronic filing alternatives. The Washington state legislature has mandated that certain filers submit their PDC reports electronically. The ((commission)) PDC makes available to all candidates, public officials, lobbyists, lobbyist employers, and political committees that are required to file reports under this chapter electronic filing alternatives for submitting reports, and encourages all persons required to report under the disclosure law to utilize the electronic filing alternatives provided by the PDC.

AMENDATORY SECTION (Amending WSR 16-04-027, filed 1/25/16, effective 2/25/16)

**WAC 390-19-020 Electronic filing—Mandatory filing.** (1) RCW 42.17A.245 mandates that persons ((satisfying)) meeting the qualifying criteria in that section file all contribution and expenditure reports by electronic means.

(2) Persons filing by electronic means shall register with the PDC and receive a filer identification number and pass-

word. Filers must have a current C-1 Candidate Registration Statement or a C-1pc Committee Registration Statement on file with the PDC prior to receiving a filer identification number.

(3) A filer subject to RCW 42.17A.245 shall file all PDC C-3 and C-4 reports and all appropriate schedules electronically in compliance with subsection (5) of this section.

(4) Any filer required to file electronically, but who files on paper, is in violation of RCW 42.17A.245 and may be subject to enforcement action unless the filer is a candidate who has sought and been granted an exception from electronic filing under WAC 390-19-050.

(5) A filer subject to electronic filing shall file reports using one of the following:

(a) The ORCA software (Online Reporting of Campaign Activity) provided free-of-charge by the PDC; or

(b) Any other electronic filing application provided or approved by the PDC.

(6) Pursuant to RCW 42.17A.055, state agencies reporting their legislative activities under RCW 42.17A.635 are required to file electronically.

AMENDATORY SECTION (Amending WSR 01-22-052, filed 10/31/01, effective 1/1/02)

**WAC 390-19-040 Electronic filing—Verification and amendments.** (1) An electronic report is filed when it is received and validated by the ((public disclosure commission))PDC((§)) computer system. The PDC shall notify the filer that the electronic report has been received.

(2) An electronic report is timely filed if received on or before 11:59 p.m. Pacific Time on the prescribed filing date.

(3) An electronic report that is infected with a virus, damaged, or is improperly formatted is not properly filed with the PDC and shall be rejected.

(4) To amend an electronically filed report, the filer shall electronically refile the entire report.

#### NEW SECTION

**WAC 390-19-045 Electronic filing system—Inoperable.** (1) For the purpose of RCW 42.17A.055, "electronic filing system" means the specific PDC-provided application or functionality necessary to file a specific report and does not include software provided by third parties;

(2) For the purpose of RCW 42.17A.055, "inoperable" means the electronic filing system used by the filer is unable to prepare or receive the required report except as provided in subsection (3) of this section;

(3) The electronic filing system is not considered inoperable during regular maintenance periods lasting less than thirty minutes between the hours of 11:00 p.m. and 5:00 a.m. Pacific Time or unscheduled events lasting less than fifteen minutes in any twenty-four-hour period;

(4) The PDC will provide notification for all periods of inoperability on its web site and will provide an option for individuals to also be notified by electronic notification upon request.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-19-050 Electronic filing—Exceptions.** (1) The ~~((commission))~~ PDC may make exceptions on a case-by-case basis for candidates whose authorized committees lack the technological ability to file reports electronically.

(2) A candidate seeking an exception under RCW 42.17A.245 shall file with the PDC a written statement of reasons why the authorized committee lacks the ability to file reports electronically.

### Chapter 390-37 WAC

#### **ENFORCEMENT ~~((HEARING (ADJUDICATIVE PROCEEDING)))~~ RULES**

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

**WAC 390-37-001 Enforcement cases—Jurisdiction.** The public disclosure commission (PDC) enforces chapter 42.17A RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, campaign contribution limitations and the other provisions in chapter 42.17A RCW. ~~(The ((commission)) PDC does not enforce the Public Records Act under chapter 42.56 RCW. RCW 42.56.550 provides for direct review by the superior courts for persons seeking to enforce chapter 42.56 RCW.)~~

#### NEW SECTION

**WAC 390-37-005 Complaint review and categorization.** (1) PDC staff, upon receiving or initiating a complaint, will promptly conduct an initial review and preliminarily assign matters to certain categories.

(2) Upon initial review, a matter may be preliminarily categorized as:

(a) Unfounded or frivolous, pursuant to WAC 390-37-060;

(b) A remedial violation, pursuant to RCW 42.17A.005;

(c) Appropriate for resolution as a technical correction, pursuant to RCW 42.17A.005;

(d) A minor violation, appropriate for alternative resolution alternatives, pursuant to WAC 390-37-061;

(e) Appropriate for investigation as to whether or not there has been a material actual violation eligible for resolution pursuant to RCW 42.17A.005(2);

(f) Appropriate for referral to the attorney general, pursuant to WAC 390-37-042; or

(g) Other status as authorized and appropriate under chapter 42.17A RCW or Title 390 WAC.

(3) Each enforcement matter will be posted by PDC staff on the PDC's public case-tracking database, where its status will be updated from time to time as appropriate until the matter is closed.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-010 Enforcement procedures—General.** This chapter provides the procedures for the PDC's enforcement of compliance with chapter 42.17A RCW, including categorization of enforcement matters, complaint processes, alternative resolutions, investigations, and adjudicative proceedings (enforcement hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency at any time, pursuant to RCW 42.17A.105~~((5))~~ and 42.17A.755.

In addition, the procedures for ~~((requesting))~~ a person required to file a report under this chapter to request a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and chapters 390-24 and 390-28 WAC.

The policy of the ~~((commission))~~ PDC is to facilitate the resolution of compliance matters in a fair and expeditious manner. The ~~((commission))~~ PDC encourages the parties to consider corrections, alternative resolution ((or)), partial resolution, statements of understanding, settlement and stipulation procedures as set forth in WAC 390-37-040, 390-37-060, 390-37-062, 390-37-075, ~~((or))~~ 390-37-090, ~~((when))~~ or 390-37-142 whenever appropriate. Informal settlements are encouraged by RCW 34.05.060.

AMENDATORY SECTION (Amending WSR 15-12-079, filed 5/29/15, effective 6/29/15)

**WAC 390-37-020 Enforcement procedures—~~((Alleging a violation))~~ Who may allege a violation with the PDC.** Alleged violations of chapter 42.17A RCW may be brought to the attention of the ~~((commission))~~ PDC staff by:

(1) A member of the public;

(2) The ~~((commission))~~ PDC staff;

(3) A commission member, who shall ~~((then be disqualified))~~ thereafter, in their discretion, determine whether disqualification from participating in the ~~((decision))~~ adjudication of an enforcement matter that may arise from a complaint regarding the alleged violation(s) is appropriate;

(4) Referral from the office of the attorney general or any other law enforcement agency; or

(5) A state agency, local agency or member of a state or local agency.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-030 Enforcement procedures—~~((Citizen complaints filed with the commission))~~ Standing and notice for complainants.** (1) When a ~~((citizen))~~ complaint ((has been filed with the agency)) is filed with the PDC other than by PDC staff pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing



to participate or intervene in ~~((the))~~ any investigation or consideration of the complaint by the commission or its staff. However, the staff shall give notice to the complainant of any ~~((open))~~ commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding. The commission's presiding officer has the discretion to allow comment by a person other than the respondent during the consideration of a complaint by the commission. Any person who wishes to comment should notify staff at least three business days before the proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding, but complainants are encouraged to provide as much information as possible at the time of filing a complaint to help ensure the complaint review and investigation processes are as thorough as possible. Complainants and others are encouraged to submit evidence electronically wherever feasible.

~~((3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).))~~

AMENDATORY SECTION (Amending WSR 15-12-079, filed 5/29/15, effective 6/29/15)

**WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the ~~((commission))~~ PDC.** (1) A complaint filed with the ~~((commission))~~ PDC must be ~~((in))~~ by electronic writing. Complainants ~~((are encouraged to))~~ must use the ~~((complaint form))~~ form(s) provided by the ~~((commission))~~ PDC on its web site. The executive director may waive this requirement and allow for the use of another written format on the basis of hardship.

(2) A complaint must include:

(a) A statement of the nature of the alleged violation or violations, referencing chapter 42.17A RCW and/or Title 390 WAC (if known), date, time and place of each occurrence and name of person or persons believed to be responsible, and a description of the impact of the alleged violation on the public;

(b) All available documentation and other evidence which the complainant is able to supply that supports the allegations made in the complaint. Information about where documents or evidence can be obtained and any relevant contact information should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, email addresses, and U.S. mail address, if known, of any witnesses or other persons who have knowledge of facts ~~((that support))~~ related to the complaint;

(d) The complainant's name, email address which will be the PDC's official method of communication, U.S. mail address, and telephone number; ~~((and))~~

(e) The signature of the complainant certifying under penalty of perjury under the laws of the state of Washington that the information provided with the complaint is true and

correct to the best of ~~((his or her))~~ their knowledge and belief; and

(f) Other pertinent information, as required by the PDC.

(3) The person or entity against whom a complaint is filed is known as the respondent.

#### NEW SECTION

**WAC 390-37-042 Enforcement procedures—Process and criteria for referring enforcement matters to the attorney general.** (1) When a complaint is filed or initiated by the PDC, the PDC may refer the matter at any time to the attorney general in accordance with RCW 42.17A.755. The determination to refer a matter to the attorney general will be made by either:

(a) A majority vote of the commission at a regular or special commission meeting; or

(b) By the executive director with the documented concurrence by electronic writing of either the chair or vice chair of the commission.

Any referral to the attorney general will be made in writing and may be made by electronic transmission.

(2) Enforcement matters potentially appropriate for referral may be brought to the executive director's attention by members of the commission, by PDC staff, by another party, or by the attorney general.

(3) Where the attorney general has requested referral of a matter and addressed the relevant criteria under RCW 42.17A.755, the executive director shall respond to the request within two business days. Both the request and the response shall be in writing and may be by electronic transmission.

(4) The executive director shall report at each regular commission meeting all referrals made by the executive director to the attorney general and all requests for referral by the attorney general since the prior commission meeting.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint.** (1) Within ten days of receipt by the ~~((commission))~~ PDC of a complaint which on its face appears to have merit, the ~~((commission))~~ PDC staff shall notify the respondent that a complaint has been filed~~((-))~~, along with an explanation of possible next steps, including the categorization process under WAC 390-37-005. Sending the complaint to the respondent's email address of record as provided to the PDC shall constitute sufficient notice.

(2) The notice shall set forth the nature of the complaint and ~~((its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated. If an alternative response to the alleged violation has been issued as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet))~~ the statutory and/or rule provision(s) alleged to have been violated.

(3) Respondents who wish to respond must file their response electronically within fourteen days of being notified by PDC staff, addressing the alleged noncompliance in the

complaint. The response may address the respondent's view of which category(ies) appropriately address the alleged non-compliance pursuant to WAC 390-37-005 (remedial, technical corrections, etc.).

(4) If an alternative response to the alleged violation has been issued as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding.** (1) Upon receipt of a complaint, the ~~((executive director))~~ PDC staff will conduct an initial review of the complaint ~~((to determine what action will be taken. An initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of chapter 42.17A or if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred so as to warrant a formal investigation))~~ pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC's jurisdiction, the executive director will inform the complainant and, as appropriate, the respondent why no further ~~((investigation))~~ action is warranted.

(b) The executive director may resolve a matter as a technical correction pursuant to RCW 42.17A.755. PDC staff will notify the respondent of the need to make a correction and the deadline by which that correction must be made. The deadline will be no less than five days and no more than thirty days from the date of the notification. The failure to make the requested correction may result in the initiation of an investigation or other enforcement action.

(c) The executive director may resolve a matter as a remedial violation pursuant to RCW 42.17A.755.

(d) The executive director may resolve any complaint that alleges minor ~~((or technical))~~ violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines ~~((should))~~ will be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

~~((e))~~ (e) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or technical violations of chapter 42.17A RCW.

~~((f))~~ (f) The executive director ~~((shall))~~ may initiate ~~((a formal))~~ an investigation whenever an initial review of a complaint indicates that a material violation ~~((of chapter 42.17A RCW))~~ may have occurred.

(2) If the executive director determines ~~((a formal))~~ an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) ~~((The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever a formal investigation reveals facts that the executive director~~

~~has reason to believe are a material violation of chapter 42.17A RCW and do not constitute substantial compliance.~~

~~(4))~~ If the executive director determines an investigation is warranted, an initial hearing (also referred to as a "case status review") shall be held pursuant to WAC 390-37-071 within ninety days.

(4) Following the initial hearing (case status review), and further investigation if needed, the executive director may initiate an adjudicative proceeding whenever the facts support that an actual violation has occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) The respondent and complainant shall be notified of the date of the adjudicative proceeding or a report on an enforcement matter resulting from a complaint no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434, the staff investigative report, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-061 Enforcement procedures—Alternative responses to noncompliance—Goals and objectives—Factors to be considered.** (1) In considering appropriate responses to ~~((noncompliance with chapter 42.17A RCW or Title 390 WAC, the commission))~~ actual violations, as that term is used in the act, the PDC staff considers whether ~~((a formal))~~ an investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the ~~((commission's))~~ PDC's mission and public expectations by allowing the expedited resolution of minor ~~((and technical alleged))~~ violations, and the focusing of ~~((staff and commission))~~ resources on ~~((major alleged))~~ more significant violations of chapter 42.17A RCW and Title 390 WAC.

(2) A minor violation is an actual violation that occurs:

~~((a))~~ When required information is not timely disclosed, ~~((however))~~ but the public is not deprived of critical information(~~((:~~

~~A technical violation occurs when)); or~~

~~((b))~~ When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, ~~((but incomplete information is disclosed))~~ and the public is not deprived of critical information.

~~((c))~~ (c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest.

(3) In authorizing an alternative response to alleged non-compliance, the executive director may consider the nature of the alleged violation and any relevant circumstances including, but not limited to, the factors described in subsection ~~((3))~~ (4) of this section: Provided, that, if after weighing the relevant circumstances and factors, the executive director determines that there is evidence that so warrants, the allegations shall be addressed through ~~((a formal))~~ an investigation as provided by WAC 390-37-060.

~~((4))~~ (4) The factors the executive director may consider in permitting an alternative response to noncompliance, ~~((a formal))~~ an investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if ...	<del>((A formal))</del> An investigation and possible adjudicative hearing may be appropriate if ...
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.
The total expenditures by the respondent in the campaign or statement period were relatively modest.	The campaign or statement period involved significant expenditures by the respondent.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.
Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
<del>((Commission))</del> PDC staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	<del>((Commission))</del> PDC staff or equipment error did not appear to contribute to the noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's rules.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).	The respondent appeared negligent or unwilling to address the noncompliance.
The respondent made a good-faith effort to comply, including by consulting with <del>((commission))</del> PDC staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.

<b>An alternative response to noncompliance may be appropriate if ...</b>	<b><del>((A formal))</del> An investigation and possible adjudicative hearing may be appropriate if ...</b>
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.
Other factors relevant to a particular case	

**NEW SECTION**

**WAC 390-37-062 Enforcement procedures—Alternative responses—Cases resolvable by stipulation prior to completion of investigation—Penalty schedule.** (1) The purpose of WAC 390-37-062 is to set forth a schedule of violations and penalties that may be agreed to by a respondent pursuant to a stipulation prior to an investigation, as authorized by RCW 42.17A.755. That schedule appears in the table below.

(2) A violation not set forth in the schedule may be resolved pursuant to a stipulation, provided that the proposed penalty amount is within the dollar ranges listed in the schedule.

(3) "Occasion" as used in the schedule means an "actual violation," as defined in RCW 42.17A.005, found by the commission.

(4) Only actual violations within the last five years will be considered for determining whether the violation under consideration shall be deemed a second or third occasion.

(5) Any proposed stipulation shall be in writing, must include a brief recitation of the facts, violations, and penalty, and be signed by each party to the stipulation or their representative and provided by 4:00 p.m. three business days preceding the commission meeting. The executive director shall sign for PDC staff.

(6) The commission has the option of accepting, modifying or rejecting the proposed stipulation. If the commission accepts the stipulation, or modifies the stipulation with the agreement of the parties, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation, the commission staff may consider whether:

- (a) An investigation should be initiated; or
- (b) The matter may appropriately be resolved in another manner.

(7) In determining whether to accept the stipulation, the commission may consider the nature of the violation(s), and any aggravating and/or mitigating factors as provided in WAC 390-37-182.

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
Filed missing report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Report is filed late and is incomplete or inaccurate.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
<b>Respondent failed to file or timely file accurate and complete campaign disclosure reports:</b>			
<b>Cash Receipts Monetary Contributions Report (C-3 report)</b>			
Filed missing C-3 report or amended C-3 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to timely deposit monetary contributions within five business days of receipt.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to include employer and occupation information for contributors of more than \$100.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Campaign Summary Receipts and Expenditures Report (C-4 report)</b>			
Filed missing C-4 report or amended C-4 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250

Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to report a contractual contingent liability.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly dispose of surplus funds.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Independent Expenditure Report (C-6 report)</b>			
Filed missing C-6 report or amended C-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Report is incomplete or inaccurate.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Out-of-State Political Committee Report (C-5 report)</b>			
Filed missing C-5 report or amended C-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Last Minute Contribution Report (LMC report)</b>			
Filed missing LMC report or amended LMC report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Exceeding Contribution Limits</b>			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Other Alleged Violations</b>			
<b>Exceeding Mini Reporting Threshold</b>			
Filed C-3 and C-4 reports for full reporting after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Failure to file electronically</b>			
Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition.</b>			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
<b>Failure to file Lobbyist Registration report (L-1 report)</b>			
Filed missing L-1 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
<b>Failure to File Agency Lobbying Report (L-5 report)</b>			
Filed missing L-5 report or amended L-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000

Grassroots Lobbying Report (L-6 report)			
Filed missing L-6 report or amended L-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Sponsor identification requirements for political advertising			
Political advertising failed to include any sponsor identification, or included improper or misleading sponsor identification.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Party preference requirement for political advertising			
Political advertising failed to include a candidate's party preference.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Use of current picture requirement in political advertising			
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Political advertising or electioneering communication—Libel or defamation per se			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Commercial advertisers—Public inspection of documents			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain documents or books of account as required by WAC 390-16-050.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Candidates and political committees—Public inspection of books of accounts			
Candidates or political committees who fail to accommodate requests for public inspection as required by WAC 390-16-043.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Limitations on employers or labor organizations			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400

(8) In a matter where the PDC staff have completed an investigation or resolved the matter as a technical correction, as authorized in RCW 42.17A.755, the schedule set forth in the table above is not applicable.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas.** (1) During the

course of ~~((an))~~ a PDC audit or ~~((an))~~ investigation, the executive director may issue a subpoena directed to any person who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall:

(a) Specifically describe the information which is sought, and

(b) Set forth a reasonable time and place for the production of the information, and

(c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission or the presiding officer may issue a subpoena under RCW 42.17A.110(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, ~~((memorandums))~~ memoranda or other ~~((documents which))~~ evidence that the commission deems relevant and material.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director after an investigation has been commenced.** The executive director, ~~((with the concurrence of the chair or the chair's designee commissioner,))~~ at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does ~~((not show))~~ provide reason to believe that a ~~((material))~~ violation ~~((of the sections of chapter 42.17A RCW that are enforced by the commission))~~ has occurred, shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted. The executive director shall report at each regular commission meeting all complaints dismissed.

NEW SECTION

**WAC 390-37-071 Enforcement procedures—Initial hearing (case status review prior to ninety days).** (1) After initiating an investigation pursuant to WAC 390-37-060, the executive director will conduct a case status review, referred to as an initial hearing in RCW 42.17A.755. The case status review is not an adjudicative proceeding conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Its purpose is to ensure the investigation, is being conducted expeditiously and to provide an opportunity to discuss possible alternative resolutions.

(2) The case status review will be conducted within ninety days of the complaint being filed in the matter, and may be held by telephone conference or in-person at a time and place specified by PDC staff. Notice of the case status review will be delivered electronically whenever possible.

(3) Participation in the case status review by the respondent is not mandatory. The failure to participate in the hearing will not prejudice any rights of the respondent with respect to the investigation or potential adjudication of the matter.

(4) The case status review shall have a set time limit as determined by the executive director.

(5) At the case status review, the executive director shall have the authority to:

(a) Provide the respondent with a brief opportunity to explain the respondent's view of the matter, including why further investigation may not be warranted;

(b) Identify any available options to resolve the matter;

(c) When appropriate, encourage the parties to enter into a stipulated agreement as authorized by RCW 42.17A.755 and WAC 390-37-062; and

(d) Consider such other matters as may aid in the investigation, disposition or resolution of the matter.

(6) Following the case status review, the executive director shall direct PDC staff to update the PDC's public case-tracking database pursuant to WAC 390-37-005.

(7) The executive director shall report to the commission, no later than the next regular commission meeting, any case status reviews held. The executive director's report shall include an overview of matters addressed and any review outcomes.

(8) Nothing in this section shall limit the authority of the commission or its staff to resolve a complaint or refer a matter to the attorney general at any time.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-075 Enforcement procedures—Deferred enforcement ~~((—Process))~~ after an investigation has been commenced.** (1) As provided by WAC 390-37-060, the chair or the chair's designee commissioner may authorize deferred enforcement:

(a) Following a ~~((formal investigation))~~ case status review provided for in WAC 390-37-071, referred to as an initial hearing in RCW 42.17A.755, in lieu of a formal investigation;

(b) Following an investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or

~~((b))~~ (c) After a notice of administrative charges, prior to an adjudicative proceeding.

(2) The executive director will recommend to the chair or the chair's designee commissioner the conditions of a deferred enforcement. The conditions shall be clearly defined and agreed to by the respondent, along with the consequences for failure to meet the conditions of the deferral. Negotiations regarding deferred enforcement shall be informal and without prejudice to rights of a participant in the negotiations.

(3) With concurrence of the chair or the chair's designee commissioner, the executive director or designee (commission staff) shall memorialize the pertinent facts and the conditions of the deferral ~~((in))~~ by electronic writing to the respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by ~~((staff))~~ the executive director and the respondent. Staff shall notify the respondent that any administrative charges issued in the matter are stayed pending satisfaction of the deferral conditions.

(4) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(5) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-090 Enforcement procedures—Cases resolvable by stipulation after an investigation and prior to an enforcement hearing (adjudicative proceeding)**~~(~~or by other alternative dispute mechanisms~~)~~. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate (~~his or her~~) their request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) (~~When~~) The executive director and respondent may also agree to (~~terms of any~~) a stipulation of facts, violations, and/or penalty(~~s~~). The commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing, must include a brief recitation of the facts, violations and penalty, and be signed by each party to the stipulation or (~~his or her~~) their representative. The executive director shall sign for (~~commission~~) PDC staff. Any stipulation to facts, violations, or penalty shall be provided by 4:00 p.m. three business days preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the (~~opposing party~~) parties, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or (~~the opposing~~) either party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) (~~Following a~~) As part of the commission's review of any proposed stipulation of facts (~~or~~) violations and law or other alternative resolution ruled on at a hearing, if the commission determines certain additional sanctions or other steps are required by the respondent (~~as a result of the alternative dispute resolution including stipulations~~) and states on the record that (~~it~~) the commission intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings).** (1) An enforcement hearing (adjudicative proceeding) shall be con-

ducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding shall be heard by the commission, except for brief adjudicative proceedings which are conducted by the chair or the chair's designee.

(3) The commission or the presiding officer shall have the authority to:

(a) Determine the order of presentation of evidence;  
 (b) Administer oaths and affirmations;  
 (c) Rule on procedural matters, objections, and motions;  
 (d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(h) Take official notice of facts pursuant to RCW 34.05.452(5);

(i) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(j) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Issue an order of default pursuant to RCW 34.05.440;

(l) Take any other action necessary and authorized by any applicable statute or rule;

(m) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(n) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (m) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may (~~find that~~):

(a) Find that the respondent did not violate (~~the act~~) chapter 42.17A RCW, as alleged, and dismiss the case; or

(b) Find that the respondent violated chapter 42.17A RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Find that the respondent is in apparent violation of chapter 42.17A RCW, (~~its own~~) and that the commission's statutory remedies are inadequate, and enter (~~its~~) an order referring the matter to the attorney general or another appropriate law enforcement agency as provided in RCW 42.17A.105 and 42.17A.755.



(6) Upon the conclusion of an adjudicative proceeding or after submission of memos, briefs or proposed findings when requested by the presiding officer, the commission:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order within thirty days, unless extended by the presiding officer due to the complexity of the case or other good cause; and

(b) Shall serve the ~~((respondent))~~ parties by electronic communication a copy of the findings of fact, conclusions of law and decision and order.

(7) Once the commission has drafted and approved an order, the executive director is authorized to sign orders on behalf of the commission at the discretion of the commission.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-103 Enforcement procedures—Commission options following receipt of a staff report on alleged violations.** Upon receipt of a PDC staff report concerning alleged violations ~~((of those sections of chapter 42.17A RCW that the commission enforces))~~, the commission may:

(1) Direct the executive director to ~~((issue))~~ pursue an alternative ~~((response))~~ resolution as provided in WAC 390-37-060;

(2) Defer enforcement as provided in WAC 390-37-075;

(3) Issue an order; or

(4) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17A.105(5) and ~~((42.17A.750))~~ 42.17A.755.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-105 Enforcement hearings (adjudicative proceedings)—Prehearing conference(~~—Rule~~).** (1) In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the ~~((chair or the chair's designee upon his/her))~~ presiding officer upon their own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

(a) Identifying and simplifying issues;

(b) The necessity of any amendments to the ~~((pleadings))~~ case documents;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) Limiting the number and consolidation of the examination of witnesses; ~~((and))~~

(e) Submitting proposed orders;

(f) Deadlines for briefs, exhibit and witness lists and objections thereto, proposed orders, and other procedural ~~((and such other))~~ matters as may aid in the conduct of the proceeding.

