

WSR 19-12-004
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed May 22, 2019, 3:44 p.m., effective May 22, 2019, 3:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-193 (Rule 193) and 458-20-221 (Rule 221) provide guidance regarding the need for a seller to have a physical presence in Washington in order to establish the required nexus for the state to impose a sales or use tax collection obligation on retail sales into Washington. The United States Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), allowed Washington to impose a sales or use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision and RCW 82.08.0254, 82.12.0255 and 82.32.733, effective October 1, 2018, the department required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (SSB 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. Until the final rules reflecting these changes are adopted through the standard rule-making process, the department wants the public to be aware that the current Rules 193 and 221 may contain outdated or incomplete information regarding who is required to collect sales or use tax on taxable retail sales into Washington.

Citation of Rules Affected by this Order: Amending WAC 458-20-193 and 458-20-221.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060, and 82.32.733.

Other Authority: RCW 34.05.350.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Taxpayers rely on Rules 193 and 221 to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. Effective October 1, 2018, the department imposed a sales or use tax collection obligation on remote sellers meeting certain thresholds, under the authority of RCW 82.08.0254, 82.12.0255, and 82.32.733. SSB 5581 (2019) further clarified the sales tax collection obligation for remote sellers. Because of these changes in the law, Rules 193 and 221 require substantive updates using the standard rule-making process. Until these rules are amended, the department wants to ensure the public does not use current Rules 193 and 221 to determine their sales or use tax collection obligations beginning October 1, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 22, 2019.

Kevin Dixon
Program Manager

AMENDATORY SECTION (Amending WSR 18-06-078, filed 3/6/18, effective 4/6/18)

WAC 458-20-193 Interstate sales of tangible personal property. (1) **Introduction.** The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (Substitute Senate Bill No. 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements. This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property.

(a) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-19401 Minimum nexus threshold for apportionable receipts.

(b) This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(c) **Tangible personal property.** For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Scope of rule.** In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington. This rule explains the applicable

nexus and place of sale requirements with respect to sales of tangible personal property. This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington. For information on payment responsibilities for use tax see WAC 458-20-178.

(3) **Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standards for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

Part I - Nexus Standards for Sales of Tangible Personal Property

(101) **Introduction.** A seller is subject to the state's B&O tax and retail sales tax with respect to sales of tangible personal property, if that seller has nexus. Washington applies specific nexus standards and thresholds that are used to determine whether a seller of tangible personal property has nexus. The nexus standards and thresholds described in this rule pertain only to sellers of tangible personal property. The remainder of Part I of this rule describes these nexus standards and thresholds and how they apply in the context of Washington's wholesaling and retailing B&O classifications and the retail sales tax.

(102) **Physical presence nexus standard.** A person who sells tangible personal property in a retail sale is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6). This standard applies to retail sales both in the retail sales tax and retailing B&O tax context.

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington; or

(iv) The person is a remote seller as defined in RCW 82.08.052 and is unable to rebut the substantial nexus presumption for remote sellers set out in RCW 82.04.067 (6)(c)(ii).

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products

in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

(i) Soliciting sales of goods in Washington;

(ii) Installing, assembling, or repairing goods in Washington;

(iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;

(iv) Delivering products into Washington other than by mail or common carrier;

(v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state, except as described in subsection (102)(f) of this rule;

(vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;

(vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:

(A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or

(B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials, communications, or other information accessible to customers.

(e) **Remote sellers - Click-through nexus.** Effective September 1, 2015, a remote seller as defined in RCW 82.08.052 is presumed to meet the physical presence nexus standard described in this subsection for purposes of the retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, refers potential customers to the remote seller, whether by link on an internet web site or otherwise, but only if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller through such agreements exceeds ten thousand dollars during the preceding calendar year. For more information related to the presumption and how to rebut the presumption, see RCW 82.08.052 and 82.04.067 (6)(c)(ii).

(f) **Trade convention exception.** For the physical presence nexus standard described in this subsection, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt

will occur at a later time in Washington state. RCW 82.32.-531.

Definitions. The following definitions apply only to (f) of this subsection:

(i) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(ii) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(iii) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

(A) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or

(B) The exchange of information, ideas, and attitudes in regards to that industry or profession.

(103) **Economic nexus thresholds.** RCW 82.04.067 establishes substantial nexus thresholds that apply to persons who sell tangible personal property. For more information on the economic nexus thresholds, see WAC 458-20-19401.

Application to retail sales. Effective July 1, 2017, for B&O tax purposes, a person making retail sales taxable under RCW 82.04.250(1) or 82.04.257(1) is deemed to have substantial nexus with Washington if the person's receipts meet the economic nexus thresholds under RCW 82.04.067 (1)(c)(iii) and (iv). The receipts threshold is met if the person has more than two hundred sixty-seven thousand dollars of receipts (as adjusted by RCW 82.04.067(5)) from this state or at least twenty-five percent of the person's total receipts are in this state. For more information, see WAC 458-20-19401.

(104) **Application of standards and thresholds to wholesale sales.** The physical presence nexus standard described in subsection (102) of this rule, applies to wholesale sales for periods prior to September 1, 2015. Effective September 1, 2015, wholesale sales taxable under RCW 82.04.257(1) and 82.04.270 are subject to the RCW 82.04.-067 (1) through (5) economic nexus thresholds. Wholesaling activities not taxable under RCW 82.04.257(1) and 82.04.270 remain subject to the physical presence nexus standard. For more information, see WAC 458-20-19401.

(105) **Effect of having nexus.**

(a) **Retail sales.** A person that makes retail sales of tangible personal property and meets either the physical presence nexus standard or whose receipts meet the economic nexus thresholds described in RCW 82.04.067 (1)(c)(iii) or (iv) is subject to B&O tax on that person's retail sales received in the state. In addition, a person that makes retail sales of tangible personal property and meets the physical presence nexus standard, including as described in subsection (102)(e) of this rule, is also responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(b) **Wholesale sales.** A person that makes wholesale sales of tangible personal property and has nexus with Washington (as described in subsection (104) of this rule) is subject to B&O tax on that person's wholesale sales sourced to Washington.

(106) **Trailing nexus.** Effective July 1, 2017, for B&O tax purposes, a person is deemed to have substantial nexus with Washington for the current year if that person meets any of the requirements in RCW 82.04.067 in either the current or immediately preceding calendar year. Thus, a person who stops the business activity that created nexus in Washington continues to have nexus in the calendar year following any calendar year in which the person met any of the requirements in RCW 82.04.067 (also known as "trailing nexus").

Prior to July 1, 2017, RCW 82.04.220 provided that for B&O tax purposes a person who stopped the business activity that created nexus in Washington continued to have nexus for the remainder of that calendar year, plus one additional calendar year.

The department of revenue applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

(107) **Public Law 86-272.** Public Law 86-272 (15 U.S.C. Sec. 381 et. seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

Part II - Sourcing Sales of Tangible Personal Property

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.-730 for further explanation of the sourcing rules for those particular transactions.

(202) **Receive and receipt.**

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) **Sourcing sales of tangible personal property - In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Example 1. Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O tax or retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;
- The place of delivery, if different from the purchaser's address; and
- The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 5. John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

Example 6. Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

Example 7. An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

Example 8. A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

Example 9. An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for

Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

Example 11. Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(204) **Sourcing sales of certain types of property.**

(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

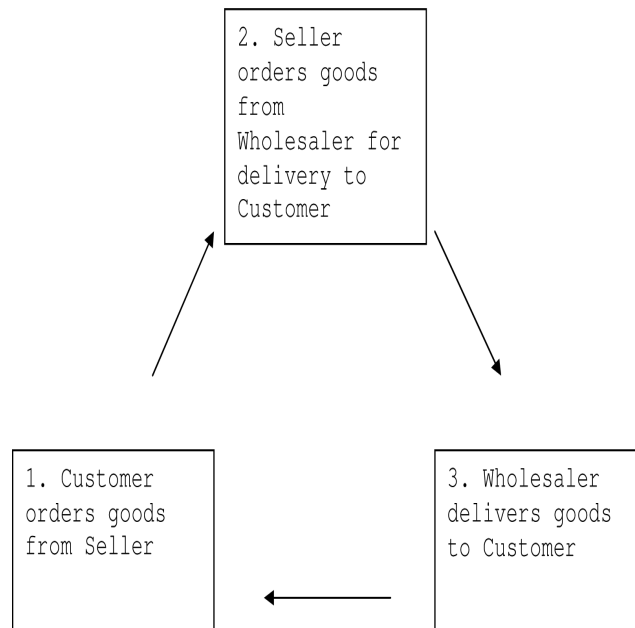
(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.730 (7)(d) and (9)(e) and WAC 458-20-158.

Part III - Drop Shipments

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's

customer's location). Below is a diagram of a basic drop shipment transaction:



The following subsections discuss the taxability of drop shipments in Washington when:

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. For information about reseller permits issued by the department, see WAC 458-20-102.

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject

to B&O tax, and the seller is not required to collect retail sales tax on the sale.

Example 12. Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) Seller and wholesaler have nexus with Washington. Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

AMENDATORY SECTION (Amending WSR 89-06-016, filed 2/23/89, effective 4/1/89)

WAC 458-20-221 Collection of use tax by retailers and selling agents. The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (Substitute Senate Bill No. 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements.

(1) Statutory requirements. RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) Definitions.

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribu-

tion, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) Liability of buyers for use tax. Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) Obligation of sellers to collect use tax. Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) Local use tax. Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) Reporting frequency. Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

WSR 19-12-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-109—Filed May 23, 2019, 5:38 p.m., effective May 23, 2019, 5:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial shrimp rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000A; and amending WAC 220-340-520.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to amend a previous filing by adding text that was inadvertently omitted. The 2019 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the Region 1 and Region 3 trawl fishery season; and (2) opens the pot fishery season for non-spot shrimp with weekly harvest limits. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 23, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000B Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3 are open to the harvest of all non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

(ii) In Catch Area 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 6:00 a.m. June 16, 2019.

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(c) Effective immediately, until further notice, the shrimp catch accounting week is Wednesday through Tuesday.

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B will open immediately, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington State wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-340-52000A Puget Sound shrimp pot and trawl fishery—Season. (19-84)

WSR 19-12-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-110—Filed May 23, 2019, 5:48 p.m., effective May 27, 2019]

Effective Date of Rule: May 27, 2019.

Purpose: Amend recreational salmon fishing rules for the Snake River.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to open salmon fishing in a portion of the Snake River. Fishery managers have determined that sufficient harvest allocation remains to allow for a one day spring Chinook fishery below Little Goose Dam. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 23, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-050001 Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050 and WAC 220-313-010:

(1) Snake River from Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. This zone includes the rock and concrete area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the Wall" in front of the juvenile collection facility); effective immediately until further notice:

(a) Hooks must be barbless when fishing for all species during times and in locations open for salmon.

(b) Salmon:

(i) Open Monday, May 27, 2019.

(ii) Daily limit 4 of which up to 1 may be an adult; minimum length 12 inches.

(iii) Release all salmon other than hatchery Chinook.

(iv) Anglers may not continue to fish for salmon or steelhead once the adult salmon daily limit has been retained.

(v) Night closure.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 19-12-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-90—Filed May 24, 2019, 1:33 p.m., effective June 1, 2019]

Effective Date of Rule: June 1, 2019.

Purpose: Amend recreational fishing rules for the Skykomish River (Reiter Ponds).

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000N; and amending WAC 220-312-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open Reiter Ponds in the Skykomish River to fishing events for juvenile anglers only which will provide angling opportunity. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 24, 2019.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000N Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective one hour before official sunrise to 12:00 noon on June 1, July 6 and August 3, 2019, it is permissible for juvenile anglers only to fish in those waters of the Skykomish River from the Reiter Ponds outlet to 500 feet downstream of the Reiter Ponds outlet.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. August 3, 2019:

WAC 220-312-04000N Freshwater exceptions to statewide rules—Puget Sound.

WSR 19-12-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-111—Filed May 24, 2019, 2:53 p.m., effective May 24, 2019, 2:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon fishing rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000A; and amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to provide consistency with the Washington sport fishing rules pamphlet and the Washington Administrative Code. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 24, 2018 [2019].

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000A Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective immediately through 12:00 p.m. May 27, 2019, it is permissible to fish for salmon in the following waters:

Marine Area 8-2: Inside and easterly of a line projected 225 degrees from the pilings at old Bower's Resort to a point 2,000 feet offshore, thence northwesterly to a point 2,000 feet off Mission Point, thence across the mouth of Tulalip Bay to a point 2,000 feet off Hermosa Point, thence northwesterly following a line 2,000 feet offshore to the intersection with a line projected 233 degrees from the fishing boundary marker on the shore at the slide north of Tulalip Bay. Unless otherwise amended all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 27, 2019:

WAC 220-313-06000A Puget Sound salmon—Saltwater seasons and daily limits.

