

WSR 21-21-056

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 15, 2021, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-063.

Title of Rule and Other Identifying Information: Amending the rules regarding the inspection of commercial advertisers' records for political advertising or electioneering communications, including advertising on digital media.

Hearing Location(s): On December 2, 2021, at 9:30 a.m., at 711 Capitol Way South, Suite 206, Olympia, WA 98504. Due to COVID-19 protocol the hearing will [be] conducted remotely and streamed live at <https://www.youtube.com/user/WASTPDC/live>. To provide public comment via conference line during this time please call 1-360-522-2372.

Date of Intended Adoption: December 2, 2021.

Submit Written Comments to: Sean Flynn, P.O. Box 40908, email pdcpdc@pdc.wa.gov.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, email pdcpdc@pdc.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal addresses how commercial advertisers respond to requests for records of the political advertising and electioneering communication it provides, the format for making such information available, and the content that must be disclosed.

Reasons Supporting Proposal: The proposal addresses the application of the commercial advertiser rules in recognition of the evolving digital media market and the increased use of digital media by political campaigns.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.345.

Statute Being Implemented: RCW 42.17A.110 and 42.17A.345.

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

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Flynn, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111; Enforcement: Kim Bradford, 711 Capitol Way South, Suite 206, Olympia, WA, 360-753-1111.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The public disclosure commission is not required to prepare a cost-benefit analysis under RCW 34.05.328 (5) (b).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 14, 2021

Sean Flynn

General Counsel

OTS-3405.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

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)~~) is defined under RCW 42.17A.005.

(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)~~) the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the (advertising or communications to the original purchaser) services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when selling digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(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. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

- (a) In person during normal business hours; or
- (b) 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, but no later than two business days; or
 - (ii) By online publication in one of the following formats:
 - (A) On the advertiser's primary website; or

(B) On a website 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 website directing users to the website on which the information is provided.

~~((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 five years after the date of the applicable election.))~~

(5) A commercial advertiser may have, to the extent necessary, up to an additional three business days to update its books of account or respond to a request to inspect its records, regarding any particular political advertising or electioneering communication, or to provide the required identifying link or attachment for digital media as required under subsection (2) of this section, if:

(a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication; and

(b) The purchaser did not provide such information.

(6) 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;))~~ A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(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))~~ (7) In addition to subsection ~~((5))~~ (6) 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, the statistical characteristics of a population (e.g., age, gender, race, ethnicity, religion, language, location, marital status, education, occupation, income, 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~~)) or communication.

((~~7~~)) (8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-050, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-050, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(8). WSR 15-12-058, § 390-18-050, filed 5/28/15, effective 6/28/15. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-050, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-050, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 99-12-068, § 390-18-050, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370. WSR 93-04-072, § 390-18-050, filed 1/29/93, effective 3/1/93.]