(2) Prehearing conferences may be presided over by the chair or ~~((his/her))~~ designee commissioner as presiding officer.

(3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions *in limine*, discovery motions, and other similar matters. The presiding officer shall not consider dispositive motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.

(5) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with the presiding officer, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(6) When the chair or ~~((his/her))~~ designee commissioner presides over a prehearing conference, ~~((he or she))~~ the presiding officer is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-120 Enforcement hearings (adjudicative proceedings)—Subpoenas—Discovery—Hearings.**

(1) The commission, or presiding officer, may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memorandums, or other records deemed relevant or material and the commission or presiding officer may issue protective orders as a part of an enforcement hearing. The ~~((agency))~~ PDC staff or its legal representative may issue subpoenas as may the attorney of the party against whom action is being taken. Upon request of the commission or presiding officer, all subpoenas must be filed with the commission, together with proof of proper service. Such subpoenas will issue and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120(4). The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission, or presiding officer, upon motion or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-130 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Right to take.** Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or ~~((assistant director))~~ other staff, may only be taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

AMENDATORY SECTION (Amending WSR 03-18-003, filed 8/20/03, effective 9/20/03)

**WAC 390-37-134 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories ~~((in enforcement hearings (adjudicative proceedings)))~~—Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or the presiding officer in a prehearing conference may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or the presiding officer in a prehearing conference may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-136 Enforcement hearings (adjudicative proceedings)—Production of documents and use at hearing and other hearing procedures ~~((adjudicative proceedings))~~.** (1) Unless a prehearing order states other-

wise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists prior to the deadline specified in subsection (3)(a) of this section. The parties are encouraged to exchange documents by email whenever possible. The parties are encouraged to confer and determine whether there are any objections to the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3)(a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file with the commission and serve on all parties a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an email to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least eight days prior to the hearing. The email shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and email address of the person sending the email message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to email transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

~~(c) ((On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.~~

~~(d))~~ The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

~~((e))~~ (d) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. ~~((Commission))~~ PDC staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

**AMENDATORY SECTION** (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-140 Brief enforcement hearings (brief adjudicative proceedings)—Authority.** (1) The commission may provide a brief adjudicative proceeding for violations ~~((of the sections of chapter 42.17A RCW that it enforces))~~ in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$1,000 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports;
- (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying;
- (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal; and
- (d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) The commission may utilize a penalty schedule for brief adjudicative proceedings.

(3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

**AMENDATORY SECTION** (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-142 Brief enforcement hearing (brief adjudicative proceeding)—Procedure.** (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the ~~((alleged violator))~~ respondent notice, which shall include:

- (a) Alleged violation;
- (b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and
- (c) Person's right to respond either ~~((it))~~ by electronic writing or in person ~~((to explain his/her view of the matter))~~.

(3) As provided in RCW 34.05.050, a respondent ~~((who has been notified of a brief adjudicative proceeding))~~ may

waive the opportunity for a hearing by providing the following ~~((prior to the hearing))~~:

- (a) A signed statement of understanding;
- (b) Any missing required reports; and
- (c) A penalty payment specified by the executive director in accordance with the penalty authority of WAC 390-37-140 and the brief enforcement hearing penalty schedules of this chapter.

(4) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that:

- (a) Acknowledges a violation of chapter 42.17A RCW and any relevant rules; and
- (b) Expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(5) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than one thousand dollars, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

(6) ~~((At the time any unfavorable action is taken the presiding officer))~~ Within thirty days after the hearing, the commission shall serve upon each party a written statement describing the violation, the reasons for the decision, ~~((and))~~ the penalty imposed ~~((Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision))~~, and information about any internal administrative review or reconsideration available. The executive director is authorized to sign the decision on behalf of the presiding officer.

(7) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

**AMENDATORY SECTION** (Amending WSR 18-10-088, filed 5/1/18, effective 6/1/18)

**WAC 390-37-143 Brief enforcement hearings (brief adjudicative proceeding)—Penalty schedule.** The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			

<b>Violation</b>	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report up to \$1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150 per report	\$300 per report	\$600 per report up to \$1,000
Failed to file report by date of enforcement hearing.	\$250 per report	\$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	\$150	\$300	\$600
Statement of contributions deposit (C-3).	\$150	\$300	\$600
Summary of total contributions and expenditures (C-4).	\$150	\$300	\$600
Independent expenditures and electioneering communications (C-6).	\$150	\$300	\$600
Last minute contribution report (LMC).	\$150	\$300	\$600
Out-of-state committee report (C-5).	\$150	\$300	\$600
Annual report of major contributors (C-7).	\$150	\$300	\$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	\$150	\$300	\$600
Public agency lobbying report (L-5).	\$150	\$300	\$600
Grass roots lobbying report (L-6).	\$150	\$300	\$600
Failure to file electronically.	\$350	\$650	\$1,000
Exceeding contribution limits.	\$150	\$300	\$600
Exceeding mini reporting threshold.	\$150	\$300	\$600
Failure to comply with political advertising sponsor identification requirements.	\$150	\$300	\$600
Failure to include required candidate's party preference in political advertising.	\$150	\$300	\$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345.	\$150	\$300	\$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	\$150	\$300	\$600

Violation	1st Occasion	2nd Occasion	3rd Occasion
Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000

"Occasion" means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

- (a) Whether the respondent is a first-time filer;
- (b) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;
- (c) The respondent's unpaid penalties from a previous enforcement action;
- (d) The impact on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;
- (e) The amount of financial activity by the respondent during the statement period or election cycle;
- (f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;
- (g) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;
- (h) Good faith efforts to comply, including consultation with ~~((commission))~~ PDC staff prior to initiation of enforcement action and cooperation with ~~((commission))~~ PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;
- (i) Personal emergency or illness of the respondent or member of his or her immediate family;
- (j) Other emergencies such as fire, flood, or utility failure preventing filing;
- (k) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization; and
- (l) ~~((Commission))~~ PDC staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing.

(3) The presiding officer has authority to suspend all or a portion of an assessed penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

- (a) Was found in violation during a previous reporting period;
- (b) The violation remains in effect following any appeals; and
- (c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-144 Brief enforcement hearing (brief adjudicative proceedings)** ~~—((Administrative review procedures))~~ **Process for full commission review.** (1) The commission shall conduct a review of the initial order upon the electronic written ~~((or oral))~~ request of a party if the commission receives the request within twenty-one days after the service of the initial order. "Service" is defined as the date the order was deposited in the U.S. mail per RCW 34.05.010(19), electronically distributed or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If ~~((the parties have))~~ a party has not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be ~~((it))~~ by electronic writing stating the findings made, and the reasons for the decision, and notice that reconsideration and judicial review are available. The order on review shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty days after the date of the initial order or request for review and therefore cannot dispose of the request within that time period, the request is:

- (a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Scheduled for consideration and disposition at the next commission meeting at which it is practicable to do so.

**AMENDATORY SECTION** (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

**WAC 390-37-150 Commission reconsideration and judicial review of decisions.** (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the ~~((written))~~ request of a party ~~((thereby))~~ by electronic writing or (b) the motion or written request, by electronic writing, of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request or motion for reconsideration shall be filed electronically at the office of the public disclosure commission (PDC), or motion made, within ten days of service of the decision of which reconsideration is sought. Copies of the request or motion shall be served electronically on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) A request for review was deemed denied in accordance with WAC 390-37-144(4);

(b) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence in time for the review process in WAC 390-37-144. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or

(c) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsid-

eration is sought shall be stayed and the decision shall not be final until the commission has acted on the request or motion for reconsideration.

(7) The commission is deemed to have denied the request or motion for reconsideration ~~((or motion))~~ if, within twenty days from the date the request or motion is filed, the commission does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either:

(i) Affirming its decision; or

(ii) Withdrawing or modifying the final order; or

(iii) Setting the matter for further hearing.

Provided, that before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

**AMENDATORY SECTION** (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-182 Penalty factors.** (1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time actual violation;

(b) Shall assess a penalty for a second actual violation ~~((of the same rule))~~ by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding actual violations ~~((of the same rule.))~~ pursuant to the following schedule:

<b>Violations:</b>			
<b>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report) / (2) Candidate Registration / (C-1 report) / (3) Lobbyist Monthly Expense Report (L-2 report) / (4) Lobbyist Employer Annual Report (L-3 report) and (5) Local Treasurer's Annual Report (T-1 report).</b>			
	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
<u>Filed missing report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Report is filed late and is incomplete or inaccurate.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,000 - \$3,000</u>
<b>Respondent failed to file or timely file accurate and complete campaign disclosure reports:</b>			
<u>Cash Receipts Monetary Contributions Report (C-3 report)</u>			

<u>Filed missing C-3 report or amended C-3 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to timely deposit monetary contributions within five business days of receipt.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to include employer and occupation information for contributors of more than \$100.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<b>Campaign Summary Receipts and Expenditures Report (C-4 report)</b>			
<u>Filed missing C-4 report or amended C-4 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to report a contractual contingent liability.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly dispose of surplus funds.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500- \$2,500</u>	<u>\$2,500 - \$10,000</u>
<b>Independent Expenditure Report (C-6 report)</b>			
<u>Filed missing C-6 report or amended C-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Report is filed late and is incomplete or inaccurate.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<b>Out-of-State Political Committee Report (C-5 report)</b>			
<u>Filed missing C-5 report or amended C-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<b>Last Minute Contribution Report (LMC report)</b>			
<u>Filed missing LMC report or amended LMC report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<b>Exceeding contribution limits</b>			
<u>Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<b>Other Alleged Violations:</b>			
<b>Exceeding mini reporting threshold</b>			
<u>Filed C-3 and C-4 reports for full reporting after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<b>Failure to file electronically</b>			
<u>Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>

<u>Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition</u>			
<u>Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Failure to File Lobbyist Registration Report (L-1 report)</u>			
<u>Filed missing L-1 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Failure to File Agency Lobbying Report (L-5 report)</u>			
<u>Filed missing L-5 report or amended L-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Grassroots Lobbying Report (L-6 report)</u>			
<u>Filed missing L-6 report or amended L-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Sponsor identification requirements for political advertising</u>			
<u>Political advertising failed to include any sponsor identification or included improper or misleading sponsor identification.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Party preference requirement for political advertising</u>			
<u>Political advertising failed to include a candidate's party preference.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Use of current picture requirement in political advertising</u>			
<u>Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,000</u>	<u>\$1,000 - \$1,500</u>
<u>Political advertising or electioneering communication—Libel or defamation per se</u>			
<u>Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Commercial advertisers—Public inspection of documents</u>			
<u>Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain documents or books of account as required by WAC 390-18-050.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>



<u>Candidates and political committees—Public inspection of books of account</u>			
<u>Candidates or political committees who fail to accommodate requests for public inspections as required by WAC 390-16-043.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Limitations on employers or labor organizations</u>			
<u>Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>

(3) In addition to the requirements of RCW 42.17A.755, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(b) The impact on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(c) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(d) Amount of financial activity by the respondent during the statement period or election cycle;

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Whether the respondent or any person, including an entity or organization, benefited politically or economically from the noncompliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) ~~((Commission))~~ PDC staff or equipment error, including technical problems at the ~~((agency))~~ PDC preventing or delaying electronic filing;

(k) The respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions;

(l) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

(m) Whether the respondent is a first-time filer;

(n) Good faith efforts to comply, including consultation with ~~((commission))~~ PDC staff prior to initiation of enforcement action and cooperation with ~~((commission))~~ PDC staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(o) Penalties imposed in factually similar cases; and

(p) Other factors relevant to a particular case.

~~(4) The commission~~~~((, and the presiding officer in brief adjudicative proceedings,))~~ may consider the factors in subsections (1) through (3) of this section in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

~~(5) ((The presiding officer in brief adjudicative proceedings may consider whether any of the factors in subsections (1) through (3) of this section are factors that warrant directing a case to the full commission.))~~ Notwithstanding the above schedule, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755, based on the aggravating factors set forth in subsections (1) through (3) of this section.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 390-37-041 Citizen action notice procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.

**WSR 18-16-037**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed July 25, 2018, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-10-067.

Title of Rule and Other Identifying Information: Chapter 16-700 WAC, State fair fund—Proration.

Hearing Location(s): On October 19, 2018, at 10:00 a.m., at the Hilton Hotel, 301 West 6th Street, Vancouver, WA 98660.

Date of Intended Adoption: October 30, 2018.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarules.comments@agr.wa.gov](mailto:wsdarules.comments@agr.wa.gov), fax 360-902-2092, by 5:00 p.m., October 22, 2018.

Assistance for Persons with Disabilities: Contact Teresa Norman, phone 360-902-2043, fax 360-902-2092, TTY 800-

833-6388 or 711, email [tnorman@agr.wa.gov](mailto:tnorman@agr.wa.gov), by October 10, 2018.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose is to update the Washington state department of agriculture's (WSDA) fair rules to be consistent with changes to state statute adopted by the legislature in 2018. Chapter 280, Laws of 2018, updated chapter 15.76 RCW to: (1) Ensure that if a fair is not held due to a natural disaster, and therefore does not conduct two successful, consecutive annual fairs, it will not lose eligibility to apply for allocations; (2) no longer restricts allocations to reimbursement for premiums and prizes; (3) allow fairs to receive reimbursement for operating expenses incurred; (4) increase the amount of the fair fund spent on allocations; and (5) clarify terms of appointment to the fairs commission. Chapter 16-700 WAC contains the requirements for agricultural fairs receiving allocations from the state fair fund. Proposed amendments reorganize the chapter and clarify qualifications and requirements for all categories of agricultural fairs.

**Reasons Supporting Proposal:** SB 6368, which amends chapter 15.76 RCW, was signed into law and became effective on June 7, 2018. Updates to the rules are necessary to comply with updates to the authorizing statute. In addition, this chapter has not been revised since 1997, lacks clarity, and contains outdated information.

**Statutory Authority for Adoption:** RCW 15.76.180 and chapter 34.05 RCW.

**Statute Being Implemented:** Chapter 15.76 RCW.

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

**Name of Proponent:** WSDA, governmental.

**Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement:** Teresa Norman, 1111 Washington Street S.E., Olympia, 360-902-2043.

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. WSDA is not a listed agency under RCW 34.05-328 (5)(a)(i).

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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(b), (d), and (e). These rules concern distribution of public funds to agricultural fairs. The rules do not regulate or change the business practices of any business.

July 25, 2018  
Patrick Capper  
Deputy Director

**AMENDATORY SECTION** (Amending WSR 80-01-019, filed 12/14/79, effective 1/1/81)

**WAC 16-700-002 Definitions.** "Agricultural fair((+))" means a fair or exhibition ((which is)) intended to promote agriculture by ((including)) having a balanced variety of exhibits of livestock and agricultural products((-as well as)); agriculture related arts and manufactures; ((including)) products of the farm home((-)); and educational contests, displays, and demonstrations designed to train youth and to promote the ((welfare of farm people and rural living)) importance of agriculture and support rural economic development. There are five categories of agricultural fairs: Area fairs, community fairs, county fairs, district fairs, and youth shows or fairs.

"Allocation" means amounts from the state fair fund, the account established in RCW 15.76.115, allocated to agricultural fair categories.

"Area fair" means an agricultural fair with both open and junior participation and an extensive diversification of classes, displays, and exhibits. Area fairs serve an area larger than one county; have organized governing boards of directors; are nonprofit; show evidence of community support; and are not under county commissioner jurisdiction.

"Community fair" means an agricultural fair with either or both open or junior classes, displays or exhibits. Community fairs do not have as extensive diversification of classes, displays, or exhibits as area, county, or district fairs. Community fairs serve an area smaller than areas served by area, county, and district fairs; have organized governing boards of directors; are nonprofit; and show evidence of community support. There may be more than one community fair in a county.

"County fair" means an agricultural fair with both open and junior participation but not as extensive diversification of classes, displays, and exhibits as an area fair. County fairs are authorized by RCW 36.37.050, serve a single county, and are under the jurisdiction of a board of county commissioners.

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture.

"District fair" means an agricultural fair with both open and youth participation but not as extensive diversification of classes, displays, and exhibits as an area fair. District fairs are authorized by RCW 36.37.050, serve more than one county, and are under county commission jurisdiction.

"Premiums and prizes" means anything of value given as a reward or incentive for exhibits and educational contests, displays, and demonstrations of an educational nature. Premiums and prizes do not include livestock sale revenues, nor anything of value given as a reward or incentive for promotional or entertainment activities, such as queen contests, parades, dances, rodeos, and races.

"Reimbursement" means a proportion of an allocation distributed to eligible applicants as reimbursement for operating costs incurred according to the requirements of chapter 15.76 RCW and this chapter.

"Youth fair or show" means a 4-H or FFA agricultural fair with the purpose of educating and training youth in agriculture and life skills. Youth fairs or shows serve three or more counties; must be approved by an approving agency;

have organized governing boards of directors; are nonprofit; and show evidence of community support.

"Youth fair or show approving agency" means either the Washington State University, which approves 4-H fairs and shows, or the office of the superintendent of public instruction, which approves FFA fairs and shows.

#### NEW SECTION

##### **WAC 16-700-015 Applications for reimbursement.**

(1) Agricultural fairs must use reimbursement application forms supplied by the department. Applicants for reimbursement must include all information requested by the application forms including, but not limited to, the number of exhibits and exhibitors, the amount awarded for premiums and prizes, and operating expenses.

(2) An area, county, or district fair applying for a reimbursement must submit to the director an annual application and a certified auditor's report of operating expenses on or before February 15th in the year following the fair.

(3) A community fair applying for a reimbursement must submit to the director an annual notarized application on or before December 1st in the year of holding the fair.

(4) Youth fairs or shows applying for a reimbursement must submit to the director an annual notarized application on or before December 1st in the year of holding the fair. The department will submit a copy of each youth fair or show application to the approving agency.

AMENDATORY SECTION (Amending WSR 80-01-019, filed 12/14/79, effective 1/1/81)

**WAC 16-700-022 Requirements to qualify for reimbursement.** ~~((A))~~ Any agricultural fair ~~((s shall))~~, except for single species youth shows, applying for reimbursement of operating expenses must:

(1) ~~((Have a written statement of aims and purposes made public.~~

~~((2))~~ Provide special activities for youth training and development, such as judging contests, educational demonstrations, and displays ~~((designed to train youth)).~~

~~((3))~~ (2) Hold all activities to be considered as part of the fair on consecutive days ~~((: Provided, That)).~~ A fair may hold a portion of these activities ~~((may be held))~~ up to seven days before the first day of the fair.

(3) Have all displays or exhibits in one place and open to the public for at least a seven-hour period.

AMENDATORY SECTION (Amending WSR 80-01-019, filed 12/14/79, effective 1/1/81)

**WAC 16-700-024 Director's review.** Any fair not qualifying under WAC ~~((16-700-021 or 16-700-022(3)))~~ 16-700-022 may apply to the director for a review of its circumstances and the director ~~((is authorized))~~ has discretion to determine eligibility ~~((on the basis))~~ in consideration of those circumstances on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 97-04-078, filed 2/5/97, effective 3/8/97)

**WAC 16-700-050 Merit criteria.** (1) After allocation to fair categories, fairs commissioners evaluate agricultural fairs to help determine the distribution of reimbursement according to the merit rating.

(2) Fairs commissioners evaluating agricultural fairs have discretion in award of merit points.

(3) In determining the merit of ~~((area, district, county and community fairs shall be determined on the basis of))~~ agricultural fairs, the fairs commissioners use standards based on the following criteria:

~~((+))~~ (a) **Aims and purposes:** ~~((For what))~~ Evidence of successful achievement of the fair or show's stated aims and purposes. Fairs and shows should have a written statement prominently displayed to the public that describes the reason or purposes ~~((is the show held and what is the evidence of successful achievement of these aims and purposes?~~

~~((2))~~ for which the fair or show is held.

(b) **Organization and management:** ~~((To what))~~ The extent ~~((is))~~ to which the organization, its officers and management, and the physical facilities and financial resources are geared to accomplish the objectives stated ~~((above?~~

~~((3))~~ **Area served:** What is the extent of the area from which exhibits and exhibitors are drawn and the extent of the area served?

~~((4))~~ in the written statement of aims and purposes.

(c) **General attractiveness:** ~~((Are))~~ The agricultural, educational, commercial and recreational features ~~((well balanced, making))~~ that help make the fair attractive to the fair-going public ~~((?~~

~~((5))~~.

(d) **Exhibits:** ~~((What is))~~ The number, quality and diversity of exhibits and their general rating judged by recognized standards of excellence, as well as their neatness and orderliness in all departments, in open and junior classes ~~((?~~

~~((6))~~.

(i) To qualify for the maximum number of animal exhibit merit points, fairs should have three or more large animal categories, such as beef, sheep, swine, horses, dairy, goats, and llamas; and three or more small animal categories, such as dogs, cats, poultry, rabbits, cavyies, and pocket pets.

(ii) To qualify for the maximum number of still life exhibit merit points, fairs should have three or more still life categories, such as baked goods, food preservation, clothing and sewn items, decorative arts, fine arts, photography, horticulture, crops, floriculture, crafts and hobbies, ag mechanics, and STEM (science, technology, engineering and mathematics) exhibits.

(iii) Animal-only fairs and shows are exempt from the still life requirement.

(e) **Community, county or area interest:** ~~((How is fair))~~ The participation and support ~~((of))~~ from the area served as indicated by ~~((of))~~ attendance, both paid and total ~~((;))~~; and ~~((of))~~ by active support ~~((of))~~ from service clubs, farm organizations and other groups ~~((?~~

~~((7))~~.

(f) **Success of the fair:** How successful ~~((does))~~ the fair appears, measured by its accomplishment in relation to resources available ~~((?)~~.

(4) In the case of youth fairs and shows, fair commissioners also consider to the extent to which the show or fair supplements youth programs; provides opportunities for showing results of supervised training in these programs; and provides special activities for youth development, such as judging contests, educational demonstrations, banquets, barbecues, programs, or other supervised recreation.

AMENDATORY SECTION (Amending Order 847, Regulation 7, effective 6/8/61)

**WAC 16-700-070 Reserve for disaster grants.** ~~((Allocations to fairs from the special assistance portion of the state fair fund shall be made on a matching basis except that this requirement may be waived in the case of assistance due to))~~ The department must reserve not less than five thousand dollars for the purpose of making disaster grants to fairs that have experienced disasters resulting from fire, flood, wind, snow, earthquake or other acts of God. ((A reserve of not less than \$5,000 shall be held for the purpose of making disaster grants.))

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-700-010 Activity reports required.
- WAC 16-700-011 Fair reorganization.
- WAC 16-700-021 Qualifications.
- WAC 16-700-027 Board of directors.
- WAC 16-700-030 Effect of donated labor, materials, and equipment.
- WAC 16-700-040 Consideration given to community support.
- WAC 16-700-060 Criteria for youth shows and fairs.
- WAC 16-700-075 Special assistance grant limits.
- WAC 16-700-080 Qualifying premiums and prizes.
- WAC 16-700-090 Effective date.

**WSR 18-16-040**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed July 25, 2018, 11:13 a.m.]

Supplemental Notice to WSR 18-08-090.

Preproposal statement of inquiry was filed as WSR 18-01-057.

Title of Rule and Other Identifying Information: Proposed rules to address the placement and storage of mini spirits bottles by spirits retail licensees: WAC 314-02-107 What are the requirements for a spirits retail license?

Hearing Location(s): On September 5, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after September 19, 2018.

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by September 5, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA Coordinator, Human Resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by August 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to address the placement and storage of mini spirits bottles for sale in a spirits retailer's premises.

Reasons Supporting Proposal: The placement and storage of mini spirits bottles is a public safety issue. The proposed rules will ensure mini spirits bottles are secured in stores frequented by minors.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.630.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Janette Benham, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1760; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

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. A cost-benefit analysis is not required because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no reporting requirements. Locking or otherwise securing mini spirits bottles would not impose more-than-minor costs on businesses in the industry.

July 25, 2018  
Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-02-107 What are the requirements for a spirits retail license?** (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

- (i) Inventory management;
- (ii) Employee training and supervision; and
- (iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2)(a) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(b) A grocery store or a specialty shop licensee that adds a spirits retail liquor license must display bottled spirits fifty milliliters or less in size offered to customers for off-premises consumption in a secure manner so a licensee or employee of the licensee must unlock or otherwise access the spirits for a customer before the customer purchases the spirits.

(i) The display of bottled spirits fifty milliliters or less in size applies whether a bottle is displayed or sold individually or in a package with other bottled spirits fifty milliliters or less in size.

(ii) Spirits retail licensees with more than fifty percent of their sales in alcohol do not need to secure bottled spirits fifty milliliters or less.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

**WSR 18-16-041**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed July 25, 2018, 12:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-067.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-482-0005 How does being a student of higher education impact my eligibility for the Washington basic food program?

Hearing Location(s): On September 4, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than September 5, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 4, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by August 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-482-0005 in order to align with federal regulations allowing the department to use average monthly employment hours when determining whether students of higher education meet the twenty hour work requirement to receive basic food benefits.

Reasons Supporting Proposal: This change is necessary to align state program rules with federal regulations.

Statutory Authority for Adoption: The state legislature authorizes the department to administer supplemental nutrition assistance program and food assistance program for legal immigrants under RCW 74.04.500, 74.04.510, and 74.08A.-120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98504, 360-725-4611.

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. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

July 19, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-043, filed 11/26/13, effective 1/1/14)

**WAC 388-482-0005 How does being a student of higher education impact my eligibility for the Washington basic food program?** (1) For basic food, we consider you a student of higher education if you are:

- (a) Age eighteen through forty-nine;
- (b) Physically and mentally able to work (we determine if you are unable to work);
- (c) Enrolled in an institution of higher education at least half-time as defined by the institution; and

(d) Enrolled in coursework considered to be higher education.