WSR 19-12-021

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 28, 2019, 1:53 p.m., effective May 28, 2019]

Effective Date of Rule: May 28, 2019.

Purpose: Increase child care centers' and seasonal day camps' working connections child care base rates effective February 1, 2019.

Citation of Rules Affected by this Order: Repealing WAC 110-15-2401, 110-15-2410, 110-15-2420, 110-15-2426, 110-15-2430, 110-15-2435, 110-15-2440, 110-15-2445, 110-15-2450, 110-15-2455, 110-15-2460 and 110-15-2465; and amending WAC 110-15-0200.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065; chapter 43.216 RCW.

Other Authority: Consolidated Appropriations Act of 2018 (Public Law 115-141).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The federal child care development fund requires states to maintain the level of subsidy needed to ensure that (1) providers can afford the cost of fully implementing high quality care, and (2) ensure all families have equal access to child care.

An additional federal fiscal year 2018 discretionary funding appropriation was available to Washington state on February 1, 2019. These rules are being filed as an emergency because the state is under corrective action to improve equal access for all families, centers' rates effective February 1 rather than wait the approximately six months needed for a permanent rule. These emergency rules are being extended

while the department goes through the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 28, 2019.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION [(Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)]

WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and ~~(DCYF)~~ DCYF contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or ~~(DCYF)~~ DCYF contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kin- dergarten or school)
Region 1	Full-Day	\$(34.03) 35.29	\$(28.62) 32.44	\$(27.03) 30.53	\$(25.46) 29.41
	Half-Day	\$(17.02) 17.65	\$(14.31) 16.22	\$(13.52) 15.26	\$(12.73) 14.71
Spokane County	Full-Day	\$(34.81) 45.45	\$(29.28) 38.77	\$(27.67) 35.65	\$26.05
	Half-Day	\$(17.41) 22.73	\$(14.64) 19.39	\$(13.84) 17.83	\$13.03
Region 2	Full-Day	\$(34.39) 39.44	\$(28.68) 31.62	\$(26.61) 30.44	\$23.53
	Half-Day	\$(17.20) 19.72	\$(14.34) 15.81	\$(13.31) 15.22	\$11.77
Region 3	Full-Day	\$(45.50) 57.84	\$(37.93) 49.47	\$(32.78) 42.34	\$31.82
	Half-Day	\$(22.75) 28.92	\$(18.97) 24.73	\$(16.39) 21.17	\$15.91
Region 4	Full-Day	\$(52.94) 68.98	\$(44.20) 59.59	\$(37.10) 55.57	\$33.41
	Half-Day	\$(26.47) 34.49	\$(22.10) 29.80	\$(18.55) 27.79	\$16.71
Region 5	Full-Day	\$(38.82) 48.86	\$(33.41) 40.33	\$(29.40) 35.47	\$26.12
	Half-Day	\$(19.41) 24.43	\$(16.71) 20.16	\$(14.70) 17.74	\$13.06
Region 6	Full-Day	\$(38.18) 46.39	\$(32.78) 39.22	\$(28.62) 35.29	\$28.01
	Half-Day	\$(19.09) 23.20	\$(16.39) 19.61	\$(14.31) 17.65	\$14.01

(Chart effective ~~((09/01/17))~~ 02/01/2019)

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center ~~((WAC 170-295-0010 and 170-295-0050 allow))~~ WACs 110-300A-0010 and 110-300A-0050 allow providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC ~~((170-290-0220))~~ 110-15-0220.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-15-2401 Eligible consumers.
- WAC 110-15-2410 Application for early head start-child care partnership slots.
- WAC 110-15-2420 Copay for early head start-child care partnership slots.
- WAC 110-15-2426 Eligibility period for early head start-child care partnership slots.
- WAC 110-15-2430 Eligible early head start-child care partnership slots providers.
- WAC 110-15-2435 Subsidy payments for early head start-child care partnership slots providers.
- WAC 110-15-2440 Early achievers payments for partnership slots providers.
- WAC 110-15-2445 Reapplication for early head start-child care partnership slots.
- WAC 110-15-2450 Deenrollment process for early head start-child care partnership slots providers.
- WAC 110-15-2455 Payment discrepancies for early head start-child care partnership slots consumers.
- WAC 110-15-2460 Payment discrepancies for early head start-child care partnership slots providers.

WAC 110-15-2465 Administrative hearings for early head start-child care partnership slots.

WSR 19-12-022

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 28, 2019, 2:09 p.m., effective May 29, 2019]

Effective Date of Rule: May 29, 2019.

Purpose: Changes are being made to the following WAC to align with the Family First Prevention Act. This change in legislation requires all employees working in a department of children, youth, and families licensed group care facility to complete fingerprint based background checks and out-of-state child abuse and neglect history checks of every state the individual has lived in the preceding five years before the background check application. These changes went into effect October 1, 2018.

Chapter 110-04 WAC, Background checks: WAC 110-04-0010 What is the purpose of this chapter?, 110-04-0020 What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0030 Why are background checks done?, 110-04-0040 Who must have background checks?, 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children?, 110-04-0070 What happens if I don't comply with the background check requirement?, 110-04-0080 What does the background check cover?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or if I have been pardoned for a crime? and 110-04-0150 How will I know the status of the background check?; and chapter 110-145 WAC: WAC 110-145-1325 What is required to apply for a group care facility license?

Citation of Rules Affected by this Order: Amending WAC 110-04-0010, 110-04-0020, 110-04-0030, 110-04-0040, 110-04-0060, 110-04-0070, 110-04-0080, 110-04-0100, 110-04-0110, 110-04-0120, 110-04-0130, 110-04-0140, 110-04-0150, and 110-145-1325.

Statutory Authority for Adoption: For chapter 110-04 WAC is RCW 43.43.832; and for WAC 110-145-1325 is RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, Public Law 115-123.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These rules were originally filed as an emergency on October 1, 2018 (WSR 18-20-095), to meet the requirements in the Family First Prevention Act that went into effect October 1, 2018. At this time, the department is going through the permanent rule-making process (WSR 18-21-126) and needs to extend these rules to continue being in compliance with the federal legislation and to continue receiving Title IV-E funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 14, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 28, 2019.

Brenda Villarreal
Rules Administrator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0010 What is the purpose of this chapter? This chapter establishes rules for background checks conducted by ~~((children's administration (CA) at))~~ the department of ~~((social and health services (DSHS)))~~ children, youth, and families (DCYF) for child welfare purposes and does not apply to background checks required for child care or early learning purposes as they are addressed in chapter 110-06 WAC. The department does background checks on individuals who are licensed, certified, contracted, employed in a group care facility, or authorized to care for or have unsupervised access to children. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0020 What definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180~~ of this chapter? The following definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180~~ of this chapter:

"Authorized" or **"authorization"** means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

~~((**"CA"** means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child placing agencies, child protective services, child welfare services, and other services to children and their families.))~~

"Certification" means:

~~((1))~~ **(a)** Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

~~((2))~~ **(b)** Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" means a person who is one of the following:

~~((1))~~ **(a)** Under eighteen years old;

~~((2))~~ **Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;**

~~((3))~~ **(b)** Up to twenty-one years of age and participating in the extended foster care program;

~~((4))~~ **(c)** Up to twenty-one years of age and under the custody of the Washington state juvenile rehabilitation administration.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Department" or ~~((DSHS))~~ **"DCYF"** means the department of ~~((social and health services (DSHS)))~~ children, youth, and families responsible for providing child welfare programs and services to children and their families and licensing foster homes, group care facilities and programs, and child placing agencies.

"I" and **"you"** refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"(DLR) Licensing division" or **"LD"** means the licensing division ~~((of licensed resources within children's administration. DLR))~~ within DCYF. LD licenses and monitors foster homes, child placing agencies and licensed group care facilities.

~~("I" and "you" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.)~~

"Licensor" means either:

~~((1) A DLR)~~ (a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies ~~((established under this chapter))~~ that provide foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

~~((2))~~ (b) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Unsupervised" means will not or may not be in the presence of:

~~((1))~~ (a) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

~~((2))~~ (b) Another individual who has been previously approved by ~~((children's administration))~~ DCYF.

"We" refers to the department, including licensors and ~~((social workers))~~ caseworkers.

"WSP" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0030 Why are background checks done? ~~((The children's administration))~~ DCYF does background checks to help safeguard the health, safety, and well-being of children in out of home care. By doing background checks, the department reduces the risk of harm to children from individuals ~~((that))~~ who have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, ~~((or authorized))~~ authorization to be employed at a group care facility, or authorization to have unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children? For ~~((children's administration))~~ DCYF, these regulations apply to all applications for new and renewal licenses, contracts, certifications, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children that are processed by ~~((the children's administration))~~ DCYF after the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0070 What happens if I ~~((don't))~~ do not comply with the background check requirement? The department will deny, suspend or revoke your license, contract, or certification, or disqualify you to care for children if you or someone on the premises of your home or facility having unsupervised access, or an employee at a group care facility does not comply with the department's requirement for a background check.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- Washington state patrol.
- Washington courts.
- Department of corrections.
- Department of health.

- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for ~~((children's administration))~~ DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) ~~((through))~~ and (2) of this section, background checks conducted by ~~((children's administration))~~ DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home and for all staff working in a group care facility, including those not directly working with children:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in ~~((WAC 388-06A-0150 (4)(b), children's administration))~~ subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children. Those felony convictions are as follows:

- (a) Child abuse and/or neglect;
- (b) Spousal abuse;
- (c) A crime against a child (including child pornography);
- (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or
- (e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC ~~((388-06A-0170))~~ 110-04-0100 (1)(a) through (e), you will not be able to:

- (a) Receive a license to provide care to children;
- (b) Be approved for adoption of a child;

- (c) Be a contractor;
- (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children;
- (e) Be authorized to be employed at a group care facility even if you do not work directly with children;
- (f) Volunteer or participate as an intern in a home or facility that offers care to children; or
- ~~((f))~~ (g) Provide any type of care to children, if the care is funded by the state.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children? The department must disqualify you from licensing, contracting, certification, authorization for employment at a group care facility, or ~~((from having))~~ authorization for unsupervised access to children if it has been less than five years from a conviction for the following crimes:

(1) Any felony physical assault or battery offense not included in WAC ~~((388-06A-0170))~~ 110-04-0100;

(2) Any felony violation of the following drug-related crimes:

(a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW);

(b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(3) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from being authorized to be employed at a group care facility or having unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children? (1) In two situations, ~~((DSHS))~~ DCYF may find a person with convictions able to be authorized to be employed at a group care facility or have unsupervised access to children:

(a) If the conviction for any crime listed in WAC ~~((388-06A-0180))~~ 110-04-0110 occurred more than five years ago; or

(b) If the conviction was for a crime other than those listed in WAC ~~((388-06A-0170 or 388-06A-0180))~~ 110-04-0100 or 110-04-0110.

(2) In both of these situations, ~~((DSSH))~~ DCYF must review your background to determine your character, suitability, and competence to have unsupervised access to children. In this review, ~~((DSSH))~~ DCYF must consider the following factors:

- (a) The amount of time that has passed since you were convicted;
- (b) The seriousness of the crime that led to the conviction;
- (c) The number and types of other convictions in your background;
- (d) Your age at the time of conviction;
- (e) Documentation indicating you have successfully completed all court-ordered programs and restitution;
- (f) Your behavior since the conviction; and
- (g) The vulnerability of those that would be under your care.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check? (1) The department will not license, contract, certify, authorize employment at a group care facility, or authorize ~~((a person to have))~~ unsupervised access to children to a person who ~~((have))~~ has a criminal charge pending for a disqualifying crime;

(a) Described in the Adoption and Safe Families Act of 1997 ~~((, or a criminal charge pending for a disqualifying crime));~~ or

(b) That relates directly to child safety, permanence, or well-being.

(2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children by providing proof to the department that the charge against you has been dropped or that you were acquitted.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0150 How will I know the status of the background check? (1) If you have been approved by the background check:

(a) The department will notify you ~~((;))~~ and your prospective employer ~~((, or you))~~ or supervisor ~~((;))~~ if you have

requested a contract, authorization to be employed at a group care facility, or approval for unsupervised access to children.

(b) The department will not directly notify you, and will instead continue the process for approving your application if you have requested a license or certification to care for children.

(2) If you have been disqualified by the background check:

(a) The department will notify you in writing and include any laws and rules that require disqualification;

(b) The department will also notify the care provider, the prospective employer, or the licensor; and

(c) You will not receive a license, contract, certification, or be authorized to be employed at a group care facility or have unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the DCYF licensing division ~~((of licensed resources, children's administration)).~~

(2) You must submit a completed background authorization form for your executive director, agency staff including those not directly working with children, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter ~~((388-06A))~~ 110-04 WAC.

