

WSR 23-12-036

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 30, 2023, 10:55 a.m., effective June 30, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules follow up on the previously adopted rules making inflationary adjustments to the monetary limits and reporting values of the campaign finance category (see WSR 23-07-004) and updates to the references to the newly adjusted values throughout the public disclosure commission rules, Title 390 WAC. The amendments are technical in nature to reflect the new values.

Citation of Rules Affected by this Order: Amending WAC 390-16-013, 390-16-042, 390-16-043, 390-16-058, 390-16-059, 390-16-063, 390-16-105, 390-16-226, 390-16-236, 390-16-245, 390-16-309, 390-16-310, 390-16-312, 390-16-320, 390-17-315, 390-18-010, and 390-18-025.

Statutory Authority for Adoption: RCW 42.17A.110 and [42.17A.]125.

Adopted under notice filed as WSR 23-07-099 on March 17, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 17, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 25, 2023.

Sean Flynn
General Counsel

OTS-4410.2

AMENDATORY SECTION (Amending WSR 19-08-092, filed 4/3/19, effective 5/4/19)

WAC 390-16-013 Incidental committees—Registration and reporting requirements and method for reporting. (1) Chapter 42.17A RCW requires the disclosure of monetary and in-kind contributions and expenditures by nonprofit organizations that participate significantly in candidate and ballot proposition campaigns in Washington state. Non-profit organizations that make contributions or expenditures in Washington elections above specified thresholds, and are not otherwise defined under the law as political committees, must file organizational statements with the PDC and disclose certain contributors, regardless of the organization's primary purpose. These are referred to in the law as "incidental committees." To be an incidental committee, trig-

gering the requirements to file a statement of organization with the PDC and then file the required disclosure reports, an organization must expect to make contributions or expenditures of at least (~~twenty-five thousand dollars~~) \$35,000 in a calendar year for an election campaign and receive a payment of at least (~~ten thousand dollars~~) \$15,000 from a single source.

(2) The official form for providing the statement of organization by incidental committees as required by RCW 42.17A.207 is designated the incidental committee registration report, or "C-1-IC."

(3) The official form for reporting top (~~ten~~) 10 payments and expenditures by incidental committees as required under RCW 42.17A.240 is designated the incidental committee payments and political expenditures report, or "C-8."

(4) These reporting forms must be filed electronically when the PDC has provided an electronic method to do so. Until an electronic method is provided, the reporting forms should be downloaded from the PDC's website, www.pdc.wa.gov, or obtained at the PDC office, in Olympia, Washington, and submitted by postal mail or hand delivery. The executive director may make exceptions on a case-by-case basis for an incidental committee that lacks the technological ability to file reports electronically.

(5) For purposes of determining whether a nonprofit organization has the expectation of making contributions or expenditures aggregating at least (~~twenty-five thousand dollars~~) \$35,000 in a calendar year that then triggers the reporting requirements:

(a) Contributions include any monetary or in-kind contributions made to a political committee, including a political committee that the nonprofit organization sponsors; and

(b) Contributions do not include contributions made to an out-of-state political committee, unless the contribution is earmarked or otherwise designated specifically for any in-state election campaign or political committee.

(6) The sources of the top (~~ten~~) 10 largest cumulative payments of (~~ten thousand dollars~~) \$15,000 or greater, as required to be reported on the C-8 report, must include:

(a) The top (~~ten~~) 10 sources of payments within the current calendar year through the applicable reporting period, including any changes to the top (~~ten~~) 10 sources from the previous reporting period; and

(b) The total cumulative payment value, within the current calendar year through the applicable reporting period, made from a person who is reported on the current report as a source of a top (~~ten~~) 10 payment.

(7) For purposes of reporting the sources of the top (~~ten~~) 10 largest cumulative payments of (~~ten thousand dollars~~) \$15,000 or greater, for payments received from multiple persons in an aggregated form, only a payment of more than (~~ten thousand dollars~~) \$15,000 from any single person must be reported, but not the aggregated payment to the nonprofit organization itself or through any intermediary aggregated payment.

(8) An incidental committee may request a modification or suspension of reporting requirements in cases of manifestly unreasonable hardship pursuant to RCW 42.17A.120, as set forth in chapter 390-28 WAC.

(9) Each incidental committee is automatically dissolved at the end of the calendar year in which it was registered, or upon completion of all reporting requirements for that year, whichever is later.

Dissolution does not absolve the nonprofit organization that registered as an incidental committee from responsibility for any obligations resulting from a finding before or after dissolution of a violation committed prior to dissolution. Dissolution in this context refers only to the termination of an incidental committee created to fulfill the nonprofit's reporting responsibilities under chapter 42.17A RCW, and is not intended to affect the legal status of the nonprofit organization itself.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 111. WSR 19-08-092, § 390-16-013, filed 4/3/19, effective 5/4/19.]

