



## PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission  
From: Lori Anderson, Communications & Training Officer  
Date: October 21, 2016  
Re: Rule Making Discussion and Possible Approval of Draft Language – Timely Filing  
Presumption for Mailed Reports and Enforcement Rule Updates

A discussion of possible rule making is scheduled for the October 27 meeting. In particular, the Commission will discuss and possibly approve language that will 1) establish a timely filing presumption for reports mailed to the Commission and received within five business days of the filing deadline and 2) update enforcement rules.

### DRAFT RULES

#### **New WAC 390-05-195 Application of RCW 42.17A.140(1)**

After learning from staff that the agency is receiving mailed reports that do not bear a post office cancellation mark that should be used as the received date in accordance with RCW 42.17A.140(1), the Commission expressed interest in establishing a timely filing presumption through rule making. Attached new WAC 390-05-195 provides that any mailed report received within five business days of its due date is presumed to be timely filed and that mailed reports will not substitute for a report that must be electronically filed.

#### **Updating Enforcement Rules**

The draft language 1) updates the procedures for citizen action referrals, 2) repeals the five current brief enforcement penalty schedules and replaces them with a single schedule that incorporates the repealers and adds penalties for additional violations, and 3) implements legal counsel's recommendations to modernize time period calculations for requests for reconsideration of decisions, make consistent or otherwise clarify the use of "day" consistently across Title 390 WAC, and align WAC 390-37 with the state's model rules.

#### **WAC 390-37-041 Enforcement procedures – Allegations submitted to the attorney general's office and/or prosecuting attorneys**

The draft amendment:

- differentiates citizen actions originating with the Attorney General or a county prosecutor from complaints filed with the Commission;
- updates the procedures followed when a citizen action is referred to remove the possibility of the Commission scheduling an adjudicative proceeding and clarify that the

staff will report investigative findings to the Commission and may include a recommendation whether to commence a civil action that would be made to the attorney general or prosecutor; and

- provides that the report to the Commission will be made in an open public meeting and notice of the meeting will be given to the parties as soon as is practicable.

## Penalty Schedules

Draft proposes repealing brief enforcement penalty schedules:

- **WAC 390-37-155 Electronic filing;**
- **WAC 390-37-160 Statement of financial affairs;**
- **WAC 390-37-165 Candidate registration statement & Candidate statement of financial affairs;**
- **WAC 390-37-170 Lobbyist monthly expense report; and**
- **WAC 390-37-175 Lobbyist employer report.**

Draft **new WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding) – Penalty schedule** incorporates the repealers and sets penalties for additional violations of failing to timely file other reports, exceeding contribution limits, exceeding the mini reporting threshold, failing to comply with political advertising requirements, and using public facilities to assist a campaign for election or promote a ballot measure. The draft also sets the “look-back” period for previous violations to five years.

The draft includes the penalty amounts from the current schedules. The Commission will have the opportunity during the October meeting to determine penalty amounts for the violations that are being added.

## Time Periods

Senior Council Penny Allen has recommended the Commission amend its rules to clarify and make consistent the use of “business” and “calendar days. Under a separate agenda item, the Commission will discuss moving forward with expedited rule making to implement counsel’s suggestions with the exception of any recommended changes to the enforcement rules, which are included here as draft amendments to:

WAC Cite	WAC Title	Current	Draft amendment/Effect
<b>390-37-050</b>	<b>Enforcement procedures - Respondent's notice of complaint</b>	ten business days	Remove the phrase "business." Decreases the amount of time to approximately 8 days in which the commission staff must notify a respondent of a complaint.