(3) You must ensure ~~((that an))~~ all paid agency employees ~~((who may have unsupervised access to))~~ and any other paid adults working at your facility, including those not directly working with children complete a FBI fingerprint check and a child abuse and neglect history check of every state the individual has lived in the preceding five years before the background check application.

(4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check.

(5) You must ensure that ~~((no))~~ all employees, volunteers, or subcontractors ~~((has unsupervised access to children))~~ meet the requirements in chapters 110-04 and 110-05 WAC. An individual is not authorized to work in the facility until you are notified by ~~((children's administration))~~ the licensing division that a background check was completed that qualifies the individual to have unsupervised access. If you have both a license issued by ~~((DLR))~~ DCYF licensing division and a contract with the department you must adhere to the most stringent background check requirement.

WSR 19-12-023

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 28, 2019, 2:09 p.m., effective May 29, 2019]

Effective Date of Rule: May 29, 2019.

Purpose: These rules will establish chapter 110-05 WAC, One hundred twenty-day provisional hires, for the department of children, youth, and families (DCYF). This chapter includes the requirements for one hundred twenty-day provisional hires which allows an employee in a group care facility to have unsupervised access to children in the care and custody of DCYF on a provisional basis pending the results of their Federal Bureau of Investigation [background check].

Citation of Rules Affected by this Order: New chapter 110-05 WAC.

Statutory Authority for Adoption: Chapter 43.216 RCW, RCW 74.15.030, Public Law 115-123.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: These rules were originally filed as an emergency on October 1, 2018, WSR 18-20-091. At this time, the department is going through the normal rule-making process (WSR 18-21-125) and needs to extend these emergency rules in order to be able to meet the requirements enacted in Public Law 115-123, Family First Prevention Act. These changes went into effect October 1, 2018, [and] are needed in order for the department to continue receiving Title IV-E funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 28, 2019.

Brenda Villarreal
Rules Coordinator

Chapter 110-05 WAC

ONE HUNDRED TWENTY-DAY PROVISIONAL HIRES

NEW SECTION

WAC 110-05-0010 What is the purpose of this chapter? WAC 110-05-0010 through 110-05-0070 defines when the one hundred twenty-day provisional hire is allowed by the department of children, youth, and families (DCYF).

NEW SECTION

WAC 110-05-0020 What is the purpose of the one hundred twenty-day provisional hire? The one hundred twenty-day provisional hire allows group care facilities to hire an employee on a provisional basis pending the results of their Federal Bureau of Investigation (FBI) background check.

NEW SECTION

WAC 110-05-0030 What definitions apply to one hundred twenty-day provisional hires? "Agency" means any private agency providing services to children, juveniles, and vulnerable adults.

"Employee" means an employee of an agency defined in RCW 74.15.020 that receives children for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children for foster care or placement of children for adoption; or an employee of a department contractor when that contractor provides for the care, supervision, case management, or treatment, of children who are receiving child protective services or child welfare services as defined in RCW 74.15.020.

"Entity" means, but is not limited to, a licensed facility, corporation, partnership, sole proprietorship, or a contracted or certified service provider.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Hire" means engagement by an entity to perform specific agreed duties as a paid employee or a contract employee.

"Individual" means an employee or a contract employee in a group care facility.

NEW SECTION

WAC 110-05-0040 Who is responsible for approving the one hundred twenty-day provisional hire? The entity is responsible for approving individuals for the one hundred twenty-day provisional hire.

NEW SECTION

WAC 110-05-0050 When are individuals eligible for the one hundred twenty-day provisional hire? Individuals who have lived three consecutive years in Washington state before submitting their application, cleared the in-state background check process, and submitted fingerprints are eligible for the one hundred twenty-day provisional hire. The fingerprint process must be completed as required by the applicable DCYF program.

NEW SECTION

WAC 110-05-0060 When does the one hundred twenty-day provisional hire begin? The one hundred

twenty-day provisional hire may begin when notified by DCYF the conditions in WAC 110-05-0050 have been met.

Date Adopted: May 29, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 110-05-0070 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an entity requesting:

- (1) An initial license;
- (2) An initial contract; or
- (3) Approval as a family child day care home provider, child placing agency employee, foster parent, or adoptive parent (see 42 U.S.C. Sec. 671 (a)(20)).

WSR 19-12-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-112—Filed May 29, 2019, 4:44 p.m., effective June 1, 2019]

Effective Date of Rule: June 1, 2019.

Purpose: Amend recreational shrimp rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000N; and amending WAC 220-330-070.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available in Marine Areas 6, 7 West, 7 East, and 12. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect spot shrimp consistent with signed management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

NEW SECTION

WAC 220-330-07000P Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-330-070, effective June 1, 2019, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily to the harvest of all shrimp species until further notice.

(2) Marine Area 7 East:

a. Open June 1 through June 2 to the harvest of all shrimp species;

b. Open June 3 until further notice to the harvest of all species except spot shrimp in waters equal to or less than 200 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) Marine Areas 6 (excluding the Discovery Bay Shrimp District) and Marine Area 7 West: Open June 1 until further notice to the harvest of all shrimp species on Thursdays, Fridays, Saturdays, and Sundays only.

(4) Marine Areas 8-1, 8-2, 9, and 11: Open June 1 until further notice to the harvest of all species except spot shrimp in waters equal to or less than 150 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(5) Marine Area 13: Open June 1 until further notice to the harvest of all species except spot shrimp in waters equal to or less than 250 feet. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 250 feet deep.

(6) Marine Area 12: Open June 1, 2019 to the harvest of all shrimp species from 9:00 a.m. through 1:00 p.m.

(7) Discovery Bay Shrimp District: Open June 1, 2019 to the harvest of all shrimp species from 7:00 a.m. through 3:00 p.m.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 1, 2019:

WAC 220-330-07000N Shrimp—Areas and seasons. (19-72)

WSR 19-12-042

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 30, 2019, 10:12 a.m., effective May 30, 2019, 10:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is necessary to comply with SHB 1195, Laws of 2019, concerning the efficient administration of campaign finance and public disclosure reporting and enforcement. Included in SHB 1195 is an emergency clause which, with the exception of sections 35 and 36, take effect immediately. Sections 35 and 36 of the act take effect January 1, 2020.

Citation of Rules Affected by this Order: New WAC 390-24-211; repealing WAC 390-05-195, 390-19-030 and 390-24-105; and amending WAC 390-05-002, 390-05-007, 390-05-010, 390-05-205, 390-05-210, 390-05-215, 390-05-220, 390-05-235, 390-05-290, 390-05-300, 390-05-305, 390-05-400, 390-05-505, 390-05-507, 390-05-515, 390-05-520, 390-05-525, 390-16-001, 390-16-011A, 390-16-037, 390-16-042, 390-16-043, 390-16-058, 390-16-059, 390-16-063, 390-16-071, 390-16-105, 390-16-115, 390-16-125, 390-16-230, 390-16-238, 390-16-310, 390-16-320, 390-16-325, 390-18-010, 390-18-025, 390-18-027, 390-18-030, 390-18-040, 390-18-050, 390-19-010, 390-19-020, 390-19-040, 390-19-050, [390-20-150], 390-24-010, 390-24-020, 390-24-025, 390-24-032, 390-24-205, 390-24-301, 390-28-020, 390-28-025, 390-28-040, 390-28-060, 390-28-070, 390-28-080, 390-28-090, 390-28-100, 390-37-005, 390-37-050, 390-37-060, 390-37-061, 390-37-062, 390-37-063, 390-37-070, and 390-37-182.

Statutory Authority for Adoption: RCW 42.17A.110(1) and SHB 1195, Laws of 2019.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2019 legislature passed SHB 1195 concerning the efficient administration of campaign finance and public disclosure reporting and enforcement. Included in SHB 1195 is an emergency clause which, with the exception of sections 35 and 36, takes effect immediately. Sections 35 and 36 of the act take effect January 1, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 66, Repealed 3.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 66, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 66, Repealed 3.

Date Adopted: May 22, 2019.

B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-002 Mission and purpose of the public disclosure commission. (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. The passage of Initiative 134 in 1992 further expounded the purpose of the commission and the law.

(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.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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)~~), managed by an executive director (~~(and such other employees as are necessary)~~).

(2) Electronic communications to the commission should be sent to pdc@pdc.wa.gov. Mailings to the commission should be addressed as follows: Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-010 Purpose of rules. The purpose of these rules is to implement the provisions of chapter 42.17A RCW (~~((Initiatives 276 and 134)))~~), referred to throughout as the 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 WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-205 Definition—Consumable. (~~(~~RCW 42.17A.005 (13)(a))~~)~~ The definition of contribution in the act 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 this purpose of ((RCW 42.17A.005)) the act and these rules, the term "consumable" includes the amount paid for food, beverages, event

preparation, catering or entertainment cost furnished at the event.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-210 Definition—Contribution. (1) The term "contribution" as defined in the act and used in these rules shall be deemed to include, among other things, furnishing services, property or rights on 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 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, or 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, or the candidate's authorized committee or agent, when:

(a) Any arrangement, coordination, or direction by the candidate, or 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, or the candidate's authorized 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) 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, or 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, or the candidate's autho-

rized 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~~)), not otherwise qualifying 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 ((~~that does not qualify~~)), not otherwise qualifying 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, dis-

play, 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; ~~((☞))~~

(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; ~~((☞))~~

(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) 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; ~~((☞))~~

(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; ~~((☞))~~

(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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-215 Receipt of a campaign contribution. "Receipt" of a campaign contribution, as that term is used in the act and in these rules, shall be deemed to occur 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 agent obtains possession of the contribution; ~~((☞))~~

(b) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson, or 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; or

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

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-220 Definition—Consideration. "Consideration" as that term is used in the act and in these rules shall be deemed to include anything of value promised, paid, or transferred in return for a person's property or services rendered or to be rendered, including but not limited to reimbursement for traveling or other expenses.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-235 Definition—Fair market value. (1) "Fair market value" as used 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," as used in the act and in these rules is the ~~((amount in cash which))~~ present cash value that a well-informed buyer or lessee, willing but not obligated to buy or lease that property, would pay, and ~~((which))~~ that 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 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.

(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.

(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.

(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, ~~(((\$+))~~ one dollar per telephone per calendar day or part thereof.

(b) If ~~((toH))~~ calls are permitted with assessed charges, the ~~((toH))~~ 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 thirty days of making ~~((the toll))~~ such calls.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 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, social media, and other digital platforms, emails, and text messages.

(3) "Political advertising" ~~((is defined under RCW 42.17A.005 to))~~ as that term is defined in the act and used in these rules includes 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, web site or blog, or on a radio or television broadcast where payment for the space or time is not normally required.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-300 Suspension of reporting requirements for small jurisdictions. ~~((From the effective date of RCW 42.17A.135,))~~ The following reporting requirements ~~((are suspended))~~ do not apply in jurisdictions with fewer than ~~((one))~~ two 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-305 Petition for disclosure—Form.
~~((H)) The registered voters of a jurisdiction where reporting requirements are suspended may petition the commission to reinstate the reporting requirements suspended in jurisdictions with fewer than two thousand registered voters, as provided under RCW 42.17A.135 and this section.~~

~~(1) The commission shall reinstate the reporting requirements in a jurisdiction with fewer than two thousand registered voters 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.~~

~~(2) 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, and order such persons to file the required statements within thirty days of the commission order.~~

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the ~~((requirement))~~ authority in RCW 42.17A.125 that the commission ~~((biennially))~~ may revise the ~~((dollar amounts found in Initiative 134 and RCW 42.17A.410))~~ monetary contribution limits and reporting thresholds and code values of the act to reflect changes in economic conditions, the previous and current amounts are:

Code Section	Subject Matter	Previous	Current
.005	((Definition of)) <u>Reporting threshold for "Independent Expenditure" for political advertising</u>	\$950	((*)) <u>\$1,000</u>
.255	<u>Reporting threshold for "Independent Expenditure" not otherwise reported</u>	<u>\$100</u>	<u>\$100</u>
.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

(3) A petition for disclosure shall be filed electronically using the means provided by the PDC, or if an electronic method has not been provided the petition shall be filed on legible, on 8-1/2 x 11" paper(, and shall). The petition must 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))~~ (4) 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))~~ the auditor's seal on each verified page of the petition in order to certify it to the commission.

~~((3))~~ (5) 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))~~ (6) 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 42.17A.135 and WAC 390-05-305."

