



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

June 18, 2015

TO: Commission Members
FROM: Tony Perkins, Acting Assistant Director
RE: **June 25, 2015 Meeting: Continued Consideration of Draft New Rules, Rule Amendments – Alternative Responses to Non-Compliance**

Background

At its May 28, 2015 meeting, the Commission considered draft language for seven proposed rule amendments, and four proposed new rules, in furtherance of the Commission's 2013 – 2015 Strategic Plan action item, "*Enhance and adopt guidance for alternative responses to non-compliance (e.g., technical assistance, warning/advisory letters, notices of correction, etc.) and amend regulations accordingly.*" The Commission suggested revisions to the draft language, and requested consideration of other possible rule changes.

Additionally, the Commission and staff discussed policy considerations surrounding possible alternative responses to non-compliance, and the potential need to increase the penalty authority for brief adjudicative proceedings, as well as the penalty schedules for group enforcement.

Following the May 28, 2015 meeting, PDC staff continued drafting new and amended rules for the Commission's consideration, based on the feedback received.

Action & Next Steps

The June 25, 2015 agenda includes a review and possible Commission approval of nine proposed draft rule amendments, and a draft of one proposed new rule. All but one of the draft rules prepared for the June meeting concern sections under Chapter 390-37 WAC, the Commission's enforcement hearing (adjudicative proceeding) rules. The remaining section, a proposed amendment to WAC 390-32-030, concerns a possible alternative response to non-compliance similar to the Fair Campaign Practices Code complaint publication process.

For the benefit of Commissioner Ranade, who was not present at the May 28, 2015 meeting, in addition to the aforementioned drafts, this packet also includes draft language for the three new and six amended rules that the Commission considered at its May meeting, for which no revision was requested. Staff is prepared to continue discussion of any of these drafts.

On April 20, 2015, Lori Anderson filed a preproposal statement with the Code Reviser for rule making on alternative responses to non-compliance. After the Commission has approved proposed rule language to address this strategic plan item, staff will file the proposal with the Code Reviser, scheduling a public hearing and possible adoption in the late summer or early fall. The rules would become effective 31 days after adoption.

Enclosed Drafts

The following is a summary of the enclosed draft rule amendments under consideration. Language the Commission considered at its May 28, 2015 meeting is highlighted in yellow. Blue highlighting represents revisions and other draft language the Commission requested at the May meeting for consideration in June. In addition to the substantive changes being recommended, the draft rule amendments also include non-substantive changes (reformatting citations, eliminating redundancies, etc.). Staff will explain the proposed rules or amended rules in detail, and receive any feedback the Commission has to offer.

Draft New or Amended Rules for Review and Possible Approval on June 25, 2015:

- **WAC 390-37-056** – To explain the Commission’s goals and objectives in providing for alternative responses to non-compliance, and the factors and considerations that the executive director may weigh in authorizing an alternative response;
- **WAC 390-37-060** – To provide authority for the executive director to issue an alternative response to non-compliance following an initial review of a complaint. In addition, to clarify the Commission’s policy concerning the inspection and copying of records generated or collected during the course of an investigation. Finally, to provide for timely notice of an adjudicative proceeding to the complainant;
- **WAC 390-37-090** – To provide for timely submission of stipulations as to facts, violations, or penalty;
- **WAC 390-37-155** – Electronic filing brief enforcement hearing penalty schedule;
- **WAC 390-37-160** – Statement of financial affairs (F-1) penalty schedule;
- **WAC 390-37-165** – Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule;
- **WAC 390-37-170** – Lobbyist monthly expense report (L-2) penalty schedule;
- **WAC 390-37-175** – Lobbyist employer report (L-3) penalty schedule;

- **WAC 390-37-182** – To align the language of the Commission’s penalty factors rule to corresponding language in the draft proposed new rule, WAC 390-37-056; and
- **WAC 390-32-030** – To provide an alternative response to non-compliance similar to the Fair Campaign Practices Code complaint publication process.