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

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~~) \$1,000, 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~~) 30 days of an election, debts or obligations of more than (~~seven hundred fifty dollars~~) \$1,000 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~~) \$1,000 must be reported if the debt or obligation has been outstanding for more than (~~ten~~) 10 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-042, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, §

390-16-042, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17.370. WSR 89-20-068, § 390-16-042, filed 10/4/89, effective 11/4/89.]

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

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~~) 10 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 must 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 and reasonably accessible to both parties. The inspection must be allowed within (~~forty-eight~~) 48 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 sub-

stantiate the information disclosed on the PDC campaign finance reports. The books of account must include the underlying source documents such as receipts, invoices, copies of contribution checks, copies of canceled checks for expenditures, digital transactions, notes, or other documentation concerning expenditures, orders placed, and loans. The campaign or committee is not required to provide the name and address of contributors who gave (~~twenty-five dollars~~) \$100 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. Videorecording, 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 must be available for audit or examination by the PDC at any time upon request from the PDC.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-043, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-043, filed 11/30/18, effective 12/31/18.]

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

WAC 390-16-058 Independent expenditure—Definition and application. (1) "Independent expenditure," as that term is used in chapter 42.17A RCW, other than RCW 42.17A.255, and as used in these rules, 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 of (~~one thousand dollars~~) \$2,000 or more. A series of expenditures, each of which is under (~~one thousand dollars~~) \$2,000, constitutes one independent expenditure if their cumulative value is (~~one thousand dollars~~) \$2,000 or more; and

(e) The expenditure is not a contribution as defined in RCW 42.17A.005 and provided in 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 interest to the 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 assessed must 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~~) \$350 personally paid by the worker.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-058, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-058, filed 11/30/18, effective 12/31/18.]

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

WAC 390-16-059 Electioneering communication reporting threshold.

(1) A "sponsor" of an electioneering communication is defined in RCW 42.17A.005.

(2) For the purposes of RCW 42.17A.005, 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 (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~~) 60 days before an election, has a fair market or aggregate value of (~~one thousand dollars~~) \$2,000 or more; and
- (d) Is not a communication excluded from the meaning of "expenditure" under RCW 42.17A.005 or by these rules.
- (3) When the communications (including radio, television, electronic, mailings, billboards, newspapers, online, or periodicals) reach the (~~one thousand dollar~~) \$2,000 threshold, the sponsor must report to the commission as required by RCW 42.17A.305 within (~~twenty-four~~) 24 hours of, or on the first working day after, the date the communication is first broadcast, transmitted electronically, erected, distributed, published online or by other media, or otherwise presented to the public.
- (4) Once the (~~one thousand dollar~~) \$2,000 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~~) \$2,000 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 the PDC C-6 Report, a prorated portion of independent expenditure and electioneering communications expenditures must be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration must 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-059, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-059, filed 11/30/18, effective 12/31/18.]

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

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~~) \$1,000 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~~) \$2,000 or more that is presented to the public within (~~twenty-one~~) 21 days of an election, that supports or opposes a ballot proposition, or that

qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$1,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$1,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed, including 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 must report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication as defined in RCW 42.17A.005.

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

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-063, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-063, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(1). WSR 14-12-012, § 390-16-063, filed 5/22/14, effective 6/22/14. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-063, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-16-063, filed 5/23/06, effective 6/23/06.]

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

WAC 390-16-105 Mini campaign reporting—Eligibility. (1) A candidate or candidate's authorized committee, as those terms are defined in 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)~~) \$7,000; and

(b) No contribution or contributions from any person other than the candidate exceed (~~(five hundred dollars)~~) \$500 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)~~) \$7,000; and

(b) No contribution or contributions from any person exceed (~~(five hundred dollars)~~) \$500 in the aggregate.

(3) A continuing political committee, as that term is defined in 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)~~) \$7,000; and

(b) No contribution or contributions from any person exceed (~~(five hundred dollars)~~) \$500 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 will no longer qualify for the mini reporting option and must 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-105, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-105, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(8). WSR 14-12-010, § 390-16-105, filed 5/22/14, effective 6/22/14. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-105, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 (1) and (8). WSR 08-01-058, § 390-16-105, filed 12/14/07, effective 1/14/08. Statutory Authority: RCW 42.17.370. WSR 05-11-001, § 390-16-105, filed 5/4/05, effective 6/4/05. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-16-105, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370. WSR 01-10-050, § 390-16-105, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-16-105, filed 2/5/86; Order 91, § 390-16-105, filed 7/22/77; Order 62, § 390-16-105, filed 8/26/75.]