Code Section	Subject Matter	Previous	Current
.405(2)	Contribution Limits—		
	Candidates for state leg. office	\$950	\$1,000
	Candidates for county office	\$950	\$1,000
	Candidates for other state office	\$1,900	\$2,000
	Candidates for special purpose districts	\$1,900	\$2,000
	Candidates for city council office	\$950	\$1,000
	Candidates for mayoral office	\$950	\$1,000
	Candidates for school board office	\$950	\$1,000
	Candidates for hospital district	\$950	\$1,000
.405(3)	Contribution Limits—		
	State official up for recall or pol comm. supporting recall—		
	State Legislative Office	\$950	\$1,000
	Other State Office	\$1,900	\$2,000
.405(4)	Contribution Limits—		
	Contributions made by political parties and caucus committees		
	State parties and caucus committees	.95 per voter	\$1.00 per registered voter
	County and leg. district parties	.50 per voter	.50 per registered voter
	Limit for all county and leg. district parties to a candidate	.50 per 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	.95 per voter	\$1.00 per registered voter
	County and leg. district parties	.50 per voter	.50 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.50 per voter	.50 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$950	\$1,000
	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
.710	<u>Code values for statement of personal financial affairs - See WAC 390-24-301</u>		

((^{*} 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-505 Electioneering communication exclusions. ~~((1))~~ "Electioneering communication," as ~~((used))~~ defined in the act and used in these rules, does not include communications ~~((listed in RCW 42.17A.005 (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 (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(22)) expressly excluded from the definition in the act, such as communications conveyed through web sites, emails, telephone calls, or in-person leaflet/pamphlet drops at street addresses.~~

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-507 Definition—Funding sources for electioneering communications. (1) "Source of funds" for purposes of reporting a payment of promise to pay for an electioneering communication 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-05-515 ((Member)) Exclusion from contributions, independent expenditures, and electioneering communications—Communications within membership organizations. (1) In determining whether ~~((a))~~ an organization's political communications ~~((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))~~ are limited to its "members" for purposes of communications that are excluded from the definitions of a contribution, independent expenditure, or electioneering communication, as provided in RCW 42.17A.005 of the act and used in these rules, 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. 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."

(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))~~:

~~(a) Whether the members affirmatively accept membership ((and));~~

~~(b) The rights and obligations conferred on members by the organization, including whether members have the right to vote for:~~

~~((a)) (i) Election of directors or officers; ((or~~

~~(b)) (ii) Changes to the articles or bylaws; or~~

~~((c)) (iii) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution((:); and~~

~~(c) 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))~~ an 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 (16)(b)(v) and (22)(b)(vii), unless the communication was not sent primarily to members. However,))~~ these FEC criteria ~~((are not the only))~~ as 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 13-12-017, filed 5/24/13, effective 6/24/13)

WAC 390-05-520 Definition—Periodical. For electioneering communications and other political advertising, "periodical" means a digital or paper publication ~~((on paper))~~ that is serial in nature and appears or is intended to appear indefinitely, issued regularly or at stated intervals at least once every three months. ~~((For all other political advertising, "periodical" means a publication that is serial in nature and appears or is intended to appear indefinitely, issued regularly or at stated intervals at least once every three months.))~~

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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))~~ is all of 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, digitally communicating, 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-05-195 Date of receipt of mailed items.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 where the commission has provided an electronic filing method. 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 systems, forms and the instructions for filing can be found on the PDC web site.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-011A 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 by a candidate, or by the public official against whom recall charges have been filed.

(2) A sponsored political committee shall include on its C-1pc the name of at least one sponsor in the committee's name.

(3) ~~((To determine if a political committee))~~ For purposes of determining whether a political committee is sponsored, as defined in RCW 42.17A.005, by having 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(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(46)))~~ at the time of the amendment:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition 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 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-037 Purpose of campaign expenditures—How to report. (1) Any person required to report the "purpose" of an expenditure under RCW 42.17A.240(6), or 42.17A.255 (5)(b), 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 the goods and/or services to be provided.

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

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

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

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

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-042 Debts and obligations—Contingent liabilities—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 conditioned upon the candidate winning the election) is reportable as a debt or obligation 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.))~~

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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. If the treasurer and requestor are unable to agree on a location and the treasurer has not provided digital access to the books of account, the default location for an appointment shall be a place of public accommodation selected by the treasurer within a reasonable distance from the treasurer's office. However, if the treasurer is located out-of-state, the default location must be within the state of Washington. 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. Vidiotaping, 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 18-24-074, filed 11/30/18, effective 12/31/18)

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))~~ of one thousand dollars or more. A series of expenditures, each of which is under ~~((one half the contribution limit from an individual per election))~~ one thousand dollars, constitutes one independent expenditure if their cumulative value is ~~((equal to or greater than one half the contribution limit from an individual per election))~~ one thousand dollars or more; 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.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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))~~(21)(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))~~ excluded from the meaning of "expenditure" under RCW 42.17A.005~~((23))~~ or by commission rule.

(3) When the ~~((electioneering communication or))~~ communications (including radio ~~((or))~~, television ~~((transmissions))~~, electronic, mailings, billboards, newspapers ~~((and/or))~~, online, 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 electronically, erected, distributed, published online or by other media, or otherwise ((published)) presented to the public.

(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 18-24-074, filed 11/30/18, effective 12/31/18)

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)) ballot proposition, or that supports or opposes a candidate and 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 mea-

sure. 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 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320 and WAC 390-18-010.

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

(3) An out-of-state political committee 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 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 these rules regarding electioneering communications.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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, must file with the commission an annual "Special Political Expenditures" report, if the person:

(a) ((who)) Made contributions to any state office candidates ((and)) or statewide ballot proposition committees totaling more than the aggregate amount during the preceding

calendar year for contributions referenced in WAC 390-05-400~~((;))~~; 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 on political advertising, referenced in WAC 390-05-400~~((; shall file with the commission an annual report))~~. ~~((This))~~

(2) The 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))~~ (3) The "Special Political Expenditures" ~~((and))~~ report is designated "C-7."

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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))~~ the act and these rules, 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, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(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, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(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))~~ the act and these rules, 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, if the committee selects the mini reporting option on its registration and meets both of the following conditions:

(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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-115 Mini campaign reporting—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))~~ the candidate's consent to another person to take any of the action in (a) of this subsection 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.

(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.

(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 1st and January 31st for each year in which the committee intends to use the mini reporting system. Failure to file a new registration statement during January 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) The candidate or political committee treasurer shall comply with the requirements for public inspection of campaign books pursuant to WAC 390-16-043.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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)~~) electronically to the 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 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 PDC on or before August 31st for the general election or thirty business days prior to the date of other elections, the executive director will approve the application.

(4) If a complete application is received by the commission 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 is a candidate and, after the application deadline, a write-in opponent has filed for office in accordance with chapter 29A.24 RCW;

(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

(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 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;

(b) Acknowledges the violation and demonstrates compliance with WAC 390-16-105(4); and

(c) Takes any other action required by the PDC to address the violation.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-230 Surplus campaign funds—Use in future. (1) If after the last day of the election cycle for candidates as defined in RCW 42.17A.005 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)~~) the candidate's 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, 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)~~) the candidate's 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 cam-

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))~~ the candidate's 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 continuing political committee and must thereafter register and report in accordance with chapter 42.17A RCW.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 incurs costs for child care, the campaign can reimburse the candidate only for any portion of the expense that occurred directly as a result of the candidate's campaign activities. Also, if a candidate uses a personal vehicle for campaign 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) 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 18-24-074, filed 11/30/18, effective 12/31/18)

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))~~ the candidate's own campaign using ~~((his or her))~~ the candidate's 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 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-16-320 Candidates in small political subdivisions—Reporting. (1) ~~((According to))~~ As provided in RCW 42.17A.200 and 42.17A.135(7), a candidate for election in any political subdivision must fully 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))~~ the candidate's 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 31st of the election year total one thousand two hundred fifty dollars or more;

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

(e) The contributions received on or before September 30th 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.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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; and

(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.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 political advertising, electioneering communication, or independent expenditure" 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, independent expenditures 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) 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)~~) proposition must clearly identify the "top five contributors" to that political committee pursuant to WAC 390-18-025.

(b) 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.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to identify the "top five contributors" to that political committee pursuant to WAC 390-18-025. This requirement does not apply to bona fide political parties sponsoring independent expenditures.

(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 that is intended to be presented as a single item (e.g., 3-page letter with return envelope). Identification

on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient;

(c) By respective sponsor on advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously.

(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.

(8) The requirements under RCW 42.17A.320 were amended with passage of chapter 428, Laws of 2019. That law will become effective July 28, 2019, and will supersede the provisions of this section. Guidelines for compliance with RCW 42.17A.320 will be provided at that time. Pursuant to RCW 42.17A.110(1), new rules reflecting the statutory changes will be adopted once the 2019 general election is over.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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) 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.

(3) The requirements under RCW 42.17A.320 were amended with passage of chapter 428, Laws of 2019. That law will become effective July 28, 2019, and will supersede the provisions of this section. Guidelines for compliance with RCW 42.17A.320 will be provided at that time. Pursuant to RCW 42.17A.110(1), new rules reflecting the statutory changes will be adopted once the 2019 general election is over.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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)) audio only, such as radio, which is transmitted without a visual component.

(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 audio only, such as radio or telephone transmissions, without a visual component.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 movable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers of a comparable size as worn by an individual, sunglasses, sun visors, swizzle sticks, state or local 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 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 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 (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:

(*) (i) A letter, flier, handbill, text, 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

(*) (ii) 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.

(6) The requirements under RCW 42.17A.320 were amended with passage of chapter 428, Laws of 2019. That law will become effective July 28, 2019, and will supersede certain provisions of this section. Guidelines for compliance with RCW 42.17A.320 will be provided at that time. Pursuant to RCW 42.17A.110(1), new rules reflecting the statutory changes will be adopted once the 2019 general election is over.

AMENDATORY SECTION (Amending WSR 16-22-046, filed 10/28/16, effective 11/28/16)

WAC 390-18-040 Use of the terms "reelect," "retain," and "return." (1) The term "reelect" when used in an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in an advertisement by a nonincumbent candidate who has previously been elected to the office being sought provided that in the same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in an advertisement represents that the candidate is the incumbent but does not necessarily imply that the candidate attained the office by election.

(4) The term "return" in an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was necessarily attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in an advertisement, use the term "reelect," "retain" or "return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) "Commercial advertiser" as that term is used in the act and these rules means any person, as defined in the act, including individuals and entities, that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboard, direct mail advertising, printing, paid internet or digital communications, or 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) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if it has been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the advertising or communications to the original purchaser must maintain the information as required in this section.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, as defined in RCW 42.17A.005, must maintain current books of account and related materials as required by this section. Such information must be available for public inspection by any person, without reference to, or permission from, the PDC, and provided:

(a) In person during normal business hours; and

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

(i) By digital transmission, such as email, promptly upon request; or

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

(A) On the advertiser's primary web site;

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

(C) On the PDC's open access platform, if one is provided by the PDC for such purpose.

(4) Information regarding political advertising or electioneering communications must be made available within twenty-four hours of the time when the advertisement or communication initially has been publicly distributed or broadcast, and within twenty-four hours of any update or change to such information. Such records must be maintained for a period of no less than ~~((three))~~ five years after the date of the applicable election.

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

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;

(b) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employee identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

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

(d) Date(s) the commercial advertiser rendered service.

(6) In addition to subsection (5) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.

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

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

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

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

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

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

(g) For digital communication platforms: A description of the demographic information (e.g., age, gender, race, location, etc.) of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement of communication.

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

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 where the commission has made an electronic filing method available. The 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-020 Electronic filing—Mandatory filing. (1) (~~RCW 42.17A.245 mandates that persons 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 password. Filers must have a current C-1 Candidate Registration Statement or a C-1pe 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) All persons required to provide the commission with electronic contact information, may provide an email address or other electronic format, if such alternate format has been approved by the PDC.

(2) Any filer required to file electronically, but who files on paper, is in violation of RCW ((42.17A.245)) 42.17A.055 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)) (3) 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~~) the 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-040 ((Electronic)) Filing—Date of receipt, verification and amendments. (1) An electronic report is filed when it is received and validated by the 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.

(5) A mailed item may not be substituted for an item required to be electronically filed. However, where no electronic method has been provided, or where the executive director has approved a hardship exemption to the electronic filing requirement, the date of receipt of any properly addressed mailed application, report, statement, notice, 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. Any item mailed to the commission under the provisions of chapter 42.17A RCW that does not include a post office cancellation mark is presumed to be

filed timely if received within five business days of the due date.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-19-050 Electronic filing—Exceptions. ~~((4))~~ The PDC executive director may make exceptions on a case-by-case basis for ~~((candidates whose authorized committees))~~ persons who lack the technological ability to file reports electronically.