Draft New and Amended Rules Reviewed on May 28, 2015:

- **WAC 390-37-055** – To describe the available alternative responses to noncompliance under the Commission’s amended rules;
- **WAC 390-37-057** – To establish procedures for notices of correction as an alternative response to non-compliance;
- **WAC 390-37-058** – To establish procedures for deferred enforcement as an alternative response to non-compliance;
- **WAC 390-37-010** – To include notices of correction and deferred enforcement among the alternative resolution methods discussed (in general terms) in the current rule;
- **WAC 390-37-050** – To provide for a description, in a respondent’s notice of complaint, of any alternative response issued as of the date of the notice;
- **WAC 390-37-070** – To provide for alternative responses without the concurrence of the chair or the chair’s designee, in accordance with the process provided by the Commission’s amended rules;
- **WAC 390-37-103** – To establish that, following receipt of a staff report concerning alleged violations, the Commission may also direct staff to issue an alternative response in accordance with the Commission’s rules;
- **WAC 390-37-140** – To provide the authority of the presiding officer to assess a penalty of up to \$1,000 at a brief adjudicative proceeding (brief hearing); and
- **WAC 390-37-142** – To reflect the increased penalty authority for brief hearings provided by WAC 390-37-140. In addition, to provide the process for a respondent to waive a brief hearing, as authorized under the Administrative Procedures Act, by submitting a statement of understanding and other required elements.

Additional Materials for Review

The draft rule language scheduled for review on June 25, 2015 includes references to RCW 42.30.077 and RCW 29A.40.070(1). Respectively, those statutes concern the posting of agendas for open public meetings on agency Web sites, and the availability of ballots in all-mail elections. Copies of the two sections of law are enclosed for the Commission’s review. Finally, enclosed with this memo is WAC 390-37-030 (Enforcement procedures—Citizen complaints filed with the commission). While staff is not proposing draft language to amend

this section, the rule is relevant to the Commission's consideration of changes to WAC 390-37-060 and WAC 390-37-090.

Enclosures:

Draft New and Amended Rules for Consideration on June 25, 2015

New Rule WAC 390-37-056 Alternative Responses to Non-Compliance - Goals and Objectives – Factors to be Considered.

WAC 390-37-060 Enforcement procedures—Alternative Responses to Non-compliance—Investigation of complaints—Initiation of hearing (adjudicative proceeding).

WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.

WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.

WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.

WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.

WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.

WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.

WAC 390-37-182 Penalty factors.

WAC 390-32-030 Complaint Publication—Fair Campaign Practices Code—Alternative to Investigation or Adjudicative Proceeding.

Draft New and Amended Rules Considered on May 28, 2015

New Rule WAC 390-37-055 Alternatives to adjudicative proceedings in response to non-compliance.

New Rule WAC 390-37-057 Notices of correction - Process.

New Rule WAC 390-37-058 Deferred enforcement - Process.

WAC 390-37-010 Enforcement procedures—General.

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint.

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director

WAC 390-37-103 Commission options following receipt of a staff report on alleged violations.

WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings)—Authority.

WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)—Procedure.

Additional Materials

RCW 42.30.077 – Agendas of regular meetings — Online availability.

WAC 390-37-030 Enforcement procedures—Citizen complaints filed with the commission.

RCW 29A.40.070(1) – Date ballots mailed — Replacement ballots.

Draft New and Amended Rules for
Consideration on June 25, 2015

Alternative Responses to Non-compliance

NEW SECTION

WAC 390-37-056 Alternative Responses to Non-Compliance - Goals and Objectives - Factors to be Considered. (1) In considering appropriate responses to non-compliance with RCW 42.17A or WAC 390, the commission considers whether a formal investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better ~~serves the public and those who participate in the political process~~ meets the commission's mission and public expectations by allowing the expedited resolution of minor complaints, and the focusing of staff and commission resources on major alleged violations of RCW 42.17A and WAC 390.

(2) In authorizing an alternative response to non-compliance for minor violations as provided by WAC 390-37-055, the executive director may consider the nature of the alleged violation and any relevant circumstances, including but not limited to the factors described in (3) of this section; Provided that if, after weighing the relevant circumstances and factors, the executive director determines that there is evidence of complex or significant violations, the allegations shall be addressed through a formal investigation as provided by WAC 390-37-060.