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

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

(2) If any person gives or loans the candidate funds in connection with his or her campaign, the funds are not considered personal funds of the candidate. See WAC 390-17-305. Such funds are considered a contribution from the original source of the contribution under chapter 42.17A RCW and, unless the loan meets the exemption provided in RCW 42.17A.465(3) and this subsection, the contribution is subject to the contribution limits provided in chapter 42.17A RCW, as adjusted by WAC 390-05-400.

(a) If a candidate or candidate's own political committee or campaign or authorized committee receives a loan from a commercial lending institution, the loan is exempt from the contribution limits of

RCW 42.17A.405 and WAC 390-16-310, as adjusted by WAC 390-05-400, only if all the following criteria are met:

- (i) The loan is not guaranteed by any other person;
 - (ii) The loan is made in the regular course of business; and,
 - (iii) The loan is made on the same terms ordinarily available to the public.
- (b) A commercial loan to a candidate's own committee or campaign or authorized committee is presumed to be guaranteed by the candidate. The presumption is rebuttable by clear, cogent and convincing evidence.

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

(4) If a candidate makes documented out-of-pocket campaign expenditures on behalf of their campaign expecting repayment (not intending to make an in-kind contribution), the campaign committee must repay the candidate within (~~twenty-one~~) 21 days of the expenditure or the candidate will be deemed to have made a loan to his or her campaign committee which must qualify for repayment under subsections (1) and (2) in order for the candidate to be repaid. Undocumented out-of-pocket campaign expenditures by the candidate are in-kind contributions not eligible for repayment.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-226, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-226, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-16-226, filed 1/4/02, effective 2/4/02; WSR 00-22-056, § 390-16-226, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-16-226, filed 7/30/93, effective 8/30/93.]

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

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

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

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

(2) Depositing surplus funds.

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

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

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

(3) Reporting surplus funds expenditures.

(a) The treasurer shall file with the commission a report on the (~~tenth~~) 10th day of each month detailing expenditures made in the preceding calendar month. This report need only be filed if the total expenditures made since the last such report exceeded (~~two hundred dollars~~) \$750. The report shall be on PDC Form C-4, Campaign Summary Receipt & Expenditures.

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

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

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-236, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.240(11). WSR 17-01-160, § 390-16-236, filed 12/21/16, effective 1/21/17.]

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

WAC 390-16-245 Pledges. (1) "Pledge," as that term is used in the act and these rules, means a promise to make a future contribution. A pledge shall not be made or redeemed within (~~twenty-one~~) 21 days of an election specified in RCW 42.17A.420 if the amount of the pledge or redemption exceeds the maximum amount provided in RCW 42.17A.420, as adjusted by WAC 390-05-400. However, if payment of a pledge is in the possession of the recipient (~~twenty-two~~) 22 or more days before the election, that payment may be deposited into the campaign account within five business days of receipt in accordance with RCW 42.17A.220.

(2) If a pledge is made in an election campaign subject to the contribution limits provided in RCW 42.17A.405 and 42.17A.410, as adjusted by WAC 390-05-400:

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

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

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

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-245, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-245, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-12-033, § 390-16-245, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.390. WSR 94-07-141, § 390-16-245, filed 3/23/94, effective 4/23/94.]

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

WAC 390-16-309 Identification of affiliated entities. (1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17A.405 and 42.17A.410, as adjusted by WAC 390-05-400, if one of the entities is:

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

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

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

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

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

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

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

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

(3) In addition to subsection (1) of this section, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17A.405 and 42.17A.410, as adjusted by WAC 390-05-400, if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one or more of the following factors:

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

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

vote as a member, the officers or other decision making employees or members of another entity; or

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

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

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-309, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-309, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 10-20-012, § 390-16-309, filed 9/24/10, effective 10/25/10. Statutory Authority: RCW 42.17.390. WSR 94-11-016, § 390-16-309, filed 5/5/94, effective 6/5/94.]

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

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, as adjusted by WAC 390-05-400, are as follows:

(1) (a) The limitation on contributions in RCW 42.17A.405 or 42.17A.410, as adjusted by WAC 390-05-400, do not apply to a "candidate" as that term is defined in RCW 42.17A.005 when the candidate is contributing to the candidate's own campaign using 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, as adjusted by WAC 390-05-400, 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 will 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 must be aggregated for purposes of determining the limitations of contributions under RCW 42.17A.420, 42.17A.405, or 42.17A.410, as adjusted by WAC 390-05-400.