~~((2))~~ A candidate) A person seeking an exception ~~((under RCW 42.17A.245))~~ shall electronically file with the executive director of the PDC a written statement of reasons why the ~~((authorized committee))~~ person lacks the ability to file reports electronically. The request should be submitted by the tenth day of the month preceding the month in which the report is due so that action on the request can be completed before the filing deadline. The request does not suspend the reporting requirement of any portion of chapter 42.17A RCW. Upon receipt of a filed request, the executive director may request further information from the applicant in consideration of the request. The executive director shall issue a decision to approve or deny a request for an exception to an electronic filing requirement within thirty days of receiving a filed request, which may be extended if further information is provided upon request by the executive director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-19-030 Electronic filing—Reporting threshold.

AMENDATORY SECTION (Amending WSR 14-15-015, filed 7/3/14, effective 12/1/14)

WAC 390-20-150 Changes in dollar amounts. Pursuant to the commission's authority in RCW 42.17A.125~~((2))~~ to revise the monetary reporting thresholds found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

Statutory Section	Subject Matter	Amount and Date Enacted or Last Revised	Revision Effective December 1, 2014
.600 (1)(i)	Lobbyist employer's members or funders	\$500 (1973)	\$1,450
.610(5)	Casual lobbying threshold	\$25 (1982)	\$35
.615 (2)(a)	Itemize entertainment expenditures	\$25 (1978)	\$50
.630 (2)(a)	Contributions disclosed by lobbyist employer on monthly report (L-3c)	\$100 (1990)	\$110

Statutory Section	Subject Matter	Amount and Date Enacted or Last Revised	Revision Effective December 1, 2014
.635 (5)(d)(v)	Nonpublic funds spent on gifts provided by public agency	\$15 (1979)	\$25
.640(1)	Grass roots lobbying	\$500/ \$1,000 (1985)	\$700/ \$1,400

Chapter 390-24 WAC

~~((FORMS FOR))~~ **REPORTS OF FINANCIAL AFFAIRS**

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

WAC 390-24-010 ~~((Forms))~~ Submissions for statement of financial affairs. The official ~~((form for))~~ statement~~((s))~~ of financial affairs as required by RCW 42.17A.-700 is designated "F-1." Copies of this ~~((form))~~ application are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any paper attachments must 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 390-24-020 ~~((Forms for))~~ Amending the statement of financial affairs. (1) The official ~~((form))~~ application for amending statements of financial affairs as required by RCW 42.17A.700 for all persons who have previously filed the ~~((Form))~~ F-1 is designated ~~((Form))~~ "F-1A."

(2) ~~((No more than three F-1A forms may be filed to amend a previously submitted statement of financial affairs (Form F-1). The form can))~~ An application for amending the F-1 may be submitted once per year for up to three years. The F-1A may be used only to update information required on an F-1.

(3) The commission reserves the right to reject amendatory ~~((forms))~~ applications and require a new ~~((statement of financial affairs (Form))~~ F-1~~((3))~~) at any time the amendments are confusing or create misunderstandings. Authority is delegated to the commission's executive director to make this determination.

(4) Copies of ~~((Form))~~ F-1A are available on the commission's web site, www.pdc.wa.gov and at the Commission Office, Olympia, Washington. Any paper attachments must be on 8-1/2" x 11" white paper.

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

WAC 390-24-025 Time for filing statement of financial affairs. It shall be the policy of the public disclosure commission to construe the filing requirements of RCW 42.17A.700 for elected officials in the following manner: It is the interpretation of the commission that:

(1) Any person holding elected public office, except as exempted by the terms of RCW 42.17A.700, and any appointed official and professional staff member listed or ref-

erenced in RCW 42.17A.700, and any appointed official required to comply with the reporting requirements of RCW 42.17A.700 by any other statute is required to file the statement of financial affairs ~~((if such person holds such public office between January 1 and April 15 of any year. Such report shall be for the preceding calendar year.~~

~~(2) Any local elected official whose term of office expires immediately after December 31 shall file a statement of financial affairs for the calendar year which ended on that date.~~

~~(3) Any local elected official who resigns his public office prior to the completion of his current term of office shall file a statement of financial affairs covering that portion of the year that he was in office)) (F-1) for each partial or full calendar year that such person has served.~~

(a) For any officer or official who leaves public office prior to January 1st, the F-1 shall cover only the portion of the previous year that such person was in office.

(b) For any officer or official appointed to office between January through November, the F-1 shall cover the immediately preceding twelve-month period. For any officer or official appointed to office in December, the F-1 shall cover the preceding twelve-month period ending December 31st of the same year.

(2) Any person required to file an F-1 must electronically file the F-1 with the commission under the relevant periods as follows:

(a) Between January 1st and April 15th of each year immediately following the year, or portion of the year served;

(b) As alternative to (a) of this subsection, within sixty days of leaving public office, for any officer or official who leaves office before January 1st of the following year; or

(c) Within two weeks of appointment for any person appointed to a vacancy in office during the months of January through December.

AMENDATORY SECTION (Amending WSR 86-21-106, filed 10/20/86)

WAC 390-24-032 Definition—Nonreimbursed public office related expense. A "nonreimbursed public office related expense" is an expenditure incurred by an elected or appointed official, or a member of ~~((his or her))~~ official's immediate family, solely because of being an official.

AMENDATORY SECTION (Amending WSR 86-08-030, filed 3/26/86)

WAC 390-24-205 Report of legislation prepared, promoted or opposed. (1) Pursuant to RCW ~~((42.17.241 [42.17A.710]))~~ 42.17A.710 (1)(e), an official must provide in each report required by that subsection:

(a) The name of each governmental entity of which the official is an officer or employee,

(b) A statement of each subject area on which the reporting official has prepared, promoted or opposed any legislation, rule, rate or standard for such entity,

(c) The compensation received or promised for said service and,

(d) All other persons for whom such services have been performed for current or deferred compensation, together with an itemization of such actual or proposed legislation, rules, rates and standards, and the amount of compensation paid or promised for the service.

(2) A person need not report the information described in subsection (1)(a), (b), and (c) of this section as to any entity of which such person is an elected official.

NEW SECTION

WAC 390-24-211 Public or private office held. An elected official or executive state officer is not required to report the office, directorship, or position held in a public or private office for service on a governmental board, commission, association, or functional equivalent, when such service is part of the elected official's or executive state officer's official duties.

AMENDATORY SECTION (Amending WSR 15-01-066, filed 12/11/14, effective 1/11/15)

WAC 390-24-301 Changes in dollar amounts of reporting thresholds and code values. Pursuant to the commission's authority in RCW 42.17A.125~~((2))~~ to revise the monetary reporting thresholds and code values found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

Statutory Section	Subject Matter	Amount Enacted or Last Revised	Revision Effective January 12, 2015
.710 (1)(b)	Bank Accounts	\$20,000	\$24,000
.710 (1)(b)	Other Intangibles	\$2,000	\$2,400
.710 (1)(c)	Creditors	\$2,000	\$2,400
.710 (1)(f)	Compensation	\$2,000	\$2,400
.710 (1)(g)(ii)	Compensation to Business Entity	\$10,000	\$12,000
.710 (1)(g)	Bank Interest Paid	\$2,400	\$2,900
.710 (1)(h)	Real Property-Acquired	\$10,000	\$12,000
.710 (1)(i)	Real Property-Divested	\$10,000	\$12,000
.710 (1)(j)	Real Property-Held	\$10,000	\$12,000
.710 (1)(k)	Real Property-Business	\$20,000	\$24,000
.710 (1)(l)	Food and Beverages	\$50	
.710 (2)	Dollar Code A	Up to (((\$3,999)) \$4,449	Up to (((\$4,499)) \$29,999
	Dollar Code B	(((\$4,000-\$19,999)) \$4,500-\$23,999	(((\$4,500-\$23,999)) \$30,000-\$59,999
	Dollar Code C	(((\$20,000-\$39,999)) \$24,000-\$47,999	(((\$24,000-\$47,999)) \$60,000-\$99,999
	Dollar Code D	(((\$40,000-\$99,999)) \$48,000-\$119,999	(((\$48,000-\$119,999)) \$100,000-\$199,999
	Dollar Code E	(((\$100,000)) \$120,000 and up	(((\$120,000 and up)) \$200,000-\$499,999
	<u>Dollar Code F</u>		\$500,000-\$749,999
	<u>Dollar Code G</u>		\$750,000-\$999,999

Statutory Section	Subject Matter	Amount Enacted or Last Revised	Revision Effective January 12, 2015
	Dollar Code H		\$1,000,000 or more

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-24-105 Definition—Written sworn statement.

Chapter 390-28 WAC**~~((HARDSHIP EXEMPTIONS—HEARING EXAM-
INER SYSTEM))~~ MODIFICATIONS OF REPORTING
REQUIREMENTS—PROCEDURES**

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

WAC 390-28-020 Definition—Applicant. The term applicant for the purposes of chapter 390-28 WAC shall mean any person as defined in RCW 42.17A.005 ~~((that))~~ who seeks a modification pursuant to RCW 42.17A.120 and these rules.

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

WAC 390-28-025 Hearing to modify reporting requirements. (1) Any person who considers compliance with any of the reporting requirements of chapter 42.17A RCW to be a manifestly unreasonable hardship in a particular case may apply for a modification of such reporting requirements pursuant to RCW 42.17A.120 and further pursuant to these rules.

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

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

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

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

modification to the required reporting which, in the applicant's opinion, will relieve the perceived hardship.

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

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

WAC 390-28-060 Hearing to modify reporting—~~((Administrative law judge))~~ Brief adjudicatory proceedings—Presiding officer. (1) Reporting modification requests may be heard in a brief adjudicatory proceeding, as provided under the Administrative Procedure Act, RCW 34.05.482 through 34.05.494. The commission, the commissioner chair acting as presiding officer, or another commissioner appointed by the chair, may preside over the proceedings.

(2) The commission may request through the office of administrative hearings the appointment of an administrative law judge to hear individual applicants ~~((-~~ ~~((2)))~~, in accordance with the following procedure:

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

~~((3)))~~ (b) If the applicant files objections to the administrative law judge's proposed decision, the filing requirement from which the applicant has sought modification shall not be suspended unless the commission, upon notice of the filing of objections, determines that a temporary suspension is justifiable pursuant to the criteria set out in RCW 42.17A.120. Such suspension of filing requirements shall be granted only until the decision is finalized by formal action of the commission.

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

AMENDATORY SECTION (Amending WSR 07-14-117, filed 7/3/07, effective 8/3/07)

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

(2) The commission ~~((,- or the administrative law judge,))~~ or presiding officer shall proceed to decide the application in the same manner as if an appearance were made. However, in the event the commission, or ~~((the administrative law judge))~~

presiding officer is not able to reach a conclusion on the request because of an insufficiency of the evidence, the hearing may be adjourned for the purposes of gathering further evidence, or the application may be denied.

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

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17A.120 generally shall be considered to be a public record. However, if a modification is requested by a filer because of a concern for personal safety that is caused by the potential disclosure of a reporting requirement, upon request by the filer, the information submitted for that modification request regarding that safety concern shall not be made public prior to, or at the hearing on the request for modification. Any information provided or prepared for the modification hearing shall remain exempt from public disclosure under chapters 42.17A and 42.56 RCW to the extent it is determined at the hearing that disclosure of such information would present a personal safety risk to a reasonable person. If no written order is entered based on findings pursuant to this section, then the exempted information will become available for public disclosure.

(2) Except as otherwise provided in subsection (1) of this section, there is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17A.120, the commission or presiding officer may close the hearing or a portion of the hearing or hearing record. The commission or presiding officer may close a hearing or portion of a hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17A.120; or

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

~~((2))~~ (3)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission or presiding officer must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection ~~((4))~~ (2)(a) or (b) of this section;

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

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

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

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

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

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

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

~~((3))~~ (4) Any decision or order ~~((adverse to an applicant))~~ rendered by the commission or presiding officer or the administrative law judge shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

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

WAC 390-28-090 Hearing to modify reporting—Required findings. (1) The commission or presiding officer, after hearing as provided in these rules, may suspend the applicable reporting requirement of chapter 42.17A RCW if ~~((#))~~ the commission or presiding officer finds that the literal application of such requirement works a manifestly unreasonable hardship in the case under consideration and if it also finds that such suspension or modification will not frustrate the purposes of the act. The commission or presiding officer shall suspend or modify such reporting requirement or requirements only to the extent necessary to substantially relieve such hardship, and only upon clear and convincing proof to support such claim.

(2) The commission or presiding officer may approve a modification for the length of an elected official's term of office, or up to three years for an executive state officer. If the commission has approved a modification for more than one year, and there is a material change in the applicant's circumstances or relevant information after the initial year, then the applicant must request a modification at least one month prior to the next filing deadline (rather than at the conclusion of the approval period).