(3) The factors the executive director may consider in authorizing an alternative response to non-compliance, a formal investigation, or an adjudicative proceeding include, but are not limited to:

<u>An alternative response to non-compliance may be appropriate if...</u>	<u>A formal investigation and possible adjudicative hearing may be appropriate if...</u>
<u>It appears that non-compliance resulted from a good-faith error, omission, or misunderstanding.</u>	<u>It appears that the non-compliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.</u>
<u>The respondent is a first-time filer.</u>	<u>The respondent has experience in complying with the applicable requirements.</u>
<u>The respondent's compliance history indicates the non-compliance was isolated or limited in nature, and not indicative of systematic or on-going problems.</u>	<u>The non-compliance 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.</u>
<u>The impact of the non-compliance on the public was minimal.</u>	<u>The non-compliance 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.</u>
<u>The respondent's organization or campaign was relatively unsophisticated or small.</u>	<u>The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well-financed and staffed.</u>
<u>The total expenditures by the respondent in the campaign or statement period were relatively modest.</u>	<u>The campaign or statement period involved significant expenditures by the respondent.</u>
<u>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.</u>	<u>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.</u>
<u>There is no evidence that any person, including an entity or organization, benefitted politically or economically from the non-compliance.</u>	<u>It appears the respondent or anyone else benefitted politically or economically from the non-compliance.</u>
<u>Personal emergency or illness of the respondent or member of his or her immediate family contributed to the non-compliance.</u>	<u>There are no circumstances that appear to mitigate or appropriately explain the late reporting or other non-compliance.</u>

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 non-compliance.
Commission staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	Commission staff or equipment error did not appear to contribute to the non-compliance.
The non-compliance 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 non-compliance 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 non-compliance.
The respondent made a good-faith effort to comply, including by consulting with commission 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.
Other factors relevant to a particular case	

non-compliance—Investigation of complaints—Initiation of hearing—(ad-judicative proceeding). (1) Upon receipt of a complaint the following

will occur:

(a) The executive director will conduct an initial review of the complaint to determine if it is obviously unfounded or frivolous or appears on its face to have merit. An initial review is a preliminary investigation to determine if there is sufficient ground indicating that a material violation of chapter RCW 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules.

(b) Whenever an initial review of a complaint indicates that a material violation of chapter RCW 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, the executive director may:

(i) dispose of the complaint through an alternative response as provided in WAC 390-37-055; or

(ii) direct a formal investigation be conducted.

(2e) If the executive director determines a formal investigation will require the expenditure of substantial resources, the executive

director may request review and concurrence by the commission before proceeding.

(~~32~~) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever an formal investigation reveals facts that the executive director has reason to believe are a material violation of ~~chapter RCW 42.17A RCW~~ and do not constitute substantial compliance.

(~~43~~) The respondent and complainant shall be notified of the date of the adjudicative proceeding no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434. ~~The complainant shall also be provided a copy of this notice.~~

~~The respondent and complainant shall be notified that a report on an enforcement matter will be provided to the commission at the time that the agenda listing the report is made public, or within the time provided for posting such agenda to the commission's Web site under RCW 42.30.077, whichever is earlier.~~

(~~54~~) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.56.240(1).

(a) The records are exempt until:

~~(i) The A final staff investigative report is submitted enforcement matter is scheduled for an adjudicative proceeding; or~~

~~_(ii) After receiving a report on an enforcement matter, the commission accepts the investigation as complete and moves the matter forward to an adjudicative proceeding, or dismisses the complaint, or refers the matter to law enforcement authorities under RCW 42.17A.105 or 42.17A.755(3);~~

~~(iii) The commission or chair concur in a dismissal by the executive director;~~

~~(ii) The executive director authorizes final disposition of the complaint through an alternative response as provided in this section.~~

~~or~~

~~(iv) The commission or executive director otherwise finally disposes of the complaint.~~

(b) Without waiving any exemptions from public disclosure that are otherwise available for pending investigations, the commission may make public:

(i) A copy of a complaint filed with or submitted to the commission, including any attachments; and

(ii) Materials concerning an enforcement matter that are placed on the commission's web site with a commission meeting agenda.

(c) If a request is made for any such record that implicates the privacy of an individual as defined in RCW 42.56.050, written notice of the records request may be provided to the individual in order that such individual may request a protective order from a court under RCW 42.56.540.