(5) The limitations on contributions 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 must 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, as adjusted by WAC 390-05-400.

(6) The limitations on contributions in RCW 42.17A.420, 42.17A.405, and 42.17A.410, as adjusted by WAC 390-05-400, 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-310, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-310, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-310, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 09-09-126, § 390-16-310, filed 4/22/09, effective 5/23/09; WSR 05-06-070, § 390-16-310, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 42.17.370(1). WSR 96-05-001, § 390-16-310, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.390. WSR 94-11-016, § 390-16-310, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-16-310, filed 7/30/93, effective 8/30/93; WSR 92-05-079, § 390-16-310, filed 2/18/92, effective 3/20/92; WSR 90-20-088, § 390-16-310, filed 9/28/90, effective 10/29/90.]

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

WAC 390-16-312 Handling contributions of uncertain origin. No contribution shall be deposited by any candidate or treasurer who believes, from the face of the contribution instrument or for any other reason, the contribution was made in a fictitious name, by one person through an agent, relative, political committee, or any other person so as to conceal the source of the contribution or to exceed the contribution limits provided in RCW 42.17A.420, 42.17A.405, or 42.17A.410, as adjusted by WAC 390-05-400, or otherwise violate the

act. The candidate or treasurer shall return such contributions within (~~ten~~) 10 days to the original contributor if his or her identity is known. Otherwise, the contribution instrument shall be endorsed and made payable to "Washington state treasurer" and the contribution sent to the commission for deposit in the state's general fund.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-312, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 17-03-028, § 390-16-312, filed 1/6/17, effective 2/6/17; WSR 12-03-002, § 390-16-312, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-16-312, filed 7/30/93, effective 8/30/93; WSR 91-14-041, § 390-16-312, filed 6/27/91, effective 7/28/91.]

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

- WAC 390-16-320 Candidates in small political subdivisions—Reporting.** (1) As provided in RCW 42.17A.200 and 42.17A.135(7), a candidate for election in any political subdivision must fully report if the candidate receives (~~five thousand dollars~~) \$7,000 or more in contributions or expects to receive (~~five thousand dollars~~) \$7,000 or more in contributions during an election cycle.
- (2) It is presumed the candidate "expects to receive" (~~five thousand dollars~~) \$7,000 or more when any one of the following first occurs:
- (a) The candidate or candidate's authorized committee receives at least (~~five thousand dollars~~) \$7,000 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 the candidate's campaign contributions in the previous election for the same office were (~~five thousand dollars~~) \$7,000 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~~) \$1,250 or more;
- (d) The contributions received on or before June 30th of the election year total (~~two thousand five hundred dollars~~) \$2,500 or more;
- (e) The contributions received on or before September 30th of the election year total (~~three thousand seven hundred fifty dollars~~) \$3,750 or more; or
- (f) The candidate otherwise anticipates that (~~five thousand dollars~~) \$7,000 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 dollars~~) \$7,000 reporting threshold.
- (4) A candidate or candidate's authorized committee that receives, or expects to receive, (~~five thousand dollars~~) \$7,000 or more must:
- (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 C-1 Report;

- (ii) A personal financial affairs statement, PDC F1 Report and, if relevant, the F1 Supplement; and
- (iii) Contribution and expenditure reports, PDC C3 and C4 reports 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-16-320, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-16-320, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-320, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-08-044, § 390-16-320, filed 3/28/07, effective 4/28/07.]

OTS-4395.1

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

- WAC 390-17-315 Political committees—Qualifications to contribute.** (1) Within (~~one hundred eighty~~) 180 days of making a contribution to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official, a political committee shall have received contributions of \$10 or more each from at least (~~ten~~) 10 individuals registered to vote in Washington state.
- (2) A political committee shall have received contributions of (~~\$10~~) \$25 or more each from at least (~~ten~~) 10 individuals registered to vote in Washington state before contributing to a Washington state political committee.
- (3) A political committee shall maintain a list of the names and addresses of these registered voters from whom contributions are received, the amount of each contribution, and the date each contribution is received. Upon written request of the commission or other person seeking this information, the political committee shall provide the list within (~~fourteen~~) 14 days.

[Statutory Authority: RCW 42.17.130 and 42.17.093. WSR 12-01-047, § 390-17-315, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370. WSR 07-07-005, § 390-17-315, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-17-315, filed 1/4/02, effective 2/4/02; WSR 96-05-001, § 390-17-315, filed 2/7/96, effective 3/9/96. Statutory Authority: RCW 42.17.390. WSR 94-07-141, § 390-17-315, filed 3/23/94, effective 4/23/94. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-17-315, filed 7/30/93, effective 8/30/93.]