(3) The commission or presiding officer may apply a modification retroactively to previously filed reports. In such cases, the previously reported information of the kind that is no longer being reported is confidential and exempt from public disclosure under this chapter and chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 14-15-013, filed 7/3/14, effective 8/3/14)

WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs. (1) One or more of the following may be considered

by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1)(b) if:

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

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant; and

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

(b) **Income and ownership interests.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1)(f) and (g), if:

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

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

(iii) Such reporting would present a manifestly unreasonable hardship to the applicant including but not limited to adversely affecting the competitive position of an entity in which the applicant had an interest of ten percent or more as described in RCW 42.17A.120; and

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

(c) **Immediate family members' interests.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family, if:

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

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1)(h) through (k):

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

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

(iii) A judge, prosecutor, sheriff, or their immediate family member who is required to disclose the personal residence

of the judge, prosecutor, or sheriff, may satisfy that reporting requirement without requesting a modification by reporting:

(A) The city or town; and

(B) The type of residence, such as a single-family or multifamily residence, and the nature of ownership.

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

A prospective modification to allow nondisclosure of a residential address may be granted if the applicant or an immediate family member has received a threat, been issued a no contact order or presents a similar personal safety concern.

(e) **Other.** An applicant may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, web site, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, when the applicant certifies ~~((he or she))~~ that the applicant is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW 42.17A.710 (1)(g) and WAC 390-24-020 by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.** When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner and of the entity of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

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

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

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

(d) Domestic partnership agreement under chapter 26.60 RCW;

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

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status

of the parties under state law, including their individual property that is separate under state law.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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~~) remediable 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. (1) Within ten days of receipt by the PDC of a complaint which on its face appears to have merit, the 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 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 or categories appropriately address the alleged noncompliance pursuant to WAC 390-37-005 (~~(remedial)~~) remediable, technical corrections, etc.). The PDC staff may provide for a shorter response period for complaints received within sixty days of an election.

(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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding. (1) Upon receipt of a complaint, the PDC staff will conduct an initial review of the complaint 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 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))~~ remediable violation pursuant to RCW 42.17A.755.

(d) The executive director may resolve any complaint that alleges minor 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 will be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(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) The executive director may initiate an investigation whenever an initial review of a complaint indicates that a material violation may have occurred.

(g) The executive director shall report at each regular commission meeting a summary covering the period since the previous commission meeting of all complaints initiated or received; how they were categorized; the nature of the allegations; conformance to required timelines; and actions taken and resolutions achieved pursuant to the alternatives provided for under chapter 42.17A RCW, such as dismissals, requests for technical correction, warning letters, complaint publication, statements of understanding, initiations of investigations, status reviews, stipulations, referrals to the attorney general's office, brief adjudicative proceedings, or commission hearings.

(2) If the executive director determines an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) 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 sup-

port that ~~((an actual))~~ a 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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-061 Enforcement procedures—Alternative responses to noncompliance—Goals and objectives—Factors to be considered. (1) In considering appropriate responses to ~~((actual))~~ violations, as that term is used in the act, the PDC staff considers whether an investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the PDC's mission and public expectations by allowing the expedited resolution of minor violations, and the focusing of resources on more significant violations of chapter 42.17A RCW and Title 390 WAC.

(2) A minor violation is ~~((an actual))~~ a violation that occurs:

(a) When required information is not timely disclosed, but the public is not deprived of critical information; ~~((or))~~

(b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information ~~((or))~~; or

(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 (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 an investigation as provided by WAC 390-37-060.

(4) The factors the executive director may consider in permitting an alternative response to noncompliance, an investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if ...	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.
PDC staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	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 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.
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.

An alternative response to noncompliance may be appropriate if ...	An investigation and possible adjudicative hearing may be appropriate if ...
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	

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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,) a violation 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.

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
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
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 report)			
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
Campaign Summary Receipts and Expenditures Report (C-4 report)			
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

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
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
Independent Expenditure Report (C-6 report)			
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
Out-of-State Political Committee Report (C-5 report)			
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
Last Minute Contribution Report (LMC report)			
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
Exceeding Contribution Limits			
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
Other Alleged Violations			
Exceeding Mini Reporting Threshold			
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
Failure to file electronically			
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
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.			
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

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
Failure to file Lobbyist Registration report (L-1 report)			
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
Failure to File Agency Lobbying Report (L-5 report)			
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

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
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 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas. (1) During the course of a PDC audit or 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, text messages, records, memoranda, electronically stored data, or other evidence that the commission deems relevant and material.

(3) As provided in the act, the commission or executive director may apply in superior court for authorization to issue a subpoena before issuing the subpoena, in circumstances where appropriate.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director after an investigation has been commenced. The executive director, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation,

~~((does))~~ provides reason to believe that a violation has occurred, but also 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.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

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 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 pursuant to the following schedule:

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
Filed missing report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Report is filed late and is incomplete or inaccurate.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,000 - \$3,000
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 report)			
Filed missing C-3 report or amended C-3 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to timely deposit monetary contributions within five business days of receipt.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to include employer and occupation information for contributors of more than \$100.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Campaign Summary Receipts and Expenditures Report (C-4 report)			
Filed missing C-4 report or amended C-4 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to report a contractual contingent liability.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly dispose of surplus funds.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	\$0 - \$1,500	\$1,500- \$2,500	\$2,500 - \$10,000
Independent Expenditure Report (C-6 report)			
Filed missing C-6 report or amended C-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
Report is filed late and is incomplete or inaccurate.	\$0 - \$1,500	\$1,500 - \$2,500	\$2,500 - \$10,000
Out-of-State Political Committee Report (C-5 report)			
Filed missing C-5 report or amended C-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
Last Minute Contribution Report (LMC report)			
Filed missing LMC report or amended LMC report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
Exceeding contribution limits			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	\$0 - \$1,500	\$1,500 - \$2,500	\$2,500 - \$10,000
Other Alleged Violations:			
Exceeding mini reporting threshold			
Filed C-3 and C-4 reports for full reporting after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
Failure to file electronically			
Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
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			
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 - \$1,000	\$1,000 - \$2,000	\$2,500 - \$10,000
Failure to File Lobbyist Registration Report (L-1 report)			
Filed missing L-1 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Failure to File Agency Lobbying Report (L-5 report)			
Filed missing L-5 report or amended L-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
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 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Sponsor identification requirements for political advertising			
Political advertising failed to include any sponsor identification or included improper or misleading sponsor identification.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
Party preference requirement for political advertising			
Political advertising failed to include a candidate's party preference.	\$0 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
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 - \$500	\$500 - \$1,000	\$1,000 - \$1,500

Violations:			
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).			
	1st Occasion	2nd Occasion	3rd Occasion
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 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
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 - \$500	\$500 - \$1,500	\$1,500 - \$2,500
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 390-18-050.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Candidates and political committees—Public inspection of books of account			
Candidates or political committees who fail to accommodate requests for public inspections 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

(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) PDC staff or equipment error, including technical problems at the 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 PDC staff prior to initiation of enforcement action and cooperation with 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 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) 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.

WSR 19-12-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-113—Filed May 30, 2019, 3:41 p.m., effective May 30, 2019,
3:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon fishing rules for Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the state's share of the fishing plans agreed-to with resource comanagers at the 2019 North of Falcon proceedings. These emergency rules are necessary to take advantage of the state's fishing opportunity that is imminent and will be available prior to the permanent rule, in a manner consistent with comanager agreed fisheries. Specifically the emergency rules:

(A) Facilitate the Tulalip ceremonial fishery by closing an open state fishery in the Tulalip special fishery area.

(B) Close Area 11 in June to salmon fishing, and limit salmon fishing in Area 11 in July, as described in the regulation.

(C) Change the opening dates for all salmon fishing in Marine Area 9, and the opening date for Chinook fishing in Marine Area 10.

(D) Change the opening date for salmon in Marine Area 6.

(E) Remove additional sockeye limit in Marine Area 7.

The reason[s] for the emergency rules are to meet conservation objectives and because the current 2018 permanent

rule is inconsistent with the agreed 2019 North of Falcon fishery sharing package.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 30, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000B Puget Sound salmon—Salt-water seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective immediately:

(1) Catch Record Card Area 6:

(a) Immediately through June 30, 2019: Closed.

(b) July 1 through August 15, 2019:

(i) Daily limit of 2 salmon.

(ii) Release chum, wild Chinook and wild coho.

(2) Catch Record Card Area 7:

(a) Immediately through June 30, 2019: Closed.

(b) July 1 through July 31, 2019:

(i) Daily limit of 2 salmon.

(ii) Release chum and wild Chinook.

(iii) Closed to salmon fishing in the Southern Rosario Strait and Eastern Strait of Juan de Fuca closure area described in WAC 220-313-020(7).

(3) Catch Record Card Area 8-2:

(a) Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point are open the day of May 31, 2019: Daily limit of 2 salmon.

(b) Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point are closed for the day of June 15, 2019.

(4) Catch Record Card Area 9:

(a) Immediately through July 24, 2019: Closed.

(b) July 25 through July 28, 2019, except waters in this subsection:

(i) Daily limit of 2 salmon; no more than one may be a Chinook salmon.

(ii) Release chum, wild coho and wild Chinook.

(iii) Closed south of a line from Foulweather Bluff to Olele Point July 16 through July 24, 2019, or until Chinook retention closes in Catch Record Card Area 9.

- (5) Catch Record Card Area 10:
 (a) Immediately through May 31, 2019: Closed.
 (b) June 1 through July 24, 2019:
 (i) Daily limit of 2 salmon.
 (ii) Release Chinook and chum.
 (c) July 25 through August 31, 2019:
 (i) Daily limit of 2 salmon; no more than one may be a Chinook salmon.
 (ii) Release chum and wild Chinook.
 (6) Catch Record Card Area 11:
 (a) Immediately through June 30, 2019: Closed.
 (b) July 1, 2019 until further notice:
 (i) Daily limit of 2 salmon of which one may be a hatchery Chinook.
 (ii) Release wild Chinook.
 (iii) Fishing for salmon from a vessel is prohibited Thursdays and Fridays of each week.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 19-12-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-101—Filed May 31, 2019, 1:50 p.m., effective June 1, 2019]

Effective Date of Rule: June 1, 2019.

Purpose: Amends recreational fishing rules for the Columbia River from the Washington/Oregon border to Chief Joseph Dam and Columbia River tributaries from Buoy 10 to McNary Dam.

Citation of Rules Affected by this Order: Amending WAC 220-312-030 and 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to make the use of barbless hooks voluntary during salmon and steelhead directed fisheries in the Columbia River mainstem from Buoy 10 to Chief Joseph Dam and Columbia River tributaries downstream of McNary Dam (removing the barbless hook requirements for all species in areas with selective gear rules and fly-fishing only requirements will reduce confusion by providing consistent regulations for species in those areas). This rule implements the policy direction provided by the commission on March 2, 2019, to make the use [of] barbless hooks voluntary for salmon and steelhead fisheries in the Columbia River and its tributaries. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 31, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000R Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective June 1, 2019 until further notice:

(1) Barbed hooks are allowed for salmon and steelhead in the following waters:

(a) Blue Creek (Lewis County), from the mouth to Spencer Road

(b) Cispus River (Lewis County)

(c) Coweeman River and tributaries (Cowlitz County)

(d) Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County)

(e) Drano Lake (Skamania County)

(f) Elochoman River (Wahkiakum County)

(g) Grays River (Wahkiakum County)

(h) Grays River, West Fork (Wahkiakum County)

(i) Kalama River (Cowlitz County)

(j) Klickitat River (Klickitat County)

(k) Lewis River (Clark County)

(l) Rock Creek (Skamania County)

(m) Tilton River (Lewis County)

(n) Toutle River (Cowlitz County)

(o) Toutle River, North Fork (Cowlitz County)

(p) Washougal River (Clark County)

(q) Washougal River, West (North) Fork (Clark/Skamania counties)

(r) White Salmon River (Klickitat/Skamania counties)

(2) Barbed hooks are allowed for salmon, steelhead, and cutthroat in the Cowlitz River (Cowlitz County)

(3) Selective gear rules, except: barbed hooks are allowed in the following waters:

(a) Abernathy Creek and tributaries (Cowlitz County)

(b) Cedar Creek and tributaries (tributary of N.F. Lewis) (Clark County)

(c) Coal Creek (Cowlitz County)

(d) Delameter Creek (Cowlitz County)

(e) Germany Creek (Cowlitz County) and all tributaries.