(d) Certain documents provided to the commission shall be returned to candidates, campaigns, or political committees as required by RCW 42.17A.105 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

[Statutory Authority: RCW 42.56.100, 42.56.040, and 42.17A.110. WSR 12-18-015, § 390-37-060, filed 8/24/12, effective 9/24/12. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-060, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 05-11-001, § 390-37-060, filed 5/4/05, effective 6/4/05; WSR 03-22-065, § 390-37-060, filed 11/4/03, effective 12/5/03; WSR 93-24-003, § 390-37-060, filed 11/18/93, effective 12/19/93; WSR 91-16-072, § 390-37-060, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-060, filed 2/5/86; WSR 84-12-017 and 84-12-029 (Orders 84-03 and 84-03A), § 390-37-060, filed 5/25/84 and 5/29/84; Order 81, § 390-37-060, filed 7/22/76.]

WAC 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. Any stipulation to facts, and violations, or penalty shall be provided ~~prior to or at the hearing.~~

~~Stipulations to penalty shall be provided~~ by 4:00 p.m. three business days preceding the hearing. The commission has the option of accepting,

rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

[Statutory Authority: RCW 42.17.370. WSR 06-14-057, § 390-37-090, filed 6/29/06, effective 7/30/06; WSR 05-11-001, § 390-37-090, filed 5/4/05, effective 6/4/05; WSR 03-22-065, § 390-37-090, filed 11/4/03, effective 12/5/03; WSR 91-16-072, § 390-37-090, filed 8/2/91, effective 9/2/91. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-090, filed 2/5/86; WSR 84-12-017 (Order 84-03), § 390-37-090, filed 5/25/84; Order 81, § 390-37-090, filed 7/22/76.]

WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$250 350	\$350 650	\$500 1,000	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer, including but not limited to payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the

amount of the outstanding penalty, up to ~~five hundred~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

[Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-155, filed 11/4/03, effective 12/5/03.]

WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150-250	\$300-500	\$500-1,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100-150	\$200-300	\$400-600	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$100-150 - \$0	\$200-300 - \$100-150	\$400-600 - \$200-300	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer, including but not limited to payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current

violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~five hundred one thousand~~ dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-160, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-160, filed 11/4/03, effective 12/5/03.]

WAC 390-37-165 Candidate registration statement (C-1)/candidate

statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$150-250 per report	\$300-500 per report, up to \$5001,000	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100-150 per report	\$200-300 per report	\$400-600 per report, up to \$1,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100-150 per report	\$100-150 - \$200-300 per report	\$200-300 - \$400-600 per report, up to \$1,000	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer, including but not limited to payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes ~~five hundred~~ one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~five hundred~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-165, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-165, filed 11/4/03, effective 12/5/03.]

WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150,250	\$300,500	\$500,1,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100,150	\$200,300	\$400,600	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100,150	\$100,150 - \$200,300	\$200,300 - \$400,600	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer, including but not limited to payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case. Except in rare circumstances, the nonsuspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~five hundred~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-170, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-170, filed 11/4/03, effective 12/5/03.]

WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$150250	\$300500	\$5001,000	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$100150	\$200300	\$400600	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$0 - \$100150	\$100150 - \$200300	\$200300 - \$400600	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer, including but not limited to payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes five hundred one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the

amount of the outstanding penalty, up to ~~five hundred~~ one thousand dol-
lars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commis-
sion for an enforcement action when the person:

(a) Was found in violation during a previous reporting period,

(b) The violation remains in effect following any appeals, and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

[Statutory Authority: RCW 42.17.370. WSR 05-04-038, § 390-37-175, filed 1/27/05, effective 2/27/05; WSR 03-22-065, § 390-37-175, filed 11/4/03, effective 12/5/03.]

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 (3).

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time violation;

(b) Shall assess a penalty for a second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding violations of the same rule.

(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 non-compliance was isolated or limited in nature, indicative of systematic or on-going 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 respondent's organization,~~ 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 non-compliance 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, ~~one else~~-benefitted politically or economically from the non-compliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) Commission staff or equipment error, including technical problems at the agency 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 non-compliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

(m) Whether the respondent is a first-time filer;

(n) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action, ~~and~~ cooperation with commission staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(o) Penalties imposed in factually similar cases; and,

(p) Other factors relevant to a particular case.