(2) An institution of higher education is:

(a) Any educational institution that requires a high school diploma or high school equivalency certificate;

(b) A business, trade, or vocational school that requires a high school diploma or high school equivalency; or

(c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or high school equivalency.

(3) If you are a student of higher education, you must also meet one of the following conditions to be eligible for basic food:

(a) You have paid employment and work an average of at least twenty hours per week ~~(-)~~ each month;

(b) You are self-employed, work, and earn at least the amount you would earn working an average of twenty hours per week at the federal minimum wage each month; or

(c) You were participating in a state or federal work study program during the regular school year.

(i) To qualify under this condition, you must:

(A) Have approval for work study at the time of application for basic food;

(B) Have work study that is approved for the school term; and

(C) Anticipate actually working during that time.

(ii) The work study exemption begins:

(A) The month in which the school term starts; or

(B) The month work study is approved, whichever is later.

(iii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends; or

(B) We find out you refused a work study assignment.

(d) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

(e) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

(f) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

(g) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

(h) You participate in the WorkFirst program under WAC 388-310-0200;

(i) You receive TANF or SFA benefits;

(j) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The basic food employment and training (~~(BF E&T)~~) program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

(4) If you are a student of higher education and the only reason you are eligible for basic food is because you are participating in work study, you are only eligible while you work and receive money from work study. If your work study stops during the summer months, you must meet another condition to be an eligible student during this period.

(5) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

(6) We do not consider you a student of higher education if you:

(a) Graduate;

(b) Are suspended or expelled;

(c) Drop out; or

(d) Do not intend to register for the next normal school term other than summer school.

#### WSR 18-16-048

#### PROPOSED RULES

#### ARTS COMMISSION

[Filed July 25, 2018, 4:58 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-051.

Title of Rule and Other Identifying Information: WAC 30-40-050 Funding, remove one sentence that places a restriction on artwork funding that does not exist in statute.

Hearing Location(s): On September 13, 2018, at 11:00 a.m., at 711 Capitol Way South, Suite 600, Olympia, WA 98504. Written comments due by September 10, 2018.

Date of Intended Adoption: September 13, 2018.

Submit Written Comments to: Terry J. West, 711 Capitol Way South, Suite 600, Olympia, WA 98504, email [terry.west@arts.wa.gov](mailto:terry.west@arts.wa.gov), fax 360-586-5351, by September 10, 2018.

Assistance for Persons with Disabilities: Contact Terry J. West, phone 360-586-5350, fax 360-586-5351, email [terry.west@arts.wa.gov](mailto:terry.west@arts.wa.gov), by September 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Remove one sentence of the WAC that places a restriction on artwork funding that does not exist in statute.

Reasons Supporting Proposal: This minor amendment allows the WAC to more accurately reflect the authorizing statute.

Statutory Authority for Adoption: RCW 43.46.040.

Statute Being Implemented: RCW 43.46.090 through 43.46.095.

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

Name of Proponent: Washington state arts commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Terry J. West, 711 Capitol Way South, Suite 600, Olympia, 360-586-5350.

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. The Washington state arts commission is not listed under this statute as required to prepare a cost-benefit analysis. The rule being amended is not considered a significant rule change.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: A small business economic impact statement is not required under chapter 19.85.030 RCW because there are not more-than-minor costs to businesses in order to comply with this minor amendment.

June 26, 2018  
Karen Hanan  
Executive Director

**AMENDATORY SECTION** (Amending WSR 18-02-086, filed 1/2/18, effective 2/2/18)

**WAC 30-40-050 Funding.** (1) Calculation of funds.

(a) Pursuant to RCW 43.46.090 through 43.46.095, one-half of one percent of the state's capital appropriation for the original construction of specific public buildings is set aside for the administration, acquisition, and conservation of works of art for the state art collection.

(b) ~~((The formula is applied to escalated maximum allowable construction cost, and may be applied to architecture and engineering fees and equipment cost.~~

(e)) Funding is generated by construction of any new building and/or additions to an existing building or structure except for highway construction sheds, warehouses, or other temporary buildings. In addition, funding is generated by any renovation and remodel work exceeding two hundred thousand dollars at universities, colleges, and community colleges. Renovation and remodel work does not include repair, maintenance, or replacement of building systems, such as HVAC, plumbing, wiring, fire sprinklers, roofs, insulation, lighting, or other system that keeps the building functional and safe.

(2) Partner agency eligibility and site requirements of funds.

(a) All state agencies including all state departments, boards, councils, commissions, and quasi-public corporations; all universities, colleges, community colleges, and technical colleges; and the office of the superintendent of public instruction who appropriates state funding to school districts for the original construction of school plant facilities, shall apply the formula.

(b) Works of art must be placed in public buildings or on public lands. In siting works of art, priority is given to state properties and K-12 public schools.

(c) Works of art may be sited in a location other than the construction site generating the funding.

(3) Use of funds.

(a) Staff is responsible for negotiating contracts and expending funds.

(b) Funds may be used for works of art in the state art collection that are:

(i) Integral to or attached to a public building or structure;

(ii) Detached inside or outside a public building or structure;

(iii) On or part of the landscape;

(iv) Permanent or temporary;

(v) Part of a portable exhibition or collection.

(c) Funds may be used for expenses incurred in the design, fabrication, and installation of works of art, artists' fees and expenses, staff administrative expenses, and conservation.

(d) Funds shall not be used for the partner agency's administrative expenses, architectural or professional design services, site preparation, public event expenses, insurance, fees for art selection committee participation, or maintenance of the work of art.

(e) Funds shall not be used for clock towers, electrically powered water features, memorials, logos, signage, or the depiction of school mascots.

(4) Determination of funds. Staff shall determine the funds that are available for projects and sites, in consultation with the partner agency; director of general administration; directors of state agencies; the superintendent of public instruction and school district boards of directors; or the boards of regents or trustees of universities, colleges, and community colleges. (RCW 43.17.210, 43.19.455, 28A.335-210, and 28B.10.025.)

(5) Supplemental funds. The one-half of one percent formula is a required minimum for works of art. Partner agencies may designate additional funds from other sources. Works of art acquired using supplemental funding become part of the state art collection.

(6) Transfer of funds. After project funds for works of art are determined, staff may request transfer of the funds from the partner agency.

(7) Pooling of funds.

(a) Staff may determine that funds from multiple construction projects may be combined as part of a pooling program or to fund larger works of art within a partner agency.

(b) Only K-12 school districts with applicable state assisted construction project funds may apply for K-12 pooled funds.

(c) Eligible K-12 school districts may apply for pooled funds pursuant to WAC 30-12-017 (Applications), WAC 30-12-030 (Panels), and in accordance with published application guidelines.

## WSR 18-16-061

### PROPOSED RULES

### EMPLOYMENT SECURITY DEPARTMENT

[Filed July 26, 2018, 5:12 p.m.]

Supplemental notice to WSR 18-12-076.

Preproposal statement of inquiry was filed as WSR 18-08-052.

Title of Rule and Other Identifying Information: Reasonable assurance, clarifying requirements for educational employees to qualify for unemployment benefits, specifically addressing modifications to the analysis of whether an educational employee has a contract or reasonable assurance of continued employment, as well as clarifying eligibility requirements for educational employees with multiple employers.

Hearing Location(s): On September 4, 2018, at 1:00 p.m., at the Employment Security Department, 212 Maple Park Avenue S.E., Maple Leaf Conference Room, Olympia, WA 98501.

Date of Intended Adoption: September 5, 2018.

Submit Written Comments to: Scott E. Michael, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 360-902-9662, by September 4, 2018.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-902-9354, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by August 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify when educational employees qualify for unemployment insurance benefits within and between academic terms by laying out more specific guidelines when an educational employee has a contract or reasonable assurance for future work; addressing when educational employees work for more than one employer; and explaining the impact of voluntary quits for educational employees that have a contract or reasonable assurance for future work.

Reasons Supporting Proposal: Adoption of the proposed rules will help keep Washington in conformity with federal laws governing its unemployment insurance program, thereby allowing Washington to continue to receive federal funding to administer its state unemployment insurance program.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.44.050, 50.44.053, 50.44.055, chapter 97, Laws of 2018.

Rule is necessary because of federal law, 26 U.S.C. § 3304 (a)(6)(A); United States Department of Labor, Unemployment Insurance Program Letter No. 5-17 (Dec. 22, 2016).

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-902-9587; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Scott E. Michael, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-902-9587, fax 360-902-9662, TTY relay 711, email rules@esd.wa.gov, https://www.esd.wa.gov/newsroom/UI-rule-making/reasonable-assurance.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 26 U.S.C. § 3304 (a)(6)(A); United States Department of Labor, Unemployment Insurance Program Letter No. 5-17 (Dec. 22, 2016). The consequence of not adopting the proposed rules is that the employment security department could lose the federal funding it receives to administer the state unemployment insurance program.

July 26, 2018  
Suzan G. LeVine  
Commissioner

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

**WAC 192-210-001 Which (~~educational employees are~~) employment is subject to RCW 50.44.050? (1) (~~Except as provided in subsection (2) of this section,~~) The provisions of RCW 50.44.050 apply only to (~~services performed in the employ of an~~) educational institutions or (~~institution of higher education~~) educational service districts operated by:**

- (a) The state;
- (b) A political subdivision of the state;
- (c) A nonprofit organization or unit; or
- (d) An Indian tribe.

(2) The provisions of RCW 50.44.050 apply to services performed either:

(a) In the employ of an educational institution; or

(b) In any educational institution while in the employ of an educational service district established pursuant to chapter 28A.310 RCW.

(3)(a) The provisions of RCW 50.44.050 do not apply if you are employed by a subsidiary business or organization owned or operated by an educational institution when:

(i) The primary purpose of the subsidiary business or organization is other than educational;

(ii) You are not employed in the role of (~~faculty~~) instructional, research or principal administrative staff; and

(iii) Your regular employment does not depend on the (~~school's~~) educational institution's academic calendar.

(b) All three criteria must be met in order for your services to be exempt from the provisions of RCW 50.44.050. For example:

(i) You work for Pack Forest (operated by the University of Washington, College of Forest Resources) or one of the extension programs operated by Washington State University. You are not employed in the role of (~~faculty~~) instructional, research or principal administrative staff and your regular employment does not depend on the (~~school's~~) educational institution's academic calendar. However, the primary purpose of each of these entities is educational. Employment



for these entities is subject to the provisions of RCW 50.44.-050 regardless of the nature of your employment.

(ii) You work for a radio station that is wholly owned and operated by a college. The primary purpose of the business is other than educational, you are not employed in the role of ~~((faculty))~~ instructional, research, or principal administrative staff, and your regular employment does not depend on the ~~((school's))~~ educational institution's academic calendar. You are not subject to the restrictions of RCW 50.44.050.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

**WAC 192-210-005 Definitions—Educational employees.** ~~((1) Contract. An agreement that is binding on an educational institution to provide work and on an individual to perform services.~~

~~(2) Faculty. A teacher, counselor, librarian, or other position with similar training, experience and level of responsibility.~~

~~(3) Full-time employment. Employment designated as full time for or at the educational institution under a collective bargaining agreement, individual hiring contract, or other agreement (including institutional policies), as provided in RCW 50.04.310(2). For faculty at public institutions, the hiring contract, agreement or institutional policy must be consistent with the provisions of RCW 28A.405.210 (kindergarten through twelfth grade), RCW 28B.50.851 (community and technical colleges), RCW 28B.35.120 (regional universities), or RCW 28B.20.130 (other colleges and universities).~~

~~(4) Under the same terms and conditions of employment. This includes economic conditions of employment such as wages, duration of contract, hours of work, and general nature of the work. It does not include other conditions and details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test. A position would be considered to be under the same terms and conditions of employment if it is of similar type or classification, with similar pay, fringe benefits, hours of work, general type of work, and duration of employment.)~~ (1) Considerably less. The economic conditions of an offer of employment are considerably less if the individual will not earn at least ninety percent of the total wages earned in the prior academic year or term.

(2) Educational institution. Includes any public or private preschool, elementary school, secondary school, technical or vocational school, community college, college, and university.

(3) Educational service district means an educational service district established pursuant to chapter 28A.310 RCW.

(4) Highly probable means very likely.

(5) Nonprofessional capacity. Includes all other services not performed in a professional capacity, regardless of the legal or educational requirements to perform such services.

(6) Professional capacity. Includes services performed in an instructional, research, or principal administrative capacity.

(7) Same capacity. In order for services to be performed in the same capacity, both the current work and the future work must both be in a professional capacity or both be in a nonprofessional capacity, even if the job titles or duties are different. In addition, both the current work and the future work must both be for an educational institution or both be for an educational services district, even if the employers or districts are different. For example:

(a) An assistant principal for the ABC school district has a contract to be a teacher for the XYZ school district the following academic year. These two positions are in the same capacity.

(b) A counselor who performed services in an educational institution for an educational services district is given reasonable assurance to work as a counselor directly for an educational institution the following academic year. These two positions are not in the same capacity.

(8) Totality of the circumstances. Analyzing the totality of the circumstances requires considering factors such as funding (including appropriations), enrollment, the nature of the course (required or optional, taught regularly or only sporadically), the claimant's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies.

AMENDATORY SECTION (Amending WSR 99-18-066, filed 8/31/99, effective 10/1/99)

**WAC 192-210-010 What are the objective criteria used to define "academic year"?—~~See RCW 50.44.050((5))~~ (6).** Summer term will be considered part of the academic year for an educational institution unless:

(1) Total enrollment of full-time equivalent students during the previous summer term is less than one third of the average academic year enrollment of full-time equivalent students for the fall, winter, and spring terms of the preceding two years; or

(2) Total full-time equivalent staff during the previous summer term is less than fifty percent of the academic year average of the full-time equivalent staff during the fall, winter, and spring terms during the preceding two years.

AMENDATORY SECTION (Amending WSR 02-19-009, filed 9/5/02, effective 10/6/02)

**WAC 192-210-015 How will the department decide if an individual has a contract or reasonable assurance ~~((exists))~~ of future work?—~~See RCW 50.44.053.~~ ((Reasonable assurance is a bona fide offer from an educational institution to assign an individual future work at that institution under the same terms and conditions as the individual's previous employment. It is less than a contract or written agreement, but more than a mere possibility of future employment. The department must find that continued employment for that individual is likely or probable. For instructional, research, or principal administrative staff at a community or technical college, the additional provisions of WAC 192-210-020 will**

be considered in determining whether the individual has reasonable assurance.) (1)(a) For individuals who perform services in a professional capacity, wages and hours from an educational institution or educational services district will count towards the individual's base year and benefit year unless the educational institution or educational services district shows it is highly probable that the individual meets the three prerequisites in subsection (2) of this section and the educational institution or educational services district shows it is highly probable that the individual either has a contract for future work under subsection (3) of this section or reasonable assurance of future work under subsection (4) of this section.

(b) For individuals who perform services in a nonprofessional capacity, wages and hours from an educational institution or educational services district will count towards the individual's base year and benefit year unless the educational institution or educational services district shows it is highly probable that the individual meets the three prerequisites in subsection (2) of this section and the educational institution or educational services district shows it is highly probable that the individual has reasonable assurance of future work under subsection (4) of this section.

(c) When determining if an individual has a contract or reasonable assurance of future work, the department will use the facts as they are known at the time the individual filed his or her weekly claim.

(2) In order for there to be a contract or reasonable assurance of future work, the following three prerequisites must be met:

(a) There is a written, verbal or implied offer of employment made by an individual with actual authority to offer employment;

(b) The offer of employment provides that the employee will perform services in the same capacity during the ensuing academic year or term (or remainder of the current academic year or term) as in the first academic year or term; and

(c) The economic conditions of the offer of employment may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof).

(3) A contract for future work is an agreement that is:

(a) Enforceable by both the employer and employee;

(b) Noncontingent; and

(c) Provides for compensation for either:

(i) An entire academic year; or

(ii) On an annual basis.

(4) Reasonable assurance of future work exists if either:

(a) There are no contingencies in the offer of employment that are within the employer's control; and

(b) After giving primary weight to contingent nature of an offer of employment and considering the totality of the circumstances, it is highly probable that the contingencies contained in the offer of employment will be met and there will be a job available for the claimant in the following academic year or term; or

(c) The individual is tenured or holds tenure track status, unless advised otherwise by the institution of higher education. An individual holds tenure track status if he or she is a

probationary faculty employee having an opportunity to be reviewed for tenure.

(5) For the purposes of determining whether reasonable assurance of future work exists under subsection (4) of this section, contingencies considered to be in the employer's control include, but are not limited to, course programming, funding allocation decisions, final course offerings, and facility availability. Contingencies considered to be outside of the employer's control include, but are not limited to, enrollment and the availability of funding from an outside source, such as a grant.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

**WAC 192-210-045** When does ~~((reasonable assurance))~~ **RCW 50.44.050** apply if ~~((#))~~ **an individual works for more than one ((school)) employer? ~~((1))~~ RCW 50.44.050 prevents the payment of benefits when "any and all" school wages for "any and all" schools for **any** week of unemployment fall between two successive academic terms or during holiday or vacation break periods.**

(2) If you receive reasonable assurance for the following academic term from any school, the wages from all schools for whom you worked during the preceding academic term or break will be restricted:

Example: You worked for ABC and XYZ schools during spring 2009. You received reasonable assurance of returning to work during the fall 2009 term from ABC School but not from XYZ School. The wages from both schools must be restricted during the period between academic terms or breaks.

(3) The period during which wages will be restricted begins during the first full week in which any school for which you worked during the preceding academic term is on break and continues through the last full week in which all schools for which you worked during the preceding academic term have resumed a term of instruction.

Example: You worked for ABC and XYZ schools during the 2008-2009 academic year. Summer is not part of the academic year for either school. ABC School's summer break begins June 15, 2009, and ends September 2, 2009. XYZ School's break begins June 22, 2009, and ends September 9, 2009. Your school wages must be restricted from June 14, 2009, through September 5, 2009.) An educational institution or educational services district that offers a contract or reasonable assurance of future work will not have its hours or wages count towards a claimant's base year and benefit year. The wages and hours from all other base year employers may count towards a claimant's base year and benefit year, unless another provision applies to exclude the wages and hours. If the claimant does qualify for benefits, the educational institutions or educational services districts that offered a contract or reasonable assurance of future work will not be charged for benefits paid or be required to reimburse the department for benefits paid. For example:

(1) An individual works for both the ABC elementary school and the XYZ elementary school during the base year. The ABC elementary school offers reasonable assurance of future work, while the XYZ elementary school does not.

Only the wages and hours from the XYZ elementary school may count towards the individual's base year and benefit year.

(2) An individual works full time as a computer programmer for a software company during the day. At night, the individual also teaches a programming class at a technical college. At the end of the spring term, the individual is laid off from the software company and receives a contract or reasonable assurance of future work from the technical college. Only the wages and hours from the software company may count towards the individual's base year and benefit year.

#### NEW SECTION

**WAC 192-210-055 What is the impact of voluntary quits on the between and within terms denial provisions of RCW 50.44.050?** An employee of an educational institution, or an employee of an educational services district that performs services in an educational institution, who voluntarily leaves work for reasons that constitute good cause under RCW 50.20.050 may have the hours and wages from the educational institution or educational services district count towards the base year or benefit year, even if the employee has a contract or reasonable assurance of future work.

#### NEW SECTION

**WAC 192-210-060 Under what circumstances is an educational employee entitled to retroactive payments of unemployment benefits?** (1) A nonprofessional employee who is denied unemployment benefits pursuant to RCW 50.44.050 can receive a retroactive payment of unemployment benefits if:

(a) The employee filed a timely claim for benefits for each week claimed;

(b) Benefits were originally denied for that week solely pursuant to RCW 50.44.050 because the employee received a reasonable assurance of future work; and

(c) Despite the reasonable assurance of future work, work was not actually available in the ensuing academic year or term.

(2) A professional employee who is denied benefits pursuant to RCW 50.44.050 because the employee received a contract or reasonable assurance of future work cannot receive a retroactive payment of unemployment benefits, even if work is not actually available in the ensuing academic year or term.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-210-020 Reasonable assurance for instructional, research, or principal administrative staff at a community or technical college—RCW 50.44.053(3).

### WSR 18-16-075 PROPOSED RULES DEPARTMENT OF HEALTH

[Filed July 30, 2018, 10:49 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-907-030 Pharmaceutical licensing periods—Fees and renewal cycle, 246-907-0301 Pharmacy assistant licensing periods and fees—Fees and renewal cycle and 246-907-0302 Hospital pharmacy associated clinics licensing periods and fees—Fees and renewal cycle; the department is proposing fee increases for many of the pharmacy program fees, including pharmacy professions and pharmaceutical firms. The department is also proposing a few fee decreases to simplify the fee schedule, and changes to duplicate credential, verification of credential, and late renewal penalties to align them with standards for all health professions. The proposal includes repeal of WAC 246-907-0301 and moving fees for pharmacy assistants to WAC 246-907-030.

Hearing Location(s): On September 4, 2018, at 1:00 p.m., at the Department of Health (DOH), Town Center 2, 111 Israel Road S.E., Room 158, Tumwater, WA 98501.

Date of Intended Adoption: September 14, 2018.

Submit Written Comments to: Sherry Thomas, Policy Coordinator, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 4, 2018.

Assistance for Persons with Disabilities: Contact Sherry Thomas, phone 360-236-4612, TTY 360-833-6388 or 711, email [sherry.thomas@doh.wa.gov](mailto:sherry.thomas@doh.wa.gov), by August 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current fees are not generating sufficient revenue to keep the program self-supporting as required in the law. The pharmacy program budget is currently in a \$1 million deficit that is anticipated to grow to \$12 million by 2025 if fees are not increased. This deficit is caused by a number of factors that included a large increase in complaint volume and multiple legislative changes that increased inspection and enforcement activities, created newly regulated facilities, and converted the pharmacy board from a seven member board to a fifteen member commission, all of which have contributed to the need for more investigators and other staff. In addition, the pharmacy program must increase staffing to address the current and projected workload of the commission, which includes substantial revision and consolidation of thirty current WAC chapters and related procedures to address changes in technology and the health care system. Section 219(16), chapter 1, Laws of 2017, provided additional spending authority to the commission that has been pending adoption of these proposed fee rules.

The department is proposing increases to initial credential and renewal fees for many of the pharmacy credentials to include pharmacy professions and pharmaceutical firms. The fees for controlled substances researcher are not changing because they were substantially increased in 2016. The department anticipates these changes will best help the program recover from the current large deficit and reach the

desired fund balance of fifteen percent over an eight year period. The department is also proposing adjustments to standardize fees for late renewal, verification of credentials, and duplicate credentials, a few small fee decreases to simplify the fee schedule, and formatting changes to help credential holders determine which fees they are required to pay. In addition, the department is proposing including the pharmacy assistant fees in WAC 246-907-030 and repealing WAC 246-907-0301.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's/program's members and licensing fees to be based on licensure costs. Increasing fees to the proposed levels will allow this program's revenues to align with current and projected expenses and avoid the anticipated \$12 million budget deficit over an eight year period. The other fee adjustments and formatting changes will simplify the fee schedule and create consistency in the fees for functions that require similar staff time to complete across all health professions/programs.

The commission and the department will continue to monitor the budget and identify efficiencies where possible to attempt to lower the expenditure growth rate of seven percent down to 3.5 percent. The process to identify potential efficiencies is anticipated to begin in August 2018.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250, 43.70.280, chapters 18.64 and 18.64A RCW.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4612.

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. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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 rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 27, 2108 [2018]  
John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 16-18-087, filed 9/6/16, effective 10/7/16)

**WAC 246-907-030 Pharmaceutical licensing (~~periods and fees~~) fees and renewal cycle.** (1) Pharmacist, pharmacy technician, ~~(and)~~ pharmacy intern ~~(licenses)~~, and pharmacy assistant credentials must be renewed every

year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Pharmacy location ~~(controlled substance registration (pharmacy))~~ credentials, controlled ~~(Substances Act)~~ substance researcher registration, ~~(pharmacy technician utilization, and shopkeepers differential hours licenses)~~ drug dog handler K9 registration, and other Controlled Substances Act registrations will expire on June 1st of each year.

(3) All other ~~(licenses)~~ credentials, including health care entity ~~(licenses, registrations, permits, or certifications)~~ will expire on October 1st of each year, except the shopkeeper endorsement which expires annually associated with a business license issued by the department of revenue.