(f) Grays River (Wahkiakum County)

(g) Grays River, East Fork (Wahkiakum County)

(h) Grays River, South Fork (Wahkiakum County)

- (i) Grays River, West Fork tributaries (Wahkiakum County)
- (j) Green River (Cowlitz County)
- (k) Hamilton Creek (Skamania County)
- (l) Kalama River (Cowlitz County): From 1,000 feet above fishway at upper salmon hatchery to Summers Creek and from the intersection of 6000 and 6420 Rds. to 6600 Rd. bridge immediately downstream of Jacks Creek.
- (m) Lacamas Creek (Clark County): From mouth to foot-bridge at lower falls.
- (n) Lacamas Creek, tributary of Cowlitz River (Lewis County)
- (o) Lewis River, East Fork (Clark/Skamania counties): From mouth to 400 feet below Horseshoe Falls.
- (p) Little Washougal River (Clark County)
- (q) Mill Creek (Cowlitz County)
- (r) Mill Creek (Lewis County): From the mouth to the hatchery road crossing culvert.
- (s) Olequa Creek (Lewis/Cowlitz counties)
- (t) Outlet Creek (Silver Lake) (Cowlitz County)
- (u) Salmon Creek (Clark County): From the mouth to 182nd Avenue Bridge.
- (v) Salmon Creek (Lewis County)
- (w) Skamokawa Creek (Wahkiakum County)
- (x) Stillwater Creek (Lewis County)
- (y) Swift Reservoir (Skamania County): From the posted markers approximately 3/8 mile below Eagle Cliff Bridge to the bridge; from the Saturday before Memorial Day through July 15.
- (z) Toutle River, North Fork (Cowlitz County): From the mouth to the posted deadline below the fish collection facility.
- (aa) Wind River (Skamania County): from 100 feet above Shipherd Falls to Moore Bridge.
- (bb) White Salmon River (Klickitat/Skamania counties): From the county road bridge below the former location of the powerhouse upstream to Big Brother Falls (river mile 16).
- (4) Fly fishing only, except: use of barbed hooks is allowed in the Kalama River (Cowlitz County): From Summers Creek to the intersection of 6000 and 6420 Rds.

NEW SECTION

WAC 220-312-0600N Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, effective June 1, 2019 until further notice; barbed hooks are allowed for salmon and steelhead in the Columbia River from a true north-south line through Buoy 10 to Chief Joseph Dam.

**WSR 19-12-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-114—Filed May 31, 2019, 1:52 p.m., effective June 5, 2019]

Effective Date of Rule: June 5, 2019.

Purpose: Amends recreational fishing rules for the Klickitat River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000S; and amending WAC 220-312-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The number of hatchery origin spring Chinook that have returned to Klickitat Salmon Hatchery is far below the five hundred fish needed to meet the hatchery escapement goal. As of May 28, only forty-two adults have been collected for the hatchery program. Closing the river to spring Chinook retention will increase the number of hatchery fish available for broodstock and help ensure future hatchery returns. Washington department of fish and wildlife will continue working with comanagers to monitor the progress of broodstock collection and reopen the fishery if returns indicate that hatchery goals will be met. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 31, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000T Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective June 5, 2019 until further notice:

- (1) **Cispus River (Lewis Co.):** Salmon: closed.
- (2) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: closed.
- (3) **Cowlitz River (Cowlitz Co.):** Salmon: closed.
- (4) **Drano Lake (Skamania Co.):** In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Highway 14 bridge: Salmon and steelhead: closed.
- (5) **Kalama River (Cowlitz Co.):**
 - a. From the mouth upstream to 1000 feet below the fishway at the upper salmon hatchery:

(i) Salmon and steelhead: The use of barbed hooks is permissible.

(ii) Salmon; effective immediately: Daily limit 6; no more than 1 adult may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

b. From 1000 feet above fishway at upper salmon hatchery to Summers Creek: Selective Gear Rules, except the use of barbed hooks is permissible.

c. From Summers Creek to the intersection 6000 and 6420 Roads: fly fishing only, except the use of barbed hooks is permissible.

d. From the intersection 6000 and 6420 Roads to 6600 Road Bridge immediately downstream of Jacks Creek: Selective Gear Rules, except the use of barbed hooks is permissible.

(6) Klickitat River (Klickitat Co.):

a. From the mouth (Burlington Northern Railroad bridge) to boundary markers below Klickitat Salmon Hatchery, effective immediately until further notice: Salmon: closed.

(7) Lewis River (Clark/Cowlitz Co.): Salmon: closed.

(8) Wind River (Skamania Co.): From the mouth to 800 yards downstream of Carson National Fish Hatchery: Salmon and steelhead: closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 5, 2019:

WAC 220-312-03000S Southwest—Freshwater exceptions to statewide rules. (19-106)

**WSR 19-12-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-115—Filed May 31, 2019, 1:59 p.m., effective May 31, 2019, 1:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000S; and amending WAC 220-314-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to add additional fishing days to the 2019 halibut season for some areas. Adding these days will provide additional angling opportunity. This rule is in line with federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and the interim final rule adopted by the

National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 31, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000T Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) Catch Record Card Area 1:

(a) Open Thursday June 20.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(c) Lingcod can be retained when halibut are on board, during the halibut season north of the Washington-Oregon border.

(2) Catch Record Card Area 1 (Nearshore fishery):

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open Mondays and Wednesdays. Beginning Thursday, June 6 open seven days per week.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) Catch Record Card Area 2: Open Thursday, June 6 and Thursday June 20.

(a) Immediately through May 31, it is unlawful to fish for or possess lingcod, seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain lingcod on days open during the primary halibut season seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°52.94'N. lat., 124°22.58'W. long.
 46°44.18'N. lat., 124°18.00'W. long.
 46°38.17'N. lat., 124°15.88'W. long.

(4) Card Areas 3 and 4:

(a) Open Thursday, June 6; Saturday, June 8; Saturday June 15; Thursday, June 20; Saturday, June 22

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line); effective June 1: it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) Catch Record Card Area 5 through 10:

(a) Open Saturday, June 1; Thursday, June 6; Saturday, June 8; Thursday, June 13; Saturday, June 15; Thursday, June 20; Thursday June 27; Saturday, June 22; and, Saturday, June 29.

(b) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) **Catch Record Card Areas 11, 12 and 13:** Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) Annual halibut limit is four.

(10) All other permanent rules remain in effect.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000S Halibut—Seasons—Daily and possession limits. (19-107)

**WSR 19-12-070
 EMERGENCY RULES
 BOARD OF**

PILOTAGE COMMISSIONERS

[Filed June 3, 2019, 11:05 a.m., effective July 1, 2019]

Effective Date of Rule: July 1, 2019.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The board of pilotage commissioners (BPC) is complying with the legislative intent through the passage of ESHB 1160, which stipulates certain conditions in order for BPC to receive state appropriation from the pilotage account solely for self-insurance liability premium expenditures.

Purpose: To amend WAC 363-116-301 New revenue collection, in order to define ESHB 1160 conditions and directives.

Citation of Rules Affected by this Order: Amending WAC 363-116-301.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Without the mechanisms in place to collect the revenue needed to pay the self-insurance liability premium expenditures, the agency will be in financial crisis, putting BPC's mission to ensure against the loss of lives, loss of or damage to property and vessels, and to protect the marine environment by maintaining efficient and competent pilotage services in jeopardy.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; and Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 16, 2019.

Jaimie Bever
Executive Director

AMENDATORY SECTION (Amending WSR 17-20-009, filed 9/22/17, effective 10/23/17)

WAC 363-116-301 New revenue collection. With respect to the passage of Engrossed ~~((Senate Bill No. 5096))~~ Substitute House Bill No. 1160, Section 108, the board of pilotage commissioners is appropriated ~~((one million one hundred thousand))~~ three million one hundred twenty-five thousand dollars from the ~~((multimodal transportation))~~ pilotage account state appropriation solely for self-insurance liability premium expenditures. This appropriation is contingent upon ~~((three))~~ two stipulated conditions:

(1) The Puget Sound pilots shall pay to the board, from its tariffs, one hundred fifty thousand dollars annually on July 1, ~~((2017))~~ 2019, and July 1, ~~((2018))~~ 2020. These amounts shall be deposited by the board into the pilotage account and used solely for the expenditure of self-insurance premiums; and

(2) ~~((The board shall maintain the Puget Sound pilotage district pilotage tariff at the rate which became effective on January 1, 2017; and~~

~~((3)))~~ A self-insurance premium surcharge of sixteen dollars shall be added to each Puget Sound pilotage assignment on all vessels requiring pilotage in the Puget Sound pilotage district. The Puget Sound pilots shall remit the total amount of such surcharges generated to the board by the tenth of each month. The surcharge shall be in effect from July 1, ~~((2017))~~ 2019, through June 30, ~~((2019))~~ 2021. These amounts shall be in addition to those fees to be paid to the board pursuant to subsection (1) of this section and shall be deposited by the board into the pilotage account solely for the expenditure of self-insurance premiums.

These ~~((three))~~ two directives are in effect beginning May ~~((18, 2017))~~ 16, 2019, through June 30, ~~((2019))~~ 2021.

WSR 19-12-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-105—Filed June 3, 2019, 12:12 p.m., effective June 16, 2019]

Effective Date of Rule: June 16, 2019.

Purpose: Amend recreational fishing rules for Columbia River.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the state's share of the fishing plans agreed to with resource comanagers at the 2019 North of Falcon proceedings. These emergency rules are necessary to meet conservation objectives and because the current permanent rule is inconsistent with the agreed 2019 North of Falcon fishery sharing package. Specifically, the rule closes sections of the Columbia River to salmon retention beginning June 16 due to low expected returns of summer Chinook and sockeye salmon.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 31, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) From Buoy 10 upstream to Megler-Astoria Bridge; salmon and steelhead open August 1 through August 20:

- (a) Night closure.
- (b) Daily limit 2.
- (c) No more than 1 Chinook may be retained.
- (d) Release all salmon and steelhead except Chinook and hatchery coho.

(2) From Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon Bank; salmon and steelhead:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Open August 1 through August 20:

- (i) Night closure.
- (ii) Daily limit 2.
- (iii) No more than 1 Chinook may be retained.
- (iv) Release all salmon and steelhead except Chinook and hatchery coho.

(3) From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon Bank to Hood River Bridge; salmon and steelhead:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Open August 1 through August 20:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and steelhead except Chinook and hatchery coho.

(4) From Hood River Bridge to John Day Dam:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Salmon and steelhead open August 1 through August 20:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and steelhead except Chinook and coho.

(5) From John Day Dam upstream to Hwy 395 at Pasco, WA:

- (a) Open June 16 through June 30:
 - (i) Daily limit 2.
 - (ii) Release all salmon and wild steelhead.
- (b) Open July 1 through July 31:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead.
- (c) Salmon and steelhead open August 1 through August 20:
 - (i) Night closure.
 - (ii) Daily limit 1.
 - (iii) Release all salmon and wild steelhead except Chinook and coho.

(6) From Hwy 395 Bridge at Pasco, WA upstream to Priest Rapids Dam: Salmon and steelhead closed June 16 through August 15.

WSR 19-12-084

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 19-06—Filed June 4, 2019, 9:55 a.m., effective June 4, 2019, 9:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of ecology is adopting a new emergency chapter 173-167 WAC, Emergency drought funding.

This emergency rule provides eligibility criteria for grant funds to alleviate hardship resulting from drought declared in 2019. The emergency rule will be effective through October 2, 2019. If needed, ecology may adopt subsequent emergency rules.

Please visit our web site for information and to participate in the rule-making process <http://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-167>.

Citation of Rules Affected by this Order: New chapter 173-167 WAC.

Statutory Authority for Adoption: Chapter 43.83B RCW, Water supply facilities.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency rule is necessary to protect public health and safety and promote timelines that are in the best interest of the public. Once the rule is in place, ecology may distribute funds to alleviate hardship. Drought can cause immediate impacts to public bodies. To address these impacts, drought funding needs to be administered in a timely manner.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 14, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 14, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 4, 2019.

Maia D. Bellon
Director

Chapter 173-167 WAC
EMERGENCY DROUGHT FUNDING

NEW SECTION

WAC 173-167-010 Purpose and applicability. (1) Ecology is authorized to provide funding to public entities to implement projects and measures that alleviate undue hardship caused by drought conditions negatively affecting:

- (a) The delivery of safe and reliable drinking water supplies;
- (b) The survival of fish and wildlife; and
- (c) The viability of agricultural activities and livestock operations.

(2) This chapter establishes criteria for project grant eligibility, selection, issuance, and performance, and applies to projects under which ecology may disburse funds for addressing undue hardship caused by drought conditions.

(3) Provisions in this chapter supplement provisions of chapter 173-166 WAC. In the event of any conflict between this rule and chapter 173-166 WAC, the provisions of this chapter control.