(4) The commission, and the presiding officer in brief adjudicative proceedings, may consider the factors in (1) - (3) in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(5) The presiding officer in brief adjudicative proceedings may consider whether any of the factors in (1) - (3) are factors that warrant directing a case to the full commission.

[Statutory Authority: RCW 42.17A.110, 42.17A.755. WSR 13-05-014, § 390-37-182, filed 2/7/13, effective 3/10/13.]

~~Code—Alternative to Investigation or Adjudicative Proceeding.~~ (1) Writ-

ten and signed complaints alleging a violation of one or more specific provisions of WAC 390-32-010 - the Fair Campaign Practices Code - may be submitted to the commission by any person.

(a) Subject to the limitations in paragraph (4) of this section, upon receipt of a complaint under paragraph (1) of this section, the executive director shall forward a copy of the complaint to the respondent within twenty-four hours, accompanied by a request for a response to the complaint returned within five days from the date of mailing.

(b) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under paragraph (1) of this section.

(2) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056, the executive director may authorize the processing of a complaint alleging violations of RCW 42.17A or WAC 390 according to the complaint publication process provided in this section.

(a) Subject to the limitations in paragraph (4) of this section, upon receipt of a complaint authorized by the executive director for processing under paragraph (2) of this section, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five days from the date of mailing.

(b) Complaints authorized by the executive director for processing under paragraph (2) of this section shall be forwarded to the respondent within ten business days of receipt, or eight days prior to the date that ballots must be available under RCW 29A.40.070(1), whichever is earlier.

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five days for response. The complaint and the response shall be available at the commission office for public inspection and copying.

If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under paragraph (3)(a) or (b) of this section, the publication of complaints or responses under paragraph (2) of this section shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under paragraph (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that a material violation of chapter RCW 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, considering the factors set forth in WAC 390-37-056, the executive director may:

(a) dispose of the complaint through an additional alternative response as provided in WAC 390-37-055; or

(b) direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of the date that ballots must be mailed to voters under RCW 29A.40.070(1).

(6) The filing of a complaint with the commission under this section or any provision of Chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.

[Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-32-030, filed 10/31/85; Order 93, § 390-32-030, filed 8/26/77; Order 91, § 390-32-030, filed 7/22/77.]

Draft New and Amended Rules
Considered on May 28, 2015

Alternative Responses to Non-compliance

NEW SECTION

WAC 390-37-055 Alternatives to adjudicative proceedings in response to non-compliance. (1) Considering the factors set forth in WAC 390-37-056(3), the executive director may authorize an alternative response to non-compliance in lieu of a formal investigation, adjudicative proceeding, or both.

(2) Alternative responses to non-compliance authorized under this section include:

(a) technical assistance, including assistance in filing or correcting required reports;

(b) formal written warnings;

(c) notices of correction as provided in WAC 390-37-057;

(d) deferred enforcement as outlined in WAC 390-37-058; and

(e) the complaint publication and review process provided in WAC 390-32-030.

NEW SECTION

WAC 390-37-057 Notices of correction - Process. (1) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056(3), following an initial review of a complaint under WAC 390-37-060, the executive director may authorize a notice of correction as an alternative response to non-compliance in lieu of a formal investigation.

(2) A notice of correction recites available facts and information from staff's review of a complaint, confirms staff's determination that the respondent is not in substantial compliance with the relevant statutes and rules, and states the necessary corrective action(s) the respondent has taken or agrees to take. If the corrective action is completed, no further response to the complaint is necessary and staff may close the complaint.

(3) If the corrective action is not completed, the executive director may direct a formal investigation be conducted as provided in WAC 390-37-060.

NEW SECTION

WAC 390-37-058 Deferred Enforcement - Process. (1) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056(3), the executive director may authorize deferred enforcement as an alternative response to non-compliance in lieu of a formal investigation, adjudicative proceeding, or both.

(2) The executive director may authorize deferred enforcement:

(a) following an initial review of a complaint, when minor or technical violations by the respondent are readily apparent); or

(b) following a formal investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or

(c) after a notice of administrative charges, prior to an adjudicative proceeding.