(4) The following nonrefundable fees will be charged for pharmacy ~~(location)~~ professionals:

<del>(Title of fee</del>	<b>Fee</b>
<del>Original pharmacy fee</del>	\$370.00
<del>Original pharmacy technician utilization fee</del>	65.00
<del>Renewal pharmacy fee</del>	405.00
<del>Renewal pharmacy technician utilization fee</del>	75.00
<del>Penalty pharmacy fee</del>	205.00

(5) The following nonrefundable fees will be charged for vendor:

<del>Original fee</del>	75.00
<del>Renewal fee</del>	75.00
<del>Penalty fee</del>	50.00

(6) The following nonrefundable fees will be charged for pharmacist:

<del>Original license fee</del>	145.00
<del>Renewal fee, active and inactive license</del>	190.00
<del>Renewal fee, retired license</del>	25.00
<del>Penalty fee</del>	100.00
<del>Expired license reissuance (active and inactive)</del>	90.00
<del>Reciprocity fee</del>	335.00
<del>Certification of license status to other states</del>	30.00
<del>Retired license</del>	25.00
<del>Temporary permit</del>	65.00

(7) The following nonrefundable fees will be charged for shopkeeper:

<del>Original fee</del>	40.00
<del>Renewal fee</del>	40.00
<del>Penalty fee</del>	40.00
<del>Shopkeeper - With differential hours:</del>	
<del>Original fee</del>	35.00

Renewal fee	35.00
Penalty fee	35.00
<del>(8) The following nonrefundable fees will be charged for drug manufacturer:</del>	
Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00
<del>(9) The following nonrefundable fees will be charged for drug wholesaler – Full line:</del>	
Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00
<del>(10) The following nonrefundable fees will be charged for drug wholesaler – OTC only:</del>	
Original fee	330.00
Renewal fee	330.00
Penalty fee	165.00
<del>(11) The following nonrefundable fees will be charged for drug wholesaler – Export:</del>	
Original fee	590.00
Renewal fee	590.00
Penalty	295.00
<del>(12) The following nonrefundable fees will be charged for drug wholesaler – Export nonprofit humanitarian organization:</del>	
Original fee	25.00
Renewal fee	25.00
Penalty	25.00
<del>(13) The following nonrefundable fees will be charged for pharmacy technician:</del>	
Original fee	60.00
Renewal fee	50.00
Penalty fee	50.00
Expired license reissuance	50.00
<del>(14) The following nonrefundable fees will be charged for pharmacy intern:</del>	
Original registration fee	30.00
Renewal registration fee	30.00
<del>(15) The following nonrefundable fees will be charged for Controlled Substances Act (CSA):</del>	

Registrations-	
Dispensing registration fee (i.e., pharmacies and health care entities)	80.00
Dispensing renewal fee (i.e., pharmacies and health care entities)	65.00
Distributors registration fee (i.e., wholesalers)	115.00
Distributors renewal fee (i.e., wholesalers)	115.00
Manufacturers registration fee	115.00
Manufacturers renewal fee	115.00
Sodium pentobarbital for animal euthanization registration fee	40.00
Sodium pentobarbital for animal euthanization renewal fee	40.00
Researchers registration fee	400.00
Researchers renewal fee	400.00
Other CSA registrations	40.00
<del>(16) The following nonrefundable fees will be charged for legend drug sample – Distributor:</del>	
Registration fees	
Original fee	365.00
Renewal fee	265.00
Penalty fee	135.00
<del>(17) The following nonrefundable fees will be charged for poison manufacturer/seller – License fees:</del>	
Original fee	40.00
Renewal fee	40.00
<del>(18) The following nonrefundable fees will be charged for facility inspection fee:</del>	
	200.00
<del>(19) The following nonrefundable fees will be charged for precursor control permit:</del>	
Original fee	65.00
Renewal fee	65.00
<del>(20) The following nonrefundable fees will be charged for license reissue:</del>	
Reissue fee	30.00
<del>(21) The following nonrefundable fees will be charged for health care entity:</del>	
Original fee	365.00
Renewal	265.00
Penalty	135.00))

(a) All pharmacy professionals:

<u>Title of fee</u>	<u>Fee</u>
<u>Verification of credential</u>	<u>\$25.00</u>
<u>Duplicate credential</u>	<u>10.00</u>

(b) Pharmacist:

<u>Original credential</u>	<u>\$200.00</u>
<u>Renewal</u>	<u>265.00</u>
<u>Late renewal penalty</u>	<u>135.00</u>
<u>Expired credential reissuance</u>	<u>265.00</u>
<u>Inactive credential renewal</u>	<u>265.00</u>
<u>Retired credential application</u>	<u>25.00</u>
<u>Retired credential renewal</u>	<u>25.00</u>
<u>Temporary permit</u>	<u>100.00</u>
<u>Reciprocity</u>	<u>465.00</u>

(c) Pharmacy technician:

<u>Original credential</u>	<u>\$70.00</u>
<u>Renewal</u>	<u>70.00</u>
<u>Late renewal penalty</u>	<u>50.00</u>
<u>Expired credential reissuance</u>	<u>70.00</u>

(d) Pharmacy intern:

<u>Original credential</u>	<u>\$45.00</u>
<u>Renewal</u>	<u>45.00</u>
<u>Late renewal penalty</u>	<u>45.00</u>
<u>Verification of internship hours</u>	<u>25.00</u>
<u>Expired credential reissuance</u>	<u>45.00</u>

(e) Pharmacy assistant:

<u>Original credential</u>	<u>\$35.00</u>
<u>Renewal</u>	<u>35.00</u>
<u>Late renewal penalty</u>	<u>35.00</u>
<u>Expired credential reissuance</u>	<u>35.00</u>

(5) The following nonrefundable fees will be charged for pharmaceutical firms:

(a) All pharmaceutical firms:

<u>Verification of credential</u>	<u>\$25.00</u>
<u>Duplicate credential</u>	<u>10.00</u>
<u>Facility inspection</u>	<u>400.00</u>

(b) Pharmacy (includes hospital pharmacies):

Pharmacy credential (for hospital pharmacy associated clinics, see WAC 246-907-0302)

<u>Original credential</u>	<u>\$540.00</u>
<u>Renewal</u>	<u>540.00</u>

<u>Late renewal penalty</u>	<u>270.00</u>
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**Pharmacy technician utilization**

<u>Original utilization</u>	<u>100.00</u>
<u>Renewal</u>	<u>100.00</u>

**Controlled substances authority**

<u>Original credential</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>

**With differential hours**

<u>Original credential</u>	<u>55.00</u>
<u>Renewal</u>	<u>55.00</u>

(c) Nonresident pharmacy:

**Pharmacy credential**

<u>Original credential</u>	<u>\$540.00</u>
<u>Renewal</u>	<u>540.00</u>
<u>Late renewal penalty</u>	<u>270.00</u>

**Controlled substances authority**

<u>Original credential</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>

(d) Controlled substance researcher:

<u>Original credential</u>	<u>\$400.00</u>
<u>Renewal</u>	<u>400.00</u>

(e) Other controlled substances act registrations (i.e., analytical laboratories, school laboratories):

<u>Original credential</u>	<u>\$360.00</u>
<u>Renewal</u>	<u>360.00</u>

(f) Drug dog handler K9 registration:

<u>Original credential</u>	<u>\$55.00</u>
<u>Renewal</u>	<u>55.00</u>

(g) Health care entity:

**Health care entity credential**

<u>Original credential</u>	<u>\$540.00</u>
<u>Renewal</u>	<u>540.00</u>
<u>Late renewal penalty</u>	<u>270.00</u>

**Controlled substances authority**

<u>Original credential</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>

(h) Drug manufacturer:

**Manufacturer credential**

<u>Original credential</u>	<u>\$825.00</u>
<u>Renewal</u>	<u>825.00</u>
<u>Late renewal penalty</u>	<u>300.00</u>

**Controlled substances authority**

Original credential 150.00  
Renewal 150.00

(i) Drug wholesaler - Full line:

**Wholesaler credential**

Original credential \$825.00  
Renewal 825.00  
Late renewal penalty 300.00

**Controlled substances authority**

Original credential 150.00  
Renewal 150.00

(j) Drug wholesaler - Export:

**Wholesaler credential**

Original credential \$825.00  
Renewal 825.00  
Late renewal penalty 300.00

(k) Drug wholesaler - OTC only:

Original credential \$465.00  
Renewal 465.00  
Late renewal penalty 235.00

(l) Drug wholesaler - Export nonprofit humanitarian organization:

**Wholesaler credential**

Original credential \$25.00  
Renewal 25.00  
Late renewal penalty 25.00

(m) Legend drug sample distributor:

**Distributor credential**

Original credential \$540.00  
Renewal 540.00  
Late renewal penalty 270.00

**Controlled substances authority**

Original credential 150.00  
Renewal 150.00

(n) Poison manufacturer/seller:

Original credential \$55.00  
Renewal 55.00  
Late renewal penalty 50.00

(o) Precursor chemicals:

Original credential \$55.00

Renewal 55.00  
Late renewal penalty 50.00

(p) Itinerant vendor:

Original credential \$55.00  
Renewal 55.00  
Late renewal penalty 50.00

(q) Sodium pentobarbital for animal euthanization:

Original credential \$55.00  
Renewal 55.00  
Late renewal penalty 50.00

(r) Shopkeeper:

Original credential \$55.00  
Renewal 55.00

AMENDATORY SECTION (Amending WSR 16-18-069, filed 9/2/16, effective 9/8/16)

**WAC 246-907-0302 Hospital pharmacy associated clinics (~~licensing periods and fees~~) fees and renewal cycle.** (1) Parent hospital pharmacy licenses with one or more hospital pharmacy associated clinics (HPAC) expire on June 1st of each year.

(2) A parent hospital pharmacy must submit fees for HPACs in addition to fees set in WAC 246-907-030(4). HPAC fees are due annually, except as provided under subsection (3)(d) of this section.

(3) A parent hospital pharmacy must submit the following nonrefundable fees based on category and number of HPACs as defined in WAC 246-873A-020(3) added to the parent hospital pharmacy license.

(a) **Category 1 HPAC.** A parent hospital pharmacy must submit the Category 1 HPAC fee according to the number of Category 1 HPACs under the parent hospital pharmacy license.

HPAC tier	Number of Category 1 HPACs under parent hospital pharmacy license	Total annual fee
A	1-10	<del>\$(640.00)</del> 895.00
B	11-50	<del>\$(1,600.00)</del> 2,240.00
C	51-100	<del>\$(2,240.00)</del> 3,125.00
D	Over 100	<del>\$(2,880.00)</del> 4,025.00

(b) **Category 2 HPAC.** A parent hospital pharmacy must submit the Category 2 HPAC fee for each Category 2 HPAC under the parent hospital pharmacy license.

Category 2 HPAC fee	\$(( <del>540.00</del> )) 755.00
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(c) The department charges a processing fee of fifty-five dollars for an amended license to change the number of HPACs.

(d) If at any time a parent hospital pharmacy submits an addendum increasing the number of HPACs on the parent hospital pharmacy license, which changes the applicable HPAC tier to a higher fee amount, the parent hospital pharmacy shall submit the difference in fees with the addendum.

(e) The department will not refund fees when a tier reduction occurs between renewal periods.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 246-907-0301 Pharmacy assistant licensing periods and fees—Fees and renewal cycle.

**WSR 18-16-077  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed July 30, 2018, 11:15 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-915-990 Physical therapist fees and renewal cycle, 246-915-99005 Physical therapist assistant fees and renewal cycle, and 246-915A-990 Physical therapist and physical therapist assistant compact privilege fees and renewal cycle, proposing to increase renewal fees for physical therapists (PT) and physical therapist assistants (PTA), and adjustments to duplicate credential and late renewal fees. Also proposing a new section to add fees to implement the physical therapy licensure compact (compact).

Hearing Location(s): On September 11, 2018, at 10:00 a.m., at the Department of Health (DOH), Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 18, 2018.

Submit Written Comments to: Sherry Thomas, Policy Coordinator, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 4, 2018.

Assistance for Persons with Disabilities: Contact Sherry Thomas, phone 360-236-4612, fax 360-236-2901, TTY 360-833-6388 or 711, email [sherry.thomas@doh.wa.gov](mailto:sherry.thomas@doh.wa.gov), by September 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current fees are not generating sufficient revenue to keep the program self-supporting. DOH has set a desired fund balance for this program, a reserve available for unanticipated expenditures such as costly disciplinary cases, at twenty percent. The fund bal-

ance has fallen below the desired fund balance, and is projected to fall into a deficit next biennium. The purpose of the proposed fee increases is to bring licensing fee revenues in alignment with the actual costs of regulating PTs and PTAs. DOH reduced fees for the PT program in 2015 because projections were showing a growing surplus in the fund balance. In the same fee rule, DOH substantially reduced the PTA fees so they weren't paying more than PTs. These projections were based on the best information available at the time, however, actual revenue and expenditures vary and are difficult to predict, and analysis now shows revenue has been lower than projected and expenditures higher. DOH is proposing to increase the renewal fee for PTs back up to the level it was prior to the 2015 fee reduction. DOH is proposing to increase the PTA renewal fee as well, while still maintaining a lower fee than PTs and still far below the pre-2015 level.

DOH is also proposing new fees to implement the compact that was enacted in chapter 108, Laws of 2017. The legislation directs DOH, in consultation with the board of physical therapy (board), to set fees for the compact privilege to meet the financial obligations of participating. An applicant for the compact privilege must have a current license in his or her home state with no encumbrances and no adverse actions in the previous two years.

DOH is also proposing adjustments to standardize fees for late renewal and duplicate credentials to meet agency standards for health profession fees.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. Without the proposed fee increases, the fund balance is anticipated to fall into a deficit next biennium.

RCW 18.74.510 (as amended in chapter 108, Laws of 2017) directs DOH, in consultation with the board, to establish fees to implement the compact. RCW 43.70.320 (also amended in chapter 108, Laws of 2017) requires the fees received for compact privilege to be used only for the purpose of meeting financial obligations imposed as a result of this state's participation in the compact.

DOH is proposing to maintain the current application/initial license fees at the request of the board because they thought increasing those fees might create a disincentive to licensure in Washington. The other fee adjustments will create consistency in the fees for functions that require similar staff time to complete across health professions.

Statutory Authority for Adoption: RCW 18.74.510, 43.70.250, 43.70.320.

Statute Being Implemented: RCW 18.74.510.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4612; and Enforcement: Kris Waidely, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4847.

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. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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 rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 27, 2018  
John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

**WAC 246-915-990 Physical ((therapy)) therapist fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
<b>Original application</b>	
Application	\$65.00
<b>Active license renewal</b>	
License renewal	(( <del>50.00</del> )) <u>75.00</u>
Late renewal penalty	50.00
Expired license reissuance	50.00
<b>Inactive license renewal</b>	
License renewal	35.00
Expired license reissuance	50.00
<b>Duplicate license</b>	
	(( <del>15.00</del> )) <u>10.00</u>
<b>Verification of license</b>	
	25.00

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

**WAC 246-915-99005 Physical therapist assistant fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for physical therapist assistant:

Title of Fee	Fee
<b>Original application</b>	
Application	\$60.00
<b>Active license renewal</b>	
License renewal	(( <del>45.00</del> )) <u>70.00</u>

Title of Fee	Fee
Late renewal penalty	(( <del>45.00</del> )) <u>50.00</u>
Expired license reissuance	50.00
<b>Inactive license renewal</b>	
License renewal	35.00
Expired license reissuance	50.00
<b>Duplicate license</b>	
	(( <del>15.00</del> )) <u>10.00</u>
<b>Verification of license</b>	
	25.00

**Chapter 246-915A WAC**

**PHYSICAL THERAPY LICENSURE COMPACT**

NEW SECTION

**WAC 246-915A-990 Physical therapist and physical therapist assistant compact privilege fees and renewal cycle.** (1) The compact privilege must be renewed no later than the expiration date of the home state license. The compact privilege holder must comply with all physical therapy licensure compact eligibility requirements in this chapter to maintain the compact privilege.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$45.00
Renewal	45.00
Late renewal penalty	45.00

**WSR 18-16-078**

**PROPOSED RULES**

**STATE BOARD OF HEALTH**

[Filed July 30, 2018, 12:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-065.

Title of Rule and Other Identifying Information: WAC 246-215-09150 Employee restrooms—Toilet facilities, the state board of health proposes to increase the maximum distance to a readily accessible employee bathroom from within two hundred feet to within five hundred feet for mobile food units (food trucks).

Hearing Location(s): On October 10, 2018, at 1:30 p.m., at the Kittitas Valley Event Center, 901 East 7th Avenue, Ellensburg, WA 98926.

Date of Intended Adoption: October 10, 2018.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by September 19, 2018.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-4104, TTY 360-833-6388 or 711, email [Melanie.Hisaw@sboh.wa.gov](mailto:Melanie.Hisaw@sboh.wa.gov), by October 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The maximum distance of two hundred feet to a readily accessible restroom is a difficult requirement to meet and limits the number of sites where mobile food units can operate. The proposal increases the maximum distance to five hundred feet. The increase in distance provides more sites for mobile food units to operate while still protecting public health.

Reasons Supporting Proposal: The Washington State Food Truck Association petitioned the state board of health (board) to increase the maximum distance allowed to an approved toilet facility from within two hundred feet to within five hundred feet. Staff from the department of health (department) reviewed the petition and recommended that the board accept the petition. The board agreed with the recommendation and asked department staff to assess the impact and merits of the proposed change. The department evaluated the proposal and contacted industry, local health jurisdictions and other stakeholders. Based on the evaluation and recommendation from the department's food safety advisory council, the proposed rule balances the benefit of accommodating more food service locations for the mobile food industry while still ensuring access to toilet and handwashing facilities at a reasonable distance to protect public health.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 43.20.050.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Joseph Graham, Department of Health, Town Center 3, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3305.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-4031, TTY 360-833-6388 or 711, email [peter.beaton@doh.wa.gov](mailto:peter.beaton@doh.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not create any compliance costs for small businesses. The proposed rule reduces the burden on businesses.

July 30, 2018  
Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09150 Employee restrooms—Toilet facilities.** The PERMIT HOLDER shall ensure APPROVED toilet facilities are available for employees:

(1) Readily accessible and within (~~(200)~~) 500 feet of the MOBILE FOOD UNIT during times of operation, if at any one location for more than one hour; and

(2) Provided with handwashing facilities that meet the requirements specified under WAC 246-215-05210.

**WSR 18-16-079**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed July 30, 2018, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-053.

Title of Rule and Other Identifying Information: WAC 246-810-029(3) Acceptable continuing education courses for a certified counselor and certified adviser, the department of health is proposing rule language that will increase the amount of allowable distance learning program hours from twelve to up to twenty hours per reporting period.

Hearing Location(s): On September 12, 2018, at 9:30 a.m., at the Department of Health (DOH), Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: September 19, 2018.

Submit Written Comments to: Brett Lorentson, DOH, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 12, 2018.

Assistance for Persons with Disabilities: Contact Brett Lorentson [Lorentson], phone 360-236-4611, TTY 360-833-6388 or 711, email [Brett.Lorentson@doh.wa.gov](mailto:Brett.Lorentson@doh.wa.gov), by September 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will increase the amount of allowable distance learning hours from twelve to up to twenty hours per reporting period.

Reasons Supporting Proposal: Increasing the allowable amount of distance learning hours provides greater flexibility to these health care professionals, particularly those in rural areas of Washington.

Statutory Authority for Adoption: RCW 18.19.050.

Statute Being Implemented: RCW 18.19.050.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Lorentson, 111 Israel Road S.E., Tumwater, WA 98504-7852, 360-236-4611.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brett Lorentson, DOH, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4611, fax 360-236-2901, TTY 360-833-6388 or 711, email Brett.Lorentson@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impact businesses.

July 27, 2018

John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

**WAC 246-810-029 Acceptable continuing education courses for certified counselor and certified adviser.** (1) A continuing education program or course must be relevant to counseling and must contribute to the advancement, extension and enhancement of the professional competence of the credential holder. Relevant courses include those that are related to counseling theory and practice, modality(ies) of the counseling services the credential holder will provide, professional ethics, courses related to risk assessment, screening using the global assessment of functioning scale, referral of clients, and Washington state law applicable to counseling.

(2) Continuing education courses, seminars, workshops, training programs, and institutes must have a featured instructor, speaker(s), or panel approved by an industry-recognized institution of higher learning, or a local, state, national, or international organization.

(3) Distance learning programs approved by an industry-recognized local, state, national or international organization or educational organization may meet these requirements. The programs must require a test of comprehension upon completion. Distance learning programs are limited to ((twelve)) twenty hours per reporting period.

(4) Other learning experiences, such as serving on a panel, board or council, community service, research, peer consultation, or publishing articles for professional publications are acceptable if the experience contributes to the advancement, extension, and enhancement of the professional competence of the certified counselor or certified adviser. The experience is limited to six hours per reporting period.

**WSR 18-16-086**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Optometry)  
[Filed July 30, 2018, 4:24 p.m.]

Supplemental Notice to WSR 17-19-045.

Preproposal statement of inquiry was filed as WSR 17-07-047.

Title of Rule and Other Identifying Information: WAC 246-851-550 Sexual misconduct, the board of optometry (board) is proposing to amend the rule to clarify and update the sexual misconduct rule to establish what forcible or non-consensual acts are within the definition of sexual misconduct by optometrists. The board's proposed rule adds acts of sexual misconduct which include sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense. This supplemental notice adds the term "patient" which was inadvertently left out, and corrects a citation.

Hearing Location(s): On September 7, 2018, at 10:00 a.m., at the Department of Health (DOH), Kent Regional Office, Creekside Two at Center Point, 20425 72nd Avenue South, Room 306, Kent, WA 98032.

Date of Intended Adoption: September 7, 2018.

Submit Written Comments to: Lorelei Walker, Program Manager, DOH, Board of Optometry, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by date August 31, 2018.

Assistance for Persons with Disabilities: Contact Lorelei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email [loralei.walker@doh.wa.gov](mailto:loralei.walker@doh.wa.gov), by August 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies and updates the sexual misconduct rule to establish what forcible or nonconsensual acts are within the definition of sexual misconduct by optometrists. The board's proposed rule adds acts of sexual misconduct which include sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense.

Under WAC 246-851-550(2), which lists acts of sexual misconduct, the terms "key party" and "patient" should have both been referenced. The term "patient" was accidentally omitted in several subsections. This supplemental adds the term "patient" to the rule language so that "patient" and "key party" are covered under the list of sexual misconduct acts.

WAC 246-851-550(5) referred to subsection (1), when it should have referred to subsection (2). This supplemental also corrects the reference so that subsection (5) refers to subsection (2), which lists acts of sexual misconduct.

Reasons Supporting Proposal: Experience with investigations and enforcement under the current rule has raised the need to clarify what acts constitute sexual misconduct by optometrists. The proposal will establish clearer standards of conduct for optometrists and will help them understand what acts constitute sexual misconduct.

Statutory Authority for Adoption: RCW 18.54.070(2), Executive Order 06-03, RCW 18.130.050.

Statute Being Implemented: RCW 18.130.062.

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

Name of Proponent: DOH, board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program

Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

July 27, 2018  
Dale Heaston, OD  
Chair, Board of Optometry

**AMENDATORY SECTION** (Amending WSR 94-04-041, filed 1/27/94, effective 2/27/94)

**WAC 246-851-550 Sexual misconduct.** (1) ~~(An optometrist shall not engage in sexual contact or sexual activity with a current patient.~~

~~(a) A current patient is a patient.)~~ The following definitions apply to this section:

(a) "Patient" means a person who has received professional services from the optometrist within the last three years and whose patient record has not been transferred to another optometrist or health care professional.

~~((b))~~ A referral of the patient record must be in writing and with the knowledge of both the patient and the optometrist or health care practitioner to whom the record is transferred.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient.

~~((The))~~ An optometrist shall ~~(never engage in sexually harassing or demeaning behavior with current or former patients)~~ not engage, or attempt to engage, in sexual misconduct with a patient or key party, inside or outside the health care setting. Patient or key party initiation or consent does not excuse or negate the health care provider's responsibility. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part;

(c) Rubbing against a patient or key party for sexual gratification;

(d) Kissing, touching, fondling or caressing of a romantic or sexual nature;

(e) Encouraging masturbation or other sex act in the presence of the health care provider;

(f) Masturbation or other sex act by the health care provider in the presence of the patient or key party;

(g) Suggesting the possibility of a sexual or romantic dating relationship;

(h) Discussing the sexual history, preferences or fantasies of the health care provider;

(i) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(j) Making statements regarding the body, sexual history, or sexual orientation of the patient or key party;

(k) Any verbal or physical contact which may reasonably be interpreted as sexually demeaning;

(l) Taking sexually explicit photographs or films of a patient or key party;

(m) Showing a patient or key party sexually explicit photographs.

(3) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A-.030.

(4) An optometrist shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the optometrist's sexual needs.

(5) An optometrist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a former patient or key party if:

(a) There is a significant likelihood that the patient or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether an optometrist engaged, or attempted to engage, in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient;

(e) Communication between the health care provider and the patient between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the health care provider;

(g) Nature of the patient's health condition during and since the professional relationship;

(h) The patient's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

**WSR 18-16-087**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Veterinary Board of Governors)  
[Filed July 30, 2018, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-061.

Title of Rule and Other Identifying Information: WAC 246-937-040, training requirements for veterinary medication clerks (VMC). The veterinary board of governors (board) is proposing additional options for VMC applicants to meet their training requirements for registration.

Hearing Location(s): On September 24, 2018, at 10:00 a.m., at the Washington State Department of Health, River View Corporate Center, Suite 1500, Room 118, 16201 East Indiana Avenue, Spokane Valley, WA 99216.

Date of Intended Adoption: September 24, 2018.

Submit Written Comments to: Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by September 10, 2018.

Assistance for Persons with Disabilities: Contact Lorelei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email [loralei.walker@doh.wa.gov](mailto:loralei.walker@doh.wa.gov), by September 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adds an educational training program option to the current on-the-job training track to qualify for a VMC registration.

Reasons Supporting Proposal: The board and pharmacy quality assurance commission developed a model training program to set criteria for the on-the-job training program. A petitioner requested rule making to add an educational training program as an approved training pathway for a VMC. The proposed rule specifies that an educational training program must, at a minimum, meet the criteria outlined in the model training program. This will ensure that equivalent education is offered through either training option.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 360-833-6388 or 711, email [loralei.walker@doh.wa.gov](mailto:loralei.walker@doh.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed

rule applies to credentialed providers and does not impose requirements on businesses.

July 30, 2018  
Tawney Carrier, Chair  
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 02-11-022, filed 5/7/02, effective 6/7/02)

**WAC 246-937-040 Training and education.** ~~(((+The training of))~~ To qualify for a certificate of registration as a veterinary medication ((clerk)) clerk, an individual must ((be obtained by completion of)):

(1) Be a high school graduate or equivalent.

(2) Meet the training requirement by being sponsored by a veterinarian licensed in the state of Washington and completing either an on-the-job training program ((following guidelines approved by the board.

(2) The minimum educational requirement must be high school graduation or equivalency)) or an educational program that meets, at a minimum, the criteria set in the model training program developed by the veterinary board of governors and the pharmacy quality assurance commission.