<b>390-37-060 (4)</b>	<b>Enforcement Procedures - Alternative to noncompliance - Investigations of complaints - Initiations of adjudicative proceeding.</b>	ten calendar days	Remove the word "calendar."
<b>390-37-060 (5)(d)</b>	<b>Enforcement Procedures - Alternative to noncompliance - Investigations of complaints - Initiations of adjudicative proceeding.</b>	seven calendar days	Change the term "calendar" to "business." Increases the time period for returning requested documents by approximately 2 days.
<b>390-37-090(c )</b>	<b>Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms.</b>	three business days	
<b>390-37-132</b>	<b>Enforcement hearings (adjudicative proceedings) -- depositions and interrogatories - notice</b>	seven calendar days	Amending to 5 business days to make consistent with court rules governing depositions. Also removing "and interrogatories" from title.
<b>390-37-136(3)(a)</b>	<b>Production of documents and use at hearing and other hearing procedures (adjudicative proceedings)</b>	eight calendar days	Remove the word "calendar."
<b>390-37-142(6)</b>	<b>Brief Enforcement hearing (Adjudicative proceeding) - procedure</b>	ten business days	Remove the word "business," consistent with RCW 34.05.485(3) which does not state business days. Language consistent with RCW 34.05.485(3) inserted to make rule easier to understand.
<b>390-37-144 (3)</b>	<b>Brief adjudicative proceeding - administrative review procedures</b>	twenty business days	Remove the word "business," consistent with RCW 34.05.491 which does not state business days.
<b>390-37-144 (4)</b>	<b>Brief adjudicative proceeding -</b>	twenty business days	Remove the word "business."

	<b>administrative review procedures</b>		
<b>390-37-150(3)</b>	<b>Reconsideration and judicial review of decisions.</b>	twenty-one business days	Changes to "within ten days of service".

### Conforming to State’s Model Rules

At the suggestion of Senior Counsel Allen, staff has drafted amendments to make the Commission’s enforcement rules consistent with the model rules, as follows:

<b>WAC Cite</b>	<b>WAC Title</b>	<b>Draft Amendments</b>
390-37-100	Enforcement Procedures – Conduct of Hearings (adjudicative proceedings)	Inserts 10-08-200(9) – Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive subject to full opportunity for cross examination and rebuttal by all parties.
390-37-105	Prehearing Conference-Rule	Expanded to including all pleadings instead of just hearing notice
		Adds language to include the consolidation of examinations

### COMMISSION ACTION

Staff requests the Commission approve the draft language for the rules set out above. The schedules for State Register publication and regular Commission meetings accommodate a December rules hearing for any drafts the Commission approves in October.

Attachment: Draft language for proposed new WAC 390-05-195

Draft language for amendments to WACS 390-37-041, 390-37-050, 390-37-060, 390-37-100, 390-37-105, 390-37-132, 390-37-136, 390-37-142, 390-37-144, and 390-37-150

Draft repealers: WACs 390-37-155, 390-37-160, 390-37-165, 390-37, 170, and 390-37-175 and [replacement] draft new WAC 390-37-143

NEW SECTION

**WAC 390-05-195 Application of RCW 42.17A.140(1).** (1) In accordance with RCW 42.17A.140(1), the date of receipt of any properly addressed application, report, statement, notice, or payment required under the provisions of chapter 42.17A RCW is the date shown by the post office cancellation mark on the envelope. The commission frequently receives mailed items that do not bear a post office cancellation mark.

(2) Any report mailed to the commission under the provisions of chapter 42.17A RCW is presumed to be filed timely if received within five business days of the due date provided for in chapter 42.17A RCW.

(3) A mailed report may not be substituted for a report required to be electronically filed under the provisions of chapter 42.17A RCW.