(3) The conditions of deferred enforcement shall be clearly defined and agreed to by the respondent, along with the consequences for failure to meet the conditions of the deferral. Negotiations regarding deferred enforcement shall be informal and without prejudice to rights of a participant in the negotiations.

(4) With an agreement between the respondent and commission staff, the executive director or designee (commission staff) shall memorialize the pertinent facts and the conditions of the deferral in writing to the

respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by staff and the respondent. Staff shall notify the respondent that any administrative charges issued in the matter are stayed pending satisfaction of the deferral conditions.

(5) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(6) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

WAC 390-37-010 Enforcement procedures—General. This chapter provides the procedures for adjudicative proceedings (enforcement hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of ~~chapter RCW~~ 34.05-RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures~~s~~ are supplemented by the model rules of procedure in ~~chapter WAC~~ 10-08-WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.755.

In addition, the procedures for requesting a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and ~~chapters WAC~~ 390-24 and WAC 390-28-~~WAC~~.

The policy of the commission ~~shall be~~is to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures as set forth in WAC 390-37-57, WAC 390-37-58, or WAC 390-37-090 when appropriate. Informal settlements are encouraged by RCW 34.05.060.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-010, filed 11/4/03, effective 12/5/03; Order 79, § 390-37-010, filed 6/25/76.]

|

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated. If commission staff has issued an alternative response to the alleged violation as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

[Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-050, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.370(1). WSR 79-08-046 (Order 79-03), § 390-37-050, filed 7/19/79; Order 81, § 390-37-050, filed 7/22/76.]

WAC 390-37-070 Enforcement procedures—Complaints dismissed by ex-

ecutive director. The executive director, ~~with the concurrence of the chair or the chair's designee,~~ at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of the sections of ~~chapter RCW~~ 42.17A ~~RCW~~ that are enforced by the commission has occurred, ~~and/or~~ shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted.

The dismissal may occur:

- (a) Following an initial review, through an alternative response authorized by the executive director as provided by WAC 390-37-060; or
- (b) Following a formal investigation, with the concurrence of the chair or the chair's designee.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-070, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-070, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. WSR 94-05-010, § 390-37-070, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-070, filed 2/5/86; WSR 84-12-017 (Order 84-03), § 390-37-070, filed 5/25/84; Order 81, § 390-37-070, filed 7/22/76.]

WAC 390-37-103 Commission options following receipt of a staff report on alleged violations. Upon receipt of a staff report concerning alleged violations of those sections of ~~chapter RCW~~ 42.17A ~~RCW~~ that the commission enforces, the commission may:

(1) Schedule the matter for a hearing (adjudicative proceeding);

or

(2) Issue an order; or

(3) Direct the executive director to issue an alternative response as provided in WAC 390-37-060; or

(4) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.750.

[Statutory Authority: RCW 42.17.130 and 42.17.093. WSR 12-01-047, § 390-37-103, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-103, filed 11/4/03, effective 12/5/03.]

WAC 390-37-140 Brief enforcement hearings (adjudicative proceed-

ings)—Authority. (1) The commission may provide a brief adjudicative proceeding for violations of the sections of ~~chapter RCW~~ 42.17A ~~RCW~~ that it enforces in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than ~~((\$500))~~ \$1,000 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

(a) Failure to file or late filing of required reports,

(b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying,

(c) Use of public office facilities in election campaigns when the value of public funds expended was minimal,

(d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) The commission may utilize a penalty schedule for brief adjudicative proceedings.

(3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-140, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-

22-065, § 390-37-140, filed 11/4/03, effective 12/5/03; WSR 93-15-004,
§ 390-37-140, filed 7/7/93, effective 8/7/93; WSR 91-16-072, § 390-37-
140, filed 8/2/91, effective 9/2/91.]

WAC 390-37-142 Brief enforcement hearing (adjudicative proceed-

ing)—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

(a) Alleged violation;

(b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and

(c) Person's right to respond either in writing or in person to explain his/her view of the matter.