**WSR 18-16-093**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed July 31, 2018, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-071.

Title of Rule and Other Identifying Information: The Washington utilities and transportation commission has been engaged in this rule making to consider amendments to the rules in chapter 480-07 WAC, the commission's procedural rules, governing the conduct of business before the commission, including rules governing formal proceedings. At this time, the commission proposes additional rules and modifications of the rules governing confidential and other restricted information, WAC 480-07-160 and 480-07-420.

Hearing Location(s): On September 10, 2018, at 9:30 a.m., at the Richard Hemstad Building, Room 206, 1300 South Evergreen Park Drive S.W., Olympia, WA 98503. Public hearing to consider adoption of proposed rules.

Date of Intended Adoption: September 10, 2018.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, email [records@utc.wa.gov](mailto:records@utc.wa.gov), fax 360-586-1150, by August 31, 2018.

Assistance for Persons with Disabilities: Contact Ashley Miller, phone 360-664-1130, fax 360-586-1150, TTY 360-586-8230, or 360-664-1132, email [ashley.miller@utc.wa.gov](mailto:ashley.miller@utc.wa.gov), by August 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to amend the rules in chapter 480-07 WAC govern-

ing confidential and other restricted information to better ensure protection of such information from disclosure, implement statutory authority, and address additional procedural issues.

**Reasons Supporting Proposal:** The commission observed the need for further consideration of the rules in chapter 480-07 WAC governing confidential and other restricted information when the commission last revised them in March 2017. Since that time, the commission has worked with stakeholders to develop rule language to address its concerns. The commission currently proposes to amend the rules to incorporate these revisions.

**Statutory Authority for Adoption:** RCW 34.05.020.

**Statute Being Implemented:** RCW 80.01.040.

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

**Name of Proponent:** Washington utilities and transportation commission, governmental.

**Name of Agency Personnel Responsible for Drafting:** Gregory J. Kopta, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, 360-664-1355; **Implementation and Enforcement:** Mark L. Johnson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, 360-664-1115.

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. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

The proposed rule does impose more-than-minor costs on businesses.

#### **SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)**

Re: Procedural rules rule making, WAC 480-07-160 and 480-07-420, Docket A-130355.

**BACKGROUND:** Washington's Regulatory Fairness Act, chapter 19.85 RCW, is intended to focus an agency's attention on the economic impact of proposed rules on affected businesses, involve affected businesses in developing rules, and minimize any disproportionate impact of the rules on small businesses. Before adopting a rule that will impose more-than-minor costs on an industry, a state agency must analyze the compliance costs for both large and small businesses (including lost sales or revenue), involve small businesses in the development of the rule, take feasible steps to reduce the economic impact of the rule on small businesses, and prepare an SBEIS. A "small business" is any profit-making entity that has fifty or fewer employees.

Staff of the Washington utilities and transportation commission (commission) has prepared proposed revisions to WAC 480-07-160 and 480-07-420. The draft rules are posted on the commission's web site at <http://www.utc.wa.gov/130355>.

On July 2, 2018, the commission requested that affected companies provide information concerning whether the draft revised rules create additional costs for their company. The commission requested the following information, at a minimum, for each draft rule for which a commenter identified a cost impact:

1. Identify the rule number, *i.e.*, WAC 480-07-160 or 480-07-420, of the draft proposed rule the commenter identified as having a cost impact;

2. Identify whether there is any change from the current rule to the draft proposed rule that creates an **additional** cost impact on the company;

3. Explain why there will be a cost impact on the company;

4. Provide a detailed analysis of how the commenter calculated the cost impact of each draft rule the commenter identified as having a cost impact; and

5. Identify any draft proposed rule that may create a cost savings to the company compared to the current rule.

On July 30, 2018, the commission received comments from Qwest Corporation d/b/a CenturyLink QC, United Telephone Company of the Northwest d/b/a CenturyLink, CenturyTel of Washington, Inc. d/b/a CenturyLink, CenturyTel of Inter Island, Inc. d/b/a CenturyLink, and CenturyTel of Cowiche, Inc. d/b/a CenturyTel (collectively CenturyLink); Northwest Natural Gas Company (NWNNG); and Puget Sound Energy (PSE). CenturyLink states that it will incur additional costs in the form of many more staff hours to comply with the proposed provisions in WAC 480-07-160 to designate exempt information separately from confidential information. CenturyLink estimates that "determining the proper designation and preparing the justification necessarily will add at least five - ten minutes per piece of confidential information and up to thirty minutes or more in some cases." For documents that contain multiple types of restricted information, CenturyLink estimates that time will double or triple. NWNNG similarly estimates that its administrative costs of processing documents that contain restricted information could double or triple if the company must separately designate exempt information. PSE estimates that the additional administrative time required under the revised rules would result in additional costs of \$6,650 in a standard general rate case, and \$18,350 if a new resource is added to the portfolio in that case.

**ANALYSIS:** The available data indicates that the proposed revisions to WAC 480-07-160 and 480-07-420 will have only a minor impact on the costs to the industries the commission regulates. Most of the restricted information the commission receives is designated as confidential or highly confidential and thus any additional costs to separately designate exempt information will not be substantial. Under these circumstances, an SBEIS is not required.<sup>1</sup> The commission nevertheless has prepared an SBEIS in response to stakeholder comments concerning the costs that they believe will result from adopting the revised rules.

<sup>1</sup> See RCW 19.85.030 (1)(a)(i) (requiring an SBEIS "if the proposed rule imposes more than minor costs on businesses in an industry").

**Reporting, Recordkeeping, and Other Compliance Requirements (RCW 19.85.040(1)):** The proposed revised provisions in WAC 480-07-160 and 480-07-420 will require companies and parties in adjudications to incur administrative costs to designate exempt information separately from confidential information in the form of additional staff time to review, designate, and mark exempt information. The commission, however, lacks sufficient information to fully

quantify those costs. CenturyLink and NWNNG provide information in terms of time, but provide no data on the value of that time. Nor do they estimate the number of filings or documents they have made, or are likely to make in the future, that will include exempt information that must be marked according to the new requirements. The commission expects that number has been, and will continue to be, small. PSE provides cost estimates, but only for general rate case filings, which that company makes less than once a year. For a company whose annual intrastate revenues exceed \$1 billion, an additional \$6,650 or \$18,350 in additional costs is not significant.

The commission has no basis on which to find that the costs to comply with the revised rules will fall disproportionately on small businesses. All companies that provide documents containing restricted information currently incur the same legal and administrative costs to comply with the existing rules, and all companies will incur the same such costs under the revised rules. None of those costs will significantly impact company sales or revenues.

The additional costs, moreover, are necessary to comply with existing law. CenturyLink contends that "it is difficult to imagine Exempt information not also being Confidential." The Public Records Act, chapter 42.56 RCW, takes a different view. "Confidential information" is protected from public disclosure under RCW 80.04.095 or 81.77.210, and is only exempt pursuant to a court order.<sup>2</sup> Other types of information, such as utility customers' personally identifiable information, is exempt under the statute, without the need to obtain a court order.<sup>3</sup> Treating exempt information the same as confidential information fails to recognize this distinction and is inconsistent with applicable law. The proposed revisions to WAC 480-07-160 and 480-07-420 will assist the commission to ensure full compliance with the Public Records Act.

<sup>2</sup> RCW 42.56.330(1).

<sup>3</sup> E.g., RCW 42.56.330(2).

*Steps Taken to Reduce the Costs to Small Businesses (RCW 19.85.040 (2)(a)):* The rules adopt additional requirements for "providers" of exempt and confidential information, which are persons who provide the information to the commission. The commission has defined a "provider" for purposes of exempt information to exclude individuals or companies that provide exempt information about themselves, such as financial and personally identifiable information. Self-provided data [data] represents the majority of exempt information the commission receives. The persons and entities that provide it thus are not required to designate, mark, or justify their own information, relieving them of the additional costs of compliance that result from the proposed revisions to the rules. All companies, however, must comply with the rule requirements if the exempt information concerns their customers or any other third parties.

*Involvement of Small Businesses in Development of the Rules (RCW 19.85.040 (2)(b)):* The commission involved stakeholders, including small businesses, throughout the development of the proposed rules. The commission requested two sets of comments on revisions to the rules and conducted a workshop to discuss the issues.

*Industries Required to Comply (RCW 19.85.040 (2)(c)):* All industries the commission regulates must comply with the rule.

*Estimate of Jobs Created or Lost (RCW 19.85.040 (2)(d)):* Data available to the commission indicates that no jobs will be created or lost as a result of the proposed revisions to WAC 480-07-160 and 480-07-420.

**CONCLUSION:** Companies will incur additional costs to comply with revised WAC 480-07-160 and 480-07-420, but those costs will not disproportionately impact small businesses. The commission has included provisions in the rule to minimize the impact on individuals and companies providing information about themselves. The remaining provisions are necessary for compliance with the Public Records Act and other applicable laws, which justifies the additional costs.

A copy of the statement may be obtained by contacting Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.E., Olympia, WA 98504, phone 360-664-1160, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email records@utc.wa.gov.

July 31, 2018  
Mark L. Johnson  
Executive Director  
and Secretary

**AMENDATORY SECTION** (Amending WSR 17-06-051, filed 2/28/17, effective 3/31/17)

**WAC 480-07-160 Confidential and other restricted information (~~under RCW 80.04.095 or 81.77.210~~).** Several statutory provisions limit or prevent disclosure of certain information provided to the commission, including provisions exempting specified public records from disclosure or preventing the release of confidential information until affected parties have an opportunity to obtain a court order forbidding the release. The commission will provide special handling of, and ((will limit)) restrict access to, ((confidential)) information ((submitted in compliance with this rule or WAC 480-07-423)) provided to the commission under these statutory provisions. This rule ((applies to any information the provider claims to be confidential under RCW 80.04.095 or 81.77.210. Title 81 RCW, other than RCW 81.77.210, does not contain a similar statute, and the commission will not accept documents marked as confidential pursuant to this rule and submitted on behalf of companies regulated under Title 81 RCW other than solid waste collection companies.

**(1) Implementation.**

((a) Designated official.)) addresses each of these types of restricted information, including how to designate documents as containing exempt information, confidential information, or highly confidential information. Chapter 480-04 WAC governs the commission's specific process for responding to requests for public records that seek restricted information. WAC 480-07-420 governs access to, and exchange of, restricted information by parties in commission adjudicative proceedings.

**(1) Designated official.** The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter 42.56 RCW, and for the implementation of this rule. The secretary may

designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

~~((b) *Provider*. Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule or a commission protective order is a provider, as that term is used in this rule.~~

~~(e) *Requester*. Any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW, or a data request in an adjudicative proceeding is a requester, as that term is used in this rule.~~

~~(2) **Confidential information defined.** Confidential information is information that meets any of the following criteria:~~

~~(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter 42.56 RCW.~~

~~(b) Information protected under the terms of a protective order in an adjudicative proceeding.~~

~~(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 or 81.77.210. Only information that satisfies this definition may be designated as confidential.~~

~~(3) **Highly confidential information.** The commission may authorize protection of information as highly confidential only pursuant to a protective order. Highly confidential information is confidential information to which even more restricted access is necessary to ensure the information is not disclosed to the detriment of the provider (or the party designating the information as confidential, if not the provider). Highly confidential information remains subject to the requirements in RCW 80.04.095 or 81.77.210, and the provisions of this section apply to highly confidential information as well as confidential information unless this rule or the protective order authorizing highly confidential treatment of information states otherwise.~~

~~(4) **How to designate and seek protection of confidential information under this section.**) (2) **Definitions.**~~

~~(a) *Document* means any writing as the legislature has defined that term in the Public Records Act, chapter 42.56 RCW.~~

~~(b) *Confidential information* means valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095 and 81.77.210.~~

~~(c) *Exempt information* means information protected from inspection or copying under an exemption from disclosure under chapter 42.56 RCW or any other provisions of law providing an exemption from public disclosure.~~

~~(d) *Highly confidential information* means confidential information subject to heightened protection pursuant to a commission-issued protective order with provisions governing such information.~~

~~(e) *Provider* means any person who submits information to the commission or commission staff under a claim that disclosure of the information is restricted pursuant to this rule; provided that for purposes of complying with subsection (5)~~

of this section, "provider" does not include individuals who provide their own financial or personally identifiable information to the commission.

(f) *Redacted version* means the version of a document submitted to the commission with restricted information masked.

(g) *Requester* means any person who submits a request for public records under the Public Records Act, chapter 42.56 RCW.

(h) *Restricted information* means exempt, confidential, or highly confidential information.

(i) *Unredacted version* means the version of a document submitted to the commission with all information unmasked and visible.

(3) **Waiver.** A provider may claim the protection of this rule only by strict compliance with ~~((the following))~~ its requirements. The commission may refuse to accept for filing any document that fails to comply with these requirements. Failure to properly designate confidential or highly confidential information as ~~((confidential also))~~ required in this rule, WAC 480-07-420, or a commission protective order may result in disclosure of the information ((not being treated as confidential.)) in response to a request for public records or in discovery. If a provider fails to properly designate, or otherwise does not properly treat, exempt, confidential, or highly confidential information that belongs to another person, that person may petition or file a motion with the commission seeking to protect the information and requesting any other appropriate relief.

(4) **Exempt information.**

(a) *Designating information as exempt from disclosure.* Any provider claiming that information provided to the commission is exempt from disclosure must make that claim in writing at the time the provider submits the document containing the information. The provider must also state the basis for the claim of exemption at the time the provider submits information claimed to be exempt.

(b) *Provision of documents with information designated as exempt.* Any provider claiming that a document contains exempt information must submit both a redacted and an unredacted version to the commission.

(c) *Marking and submission.*

(i) The provider must clearly designate information claimed to be exempt on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the document with the designation, "Shaded information is designated as exempt per WAC 480-07-160" on the first page of a multipage document and on each specific page that the provider claims contains exempt information, except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 and except as provided in subsection (8) of this section.

(ii) The provider must print on yellow paper any required paper copy of the pages of the unredacted version of a document that contain information designated as exempt and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing information designated as exempt as part of the same filing must collate all of these documents into a set, and to the extent fea-



sible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, the provider must submit each set of documents containing information designated as exempt in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. The provider must either completely black out the information claimed to be exempt or leave a blank space where that information is located in the redacted version. The redacted and unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is exempt, the provider may submit a single page in the redacted version for the contiguous exempt pages if that page identifies the pages claimed to contain exempt information.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as exempt under this section.

(d) Procedures upon a request for information designated as exempt. If a requester submits a public records request for information that a provider has designated as exempt, the commission will follow the procedures outlined in chapter 480-04 WAC.

(e) Challenges to designations of information as exempt. The commission or a party to a proceeding in which a provider submits a document with information designated as exempt may challenge that designation. The commission will provide an opportunity to the provider and the parties to any adjudication to respond before ruling on the challenge. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

### **(5) Confidential information.**

(a) ~~(Contents. The)~~ Designating information as confidential information. Any provider ~~((must submit the claim of confidentiality))~~ claiming that information provided to the commission is confidential must make that claim in writing at the same time the provider submits the document containing the information ~~((claimed to be confidential is submitted. The provider))~~ and must state the basis ~~((on which the information is claimed to be confidential, and if the document is not submitted pursuant to a protective order in an adjudicative proceeding,))~~ for the claim. To the extent feasible, the provider also must identify any person (other than the provider) who might be directly affected by disclosure of the confidential information.

(b) Provision of documents with information designated as confidential ~~((or information designated as highly confidential)).~~ ~~((The))~~ Any provider claiming that a document contains confidential information must submit ~~((two versions~~

of all documents claimed to include either (but not both) confidential or highly confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential (confidential version) or highly confidential (highly confidential version); and

(ii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks the information claimed to be confidential or highly confidential (redacted version).

~~(e) Documents with information designated as confidential and information designated as highly confidential.~~ The provider must submit three versions of all documents claimed to include both highly confidential and confidential information:

(i) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as highly confidential or confidential (highly confidential version);

(ii) An electronic copy (as required in WAC 480-07-140(6)), and any paper copies the commission has required, of the version of the document that contains all information designated as confidential and masks all information designated as highly confidential (confidential version); and

(iii) An electronic copy in .pdf format, and any paper copies the commission has required, of the version of the document that masks all information claimed to be highly confidential or confidential (redacted version).

~~(d))~~ both a redacted and an unredacted version to the commission.

### (c) Marking and submission.

~~(i)~~ ~~((Documents containing information designated as confidential or highly confidential must be marked as follows:~~

~~(A))~~ The provider must clearly designate information claimed to be confidential on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the ~~((confidential))~~ unredacted version of the document with the designation, "~~((Designated))~~ Shaded information is designated as confidential ~~((per protective order in Docket [insert docket number])~~" if the provider submits confidential information under the provisions of a protective order, or "~~Designated information is confidential~~)" per WAC 480-07-160" ~~((if not submitted under the terms of a protective order. The provider must clearly mark each copy of the highly confidential version of the document with the designation "Designated information is highly confidential per protective order in Docket [insert docket number]."~~ The provider must place the applicable mark) on the first page of a multi-page document and on each specific page ~~((on which))~~ the provider claims ~~((there is confidential or highly))~~ contains confidential information ~~((In the subject line of the email or in a visible portion of the disc or electronic storage medium containing the electronic copies of the document, the provider also must state that one or more documents contain information designated as confidential or highly confidential under a protective order or WAC 480-07-160, as applicable.~~

~~(B) Each page of the electronic document and any required paper copies of the confidential version that includes information claimed to be confidential must clearly designate that information on each page by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on yellow paper.~~

~~(C) Each page of the electronic document and any required paper copies of the highly confidential version that contains information designated as highly confidential under a protective order must clearly designate the highly confidential information by highlighting the text with no more than twenty percent grey shading or other clearly visible designation. Each such page of any paper copies must be printed on light blue paper.~~

~~(D) If a document includes both confidential and highly confidential information, each page of any paper copies of the confidential version that contains only information designated as confidential must be printed on yellow paper, and pages containing information designated as highly confidential must be printed on light blue paper, including pages that contain both highly confidential and confidential information. The provider is responsible for ensuring that highly confidential information is clearly distinguished from confidential information when a document includes both highly confidential and confidential information.~~

~~(E)) except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 with respect to confidential information provided pursuant to a protective order and except as provided in subsection (8) of this section.~~

~~(ii) The provider must print on yellow paper any required paper copy of the ((confidential or highly confidential)) pages of the unredacted version of a document that contain information designated as confidential and submit that document, in its entirety, ~~((must be submitted))~~ in a sealed envelope. A ~~((person))~~ provider submitting more than one ~~((confidential or highly confidential document in a single submission))~~ document containing information designated as confidential as part of the same filing must collate all of ~~((the confidential documents into a set and all of the highly confidential))~~ these documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be submitted, the provider must submit each set of documents containing information designated as confidential ((or highly confidential documents must be submitted)) in a separate envelope to the extent feasible.~~

~~((F)) (iii) The provider must label the redacted version of the document ((must be labeled)) as redacted ((and submitted simultaneously with the corresponding confidential or highly confidential document)). The ((redacted version)) provider must either completely black out the information claimed to be confidential ~~((or highly confidential))~~ or leave a blank space where that information is located in the document. The redacted and ~~((confidential or highly confidential))~~ unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is confidential ~~((or highly confidential))~~, the~~

provider may submit a single page in the redacted version for the contiguous confidential pages if that page identifies the pages claimed to ~~((be confidential or highly))~~ contain confidential information.

~~((ii) Documents containing information designated as confidential or highly confidential must be submitted as follows:~~

~~(A) All documents containing information designated as confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as highly confidential or that do not include any information designated as confidential.~~

~~(B) All documents containing information designated as highly confidential that are required or intended to be submitted to meet a single deadline must be submitted at the same time and in the same message or on the same disc or electronic storage medium, separately from documents that include information designated as confidential or that do not include any such information.~~

~~(C) The fully redacted versions of all documents containing information designated as confidential or highly confidential, along with any other nonconfidential documents that are part of the filing, must be submitted separately from the documents containing information designated as confidential or highly confidential, and all of the nonconfidential documents must be submitted in a single message or on the same electronic storage medium.~~

~~(D) If the volume of documents of any type exceeds the size constraints of the commission's web portal or email system for a single submission, those documents may be submitted in multiple submissions as provided in WAC 480-07-140 (6)(e).~~

~~(E) All submissions comprising a single filing must be made as close to simultaneously as practicable.~~

~~(5)) (iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as confidential under this section.~~

~~(d) Request for information designated as confidential. If a requester submits a public records request for information that a provider has designated as confidential, the commission will follow the applicable process in chapter 480-04 WAC, WAC 480-07-420, or applicable protective order.~~

~~(e) Challenges to ((claims of confidentiality)) designations of information as confidential. The commission or a party to a proceeding in which a provider submits a document with ~~((a claim of confidentiality may challenge the claim. When a challenge is made,))~~ information designated as confidential may challenge that designation. The commission will provide an opportunity to the provider and the parties to any adjudication to respond before ruling on the challenge. ~~((If a~~~~

~~confidential designation is challenged,))~~ The provider of the ~~((confidential))~~ information designated as confidential bears the burden to show that part or all of ~~((a document))~~ that information should be protected from disclosure ~~((under chapter 42.56 RCW, RCW 80.04.095, 81.77.210, or a protective order))~~. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

~~(6) ((Requests for information designated as confidential.~~ Subject to the requirements of this subsection, the commission will release information designated as confidential or highly confidential in response to a written request for public records made in compliance with WAC 480-04-090.

~~(a) Avoidance of disclosure.~~ If the public records officer and the requester agree that the commission can satisfy the request for information without disclosing information designated as confidential or highly confidential, the public records officer will provide or make available for review the publicly available information in the commission's possession that is responsive to the request.

~~(b) Notice of request for, and release of, information designated confidential.~~ If the requester does not agree that the commission can satisfy the request without disclosing information designated as confidential or highly confidential, the commission will implement the following procedure:

~~(i) Pursuant to RCW 80.04.095 or 81.77.210, as applicable, the commission will provide written notice of any request for information designated as confidential or highly confidential to the provider and any person that has been identified as a person who might be directly affected by release of the information. The commission will issue such notice not more than two business days after receiving confirmation that the requester requests information designated as confidential or highly confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.~~

~~(ii) The commission need not assist any person in seeking or resisting judicial intervention to protect from disclosure any information designated as confidential or highly confidential, but the commission may participate in any such proceeding.~~

~~(iii) If the provider consents in writing to the release of the information designated as confidential or highly confidential or does not restrain disclosure of that information by obtaining a court order within ten days following the commission's notice of the request, the commission will consider the information public, remove the confidential or highly confidential designation from its files, and release the information to the requester.~~

~~(7))~~ **Highly confidential information.**

~~(a) Designating information as highly confidential.~~ Any provider claiming that information provided to the commission is highly confidential must make that claim in writing at the time the provider submits the document containing the information. The provider also must identify the highly confidential protective order providing the basis for the claim.

~~(b) Provision of documents containing highly confidential information.~~ Any provider claiming that a document contains highly confidential information must submit a redacted and an unredacted version to the commission.

(c) Marking and submission.

(i) The provider must clearly designate information claimed to be highly confidential on each page of the unredacted version by highlighting the text with no more than twenty percent gray shading. The provider must clearly mark each copy of the document with the designation, "Shaded information designated as highly confidential per protective order in Docket (insert docket number)" on the first page of a multipage document and on each specific page which the provider claims contains highly confidential information, except as modified pursuant to subsection (7)(a) of this section or WAC 480-07-420 and except as provided in subsection (8) of this section.

(ii) The provider must print on blue paper any required paper copy of the pages of the unredacted version of a document that contain information designated as highly confidential and submit that document, in its entirety, in a sealed envelope. A provider submitting more than one document containing information designated as highly confidential as part of the same filing must collate all of these documents into a set, and to the extent feasible, must enclose each entire set in a separate envelope. If the commission requires more than one paper copy of documents to be filed, the provider must submit each set of documents containing information designated as highly confidential in a separate envelope to the extent feasible.

(iii) The provider must label the redacted version of the document as redacted. The provider must either completely black out the information claimed to be highly confidential or leave a blank space where that information is located in the redacted document. The redacted and unredacted versions of a document must have the same pagination, and the text on each page must appear on the same lines. If the provider submits a document under a claim that all of the substantive information contained on multiple contiguous pages is highly confidential, the provider may submit a single page in the redacted version for the contiguous restricted pages if that page identifies the pages claimed to be highly confidential.

(iv) The provider must file the redacted and unredacted versions with the commission in the same web portal submission. If using another type of submission, the provider must file the redacted and unredacted versions at the same time but in separate submissions. When submitting electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as highly confidential under the applicable protective order.

(d) Request for information designated as highly confidential. If a requester submits a public records request for information that a provider has designated as highly confidential, the commission will follow the applicable procedures in chapter 480-04 WAC, WAC 480-07-420, or the applicable protective order.

(e) Challenges to designations of information as highly confidential. The commission or a party to a proceeding in which a provider submits a document that the provider claims contains highly confidential information may challenge that designation. The commission will provide an opportunity to

the provider and the parties to respond before ruling on any challenge. The provider of the information designated as highly confidential bears the burden to show that a part or all of that information should be protected from disclosure under the terms of the protective order. The commission may express its ruling orally on the record or in a written order.

(f) *Initial filing.* A provider may withhold information from an initial filing that the provider intends to designate as highly confidential after the commission enters a protective order under the following conditions:

(i) The provider describes the withheld information with reasonable particularity;

(ii) The provider files and serves complete unredacted and redacted versions of all documents that contain information designated as highly confidential as soon as practicable after the commission enters a protective order; and

(iii) The initial filing otherwise complies with all filing requirements in these rules including, but not limited to, the general rate proceeding filing requirements in subpart B. The commission may reject an initial filing if the withheld information is necessary for the commission to determine whether the filing complies with applicable filing requirements.