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

**WAC 390-37-041 Enforcement procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.** (1) When a person has notified the attorney general or prosecuting attorney under RCW 42.17A.765(4) that there is reason to believe a violation of the sections of chapter 42.17A RCW enforced by the commission has occurred, and the attorney general or prosecutor forwards the (~~complaint~~) citizen action notice to the commission, commission staff may:

- ((1)) (a) Initiate an investigation;
  - ((2)) (b) Submit a report to the commission that may include a recommendation(+)
  - (3) Schedule the matter for an adjudicative proceeding before the commission following investigation; and/or
  - (4)) whether to commence a civil action that the commission will consider making to the attorney general or prosecutor; and
  - (c) Take any other steps consistent with the agency's authority and resources.
- (2) A report to the commission will be made in an open public meeting. Commission staff shall provide advance notice of the meeting to the initiator and the subject of the citizen action as soon as is practicable.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**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 an alternative response to the alleged violation has been issued as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding.** (1) Upon receipt of a complaint, the executive director will conduct an initial review of the complaint to determine what action will be taken. An initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of chapter 42.17A or if there is sufficient ground indicat-

ing that a material violation of chapter 42.17A RCW may have occurred so as to warrant a formal investigation.

(a) The executive director shall return any complaint that is obviously unfounded or frivolous. The executive director will inform the complainant why the complaint is returned.

(b) The executive director may resolve any complaint that alleges minor or technical violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines should be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(c) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or technical violations of chapter 42.17A RCW.

(d) The director shall initiate a formal investigation whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred.

(2) 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.

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

(4) The respondent and complainant shall be notified of the date of the adjudicative proceeding or a report on an enforcement matter resulting from a complaint no later than ten (~~calendar~~) days before that date. The notice shall contain the information required by RCW 34.05.434, the staff investigative report, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

(5) 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) A final staff investigative report is submitted; or

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

(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;

(ii) A copy of the respondent's initial response to a complaint; and

(iii) 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~~) business days of the commission's final action upon completion of an audit or field investigation.

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

**WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings).** (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding shall be heard by the commission, except for brief adjudicative proceedings which are conducted by the chair or the chair's designee.

(3) The commission shall have the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Rule on procedural matters, objections, and motions;

(d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

~~(h)~~ Take official notice of facts pursuant to RCW 34.05.452(5);

~~((h))~~ (i) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

~~((i))~~ (j) Permit or require oral argument or briefs and determine the time limits for submission thereof;

~~((j))~~ (k) Issue an order of default pursuant to RCW 34.05.440;

~~((k))~~ (l) Take any other action necessary and authorized by any applicable statute or rule;

~~((l))~~ (m) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

~~((m))~~ (n) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through ~~((l))~~ (m) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may find that:



(a) Respondent did not violate the act, as alleged, and dismiss the case; or

(b) Respondent violated chapter 42.17A RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Respondent is in apparent violation of chapter 42.17A RCW, its own remedies are inadequate and enter its order referring the matter to the appropriate law enforcement agency as provided in RCW 42.17A.105 and 42.17A.755.

(6) Upon the conclusion of an adjudicative proceeding, the commission:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order; and

(b) Shall serve the respondent a copy of the findings of fact, conclusions of law and decision and order.

(7) The executive director is authorized to sign orders on behalf of the commission.

(8) When the commission finds an apparent violation and refers the matter to an enforcement agency, the commission shall give to the respondent written notice of such finding and order of referral.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-105 Prehearing conference—Rule.** (1) In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the chair or the chair's designee upon his/her own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

(a) Identifying and simplifying issues;

(b) The necessity of amendments to the (~~hearing notice~~) pleadings;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) Limiting the number and consolidation of the examination of witnesses; and

(e) Procedural and such other matters as may aid in the conduct of the proceeding.

(2) Prehearing conferences may be presided over by the chair or his/her designee.

(3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions *in limine*, discovery motions, and other similar matters. The presiding officer shall not consider dispositive motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.