OTS-4396.1

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

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, 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 must 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~~) \$2,000 or more supporting or opposing a ballot proposition must clearly identify the "top five contributors" to that political committee, as well as the "top three donors" of all political committees identified as a "top five contributor," pursuant to WAC 390-18-025.

(b) Advertising undertaken as an independent expenditure or electioneering communication must comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors," as well as the "top three donors" to political committee 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, as well as the "top three donors" to political committee contributors. This requirement does not apply to bona fide political parties sponsoring independent expenditures.

(3) Required sponsor identification must 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 must be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification must be clearly identified, spoken or displayed on advertising on websites, social media and other

digital communication. Political committee websites 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-010, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-010, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-010, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 11-05-051, § 390-18-010, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-010, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370. WSR 03-12-034, § 390-18-010, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.370(1). WSR 00-22-055, § 390-18-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-18-010, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-010, filed 7/9/85.]

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

WAC 390-18-025 Advertising—Identification of "top five contributors" and "top three donors to PAC contributors." Sponsors must identify the "top five contributors" when required to be included in political advertising, as provided in WAC 390-18-010. When the "top five contributor" list includes one or more political committees, the sponsor must further identify and separately include in the advertisement the collective "top three donors to PAC contributors" to all such political committees. This section explains how the sponsor should identify such "top three donors to PAC contributors."

(1) For purposes of RCW 42.17A.320, "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions of (~~one thousand dollars~~) \$2,000 or more during the (~~twelve~~) 12-month period preceding the date on which the advertisement is published or otherwise presented to the public. The sponsor may calculate the (~~twelve~~) 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation. If more than five contribu-

tors give an amount equal to the largest aggregate contribution exceeding the threshold value and the funds are received during the relevant (~~(twelve)~~) 12-month period, the political committee sponsoring the advertisement must select five of these contributors to identify as the top five contributors.

(2) (a) If a political committee keeps records necessary to track contributions used according to the use intended by its contributors, that committee may identify the top contributions to the advertisement, as opposed to identifying the overall top five contributors to the committee, if such identified contributors made contributions that were intended and actually used to pay for the advertisement.

(b) For purposes for identifying the top five contributors, the sponsor should not include contributions earmarked, tracked, and used for purposes other than paying for the advertisement. However, if a sponsor uses a contributor's contributions earmarked for advertising for a different candidate or slate of candidates than the candidate or candidates intended by the contributor, the sponsor must include such contribution in determining the "top five contributors" of the actual advertisement for which the contribution was used.

(3) For purposes of RCW 42.17A.350 "top three donors to PAC contributors" means the three individuals or entities, other than political committees, who gave the largest aggregate contributions to one or more political committee listed as a "top five contributor," totaling (~~(one thousand dollars)~~) \$2,000 or more during the (~~(twelve)~~) 12-month period preceding the date on which the advertisement was published or otherwise presented to the public. The sponsor may calculate the (~~(twelve)~~) 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation.

(a) If any of the contributors to a "top five" political committee is itself a political committee, the sponsor must identify the top three contributors to that political committee. Such process continues until the sponsor has identified the top three nonpolitical committee contributors for each "top five" political committees. If more than three contributors to a "top five" political committee have given an amount equal to the largest aggregate contribution, the sponsor may select three of these contributors to identify as the "top three donors to PAC contributors."

(b) If there is more than one political committee identified as a "top five contributor," the sponsor must identify the top three nonpolitical committee contributors to each "top five" political committee, and then determine the "top three donors to PAC contributors" collectively from that list.

(c) The sponsor should not include contributions to a "top five" political committee contributor for purposes of identifying the "top three donors to PAC contributors" if both:

(i) The contribution to the "top five" committee was reported as an earmarked contribution for a purpose other than the advertisement in question; and

(ii) The "top five" committee has provided written verification to the sponsor before the initial publication or public presentation of the advertisement, confirming that such contribution was tracked and used for such other purpose.

(4) For purposes of determining the "top three donors to PAC contributors," the sponsor must make reasonable efforts to identify the contributions made to a political committee. Reasonable efforts in-

clude searching through reports of contributions filed with the commission or any other state, as well as requests made to any political committee that has not disclosed its contributions to the commission or in any other state. After making reasonable efforts, the sponsor may reasonably rely on the information reported to the commission, and will not be liable for any omission or miscalculation because a contribution to any "top five" political committee has not been reported to the commission.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-025, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-025, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-025, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-025, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-08-044, § 390-18-025, filed 3/28/07, effective 4/28/07. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-025, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 02-12-007, § 390-18-025, filed 5/23/02, effective 6/23/02.]