(7) **Procedures for documents containing multiple types of restricted information.** Documents submitted to the commission may contain more than one type of restricted information. For example, a document may contain exempt information on one page and highly confidential information on another page. Any provider submitting a document containing more than one type of restricted information must comply with the provisions of this rule for each type of restricted information, subject to the provisions of this subsection. When the commission receives a request for a document containing more than one type of restricted information, the commission will also follow the procedures listed above for each relevant type of restricted information.

(a) *Differentiating types of restricted information.* The provider is responsible for distinguishing each type of restricted information from another when a document contains more than one type of restricted information. Possible methods for doing so include, but are not limited to, underlining or bracketing one type of information. The provider must identify the method used on each page of the document that contains that type of restricted information, e.g., by modifying the required designations to state, "Underlined and shaded information designated as highly confidential per protective order in Docket (insert docket number)," and "Shaded only information designated as exempt under WAC 480-07-160." The method used must be visible on both the redacted and unredacted versions of the document.

(b) *Documents containing no highly confidential information.* When a document contains both exempt and confidential information but no highly confidential information, the provider must submit a single unredacted version with all restricted information marked in accordance with subsections (4)(c), (5)(c), and (7)(a) of this section except as provided in subsection (8) of this section. The provider must submit a single redacted version with all restricted information masked.

(c) *Documents containing highly confidential information in addition to other types of restricted information.* When the document contains highly confidential information

in addition to one or more other types of restricted information, the provider must submit a single unredacted version with all restricted information marked in accordance with subsections (4)(c), (5)(c), (6)(c), and 7(a) of this section, as applicable, except as provided in subsection (8) of this section. The provider must submit at least two different redacted versions of the document. The first redacted version must mask all highly confidential information, but leave all other restricted information unmasked. The second must mask all highly confidential information and all other restricted information.

(8) **Spreadsheets.** If the cells in a spreadsheet or other tabular document include information that has been designated as exempt, confidential, or highly confidential and that would be impractical or unduly burdensome to mark as required in subsections (4) through (7) of this section, the provider need not comply with those requirements but must identify that information in a way that reasonably provides the commission with sufficient identification of the information to be protected and the basis for that protection.

(9) **Designation or redesignation of exempt, confidential, or highly confidential information.** No later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record in an adjudication in which a party has designated information as exempt, confidential, or highly confidential, that party must verify the accuracy of all (~~confidential~~) such designations in the record and in the exhibit list for the proceeding, and submit to the commission any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final, and the commission will change those designations only if the provider (~~or the party that has designated the information as confidential or highly confidential, if different~~) voluntarily removes, or is required by law to remove, (~~a confidential~~) the designation. (~~If there is conflict between designations, the commission will adopt the designation that is least restrictive to public access.~~)

AMENDATORY SECTION (Amending WSR 17-06-051, filed 2/28/17, effective 3/31/17)

**WAC 480-07-420 Discovery—Protective orders. (1) Standard form.** The commission may enter a standard form of protective order designed to promote the free exchange of information and development of the factual record in a proceeding when the commission finds that parties reasonably anticipate that discovery or evidentiary (~~submissions~~) filings will require (~~the disclosure of~~) information designated as confidential as defined in WAC 480-07-160 (~~Parties must strictly limit the information they designate as confidential to information that is or may be exempt from public disclosure under RCW 80.04.095, 81.77.210, or the Public Records Act, chapter 42.56 RCW, including RCW 42.56.330~~) to be disclosed to other parties in the adjudication. Parties must (~~follow the instructions~~) comply with the requirements in the protective order and in WAC 480-07-160 (~~properly~~) designating, marking, and (~~submitting~~) filing documents (~~with the commission~~) containing information (~~designated as~~) claimed to be confidential (~~in a proceeding~~)

governed by a protective order)). In addition, parties must modify the designation required in WAC 480-07-160 (5)(c)(1) to state, "Shaded information designated as confidential per protective order in Docket (insert docket number)." When submitting the electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as confidential under the protective order.

(2) **Amendment.** The commission may, upon motion by a party, or on its own initiative, amend its standard form of protective order to meet the parties' and the commission's needs in individual cases.

(a) *Protection for highly confidential information.* A party that wishes to designate information as highly confidential must make a motion, orally at the prehearing conference or in writing, for an amendment to the standard protective order, supported by a declaration, testimony, or representations of counsel that set forth the specific factual and legal basis for the requested level of protection and an explanation of why the standard protective order is inadequate. The motion and declaration or testimony must identify specific parties, persons, or categories of persons, if any, to whom a party wishes to restrict access, and state the reasons for such proposed restrictions. If the commission amends its standard protective order to include protections for highly confidential information, parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information designated as highly confidential.

(b) *(Limitations. If) Protection for exempt information.* The commission ((modifies)) may modify the standard protective order to include protection for ((highly confidential)) exempt information((~~parties must strictly limit the information they designate as highly confidential to the information identified in the amendment to the protective order and must follow the instructions in WAC 480-07-160 for properly marking and submitting documents with the commission as highly confidential~~)) if the commission finds that parties' access to information designated as exempt as defined in WAC 480-07-160 is necessary for development of the factual record in the adjudication. Parties must comply with the requirements in the protective order and in WAC 480-07-160 for designating, marking, and filing documents containing information designated as exempt. In addition, parties must modify the designation required in WAC 480-07-160 (4)(c)(i) to state, "Shaded information designated as exempt per protective order in Docket (insert docket number)." When submitting the electronic unredacted versions, the provider must state in the description field of the web portal submission, in the subject line of the transmitting email, or on a visible portion of the disc or electronic storage medium, whichever is applicable, that one or more documents in the filing contain information designated as exempt under the protective order.

(c) *Other information.* The commission reserves the right to restrict access to other types of information on a case-by-case basis through the use of a protective order.

(3) **Special order.** Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may order appropriate limitations on discovery including, but not necessarily limited to, one or more of the following:

(a) The discovery will not be allowed;

(b) The discovery will be allowed only on specified terms and conditions;

(c) The discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery; or

(d) Certain matters may not be inquired into, or the scope of the discovery will be limited to certain matters.

(4) **Denial of motion for protective order.** The presiding officer may order that any party or person provide or permit discovery on such terms and conditions as are just if the commission denies a motion for a protective order in whole or in part.

(5) **Challenges to designations.** The commission or a party to a proceeding may challenge a designation of information as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order. The commission will provide an opportunity for the provider of the information and other interested parties to respond before ruling on any challenge. The provider bears the burden to show that a part or all of the information should be protected from disclosure under the terms of the protective order. The commission may render its ruling orally on the record or in a written order. If the commission sustains the challenge to the designation, the commission will determine how and when the designated information must be disclosed.

(6) **Public record request for protected information.** If a requester submits a public records request during the pendency of an adjudicative proceeding, including any judicial review, for information that a provider has designated as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order, the commission will review that request pursuant to the procedures in subsection (5) of this section. If a requester submits a public records request after an adjudicative proceeding has concluded, including any judicial review, for information that a provider has designated as confidential, highly confidential, exempt, or otherwise protected from disclosure pursuant to a protective order, the commission will follow the procedures in WAC 480-04-095.

## WSR 18-16-094

### PROPOSED RULES

### STATE BOARD OF EDUCATION

[Filed July 31, 2018, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-106.

Title of Rule and Other Identifying Information: To implement provisions of SHB 2824 (chapter 177, Laws of 2018) and to make changes to rule as needed, the state board of education is amending WAC 180-16-195 Annual reporting

and review process, 180-16-225 Waiver—Substantial lack of classroom space—Grounds and procedure, chapter 180-18 WAC, Waivers for restructuring purposes, and chapter 180-90 WAC, Private schools.

Hearing Location(s): On September 5, 2018, at 2 p.m., at the Brouillet Room, Old Capitol, 600 Washington Street S.E., P.O. Box 47206, Olympia, WA 98504. Please enter the Old Capitol through the main entrance in front of the building facing Sylvester Park. If you are using a wheelchair, there is a buzzer at the entrance on Legion (between 7th and 8th streets) for individuals in wheelchairs. The buzzer will notify the office of superintendent of public instruction and they will let you in.

Date of Intended Adoption: November 8, 2018.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email [parker.teed@k12.wa.us](mailto:parker.teed@k12.wa.us), fax 360-725-6047, by September 5, 2018.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-725-6047, fax 360-586-2357, TTY 360-664-3631, email [parker.teed@k12.wa.us](mailto:parker.teed@k12.wa.us), by September 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule implements SHB 2824 by exchanging roles and responsibilities among the state board of education.

**Proposal for chapter 180-90 WAC, Private schools:**

- To implement the transfer of private school approval from the office of superintendent of public instruction to the state board of education per SHB 2824 in chapter 180-90 WAC, the proposal changes the agency referenced from "superintendent of public instruction" to "state board of education" at various points and, as necessary, modifies language to implement this transfer.
- In WAC 180-90-145 Approval—Initial application—Exception, the proposal allows for schools that have filed for an exception for the initial application to be considered at the next regularly scheduled state board of education meeting.
- In WAC 180-90-160 Minimum standards and certificate form, the proposal corrects language by referring to RCW 28A.195.010 rather than RCW 28A.150.220. This change correctly references private school law rather than basic education law and corrects a reference to graduation requirement rules so that the reference remains consistent even when graduation requirements are to be updated.
- Clarifies or corrects language as necessary.

**Proposal for chapter 180-18 WAC, Waivers for restructuring purposes:**

- To implement the transfer of administration of the approval process for waivers from basic education requirements from the state board of education to the superintendent of public instruction per SHB 2824, the proposal changes the agency referenced from "state board of education" to "superintendent of public instruction" at various points and, as necessary, modifies language to implement this transfer.
- In WAC 180-18-030 Waiver from total instructional hour requirements, clarifies that the superintendent of

public instruction may grant waiver requests that demonstrate the waiver is necessary to support improving student achievement. This is a clarification rather than a substantive change because the waiver is pursuant to WAC 180-18-050 which already requires the waiver request to demonstrate that the waiver is necessary to support improving student achievement.

- The proposal changes timelines that are based on scheduled state board of education meetings to be "based on a schedule issued by the superintendent of public instruction" and clarifies timeline information as necessary.
- In WAC 180-18-065 Waiver from one hundred eighty-day school year requirement for purposes of economy and efficiency—Criteria for evaluation of waiver requests, the proposal clarifies the order of prioritization for waiver requests in the event that a greater number of requests for waivers are received than may be granted. The proposal clarifies that districts that are already operating on a flexible calendar under this waiver program are prioritized.
- Clarifies or corrects language as necessary.

**Proposal for WAC 180-16-195 Annual reporting and review process.**

- To implement the provision of SHB 2824 that allows the state board of education to recommend withholding of funds rather than require withholding of funds, the proposal removes language that is no longer necessary when recommending withholding of funds.
- Requires that the state board of education staff notify the superintendent of public instruction and the school district in the event of a certification of noncompliance.
- Clarifies and corrects language as necessary.

**Proposal for WAC 180-16-225 Waiver—Substantial lack of classroom space—Grounds and procedure.**

- The proposal changes timelines that are based on scheduled state board of education meetings to be "based on a schedule issued by the superintendent of public instruction" and clarifies timeline information as necessary.
- Clarifies and corrects language as necessary.

Reasons Supporting Proposal: This rule making implements SHB 2824 and clarifies rule where necessary. SHB 2824 exchanges roles and responsibilities among the superintendent of public instruction and the state board of education. This proposal is necessary to implement those changes.

Statutory Authority for Adoption: The statutory authority for the change to chapter 180-18 WAC is RCW 28A.305.140 and 28A.305.141. The statutory authority for the change to chapter 180-90 WAC is RCW 28A.195.010 and 28A.195.030. The statutory authority for the change to WAC 180-16-195 is RCW 28A.150.250. The statutory authority for the change to WAC 180-16-225 is RCW 28A.305.140.

Statute Being Implemented: RCW 28A.305.140, 28A.305.141, 28A.195.010, 28A.195.030, 28A.150.250.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6047; Implementation and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

<b>WSR:</b>	<b>Title of Rule:</b> Implementation of SHB 2824.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI.
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**Part I: Estimates: No fiscal impact,** the proposed rule change will have no fiscal impact on school districts.

**Estimated Cash Receipts to:** No estimated cash receipts.

**Estimated Expenditures From:** No estimated expenditures.

**Estimated Capital Impact:** No estimated capital impact.

**Part II: Narrative Explanation:**

**II. A - Brief Description Of What the Measure Does That Has Fiscal Impact:** *Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

None.

**II. B - Cash Receipts Impact:** *Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

None.

**II. C - Expenditures:** *Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

None.

**Part III: Expenditure Detail**

**III. A - Expenditures by Object or Purpose:** None.

**Part IV: Capital Budget Impact:** None.

A copy of the statement may be obtained by contacting Mr. Thomas J. Kelly, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6301, email Thomas.kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) states that this section does not apply to rules the content of which is explicitly and specifically dictated by statute. RCW 34.05.328 [(5)(b)(iv)] states that this section does not apply to rules that only correct

typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The proposed change to chapter 180-90 WAC, Private schools, is dictated by statute and corrects or clarifies language. The proposed change to WAC 180-16-195 Annual reporting and review process, does not affect small businesses and, therefore, RCW 19.85.025 is not applicable. The proposed change to WAC 180-16-225 Waiver—Substantial lack of classroom space—Grounds and procedure, does not affect small businesses and, therefore, RCW 19.85.025 is not applicable.

July 31, 2018  
Randy Spaulding  
Executive Director

AMENDATORY SECTION (Amending WSR 11-17-044, filed 8/11/11, effective 9/11/11)

**WAC 180-16-195 Annual reporting and review process.** (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form (~~((OSPI Form 1497))~~) distributed by the state board of education (~~((as a part of an electronic submission to OSPI))~~). The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. The form shall be submitted electronically and signed by:

- (a) The school board president or chairperson, and
  - (b) The superintendent of the school district.
- (2) **State board staff review.**

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site (~~((monitoring))~~) visits of (~~((randomly))~~) selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies. (~~((School districts which foresee that they will not be able to comply with the program approval requirements, or that are deemed by the state board to be in noncompliance, may petition for a waiver on the basis of substantial lack of classroom space as set forth in WAC 180-16-225 and instructional hours offering requirements under WAC 180-18-030.))~~)

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

**(3) Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.**

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board. ~~((Basic education allocation funds shall be deducted from the basic education allocation of a school district that has been certified as being in noncompliance unless such district has received a waiver from the state board for such noncompliance, pursuant to WAC 180-16-225 or 180-18-030, or assurance of program compliance is subsequently provided for the school year previously certified as in noncompliance and is accepted by the state board.))~~

(d) ~~((The))~~ Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for ((a)) noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

~~((e) The superintendent of public instruction, or his/her designee,))~~ (f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, ((shall)) may recommend withholding of funds or may enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the non-compliance(s) ~~((not to exceed sixty school business days per noncompliance as specified in (d) of this subsection)).~~

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline ~~((shall))~~ may result, at the state board of education's or its designee's discretion, in the ~~((immediate))~~ recommendation to the superintendent of public instruction of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the ~~((superintendent of public instruction))~~ chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

~~((f))~~ (g) In the event a school district fails to sign ~~((the))~~ a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction ~~((shall withhold))~~ withholding state funds for the basic education allocation until program compliance is assured ~~((based on the following procedure:~~

(i) ~~For the first month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold twenty-five percent of the state funds for the basic education allocation to a school district.~~

(ii) ~~For the second month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold fifty percent of the state funds for the basic education allocation to a school district.~~

(iii) ~~For the third month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold seventy-five percent of the state funds for the basic education allocation to a school district.~~

(iv) ~~For the fourth month, and every month thereafter, that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold one hundred percent of the state funds for the basic education allocation to a school district until compliance is assured)).~~

~~((g))~~ (h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section ~~((The state board of education may not waive any of the basic education entitlement~~



ment requirements as set forth in this chapter, except as provided in WAC 180-16-225 or 180-18-030)) or completion of the compliance agreement.

(4) The provisions of subsection (3)((#)) (g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

**AMENDATORY SECTION** (Amending WSR 04-23-008, filed 11/4/04, effective 12/5/04)

**WAC 180-16-225 Waiver—Substantial lack of classroom space—Grounds and procedure.** (1) **Grounds.** The ((state board of education)) superintendent of public instruction may waive one or more of the basic education allocation entitlement requirements set forth in WAC 180-16-200 through 180-16-220(1) only if a school district's failure to comply with such requirement(s) is found by the ((state board)) superintendent of public instruction to be caused by substantial lack of classroom space.

As a condition to a waiver based on substantial lack of classroom space the state board will consider and a school district must demonstrate, at least, that the facilities of the school district do not contain enough classroom space or other space that can reasonably be converted into classroom space, and that necessary classroom space may not reasonably be acquired by lease or rental to enable the district to comply with the referenced entitlement requirements.

(2) **Waiver procedure.** In order to secure a waiver pursuant to subsection (1) of this section a school district must submit a petition together with a detailed explanation and documentation in support of its request not later than ((thirty days prior to either:

(a) ~~The state board of education meeting immediately preceding commencement of the school year; or~~

(b) ~~The March (or such other meeting as the state board shall have established) meeting of the board at which the board will consider certifications of compliance and noncompliance with these entitlement requirements.~~

~~A school district that can reasonably foresee an inability to comply with entitlement requirements by reason of substantial lack of classroom space should petition for a waiver as early as the state board meeting immediately preceding commencement of the school year in order to allow for the possibility that the request may be denied)) the deadline in a schedule issued by the superintendent of public instruction and the commencement of the school year.~~

**AMENDATORY SECTION** (Amending WSR 07-20-030, filed 9/24/07, effective 10/25/07)

**WAC 180-18-030 Waiver from total instructional hour requirements.** A district desiring to improve student achievement by enhancing the educational program for all students may apply to the ((state board of education)) superintendent of public instruction for a waiver from the total instructional hour requirements. The ((state board of education)) superintendent of public instruction may grant said waiver requests that demonstrate the waiver is necessary to support improving student achievement pursuant to RCW

28A.305.140 and WAC 180-18-050 for up to three school years.

**AMENDATORY SECTION** (Amending WSR 12-24-049, filed 11/30/12, effective 12/31/12)

**WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement.** (1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the ((state board of education)) superintendent of public instruction for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 and WAC 180-16-215 while offering the equivalent in annual minimum instructional hours as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The ((state board of education)) superintendent of public instruction may grant said waiver requests for up to three school years.

(2) The ((state board of education)) superintendent of public instruction, pursuant to RCW 28A.305.140(2), shall evaluate the need for a waiver based on whether:

(a) The resolution by the board of directors of the requesting district attests that if the waiver is approved, the district will meet the required annual instructional hour offerings under RCW 28A.150.220(2) in each of the school years for which the waiver is requested;

(b) The purpose and goals of the district's waiver plan are closely aligned with school improvement plans under WAC 180-16-220 and any district improvement plan;

(c) The plan explains goals of the waiver related to student achievement that are specific, measurable, and attainable;

(d) The plan states clear and specific activities to be undertaken that are based in evidence and likely to lead to attainment of the stated goals;

(e) The plan specifies at least one state or locally determined assessment or metric that will be used to collect evidence to show the degree to which the goals were attained;

(f) The plan describes in detail the participation of administrators, teachers, other district staff, parents, and the community in the development of the plan.

(3) In addition to the requirements of subsection (2) of this section, the ((state board of education)) superintendent of public instruction shall evaluate requests for a waiver that would represent the continuation of an existing waiver for additional years based on the following:

(a) The degree to which the prior waiver plan's goals were met, based on the assessments or metrics specified in the prior plan;

(b) The effectiveness of the implemented activities in achieving the goals of the plan for student achievement;

(c) Any proposed changes in the plan to achieve the stated goals;

(d) The likelihood that approval of the request would result in advancement of the goals;

(e) Support by administrators, teachers, other district staff, parents, and the community for continuation of the waiver.

AMENDATORY SECTION (Amending WSR 12-24-049, filed 11/30/12, effective 12/31/12)

**WAC 180-18-050 Procedure to obtain waiver.** (1) ~~((State board of education))~~ Superintendent of public instruction approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 shall occur ~~((at a state board meeting))~~ prior to implementation. A district's waiver application shall include, at a minimum, a resolution adopted by the district board of directors, an application form, a proposed school calendar, and a summary of the collective bargaining agreement with the local education association stating the number of professional development days, full instruction days, late-start and early-release days, and the amount of other noninstruction time. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution must include a statement attesting that the district will meet the minimum instructional hours requirement of RCW 28A.150.-220(2) under the waiver plan. The resolution shall be accompanied by information detailed in the guidelines and application form available on the ~~((state board of education's))~~ office of superintendent of public instruction's web site.

(2) The application for a waiver and all supporting documentation must be received by the ~~((state board of education at least forty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education))~~ superintendent of public instruction based on a schedule issued by the superintendent of public instruction and prior to implementation of the waiver days. The superintendent of public instruction shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek ~~((state board approval at a subsequent meeting))~~ superintendent of public instruction approval upon resubmittal.

(3) Under this section, a district seeking to obtain a waiver of no more than five days from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.305.140 solely for the purpose of conducting parent-teacher conferences shall provide notification of the district request to the ~~((state board of education))~~ superintendent of public instruction at least thirty days prior to implementation of the plan. A request for more than five days must be presented to the ~~((state board))~~ superintendent of public instruction under subsection (1) of this section for approval. The notice shall provide information and documentation as directed by the ~~((state board))~~ superintendent of public instruction. The information and documentation shall include, at a minimum:

(a) An adopted resolution by the school district board of directors which shall state, at a minimum, the number of school days and school years for which the waiver is requested, and attest that the district will meet the minimum instructional hours requirement of RCW 28A.150.220(2) under the waiver plan~~((-))~~;

(b) A detailed explanation of how the parent-teacher conferences to be conducted under the waiver plan will be used to improve student achievement;

(c) The district's reasons for electing to conduct parent-teacher conferences through full days rather than partial days;

(d) The number of partial days that will be reduced as a result of implementing the waiver plan;

(e) A description of participation by administrators, teachers, other staff and parents in the development of the waiver request;

(f) An electronic link to the collective bargaining agreement with the local education association.

~~((Within thirty days of receipt of the notification, the state board))~~ Based on a schedule issued by the superintendent of public instruction, the superintendent of public instruction will, on a determination that the required information and documentation have been submitted, notify the requesting district that the requirements of this section have been met and a waiver has been granted.

AMENDATORY SECTION (Amending WSR 04-23-006, filed 11/4/04, effective 12/5/04)

**WAC 180-18-055 Alternative high school graduation requirements.** (1) The shift from a time and credit based system of education to a standards and performance based education system will be a multiyear transition. In order to facilitate the transition and encourage local innovation, the state board of education finds that current credit-based graduation requirements may be a limitation upon the ability of high schools and districts to make the transition with the least amount of difficulty. Therefore, the state board will provide districts and high schools the opportunity to create and implement alternative graduation requirements.

(2) A school district, or high school with permission of the district board of directors, or approved private high school, desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for high school students, may apply to the state board of education for a waiver from one or more of the requirements of chapter 180-51 WAC.

(3) The state board of education may grant the waiver for a period up to four school years.

(4) The waiver application shall be in the form of a resolution adopted by the district or private school board of directors which includes a request for the waiver and a plan for restructuring the educational program of one or more high schools which consists of at least the following information:

(a) Identification of the requirements of chapter 180-51 WAC to be waived;

(b) Specific standards for increased student learning that the district or school expects to achieve;

(c) How the district or school plans to achieve the higher standards, including timelines for implementation;

(d) How the district or school plans to determine if the higher standards are met;

(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan;

(f) Evidence that students, families, parents, and citizens were involved in developing the plan; and

(g) Identification of the school years subject to the waiver.

(5) The plan for restructuring the educational program of one or more high schools may consist of the school improvement plans required under WAC 180-16-220, along with the requirements of subsection (4)(a) through (d) of this section.

(6) The application also shall include documentation that the school is successful as demonstrated by indicators such as, but not limited to, the following:

(a) The school has clear expectations for student learning;

(b) The graduation rate of the high school for the last three school years;

(c) Any follow-up employment data for the high school's graduate for the last three years;

(d) The college admission rate of the school's graduates the last three school years;

(e) Use of student portfolios to document student learning;

(f) Student scores on the high school Washington assessments of student learning;

(g) The level and types of family and parent involvement at the school;

(h) The school's annual performance report the last three school years; and

(i) The level of student, family, parent, and public satisfaction and confidence in the school as reflected in any survey done by the school the last three school years.

(7) A waiver of WAC 180-51-060 may be granted only if the district or school provides documentation and rationale that any noncredit based graduation requirements that will replace in whole or in part WAC 180-51-060, will support the state's performance-based education system being implemented pursuant to RCW 28A.630.885, and the noncredit based requirements meet the minimum college core admissions standards as accepted by the higher education coordinating board for students planning to attend a baccalaureate institution.

(8) A waiver granted under this section may be renewed upon the state board of education receiving a renewal request from the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational requirements that were implemented as a result of the waiver. The request to the state board shall include information regarding the activities and programs implemented as a result of the waiver, whether higher standards for students are being achieved, assurances that students in advanced placement or other postsecondary options programs, such as but not limited to: College in the high school, running start, and tech-prep, shall not be disadvantaged, and a summary of the comments received at the public meeting or meetings.

(9) The state board of education shall notify the state board for community and technical colleges, the (~~higher education coordinating board~~) Washington student achievement council and the council of presidents of any waiver granted under this section.

(10) Any waiver requested under this section will be granted with the understanding that the state board of education will affirm that students who graduate under alternative graduation requirements have in fact completed state requirements for high school graduation in a nontraditional program.

