

**Chapter 390-28 WAC**  
**((HARDSHIP EXEMPTIONS—HEARING EXAMINER SYSTEM)) MODIFICATIONS OF RE-  
PORTING REQUIREMENTS—PROCEDURES**

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

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

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

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

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

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

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

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

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

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

**WAC 390-28-060 Hearing to modify reporting—(~~Administrative law judge~~) Brief adjudicatory proceedings—Presiding officer.** ((-1) ~~The commission may request through the office of administrative hearings the appointment of an administrative law judge to hear individual applicants.~~

~~(2) After such hearing is concluded, the administrative law judge shall prepare and distribute to the applicant and each commissioner a proposed decision determining the issue. The applicant shall have five business days to file with the commission specific objections to the administrative law judge's **proposed** decision and to request an opportunity to present additional evidence to the commission. When written objections are timely filed, the commission, at the time of review and ratification, shall consider the whole record or such portions as may be cited by the administrative law judge, applicant or executive director. The commission may also hear additional testimony.~~

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

~~(4) At the next meeting at which the matter can be lawfully considered, the commission shall review and either ratify or modify or revise the proposed order.) Reporting modification requests may be heard in a brief adjudicatory proceeding, as provided under the Administrative Procedure Act, RCW 34.05.482 through 34.05.494, and WAC 390-37-140 through 390-37-144. The commission may preside over the proceedings. Alternatively, one of the following persons may act as the presiding officer: The commission chair; another commissioner appointed by the chair; or, at the request of the commission chair, an administrative law judge through the office of administrative hearings.~~

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

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

(2) The commission(~~(, or the administrative law judge,)~~) or presiding officer shall proceed to decide the application in the same manner as if an appearance were made. However, in the event the commission, ~~or ((the administrative law judge))~~ presiding officer is not able to reach a conclusion on the request because of an insufficiency of the evidence, the hearing may be adjourned for the purposes of gathering further evidence, or the application may be denied.

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

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

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

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

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

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

(i) The applicant has satisfied a basis for seeking closure under subsection ~~((1))~~ (2) (a) or (b) of this section;

(ii) An open hearing or record to report the information would ~~((work))~~ present a manifestly unreasonable hardship ~~((en))~~, or personal safety risk, to the applicant;

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

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

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

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

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

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

~~((3))~~ (4) Any decision or order ~~((adverse to an applicant))~~ rendered by the commission or ~~((the administrative law judge))~~ presiding officer shall be in writing or stated in the record ~~((and shall be))~~, however any dispositive order accompanied by findings of fact and conclusions of law must be in writing. The full commission may review any order rendered by a presiding officer, pursuant to WAC 390-37-144.

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

**WAC 390-28-090 Hearing to modify reporting—Required findings.**

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

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

(3) The commission or presiding officer may apply a modification retroactively to previously filed reports. In such cases, the previ-

ously reported information of the kind that is no longer being reported is confidential and exempt from public disclosure under this chapter and chapter 42.56 RCW.

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

**WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs.** (1) Under RCW 42.17A.120, the commission or presiding officer may modify reporting requirements, including the statement of financial affairs, if literal application of the requirement would work a manifestly unreasonable hardship and the suspension or modification would not frustrate the purpose of the law. One or more of the following may be considered by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when ~~((it is in the public interest))~~ such standard is met:

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

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

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

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

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

(i) Public disclosure would violate any legally recognized confidential relationship that serves a legitimate business interest;

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

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

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

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

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

who is dependent upon the applicant for support in whole or in part;  
or

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

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

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

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county. Judges, prosecutors, or sheriffs may describe a personal residence in the alternative manner provided under RCW 42.17A.710(2), without a modification.

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

~~A prospective)) and grant such a modification to ((allow nondisclosure)) amend the description of a residential address ~~((may be granted if))~~ to the extent necessary to protect the applicant or an immediate family member who has received a threat, ~~((been issued))~~ has obtained a no contact order, or ~~((presents))~~ has presented a similar personal safety concern.~~

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

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

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

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

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

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

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has

been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

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

(d) Domestic partnership agreement under chapter 26.60 RCW;

- (e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or
  - (f) Postnuptial agreement.
- (3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.