NEW SECTION

WAC 173-167-020 Definitions. Definitions only apply to this chapter:

(1) "Agreement effective date" means the date on which the grant agreement becomes effective, as specified in the agreement.

(2) "Agreement signature date" means the date the grant agreement is signed by ecology.

(3) "Applicant" means an entity that applies for a grant.

(4) "Budget" means, for the purpose of grant agreements, a breakdown of eligible costs by task.

(5) "Ecology" means the Washington state department of ecology.

(6) "Grant agreement" or "agreement" means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant, signed by authorized signatories of the recipient and ecology.

(7) "Recipient" means an entity that has a grant agreement.

(8) "Scope of work" means the tasks, deliverables, and timelines of the grant agreement.

NEW SECTION

WAC 173-167-030 Funding limitations. (1) Ecology will administer grants in accordance with the *Administrative Requirements for Recipients of Ecology Grants and Loans*. (Publication No. 17-01-004.) Revised September 2017.

(2) Except for state agency applicants and as provided for in subsection (3) of this section, applicants must provide cost-share totaling fifty percent of the total eligible cost of the project.

(3) If an applicant is seeking funding for a public water system to address the immediate undue hardship arising from drought conditions and it serves a population of less than twenty-five thousand individuals with a mean household

income of eighty percent or less of the state average, these applicants qualify for an exemption from the cost-share requirement.

(4) The department will provide no more than three hundred fifty thousand dollars to any single entity or any single project with funding authorized under this chapter, except applicants meeting criteria under subsection (3) of this section may qualify for up to seven hundred thousand dollars of funding.

NEW SECTION

WAC 173-167-040 Application. (1) All applicants must use the electronic system identified by ecology to apply for grants. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

- (a) Applicant information;
- (b) Project location and description;
- (c) Requested funding amount and budget for the project;

(d) Description of project benefit(s), including:

- (i) Problem(s) or need(s) the project would address;
- (ii) Timing and the extent to which the project is expected to address the identified needs;

(iii) Quantity of water, acreage, and number of residences affected by the proposed project, as applicable;

(iv) Method(s) used to determine project benefits; and

(v) Metrics for project success, including quantitative metrics if available.

(e) Scope of work for the project;

(f) Any other information required by ecology to evaluate the project.

(3) Ecology may request additional information to assist in the application evaluation process and may remove an application from further consideration if the application is incomplete.

NEW SECTION

WAC 173-167-050 Eligible public entities for grant funding under this chapter. (1) State, county, or city governmental agencies.

(2) Federally recognized tribes.

(3) Public utility districts, formed under chapter 54.04 RCW.

(4) Water and sewer districts, formed under chapter 57.02 RCW.

(5) Conservation districts, formed under chapter 89.08 RCW.

(6) Irrigation districts, formed under chapter 87.03 RCW.

(7) Port districts formed under chapter 53.04 RCW.

(8) Watershed management partnerships formed under RCW 39.34.200.

NEW SECTION

WAC 173-167-060 Eligibility for funding. (1) To be eligible for funding, one or more of the following must be

partially or completely within the area of a drought declaration order by ecology:

- (a) The public water system's service area;
 - (b) The geographic area where irrigated agriculture or livestock are located;
 - (c) The source of water, or the water body, that supplies water to the entity applying for funding.
- (2) The reduction in water supply caused by drought must cause, or is expected to cause, undue hardship, as described under WAC 173-167-120.
- (3) Funding may be granted if the following conditions are met:
- (a) The proposed project or measure must be for an established beneficial use of water and not used for irrigation of new acreage or another new or expanded use.
 - (b) The proposed project or measure must be cost-effective and alleviate undue hardship caused by water shortage during the declared drought emergency, as described under WAC 173-167-110 and 173-167-120.
 - (c) The applicant must provide documentation to ecology that demonstrates ability to complete the project or measure on or before the expiration of the declared drought emergency.
 - (d) Water derived from the project or measure must be put to beneficial use and address the current water shortage during the drought declaration.
 - (e) The proposed project or measure cannot impair existing rights, including instream and out-of-stream rights.
 - (f) The applicant must obtain all required permits and approvals for the proposed project prior to initiating work.
 - (g) If an applicant is seeking funding for a public water system, the applicant must obtain Washington department of health approval of the proposed project.
 - (h) The proposed project effectively manages available water supplies:
 - (i) Applicants must include water conservation actions in the proposal or demonstrate that the applicant has already made reasonable efforts to address their water supply shortage through conservation measures.
 - (ii) If the applicant is seeking funding for a public water system, the water system must have developed and be implementing a water shortage response plan, or must develop a water shortage response plan in consultation with department of health concurrently with the implementation of a project funded under this chapter.

NEW SECTION

WAC 173-167-080 Waiver. To expedite drought relief projects and measures, ecology can approve funding or compensation under this chapter without complying with:

- (1) Notice of publication;
- (2) The State Environmental Policy Act; and
- (3) Competitive bidding requirements.

NEW SECTION

WAC 173-167-100 Eligible projects or measures. (1) Eligible projects or measures include, but are not limited to:

- (a) Implementing water use efficiency projects;

- (b) Developing and implementing conservation programs that directly result in reduced water use;
- (c) Leasing or acquiring water rights providing an uninterrupted water supply for instream or out-of-stream use;
- (d) Developing new emergency source(s) of supply;
- (e) Establishing emergency interties or other alternate source(s) of supply;
- (f) Obtaining an emergency supply of potable water from trucks or bottles;
- (g) Replacing inefficient equipment or infrastructure that directly results in reduced water demand or increased water supply availability;
- (h) Addressing fish migration barriers caused by drought conditions;
- (i) The cost of mitigating impairment to senior water rights caused by the use of an emergency water source;
- (j) The cost of providing personnel necessary to implement the activities identified in this section.

(2) Ecology retains the discretion to fund an eligible project for less than the amount requested or deny a grant request for an eligible project. Situations where ecology may reduce or deny a grant request for an eligible project include, but are not limited to, incomplete application submittal, unavailability of sufficient funding for a project, or evidence that information submitted in an application is false or inaccurate.

NEW SECTION

WAC 173-167-110 Cost effectiveness. (1) A cost-effective project:

- (a) Provides for an immediate and reliable water supply for agricultural crops, livestock operations, or public water systems, or addresses undue hardship to fish and wildlife by providing demonstrable benefits.
 - (b) Includes a feasible project schedule and reasonable spending plan to complete the project in a timely and expeditious manner.
- (2) Projects that benefit:
- (a) Agricultural crops or livestock operations cannot have disproportionate cost relative to economic impact.
 - (b) Public water supplies must address short-term undue hardship while considering approaches for providing long-term water supply reliability and public health protection.
 - (c) Fish and wildlife, which includes improving stream flow conditions, cannot have disproportionate cost relative to environmental or economic benefits.

NEW SECTION

WAC 173-167-120 Undue hardship. (1) Undue hardship will be evaluated by considering:

- (a) The short-term and long-term economic, public health, or environmental effects the water shortage would have in the absence of drought relief on agricultural crops, livestock operations, public water system safety and reliability, or instream fish and wildlife resources.
- (b) The degree to which current drought conditions are directly responsible for the effects described as undue hardship.

(c) The amount of water shortage experienced or forecast for each applicant.

(2) In the Yakima Basin (water resource inventory areas 37, 38, and 39), undue hardship exists for irrigators at a water supply threshold consistent with the objectives of the Yakima Basin integrated plan. Undue hardship for irrigation projects does not exist if irrigation districts with junior prorated allocations receive seventy percent or greater of normal water supply.

NEW SECTION

WAC 173-167-140 Grant agreement. (1) Ecology will work with the recipient to prepare the grant agreement.

(2) A grant agreement issued and managed in ecology's electronic system must include, at a minimum:

- (a) Project description;
- (b) Expected outcomes;
- (c) Project budget and funding distribution;
- (d) Agreement effective date and expiration date;
- (e) Description of tasks, deliverables, and timelines;
- (f) Contact information for ecology and the recipient;
- (g) Signatures of authorized signatories;
- (h) General terms and conditions that specify requirements related, but not limited to:
 - (i) Amendments and modifications;
 - (ii) Assignment limits on transfer of rights or claims;
 - (iii) Inadvertent discovery plan for human remains and/or cultural resources;
 - (iv) Compliance with all laws;
 - (v) Conflict of interest;
 - (vi) Disputes;
 - (vii) Environmental data standards;
 - (viii) Governing law;
 - (ix) Indemnification;
 - (x) Independent status of the parties to the agreement;
 - (xi) Order of precedence for laws, rules, and the agreement;
 - (xii) Property rights, copyrights, and patents;
 - (xiii) Records, audits, and inspections;
 - (xiv) Recovery of funds;
 - (xv) Severability;
 - (xvi) Suspension;
 - (xvii) Sustainable practices;
 - (xviii) Termination;
 - (xix) Third-party beneficiary;
 - (xx) Waiver of agreement provisions.
 - (i) Special terms and conditions, if any;
 - (j) Agreement-specific terms and conditions, if any;
 - (k) Other items, if any, necessary to meet the goals of the grant program.

(3) All grant agreements under this chapter will include the latest version, as of the original agreement date, of ecology's grant general terms and conditions.

(4) Ecology may choose to extend a grant agreement at its sole discretion.

NEW SECTION

WAC 173-167-150 Performance standards—General provisions. (1) Nothing in this chapter influences,

affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant.

(2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant agreements, records, and activities.

(3) New ecology grant agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(4) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

(5) Recipients must:

(a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Use funds according to the agreement;

(c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules;

(d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement;

(e) Obtain prior approval for equipment purchases over the amount specified in the agreement.

(6) As specified in the grant agreement, the recipient must submit the following to ecology:

(a) Progress reports;

(b) Payment requests;

(c) Equipment and materials purchase reports, including receipts;

(d) Documentation of project implementation;

(e) A final closeout report;

(f) Any other required information.

(7) Ecology will:

(a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement;

(c) Confirm receipt of required documentation and satisfactory completion of the project before approving final payment.

NEW SECTION

WAC 173-167-160 Closing out the agreement. (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant agreement when it determines the recipient has met the requirements or when the agreement has been terminated (see WAC 173-167-170).

NEW SECTION**WAC 173-167-170 Termination of agreement. (1)**

Failure by the recipient to comply with a grant agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding.

(4) Ecology will document the termination of an agreement.

**WSR 19-12-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 19-58—Filed June 4, 2019, 1:38 p.m., effective June 15, 2019]

Effective Date of Rule: June 15, 2019.

Purpose: Amend recreational sturgeon fishing rules for Lake Roosevelt.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is necessary to open a harvest fishery for white sturgeon in Lake Roosevelt. Fishery managers in Washington state and British Columbia began sturgeon hatchery programs in the early 2000s in response to a decades-long decline in the white sturgeon population in Lake Roosevelt. Survival rates for those hatchery-produced juvenile sturgeon were much higher than was anticipated. As a result, there is a surplus of these fish available for harvest from Lake Roosevelt. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 29, 2019.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000C Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050:Effective June 15 until further notice, it is permissible to fish for sturgeon in waters of Lake Roosevelt from Grand Coulee Dam upstream to the China Bend Boat Ramp (including the Spokane River from Highway 25 Bridge upstream to 400' below Little Falls Dam, Colville River upstream to Meyers Falls and the Kettle River upstream to Barstow Bridge):

(a) Daily limit: 1 sturgeon; minimum fork length 53 inches, maximum fork length 63 inches. Annual limit 2 sturgeon. Anglers are allowed to continue catch and release fishing for sturgeon after the daily limit is retained and after the annual limit is retained.

(b) Anglers may fish for sturgeon with two poles with the purchase of a Two-pole endorsement.

(c) Night closure is in effect for sturgeon.

(d) All other statewide rules for white sturgeon apply.

**WSR 19-12-100
EMERGENCY RULES
PARAEDUCATOR BOARD**

[Filed June 4, 2019, 4:03 p.m., effective June 4, 2019, 4:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To make necessary program changes and provide clarification as the result of legislative budgetary decisions regarding state funding for the paraeducator fundamental course of study requirements.

Citation of Rules Affected by this Order: Amending WAC 179-09-040.

Statutory Authority for Adoption: Chapters 28A.410, 28A.413 RCW.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The statutory construct for school district requirements regarding the delivery of this training is controlled by the amount and specific reference in the state operating budget. The recently adopted state operating budget made changes to existing rule regarding the number of training days required to be provided by school districts in the fourth coming [forthcoming] school years.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 4, 2019.

Chloe Smyth
Rules Coordinator

unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

~~((6))~~ (7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

AMENDATORY SECTION (Amending WSR 18-16-106, filed 7/31/18, effective 8/31/18)

WAC 179-09-040 Fundamental course of study. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a)(i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b)(i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5)(a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each