(11) Any school or district granted a waiver under this chapter shall report annually to the state board of education, in a form and manner to be determined by the board, on the progress and effects of implementing the waiver.

AMENDATORY SECTION (Amending WSR 12-24-049, filed 11/30/12, effective 12/31/12)

**WAC 180-18-065 Waiver from one hundred eighty-day school year requirement for purposes of economy and efficiency—Criteria for evaluation of waiver requests.** (1) In order to be granted a waiver by the (~~state board of education~~) superintendent of public instruction under RCW 28A.305.141 to operate one or more schools on a flexible calendar for purposes of economy and efficiency, a school district eligible for such waiver must meet each of the requirements of RCW 28A.305.141(2).

(2) In the event that a greater number of requests for waivers are received that meet the requirement of subsection (1) of this section than may be granted by the (~~state board of education~~) superintendent of public instruction under RCW 28A.305.141(3), (~~priority shall be given to~~) if the superintendent of public instruction determines that the applying districts are otherwise eligible, their applications will be prioritized in the following order:

(a) Districts that are already operating on a flexible calendar under this waiver program; and

(b) Those plans that best redirect monetary savings from the proposed flexible calendar to support student learning.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

**WAC 180-90-112 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved private school" means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been approved by the state board of education in accordance with the minimum standards for approval as prescribed in this chapter.

(2)(a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3)(a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an

educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5)(a) "Non-Washington state certificated teacher" means a person who does not have a Washington state certification consistent with WAC 181-79A-030(2), but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the ~~((office of the superintendent of public instruction))~~ state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's cer-

tificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5)(a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

**WAC 180-90-130 Approval—Annual certification—Adverse findings.** (1) At least ninety days prior to the commencement of the annual school term or period, the chief administrator of each private school shall file with the ~~((superintendent of public instruction, in accordance with procedures established by the superintendent of public instruction;))~~ state board of education a certificate of compliance in the form and substance set forth in WAC 180-90-160.

(2) The ~~((superintendent of public instruction))~~ state board of education shall review each certificate. The review shall be completed within thirty days after receipt of a completed application.

(3) ~~((If the superintendent of public instruction finds no minor, major, or unacceptable deviations, the superintendent of public instruction shall recommend full approval of the private school to the state board of education.~~

(4)) If the ~~((superintendent of public instruction))~~ state board of education finds deviation, the private school shall be notified through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

~~((5))~~ (4) If the ~~((superintendent of public instruction))~~ state board of education finds major or unacceptable deviations, ~~((the superintendent of public instruction shall not transmit the recommendation regarding approval status to the state board of education until))~~ the private school shall submit ~~((s))~~ a narrative report indicating agreement or not with the findings of the ~~((superintendent of public instruction))~~ state board of education and any proposed remedial action to address the reported deviations. ~~((Upon receipt of the narrative report, the superintendent of public instruction shall transmit the recommendation and the narrative report to the state board of education.))~~ Minor deviations will be resolved with the ~~((office of the superintendent of public instruction staff))~~ state board of education prior to ~~((submission for))~~ approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

**WAC 180-90-141 Loss of private school approval.** ~~((1) The superintendent of public instruction is authorized to)~~ The state board of education may rescind approval of a private school for one or more of the following reasons:

~~((a))~~ (1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the ((superintendent of public instruction)) state board of education for the said period of time.

~~((b))~~ (2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

~~((c))~~ (3) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

~~((2) The superintendent of public instruction shall notify the state board of education of decisions to rescind approval.))~~

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

**WAC 180-90-145 Approval—Initial application—Exception.** Any potential private school which is unable to file its application for approval at least ninety days prior to the commencement of the annual school term or period may request the ~~((superintendent of public instruction))~~ state board of education review the application ~~((and the superintendent's findings and recommendations be submitted to the state board of education)).~~ This request shall be granted if the ~~((superintendent of public instruction))~~ state board of education finds the private school was not sufficiently developed prior to the ~~((90))~~ ninety-day time period to enable it to comply with that requirement. The ~~((superintendent of public instruction))~~ state board of education shall have the discretion to grant the request in other exceptional circumstances. If the ~~((superintendent of public instruction))~~ state board of education grants the request, the review shall be completed within thirty days and the findings and ~~((recommendations presented to the state board of education))~~ approval shall be considered at the next regularly scheduled state board of education meeting.

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

**WAC 180-90-150 Appeals.** Pursuant to RCW 28A.195.030 any private school may appeal the actions of the ~~((superintendent of public instruction or))~~ state board of education as provided in chapter 34.05 RCW and chapter 180-08 WAC.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

**WAC 180-90-160 Minimum standards and certificate form.** (1) The annual certificate required by WAC 180-

90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE  
WITH STATE STANDARDS

ESD/County/Public  
School District  
Private School/  
District Address

I, . . . . ., do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades . . . . . through . . . . . with a projected enrollment of . . . . .; and that said school is scheduled to meet throughout the . . . . . school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I, . . . . ., do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:

(a) The minimum school year for instructional purposes consists of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW ~~((28A.150.220))~~ 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided ~~((a))~~ an annual total instructional hour offering, as prescribed in RCW ~~((28A.150.220 except that the percentages for basic skills, work skills, and optional subjects and activities prescribed in RCW 28A.150.220 do not apply to private schools and that the total instructional hour offering, except as otherwise specifically provided in RCW 28A.150.220, made available is))~~ 28A.195.010, of at least:

- (i) 450 Hours for students in kindergarten.
- (ii) 1000 Hours for students in grades one through twelve.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated

teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than thirty students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC (~~(180-51-068(7))~~);

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this . . . . day of . . . . ., 20 . . .

.....  
(signed)

.....  
(title)

.....  
(phone number)

(2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The ~~((superintendent of public instruction shall be notified))~~ school shall notify the state board of education of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the revocation of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

**WAC 180-90-170 Complaints against private schools.** (1) Complaints about an approved private school may be made in writing to ~~((the office of public instruction))~~ state board of education.

(2) If a complaint against a private school is received, the ~~((office of the superintendent of public instruction))~~ state board of education will:

(a) Notify the complainant that the communication was received;

(b) Notify the school of the complaint, provide a copy of the complaint if requested, and provide an opportunity for the school to respond. All correspondence will conform to state and federal student privacy laws; and

(c) Review the complaint and the school's response and may take appropriate action it deems necessary. Any action taken by the ~~((office of the superintendent of public instruction))~~ state board of education will be limited to authority pursuant to chapter 28A.195 RCW and the rules promulgated thereunder.

(3) The record of the complaint, the response and any action taken will be retained according to the record retention schedule established by the office of the secretary of state for the ~~((office of the superintendent of public instruction))~~ state board of education.

**WSR 18-16-096**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed July 31, 2018, 12:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-020.

Title of Rule and Other Identifying Information: The Washington utilities and transportation commission has been engaged in this rule making to consider amendments to the rules in chapter 480-04 WAC, the commission's rules governing public access to information and records in order to better reflect current law and commission practice.

Hearing Location(s): On September 10, 2018, at 9:30 a.m., at the Richard Hemstad Building, Room 206, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504. Public hearing to consider adoption of proposed rules.

Date of Intended Adoption: September 10, 2018.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, email records@utc.wa.gov, by August 31, 2018.

Assistance for Persons with Disabilities: Contact Ashley Miller, phone 360-664-1130, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email ashley.miller@utc.wa.gov, by August 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to amend chapter 480-04 WAC to reflect current commission practice and implement statutory authority.

Reasons Supporting Proposal: The commission last revised chapter 480-04 WAC in 2006. Since that time, there have been technological changes and new legislation. In addition, the commission has received suggestions to clarify the rules in this chapter to incorporate and better reflect current commission practice.

Statutory Authority for Adoption: RCW 34.05.020.

Statute Being Implemented: RCW 80.01.040.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Gregory J. Kopta, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, 360-664-1355; Implementation and Enforcement: Mark L. Johnson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, 360-664-1115.

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. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The commission issued a notice requesting comment and cost information on any economic impact the proposed rules would have on businesses, and received no comments. The proposed rules

primarily reflect current commission practices and procedures and thus will not impose any costs on businesses that they do not presently incur.

A copy of the detailed cost calculations may be obtained by contacting Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.E., Olympia, WA 98504, phone 360-664-1160, fax 360-586-1150, TTY 360-586-8230 or 360-664-1132, email records@utc.wa.gov.

July 31, 2018

Mark L. Johnson  
Executive Director  
and Secretary

NEW SECTION

**WAC 480-04-005 Authority and purpose.** The Public Records Act, chapter 42.56 RCW, requires state agencies to make available for inspection and copying nonexempt public records in accordance with published rules. The sections in this chapter establish the procedures the Washington utilities and transportation commission will follow to provide full access to public records.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-020 Definitions.** (1) "Identifiable public record" is a public record that exists at the time the commission receives the request for public records and that commission staff can reasonably locate.

(2) "Public record" includes any writing (~~defined in subsection (5) of this section~~) prepared, owned, used, or retained by the commission, which contains) containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the commission regardless of physical form or characteristics.

~~((2))~~ (3) "Public records officer" means the official responsible for the commission's compliance with the Public Records Act, chapter ~~((42-17))~~ 42.56 RCW, and for the implementation of this chapter. The commission's secretary is designated as its public records officer. The secretary may designate one or more persons to assist in the implementation and application of this ~~((rule))~~ chapter, and "public records officer" as used in this chapter includes such persons.

~~((3))~~ (4) "Secretary," also referred to as "executive secretary," means the secretary of the commission appointed pursuant to RCW 80.01.030. Unless otherwise restricted, the term "secretary" also refers to the acting secretary and to the secretary's designee.

~~((4))~~ (5) "Washington utilities and transportation commission," also referred to in this chapter as "the commission," is the ~~((commission appointed by the governor under RCW 80.01.010))~~ agency established in Titles 80 and 81 RCW to regulate the rates, services, facilities, and practices of persons engaging in this state in the business of supplying any utility service or commodity, or of the transportation of persons or property, to the public for compensation. Where appropriate, the term "commission" also refers to the staff and employees of the Washington utilities and transportation commission.

~~((5))~~ (6) "Writing" ~~((means any information (e.g., words, numbers, symbols, images, and sounds) recorded in any media (e.g., handwritten, typewritten, printed, electronic, photographic, and video and audio recording), as defined in RCW 42.17.020(42).~~

~~((6) The word "you," or "your," when used in this chapter, refers to a person who requests access to public records))~~ is any means of recording any form of communication or representation as provided in RCW 42.56.010(4).

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-035 ~~((Physical address—Telephone—Facsimile—E-mail—Internet.))~~ Contact information.** ~~((The))~~ Any person may obtain information about the commission or request access to its public records by contacting the commission using the contact information provided in WAC 480-07-125. That information ~~((included in this section))~~ is current at the time of rule adoption~~((;))~~ but may change. Current information and additional contact information are available on the commission's ~~((internet))~~ web site, in person at the commission's offices, or by ~~((telephone call to))~~ calling the commission's main public telephone number.

<del>((Physical address; address for U.S.-mail or hand delivery</del>	<del>Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504 7250</del>
<del>Telephone (general)</del>	<del>360-664-1160</del>
<del>Telephone (records center)</del>	<del>360-664-1234</del>
<del>Telefacsimile (records center)</del>	<del>360-586-1150</del>
<del>Electronic mail (records center)</del>	<del>records@wute.wa.gov</del>
<del>Internet</del>	<del>www.wute.wa.gov))</del>

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-050 ~~Public information~~((; public submissions or requests other than))~~ available without making a request~~((s))~~ for public ~~((documents))~~ records.~~** ~~((Any one who wishes to obtain general information concerning topics within))~~ Many of the commission's ~~((jurisdiction may find such information))~~ public records are publicly accessible on the commission's ~~((internet site or may contact the commission by letter, telephone, or email, as described in this section. The commission will route all inquiries to staff who can best respond to the inquiry.~~

~~((1) Written requests for information should be sent to the commission's public records officer at the commission's mailing address.~~

~~((2) Electronic mail and telefacsimile requests for information should be sent to the commission's records center.~~

~~((3) Telephone requests for information may be made by contacting))~~ web site. Such documents include, but are not limited to, commission orders and notices, party filings in commission adjudications, regulated company filings, and documents containing general information about the commission, the industries and companies the commission regulates, and consumer assistance. Persons seeking commission documents should view the documents available on the commission's web site prior to submitting a public records request. Persons who need help finding such information may contact the commission's records center~~((, or by call to))~~ by calling the commission's general telephone number or sending an email to records@utc.wa.gov.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-060 Public records available; hours for inspection and copying.** (1) All of the commission's public records are available for inspection and copying unless the public record is exempt from disclosure under chapter ~~((42-17))~~ 42.56 RCW (the Public Records Act)~~((;))~~ or protected from disclosure under RCW 80.04.095 or 81.77.210 (records that contain valuable commercial information), WAC 480-07-160 (Confidential information), a protective order the commission enters pursuant to WAC 480-07-420 (Discovery—Protective orders), or ~~((under))~~ other provision of law. Except as provided in RCW ~~((42.17.260(6)))~~ 42.56-070(8), the commission will not give, sell, or provide access to lists of individuals if the information is requested for commercial purposes.

(2) The commission will promptly respond to requests for inspection and copying of public records as provided in this chapter.

(3) Public records are available for inspection and copying during the commission's customary office hours ~~((which are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding official state holidays as defined in RCW 1.16.050 (legal holidays and legislatively recognized days)))~~ specified in WAC 480-07-120.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-065 ~~((Records))~~ Index of significant decisions.** ~~((The commission will publish and index its significant adjudicative decisions; declaratory orders; interpretive statements; and policy statements.))~~ (1) **Content.** The commission will ~~((publish))~~ maintain and make available to the public ~~((its adjudicative orders that resolve contested issues or which it believes will be of interest or significance; its))~~ an index of the following:

(a) Final orders the commission has entered after June 30, 1990, in adjudicative proceedings that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(b) Declaratory orders~~((;—its))~~ the commission has entered after June 30, 1990, that contain an analysis or decision of substantial importance to the agency in carrying out its duties; and



~~(c) Interpretive and policy statements (and its policy statements)) the commission has issued since June 30, 1990.~~

~~(2) **Availability.** The commission will publish (these documents)) the index by the means it deems best suited to achieve broad availability, consistent with staff resources and technology (including distribution of paper copies, electronic mail, and internet web site posting. The commission will contemporaneously publish a summary of the decisions, orders, and statements.~~

~~(2) The commission will annually publish indices of the principles that are applied in the text of published decisions, orders, and statements.~~

~~(3) The commission will make paper copies of its indices available for sale at the commission's estimated actual cost of reproduction and distribution)). The documents contained in the index will also be included in the searchable document library on the commission's public web site.~~

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-090 Requests for public records.** (1) ~~(Many requests for public records can be handled quickly and informally without the need for a formal written request. You may ask orally, in person, or by telephone to look at a document, or get a copy of a document. You may also ask informally in writing, by letter or electronic mail. Requests may be made by electronic mail to the commission records center. Commission staff will advise you if a formal written request, as described in subsection (4) of this section, is required.~~

~~(2) The commission may require any person who seeks access to public records to present a formal written request. The commission may require a formal written request, for example, if you ask for large quantities of information or make an unusual request. The formal written request helps the commission make sure that you get all the information you have requested and that any charges for copies are proper.~~

~~(3) The commission may require a formal written request if the information you ask for might be within one of the exceptions to the law requiring disclosure. In this situation, your formal written request helps the commission make sure that its decision to disclose or withhold the information is made properly and that you get the public records you are entitled to receive. Examples of information that might be exempt from disclosure include documents that have been designated "confidential" by the person providing them to the commission, documents containing private or personal information, and documents that may be involved in litigation or hearings.~~

~~(4) If you need to make a formal written request for information, you may use a "public records request" form provided by the commission or you may write a letter that)~~

**Definition.** Except for requests for assistance to review or obtain documents on the commission's web site, any request for identifiable public records is a request for public records to which the commission must respond in compliance with the Public Records Act. Requests for public records do not include:

(a) Requests for general information about a subject or company that the commission regulates;

(b) Standing or ongoing requests for records that do not exist at the time the commission receives the request;

(c) Requests that the commission create a new document that compiles, organizes, collates, analyzes, summarizes, or is otherwise derived from existing commission records; or

(d) Requests for all or substantially all records prepared, owned, used, or retained by the commission.

**(2) Form of request.**

(a) *Public records request form.* Any person making a request for public records should complete the commission's Online Records Request Form. Persons can access this form on the commission's web site and may contact the records center for assistance.

(b) *Other writing.* A person who is unable or elects not to use the commission's Online Records Request Form may submit a letter or email to the records center. Such a request should contain((s)) the information listed ((below. If you want to use the form, you can get a copy at the commission's internet site or office, or you can ask to have it sent to you.

~~(5) Formal written requests must))~~ in subsection (3) of this section.

(c) *Telephone or in-person requests.* The commission will honor requests for public records made in person or by telephone to the public records officer during the commission's customary business hours. Any such request should include the information listed in subsection (3) of this section. The public records officer will subsequently confirm receipt of this information and the substance of the request in a written communication to the requester.

(3) **Needed information.** Any request for public records should include the following information that the commission needs to respond to the request:

(a) ((You)) The requester's name, physical address, email address, and telephone number((-));

(b) The date on which ((you submit your request.)) the requester submits the request;

(c) The identity of any individual, business, or other organization for whom ((you are)) the requester is making the request, if not only for ((yourself)) the requester personally((-);

(d) A clear ((indication, such as a document heading or title that you are)) statement that the requester is requesting public records ((to help make sure that the request is handled properly.

(e) Whether you));

(e) An election of whether the requester wants to inspect the public records ((or get)), obtain copies, or both((-);

(f) A clear description of the identifiable public records ((you want so that commission staff can find the records. If you know how the public records are described in the index maintained by the commission, provide that description to assist the commission to identify the public records you want to review.)) the requester is requesting; and

(g) A statement of whether ((you are making the request in order to obtain)) the requester is requesting a list of individuals to be used for any commercial purposes.

~~((6) Commission staff will make a reasonable effort to assist in identifying and providing all public records that you request.~~

~~(7) The commission may waive the need for a completed form when doing so supports the commission's administrative convenience and is not inconsistent with legal requirements or public policies.))~~ **(4) Requester's failure or refusal to provide information.** The public records officer will identify any information the commission needs that a requester has not included in a request for public records and will work with the requester to provide that information. If a requester refuses to provide his or her identity or sufficient other information, the commission will respond to the request to the extent feasible and consistent with applicable law.

**AMENDATORY SECTION** (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-095** ~~((Disclosure procedure.))~~ **Responding to requests for public records.** The commission will provide the fullest assistance to requesters and the most timely possible action in response to requests for public records consistent with the intent of the Public Records Act to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential commission functions.

(1) **Tracking.** Upon receiving a request for public records, the public records officer will ~~((promptly notify you if your request is found to be incomplete, and will tell you what the problem is.))~~ assign it a tracking number and log it into the commission's public records request tracking system.

(2) **Task assignment.** Unless the request clearly seeks only documents that are contained in the commission's records center, the public records officer will ~~((assist you to complete or correct your request. Notifying you of a deficiency is not a denial of your request. The public records officer may act on a deficient request to the extent that doing so is reasonable.))~~

~~(2) Upon receiving a complete request,))~~ assign the request as a task to commission management personnel:

(a) To assess whether the request is sufficiently clear in identifying the records the requester seeks;

(b) To determine whether the commission has or may have documents that are responsive to the request;

(c) To develop a reasonable estimate of the time required to search for any responsive documents; and

(d) To provide any responsive documents to the public records officer for processing.

(3) **Initial response.** Within five business days of receiving a request for public records, the public records officer will take one or more of the following actions:

(a) Inform the requester that the commission has no public records that are responsive to the request;

(b) Make the requested records available to the requester for inspection and copying, either via a link to the document(s) on the commission's web site, or by providing a paper or electronic copy of the document(s);

(c) Acknowledge receipt of the request and provide the requester with a reasonable estimate of the date by which the

commission will make the records, or an installment of the records, available for inspection and copying;

(d) Acknowledge receipt of the request, ask the requester to clarify any portion of the request that is unclear, and to the extent possible, provide a reasonable estimate of when the commission will make the requested records, or an installment of the records, available for inspection and copying if the request is not clarified; or

(e) Deny the request. If the public records officer denies the public records request in whole or in part, the public records officer will provide the requester with a written explanation of the basis for the denial. The requester may contest the denial by requesting commission review as provided in WAC 480-04-120.

(4) **Additional time to respond.** The commission may extend an estimated date by which it will make the requested records, or an installment of the records, available for inspection and copying based on the need to clarify the request, to locate and assemble the records requested, to notify third persons or agencies affected by the request, or to determine whether any of the records are exempt or otherwise protected from public disclosure, or for other good cause. The public records officer will promptly notify the requester in writing of any revised estimate and will explain the reason for the revised estimate.

(5) **Exempt or protected information.** The public records officer will review the requested records to determine whether ~~((the record or a portion of it))~~ any record, in whole or in part, includes information that is exempt from disclosure under the Public Records Act, chapter ~~((42-17))~~ 42.56 RCW, or protected from disclosure under RCW 80.04.095 or 81.77.210 (records that contain valuable commercial information), WAC 480-07-160 (Confidential and other restricted information), a protective order the commission enters pursuant to WAC 480-07-420 (Discovery—Protective orders), or ~~((under))~~ another provision of law.

~~((3))~~ (a) **Exempt information.** The commission will ~~((delete identifying details from a))~~ redact from the public records ~~((to protect the personal privacy interests as provided by law when it makes the record available or publishes it. The commission will explain the reasons for any such deletion.))~~

(4) Only the public records officer is authorized to deny requests for public records. Any action other than granting access to public records, when taken by a person other than the public records officer, is a deferral of action and not a denial of a request. Any commission staff member who does not grant access to a public record when a complete written request is made must immediately take or send the requested document, together with the written request, to the public records officer for a prompt decision granting or denying the request.

(5) If the public records officer does not grant access to all or part of a requested public record, the public records officer will give you a written statement identifying the exemption authorizing the action and how it applies to the requested record. Any portion of the record that is not subject to exemption shall be promptly disclosed.

~~((If you))~~ it makes available for inspection and copying any information that is exempt from disclosure under the Public Records Act or any other applicable law. The public

records officer will provide the requester with a withholding log that identifies the specific exemption applicable to each redaction and briefly explains how the exemption applies. Except as otherwise provided in this section, the public records officer will make available for inspection and copying all records and portions of records that are not exempt from public disclosure.

(b) Information designated as confidential. The following process will apply if the requester requests a public record that contains information that has been designated as confidential under RCW 80.04.095, 81.77.210, or WAC 480-07-160 (, or a protective order, and you have not specifically asked to be provided with confidential information,)).

(i) The public records officer will ((tell you that material)) inform the requester that information in one or more public records that are responsive to the request has been designated as confidential, ((and ask whether you)) will offer to provide a version of the document from which that information has been redacted, and will ask if the requester wants the confidential information((, before processing your request.

The commission will process any request for a record designated as confidential under RCW 80.04.095 or WAC 480-07-160 in accordance with those provisions of law.

(7) If the public records officer denies your public records request in whole or in part, the public records officer will provide you a written explanation of the basis for the denial. If you want to contest the denial, you may request a review under WAC 480-04-120).

(ii) If the requester informs the public records officer that the request necessarily includes information designated as confidential, the commission will follow the procedure in RCW 80.04.095 or 81.77.210, whichever is applicable, as set forth below.

(A) The public records officer will send a written notice of the request to the provider of the confidential information, as well as to any other person who has been identified as being directly affected by any public disclosure of the information, and will send a copy of the notice to the requester. The commission will send the notice electronically and, to the extent practicable, will confirm that the provider received that notice. The notice will state that the commission will disclose the requested confidential information to the requester unless within ten days after the date of the notice, the provider obtains a court order prohibiting that disclosure. The commission will issue that notice not more than two business days after receiving confirmation that the requester wants the confidential information.

(B) If the provider of the confidential information has not obtained a court order prohibiting its disclosure within ten days from the date of the commission's notice or the commission has not received notification from the requester withdrawing the request or stating that the commission can satisfy the request without disclosing confidential information, the public records officer will make the entirety of the public records that are responsive to the request available for inspection and copying, including all information that had been designated as confidential, as provided in subsection (6) of this section. The public records officer will also remove the confidential designations from the records, and the commission

will maintain those records as publicly available in their entirety.

(c) Information subject to protective order. The following process will apply if a requester requests a public record that contains information that is protected from public disclosure pursuant to a protective order the commission enters.

(i) The public records officer will inform the requester that information in one or more public records that are responsive to the request is protected from disclosure pursuant to a protective order and will ask whether the requester wants the protected information. If the requester agrees that the commission can satisfy the request without disclosing that information, the public records officer will provide or make available for inspection the public records that are responsive to the request and from which the information protected by the protective order has been redacted.

(ii) If the requester informs the public records officer that the request necessarily includes information that is protected by a protective order, the commission will follow one of the following processes:

(A) If the adjudication in which the commission entered the protective order has concluded, the procedure in (b)(ii) of this subsection will apply.

(B) If the adjudication has not concluded, the public records officer will notify the presiding officer in the adjudication of the request. The presiding officer will establish by notice or order the process the commission will use to receive written or oral comments or argument on the request from the requester and the parties and will enter an order determining whether the commission will make any information subject to the protective order available for inspection and copying.

(d) Information affecting rights of others. If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may notify those persons of the request prior to making the records available for inspection and copying. If the public records officer elects to provide such notice, the process in (b)(ii) of this subsection shall apply.

#### **(6) Providing responsive records.**

(a) Inspection. Consistent with other demands on the agency's resources, the commission will promptly provide space for requesters to inspect the public records they have requested.