(3) As provided in RCW 34.05.050, a respondent who has been notified of a brief adjudicative proceeding may waive the hearing by providing the following prior to the hearing: (i) a signed statement of understanding, (ii) any missing required reports, and (iii) a penalty payment specified by the executive director in accordance with the penalty authority of WAC 390-37-140 and the brief enforcement hearing penalty schedules of this chapter.

(a) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that: (i) acknowledges

a violation of RCW 42.17A and any relevant rules, and (ii) expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(43) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than ~~((\$500))~~ \$1,000, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

(54) At the time any unfavorable action is taken, within ten business days the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission. The executive director is authorized to sign the decision on behalf of the presiding officer.

(65) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-142, filed 11/4/03, effective 12/5/03. Statutory Authority: RCW 42.17.390. WSR 94-

05-010, § 390-37-142, filed 2/3/94, effective 3/6/94. Statutory Authority: RCW 42.17.370. WSR 93-15-004, § 390-37-142, filed 7/7/93, effective 8/7/93; WSR 91-16-072, § 390-37-142, filed 8/2/91, effective 9/2/91.]

Additional Materials for Review

Alternative Responses to Non-compliance

RCW 42.30.077**Agendas of regular meetings — Online availability.**

Public agencies with governing bodies must make the agenda of each regular meeting of the governing body available online no later than twenty-four hours in advance of the published start time of the meeting. An agency subject to provisions of this section is not required to post an agenda if it does not have a web site or if it employs fewer than ten full-time equivalent employees. Nothing in this section prohibits subsequent modifications to agendas nor invalidates any otherwise legal action taken at a meeting where the agenda was not posted in accordance with this section. Nothing in this section modifies notice requirements or shall be construed as establishing that a public body or agency's online posting of an agenda as required by this section is sufficient notice to satisfy public notice requirements established under other laws. Failure to post an agenda in accordance with this section shall not provide a basis for awarding attorney fees under RCW 42.30.120 or commencing an action for mandamus or injunction under RCW 42.30.130.

[2014 c 61 § 2.]

Notes:

Intent -- Finding -- 2014 c 61: "The legislature intends to promote transparency in government and strengthen the Washington's open public meetings act. The legislature finds that it is in the best interest of citizens for public agencies with governing bodies to post meeting agendas on web sites before meetings. Full public review and inspection of meeting agendas will promote a greater exchange of information so the public can provide meaningful input related to government decisions." [2014 c 61 § 1.]

WAC 390-37-030

Agency filings affecting this section

Enforcement procedures—Citizen complaints filed with the commission.

(1) When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding.

(3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-37-030, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 04-12-058, § 390-37-030, filed 5/28/04, effective 6/28/04. Statutory Authority: RCW 42.17.370. WSR 03-22-065, § 390-37-030, filed 11/4/03, effective 12/5/03; WSR 02-23-001, § 390-37-030, filed 11/6/02, effective 12/7/02. Statutory Authority: RCW 42.17.370(1). WSR 86-04-071 (Order 86-01), § 390-37-030, filed 2/5/86; WSR 84-12-017 (Order 84-03), § 390-37-030, filed 5/25/84; Order 79, § 390-37-030, filed 6/25/76.]

RCW 29A.40.070**Date ballots mailed — Replacement ballots.**

(1) Except where a recount or litigation is pending, the county auditor must mail ballots to each voter at least eighteen days before each primary or election, and as soon as possible for all subsequent registration changes.

(2) Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each special election, and at least forty-five days before each primary or general election, or any special election that involves federal office. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots were mailed, or the reason and date the ballots will be mailed if the ballots were not mailed timely.

(5) Failure to mail ballots as prescribed in this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election.

[2013 c 11 § 48. Prior: 2011 c 349 § 16; 2011 c 10 § 38; 2006 c 344 § 13; 2004 c 266 § 13; prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075 ; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Notes:

Effective date -- 2011 c 349: See note following RCW 29A.04.255.

Notice to registered poll voters -- Elections by mail -- 2011 c 10: See note following RCW 29A.04.008.

Effective date -- 2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Effective date -- 2004 c 266: See note following RCW 29A.04.575.

Policy -- 2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Effective date -- Severability -- 1977 ex.s. c 361: See notes following RCW 29A.16.040.