

WSR 21-04-072

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed January 29, 2021, 1:24 p.m., effective February 1, 2021]

Effective Date of Rule: February 1, 2021.

Purpose: These rules are necessary to implement the terms of SSB 6152 (2020), regarding the prohibition on political spending by foreign nationals.

Citation of Rules Affected by this Order: New WAC 390-16-330 and 390-16-335.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.240, 42.17A.250, 42.17A.260, 42.17A.305.

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: Emergency rules were adopted June 11, 2020, to implement SSB 6152. These emergency rules were extended on October 9, 2020, while the public disclosure commission (PDC) started actively undertaking the appropriate procedures to adopt the rule as a permanent rule. The PDC received significant public comment for the public hearing for its proposed permanent rules on December 3, 2020, and continues to consider the input received on the proposed rules for final adoption.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 29, 2021.

Sean Flynn
General Counsel

OTS-2309.2

NEW SECTION

WAC 390-16-330 Prohibited financing and involvement by foreign nationals. (1) Prohibited financing by foreign nationals.

(a) For purposes of section 9, chapter 152, Laws of 2020 (SSB 6152), a contribution, expenditure, political advertising, or electioneering communication is "financed in any part by a foreign national" if the person making the contribution or expenditure, or sponsoring the advertisement or communication, uses a funding source that includes, in whole or in part, anything of value received from a foreign

national for less than full consideration. Such value may include, but is not limited to, a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or goods and services.

(b) Anything of value received from a foreign national for less than full consideration must be segregated, using reasonable accounting methods, from the funding source used by the entity to finance a contribution, expenditure, advertisement, or communication. Funding from a foreign national may not be used to supplant, replace, or replenish the funding source or any of the resources or activities funded by that source.

(2) **Prohibited decision-making involvement by foreign nationals.**

(a) For purposes of section 9, chapter 152, Laws of 2020 (SSB 6152), a foreign national is "involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way" if the foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process regarding any such contribution, expenditure, advertisement, or communication.

(b) If any entity is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained or controlled by a foreign national, under the criteria provided in WAC 390-16-309(3), the decision-making authority of such entity regarding the contribution, expenditure, advertisement, or communication, must be clearly established to be comprised exclusively of United States citizens or legal permanent residents, in order to exclude involvement by any foreign national.

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NEW SECTION

WAC 390-16-335 Certification for contributions from entities—Prohibited activity by foreign nationals. (1) The certification required for a candidate or political committee to accept each contribution from a partnership, association, corporation, organization, or other combination of persons must be received in writing, either:

(a) By the date the report including the contribution is due, or within ten business days, whichever is later; or

(b) Within thirty days from the date the contribution is received, so long as the candidate or committee keeps any uncertified contributions in a separate bank account, to prevent commingling with other contributions, until the certification is received.

(2) Any uncertified contribution must be refunded or returned by the applicable deadline in subsection (1) of this section. The failure to timely refund or return an uncertified contribution constitutes a violation of chapter 42.17A RCW.

(3) Entities may use a certification that conforms to the suggested format below or provide a different format, so long as it provides the following information:

(a) The name of the entity making the contribution and the authorized agent;

(b) A statement that the entity is not a foreign national, as defined in RCW 42.17A.005(24);

- (c) A statement that the contribution is not financed in any part by a foreign national;
- (d) A statement that foreign nationals were not involved in making decisions regarding the contribution in any way;
- (e) The amount of the contribution and the date it was made; and
- (f) The date the certification was submitted.

Certification that Contribution Is Not From a Foreign National

I certify that the entity _____

(name of entity) making this contribution is not organized under the laws of, and does not have its principal place of business in, a foreign country. This contribution is not financed in any part by a foreign national, and foreign nationals were not involved in making decisions regarding the contribution in any way.

Amount of Contribution:

Date of Contribution:

Name of Authorized Agent:

Date Submitted:

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