(b) Copies. Upon request, the commission will provide copies of responsive documents to the requester, subject to the requester paying any copying charges the commission assesses as provided in WAC 480-04-100. The commission will provide copies of documents in the same form in which the agency retains the record (i.e., the commission will provide paper copies of paper records and electronic copies of electronic records in the same format or program). The public records officer may, but is not required to, provide copies of records in a different form or format (e.g., making .pdf electronic copies of paper records) if such copying is technically feasible using existing commission resources and does not result in the creation of a new public record.

(7) Time to inspect or claim records. The public records officer will notify the requester in writing when the requested public records are available for inspection and copying and that the requester should make arrangements to

inspect or claim any requested copies of those records. The requester must inspect the records or claim any copies within thirty days of the commission's notice. If the requester does not do so or does not make other arrangements within that thirty days, the commission may close the request.

(8) **Providing records in installments.** If a requester requests a large number of records, the public records officer may provide access to responsive records in installments. The public records officer will notify the requester in writing when each installment of the requested records is available for inspection and copying and that the requester should make arrangements to inspect or claim any requested copies of those records. The requester must inspect the records or claim any copies in each installment within thirty days of the commission's notice. If the requester does not do so or does not make other arrangements within that thirty days, the commission may stop searching for the remaining records and close the request.

(9) **Closing request.** The public records officer will close the request and notify the requester in writing of that closure under any one of the following circumstances:

(a) The commission has completed a reasonable search for the requested public records, and either:

(i) The commission has located no responsive documents; or

(ii) The commission has located responsive documents, the requester has inspected those records, and the commission has provided any requested copies of the records;

(b) The requester withdraws the request;

(c) The requester does not clarify an entirely unclear request within thirty days from the date of the public records officer's written request for clarification;

(d) The requester does not timely inspect or make arrangements to inspect or request copies of responsive records as provided in this section; or

(e) The requester does not timely submit any deposit, pay fees for an installment, or make a final payment the commission has assessed for requested copies of public records as required under WAC 480-04-100.

(10) **Subsequently discovered records.** The public records officer will promptly inform the requester if, after the commission has notified the requester that the commission has provided all available records, the commission becomes aware of additional responsive documents that existed at the time the requester made the request. The commission will make the additional documents available for inspection and copying on an expedited basis.

(11) **Log of requests.** The commission will maintain a log of the public records requests it receives, which will include:

(a) The identity of the requester if provided by the requester;

(b) The date the commission received the request;

(c) The text of the original request;

(d) A description of the responsive records that were redacted or withheld and the reasons therefor; and

(e) the date of the final disposition of the request.

AMENDATORY SECTION (Amending WSR 06-17-087, filed 8/14/06, effective 9/14/06)

**WAC 480-04-100 Copying ((and service)) charges.** The commission will charge to provide copies of public records ((upon request.

(1) ~~The commission may charge a published fee for copying public records, if you request copies. The commission may, by order, within the requirements of RCW 42.17.300, establish and change prices and establish the maximum number of various kinds of copies that will be provided without charge)~~ as provided in this section.

(1) **Adoption of statutory copying charges.** The commission has not calculated the actual costs for copying its records because to do so would be unduly burdensome for the following reasons:

(a) The commission has insufficient resources to conduct a comprehensive study to determine the actual costs of copying its records;

(b) To conduct a study of the commission's actual copying costs would interfere with other essential agency functions; and

(c) The legislature has established reasonable fees and costs in RCW 42.56.120 after the public and requesters have commented on, and been informed of, such fees and costs.

To timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient and expeditious and in the public interest for the commission to adopt the legislature's approved fees and costs for most of the commission's records, as authorized in RCW 42.56.120 and as published in the commission's fee schedule.

(2) **Fee schedule.** The ((commission's)) commission publishes its schedule of copying charges ((for copies, except as provided in WAC 480-07-145 (3)(b), is published)) in Administrative Policy 5.1c, which is available ((from)) on the commission's web site or by contacting the commission's records center. ((Out-of-state customers and governmental agencies are not charged sales tax.

(3) WAC 480-07-145 (3)(b) fixes the charge for copies when a party to an adjudicative proceeding fails to file the number of copies required to meet the commission's internal distribution needs.)) The commission does not charge sales tax on copies it makes at its own facilities.

(3) **Cost estimates.** Upon request, the commission will provide a requester with a summary of the applicable charges before the commission makes copies of the requested records. The requester may revise the request to reduce the requested number of copies and correspondingly reduce the copying charges.

(4) **Deposits and prepayment.** Before beginning to make copies, the public records officer may require a requester to pay a deposit of up to ten percent of the estimated costs of copying all the requested records. The public records officer may also require the requester to pay the remainder of the copying costs before providing all the records, or to pay the costs of copying an installment before providing that installment.

(5) **Waiver or other fee arrangements.** The commission may waive copying charges as provided in Administrative Policy 5.1c. The commission also may enter into a contract, memorandum of understanding, or other agreement

with a requester that provides an alternative fee arrangement to the charges or in response to voluminous or frequently occurring requests.

(6) Mailing and delivery costs. The commission may charge the actual costs it incurs to mail or use a commercial carrier to deliver copies of the requested public records, including the cost of any digital storage medium or device on which the commission copies the records (such as a disc or flash drive), the shipping container or envelope, and the postage or delivery charge.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-120 Review of denials of public records requests.** (1) If the commission ~~((does not disclose))~~ denies a request for a public record ((that you have requested and you)) and the requester disagrees with the denial, ((you)) the requester may ask the public records officer, in writing, for a review of the denial. ((Your)) The written request for review must describe or enclose the public records officer's written statement that explains the reasons for the denial((, as provided in WAC 480-04-095(5))).

(2) ~~((You))~~ The requester may hand deliver, or have a courier deliver, ((your)) the written request for review in person at the commission's administrative office or ((you)) the requester may send it by mail or ((electronic mail)) email.

(3) The ~~((public records officer))~~ commission will promptly ((review your)) consider the written request((-The public records officer may personally reconsider the denial decision, or may refer the request to the commission for review.

~~((4))~~ for review. The public records officer's ((initial)) denial becomes final unless the commission modifies the decision within two business days after the commission receives ((your)) the request for review unless the requester and the commission agree to a longer commission review period. The commission, however, ~~((still))~~ may modify a denial decision at a later time. Once the public records officer's initial denial decision becomes final ~~((or is modified by the commission, you)),~~ the requester may seek judicial review under RCW ((42-17-340)) 42.56.550, or the requester may request that the Washington attorney general review any claims of exemptions pursuant to RCW 42.56.530.

AMENDATORY SECTION (Amending WSR 03-24-028, filed 11/24/03, effective 1/1/04)

**WAC 480-04-130 Protection of public records.** (1) Only commission staff may copy public documents unless the public records officer decides that copying by others will not disrupt commission business operations or pose any risk to the integrity and safety of the documents.

(2) No person may take any public record from the area the public records officer designates for public inspection of public records unless expressly authorized to do so by the public records officer((-

~~(3) When a member of the public asks to examine an entire file or group of public records, as distinguished from specific public records that can be individually identified and made available, the commission may take a reasonable time~~

~~to inspect the file or group of public records to remove any material designated as confidential and any information protected from disclosure by chapter 42-17 RCW, or other provision of law)). No person may disassemble or alter any document the commission allows that person to inspect.~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-04-030 Organization of the Washington utilities and transportation commission.

**WSR 18-16-114**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed August 1, 2018, 9:24 a.m.]

Original Notice.

Preproposal Statement of Inquiry was filed as WSR 18-11-006 on May 2, 2018.

Expedited Rule Making—Proposed notice was filed as WSR 18-15-068 on July 17, 2018.

Title of Rule and Other Identifying Information: Amendments made to WAC 220-220-020 Recreational license, 220-220-200 Valid catch record card, 220-310-010 Description of catch record cards and required information, and 220-310-020 Catch record cards.

Hearing Location(s): On September 14-15, 2018, at 8:00 a.m., at the Natural Resource[s] Building, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: September 15, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 43200, Mailstop 43153, Olympia, WA 98504, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, fax 360-902-2179, email Dolores.noyes@dfw.wa.gov, by September 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department needs to amend rules pertaining to catch record cards based on passage of ESSB 6127 during the 2018 legislative session and recent recommendations made by the Pacific Fishery Management Council, a federal administrative body.

Originally, the department filed a preproposal concerning these rules on May 2, 2018 (WSR 18-11-006), in anticipation of the passed legislation. Based on further changes recommended by the Pacific Fishery Management Council and the nature of the underlying proposed changes, the department filed an expedited rule making on July 17, 2018 (WSR 18-15-068). On July 25, 2018, a third party sent an email to the department making several suggestions to the proposed rule changes filed in the expedited rule making; he sought to further amend WAC 220-310-010 (3)(c) and 220-310-020 (4) and (6)(a). The department has agreed to the changes to WAC 220-310-010 (3)(c) and 220-310-020(4) but

not to his proposed changes to WAC 220-310-020 (6)(a) as reflected in the proposed amendments shown below.

In addition, a modification is being proposed to WAC 220-310-020 (6)(a) to facilitate online catch reporting for species for which a catch record card is required. This mechanism is currently available only for the Puget Sound recreational Dungeness crab fishery; however, this modification would allow WDFW to expand that to include other species (e.g., salmon, steelhead, sturgeon, and halibut).

Because of the suggested changes to the department's proposed rules under the expedited rule making, the department is now filing this permanent rule proposal (CR-102) and scheduling a briefing and hearing for the public at the scheduled September 14-15 commission meeting.

Reasons Supporting Proposal: The proposed changes to the current rules are necessary to make the rules consistent with request [requested] legislation passed in 2018 and recommendations made by the Pacific Fishery Management Council. The proposed modification to WAC 220-310-020 (6)(a) would facilitate online catch reporting for species in addition to Puget Sound crab, which already has this capability. This would be a more convenient catch reporting method for anglers and could help increase compliance with catch reporting requirements.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Michele Culver, 1111 Washington Street S.E., Olympia, WA, 360-902-2182; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

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. This rule proposal does not affect hydraulics.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

August 1, 2018  
Scott Bird  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-220-020 Recreational license.** A recreational license is ~~((a license document or))~~ a valid internet or telephone ~~((authorization))~~ transaction number issued by the department ~~((The license document is invalid unless the personal identification information on the license has been com-~~

~~pleted and the licensee has signed the license except that a temporary fishing license is issued either as a license document requiring personal identification information or as a stamp, which is invalid unless the two consecutive days for which it is valid are entered, in permanent ink, on the stamp)) or a valid license.~~

With the exception of razor clam licenses and one-day charter boat or guide operator stamp licenses, to be valid, a license must be signed by the licensee, must contain the licensee's personal identification information, and, if a catch record card is required, must be accompanied by a valid catch record card.

To be valid, a razor clam license must be signed by the licensee.

When a catch record card is not required for use with a one-day charter boat or guide operator stamp license, the stamp license is valid only if the issue date is written in ink on the stamp and the stamp is signed by the licensee. When a catch record card is required for use with a one-day charter boat or guide operator stamp license, the license is valid only if the issue date is written in ink on the stamp, the stamp is affixed to the catch record card, the catch record card is signed by the licensee, and the catch record card contains the licensee's completed personal identification information.

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-220-200 Valid catch record card.** For a catch record card ~~((shall be invalid unless))~~ to be valid:

(1) The angler ~~((has))~~ must have in physical possession the appropriate ~~((recreational))~~ license and catch record card for the area in which the angler is participating, if a license and/or a catch record card is required.

(2) The catch record card ~~((number is written in ink in the appropriate space on the back of the recreational license, if a license is required, and))~~ must contain the personal information ~~((has been entered on the catch record card as))~~ required under WAC ~~((220-310-020, or, if an automated license is issued, the catch record card has attached to it a validation sticker containing the name and license number))~~ 220-310-010.

(3) The license issuance date ~~((is))~~ must be legible and not altered, and the license ~~((has not been))~~ must not be mutilated.

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-310-010 Description of catch record cards and required information.** (1) The department shall prepare and distribute a catch record card for the following:

- (a) Anadromous salmon (salmon);
- (b) Dungeness crab taken from Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5-13;
- (c) Halibut;
- (d) Steelhead; and
- (e) Sturgeon.

(2) Each catch record card shall contain space for the following information ~~((, which must be recorded prior to the~~

catch record card being separated from the underlying copy of the catch record card):

- (a) Name of fisher;
  - (b) Home address, or mailing address for a catch record card issued with a one-day charter boat or guide operator stamp license;
  - (c) City, state, and zip code;
  - (d) Date of issuance;
  - (e) ~~((Or, for automated licenses))~~ When the catch record card is issued with a one-day charter boat or guide operator stamp license, the catch record card shall contain space for ~~((the appropriate validation sticker))~~ that stamp.
- (3) Each catch record card shall contain space for the following information:
- (a) Month of catch;
  - (b) Day of catch;
  - (c) ~~((Catch record card area, river code, or stream: Location of catch;))~~ Location of catch by Marine Area, River, or Lake Code;
  - (d) A species code for salmon and sturgeon and a marked or unmarked space for salmon;
  - (e) A space for designating the type of vessel from which halibut was taken, either charter ("c") or ~~((personal/charter (k-boat)))~~ private ("p");
  - (f) A space for the length of sturgeon;
  - (g) For Dungeness crab:
  - (i) The type of crab fishery as described on the Dungeness crab catch record card;
  - (ii) The total crab retained by fishery type;
  - (iii) A tally mark for each crab retained.

**AMENDATORY SECTION** (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-310-020 Catch record cards.** It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) An angler must obtain and have in his or her personal possession a valid and appropriate Puget Sound Dungeness crab catch record card as described in WAC 220-310-010 to fish for or possess for personal use any Dungeness crab in Catch Record Card Area 4 east of the Bonilla-Tatoosh Line, and in Catch Record Card Areas 5-13.

(2) An angler must obtain and have in his or her personal possession a valid and appropriate catch record card as described in WAC 220-310-010 to fish for or possess for personal use any anadromous salmon, sturgeon, halibut, or steelhead except a catch record card is not required for:

(a) Commercially caught salmon retained for personal use, as provided in WAC 220-354-030, and commercially caught sturgeon retained for personal use, as provided in WAC 220-353-110; and

(b) Landlocked steelhead or for salmon in waters designated as "landlocked salmon rules apply" in WAC 220-312-010 through 220-312-060.

(3) Unless the catch record card is issued by the automated licensing system, anglers must completely, accurately, and legibly complete all personal identification information in ink on the catch record card ~~((before detaching the card from its underlying copy or, for automated licenses, affixing~~

~~the appropriate validation sticker to the catch record card to validate a catch record card))~~. A catch record card remains valid as long as there is one or more unfilled spaces available for the species being fished for, except:

(a) A catch record card remains valid for catch-and-release sturgeon fishing when the sturgeon portion of the card is full in the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington.

(b) It is unlawful to use a second or subsequent catch record card to retain halibut, sturgeon, or wild steelhead after the first card is full.

(4) Immediately upon catching and possessing a salmon, steelhead, sturgeon or halibut, anglers must enter, in ink, in the appropriate space on the card, the place, date of catch, and species (catch type). For sturgeon, anglers also must record the length of the fish; for halibut, anglers also must record the vessel type; and for salmon, anglers also must indicate whether or not the fish was marked by having a clipped adipose fin(s).

(5) Immediately upon retaining a Puget Sound Dungeness crab aboard a vessel or on the shore, fishers must enter, in ink, in the appropriate space on the Puget Sound Dungeness crab catch record card, the place and date of catch, the fishery type, and a tally mark for each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher must enter the total number of crab tally marks for each fishery type.

(6)(a) Every person issued a catch record card must, by April 30 of the year after they used the card, return the card to the department of fish and wildlife or report the card information at the designated internet site by dates indicated on the card. People issued a Puget Sound Dungeness crab catch record card must return the card to the Washington department of fish and wildlife or report the card information at the designated internet site by the dates indicated on the card.

(b) Failure to return a Dungeness crab catch record card or to report the Dungeness crab catch record card information at the designated internet site by the dates indicated on the card will result in a ten-dollar administrative fee. The administrative fee will be collected from anglers when they acquire a subsequent Puget Sound Dungeness crab endorsement.

(7) Any person possessing a catch record card must show the card to any law enforcement officer or authorized department employee who asks to inspect the card.

(8) A catch record card must not be transferred, borrowed, altered, or loaned to another person, except as authorized under RCW 77.32.565.

## WSR 18-16-115

### PROPOSED RULES

### CRIMINAL JUSTICE

### TRAINING COMMISSION

[Filed August 1, 2018, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-044.

Title of Rule and Other Identifying Information: WAC 139-10-215 Basic corrections academy equivalency certification.

Hearing Location(s): On Wednesday, September 12, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: September 12, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by September 10, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by September 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 139-10-215 clearly identifies parameters of eligibility to participate in the corrections equivalency course. It details who is eligible to participate in the corrections equivalency course, as the current language allows a break in service in excess of twenty-four months with no limit of time. As skills deteriorate over time, it is important to identify when a corrections officer should be required to attend a full academy as opposed to an equivalency.

Statutory Authority for Adoption: RCW 43.101.080.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting: Tisha Jones, Lacey, Washington, 360-486-2431; Implementation and Enforcement: Ian Edwards, Burien, Washington, 206-835-7321.

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.

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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

August 1, 2018  
Sonja Peterson  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 03-13-098, filed 6/17/03, effective 7/18/03)

**WAC 139-10-215 Basic corrections academy equivalency certification.** (1) A certificate of equivalent basic corrections training shall be issued only to corrections employees who successfully complete the equivalency process as required by the Washington state criminal justice training commission and shall be recognized in the same manner as the certificate of completion of a basic corrections academy.

(2) Eligibility for participation in the basic equivalency process shall be limited to regular, full-time custody and case management employees of publicly funded corrections agencies within this state who have either:

(a) Obtained certification through successful completion of an accepted basic corrections training program in this or another state.

(b) Previously held certification in this state and incurred a break or interruption of corrections employment in excess of twenty-four months but less than sixty months and who are required to attend the equivalency.

The determination of program acceptability shall be the responsibility of the commission's executive director or his/her designee and shall be based upon a description and/or curriculum specifying subject areas and hourly allocation thereto.

(3) The decision to request an employee's participation within the equivalency process shall be discretionary with the chief executive officer of the employing agency. Such request shall be made to the commission in the approved form, signed by the chief executive officer of the requesting agency and shall include:

(a) Documented certification of successful completion of a basic corrections training program accepted by the training commission for the purposes of equivalency participation pursuant to the provisions of section (2) above;

(b) Written curriculum detailing specific areas of training and hours of training in specific areas;

(c) Copies of current and valid basic cardiopulmonary resuscitation (CPR) card and current and valid basic or advanced first-aid card(s) taken within the past year;

(d) Statement of applicant's health and physical condition from a licensed physician giving clearance for participation in physical training and defensive tactics coursework.

(4) Following receipt and acceptance of the above by the training commission, the applicant may participate in the equivalency process which shall include written examinations of specific core material classes, practical testing in basic skill areas, and full participation in mock scenes.

(5) Upon completion of the examination process outlined in section (4) and evaluation of the applicant's performance, the training commission shall:

(a) Issue a certificate of equivalent basic training;

(b) Issue a certificate of equivalent basic training upon applicant's successful completion of additional training as the training commission may require;

(c) Require completion of the appropriate basic corrections academy program.

(6) Any waiver of, or variance in, any above requirement for equivalency participation and/or certification may be granted by the training commission if it is determined that sufficient justification exists for such action. Any action or determination by commission staff regarding a requestor or applicant for equivalency certification may, upon written request of the involved individual or agency, be appealed to the training commission executive director, or designee.



**WSR 18-16-122**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 1, 2018, 11:43 a.m.]

August 1, 2018  
 Chris P. S. Reykdal  
 State Superintendent  
 of Public Instruction

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-069.

Title of Rule and Other Identifying Information: WAC 392-140-950 through 392-140-967, Finance—Special allocations—Learning improvement days.

Hearing Location(s): On September 5, 2018, at 1:00 p.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Wanamaker Room, Olympia, WA 98501. If you are planning to testify, please arrive by 1:00 p.m.

Date of Intended Adoption: September 7, 2018.

Submit Written Comments to: Ross Bunda, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email ross.bunda@k12.wa.us, fax 360-664-3683, by September 5, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by August 29, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is considering repealing rules related to learning improvement days. OSPI has not implemented these rules since the 2010-11 school year because the underlying state funding methodology is obsolete.

Reasons Supporting Proposal: OSPI is proposing to repeal obsolete rules that funded learning improvement days based on a state funding methodology that ended in school year 2010-11.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6308; Implementation and Enforcement: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6301.

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. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 392-140-950 Learning improvement days—Applicable provisions.

WAC 392-140-951 Learning improvement days—Purpose.

WAC 392-140-955 Learning improvement days—Definition—Learning improvement day.

WAC 392-140-956 Learning improvement days—Other definitions.

WAC 392-140-957 Learning improvement days—Allowable activities.

WAC 392-140-961 Learning improvement days—Determination of the number of funded learning improvement days.

WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days.

WAC 392-140-965 Learning improvement days—Requests for review and adjustment.

WAC 392-140-967 Learning improvement days—Reporting requirements.

**WSR 18-16-123**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 1, 2018, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-129.

Title of Rule and Other Identifying Information: WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries, carryover and recovery calculation rules for learning assistance program (LAP) high poverty allocations for the 2017-18 school year.

Hearing Location(s): On September 5, 2018, at 11:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501. If you are planning to testify, please arrive by 11:00 a.m.

Date of Intended Adoption: September 7, 2018.

Submit Written Comments to: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, email thomas.kelly@k12.wa.us, fax 360-664-3683, other 360-725-6301, by September 5, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-

664-3631, email Kristin.murphy@k12.wa.us, by August 29, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is considering revising the LAP carryover and recovery calculation rules for the purpose of ensuring that funding for students in need of additional support as appropriated by the legislature can be utilized as the legislature intended. This proposed rule change will allow the funding generated at high poverty schools this school year to be spent at the schools which generated the funding next year, instead of being recovered by the state.

Reasons Supporting Proposal: This rule change will allow the funding to have maximum benefit to the high poverty students in receiving districts.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

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

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, OSPI, 600 South Washington, Olympia, WA, 360-725-6301; and Enforcement: Lisa Dawn-Fisher, OSPI, 600 South Washington, Olympia, WA, 360-725-6292.

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.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

August 1, 2018

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries.** Categorical apportionment moneys shall be expended for allowable categorical program costs. Indirect cost charges to categorical programs are limited as provided in this section. Categorical moneys may be carried over from one school district or charter school fiscal year to another only as provided in this section.

(1) The superintendent of public instruction shall recover categorical program allocations made pursuant to this chapter if not expended by the school district or charter school during the school year for allowable program costs.

(2) For the 2000-01 school year and thereafter, "allowable program costs" means direct program expenditures plus allowable indirect program charges.

(a) Direct program expenditures are expenditures directly traceable to the program for the school year reported consistent with the *Accounting Manual for Public School Districts in the State of Washington* and instructions provided by the superintendent of public instruction including the *Administrative Budgeting, and Financial Reporting Handbook*.

(b) For the purposes of this section, special education program expenditures shall be reduced (abated) by revenues to account 7121 special education revenues from other districts or charter schools.

(c) For special education, highly capable, and transitional bilingual, allowable indirect program charges equal direct program expenditures times the percentage calculated from the school district's or charter school's annual financial statements (Report F-196) for two school years prior as follows:

(i) Divide direct expenditures for program 97 (~~districtwide~~) district-wide support by;

(ii) Total general fund direct expenditures for all programs minus direct expenditures for program 97 (~~districtwide~~) district-wide support; and

(iii) Round to three decimal places.

(d) For the learning assistance program, allowable indirect program charges equal the direct program expenditures times the federal restricted indirect rate calculated by the superintendent of public instruction.

(e) For the institutional education program, allowable indirect program charges equal the state institutional education program allocation times the percentage allocated for indirect costs pursuant to the biennial operating appropriations act and the state funding formula.

(3) Commencing with the 1994-95 school year allocation, a school district or charter school may carry over from one school district fiscal year to the next up to ten percent of the state learning assistance program allocation. For the 2017-18 school year only, a school district or charter school may carry over all unspent learning assistance program high poverty allocations to the 2018-19 school year. Carryover moneys shall be expended solely for allowable learning assistance program costs.

(4) Commencing with the 1997-98 school year allocation, a district or charter school may carry over from one school fiscal year to the next up to ten percent of state special education program allocation. Carryover moneys shall be expended solely for allowable state special education program costs.

(5) Commencing with the 1998-99 school year allocation, a school district may carry over from one school district fiscal year to the next up to ten percent of the state institutional education program allocation. Carryover moneys shall be expended solely for allowable state institutional education program costs.

(6) The amount recovered pursuant to this section for special education, highly capable, bilingual, and learning assistance programs shall be determined as follows:

(a) Sum the state allocation for the categorical program for the school year and any carryover from the prior school year if applicable;

(b) Determine the district's or charter school's allowable program costs for the school year pursuant to this section;

(c) If the result of (a) of this subsection exceeds the result of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(7) For the 2017-18 school year only, learning assistance program high poverty allocations are not subject to the recovery provisions outlined in WAC 392-122-900 (6)(a) through (c).

(8) The amount recovered pursuant to this section for the institutional education program shall be determined as follows:

(a) Sum the state allocation for the institutional education program for the school year excluding any amount provided for indirect costs, and any carryover from the prior school year if applicable;

(b) Determine the school district's direct expenditures for the institutional education program as reported on Report F-196 or such other document filed pursuant to instructions provided by the superintendent of public instruction;

(c) If the amount of (a) of this subsection exceeds the amount of (b) of this subsection, the difference less any allowable carryover shall be recovered.

~~((8))~~ (9) This section applies to categorical program allocations to school districts, educational service districts and, in the case of institutional education programs, entities contracting to provide an institutional education program funded under this chapter.