(5) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with

the presiding officer, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(6) When the chair or his/her designee presides over a prehearing conference, he or she is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-132 Enforcement hearings (adjudicative proceedings)—Depositions ((and interrogatories))—Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than ((seven calendar)) five business days in writing to the commission and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the commission or its hearing officer may, for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending WSR 06-07-001, filed 3/1/06, effective 4/1/06)

**WAC 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings).** (1) Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists prior to the deadline specified in subsection (3)(a) of this section. The parties are encouraged to exchange documents by e-mail. The parties are encouraged to confer and determine whether there are any objections to the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3)(a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file with the commission and serve on all parties a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an e-mail to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least eight ((calendar)) days prior to the hearing. The e-mail shall provide the name of the party submitting the documents, the total num-

ber of pages, the software used to prepare the document, and the name, address, telephone number and e-mail address of the person sending the e-mail message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to e-mail transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

(c) On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.

(d) The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

(e) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. Commission staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

**WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)—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:

(a) A signed statement of understanding;

(b) Any missing required reports; and

(c) 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.

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

(a) Acknowledges a violation of chapter 42.17A RCW and any relevant rules; and

(b) Expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

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

(6) 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, and the penalty imposed(~~(, and their right to request review by the commission)~~). Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available. The executive director is authorized to sign the decision on behalf of the presiding officer.

(7) 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.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-144 Brief adjudicative proceeding—Administrative review procedures.** (1) The commission shall conduct a review of the initial order upon the written or oral request of a party if the commission receives the request within twenty-one business days after the service of the initial order. "Service" is defined as the date the order was deposited in the U.S. mail per RCW 34.05.010(19), or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If the parties have not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that reconsideration and judicial review are available. The order on review shall be entered within twenty (~~business~~) days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty (~~business~~) days after the date of the initial order or request for

review and therefore cannot dispose of the request within that time period, the request is:

(a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Scheduled for consideration and disposition at the next commission meeting at which it is practicable to do so.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-150 Reconsideration and judicial review of decisions.**

(1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of a party thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be filed at the office of the public disclosure commission, or motion made, (~~no later than twenty one business days after~~) within ten days of service of the decision of which reconsideration is sought. Copies of the request or motion shall be served on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) A request for review was deemed denied in accordance with WAC 390-37-144(4);

(b) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or

(c) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission is deemed to have denied request for reconsideration or motion if, within twenty (~~business~~) days from the date the request or motion is filed, the commission does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either:

- (i) Affirming its decision; or
- (ii) Withdrawing or modifying the final order; or
- (iii) Setting the matter for further hearing.

Provided, That before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                |  |
|----------------|--|
| 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.   |

NEW

**WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding) – Penalty schedule.**

(1) (a) The presiding officer may assess a penalty up to \$1,000 upon finding a violation of RCW 42.17A or Title 390 WAC.

(b) Base penalty amounts:

<b>Violation</b>	<b>1st Occasion</b>	<b>2nd Occasion</b>	<b>3rd Occasion</b>
<b>Failure to timely file statement of financial affairs (F-1):</b>			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
<b>Candidate’s failure to timely file a registration statement (C-1)/ statement of financial affairs (F-1):</b>			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report up to \$1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150 per report	\$300 per report	\$600 per report up to \$1,000
Failed to file report by date of enforcement hearing.	\$250 per report	\$500 per report	consideration by full commission
<b>Failure to timely file a lobbyist monthly expense report (L-2):</b>			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600

Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file a lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file any other report			
Failure to file electronically	\$350	\$650	\$1,000
Exceeding contribution limits			
Exceeding mini reporting threshold			
Failure to comply with political advertising sponsor identification requirements			
Failure to include required candidate's party preference in political advertising			
Failure to comply with other political advertising requirements, RCWs 42.17A.330 through 42.17A.345			
Use of public facilities to assist a campaign for election or promote a ballot measure			

“Occasion” means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(c) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

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



(ii) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing 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;

(iii) The respondent's unpaid penalties from a previous enforcement action;

(iv) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(v) The amount of financial activity by the respondent during the statement period or election cycle;

(vi) 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;

(vii) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;

(viii) 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;

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

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

(xi) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(xii) Commission staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing;

(c) The presiding officer has authority to suspend all or a portion of an assessed 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 the entry of the order in that case.

(d) If, on the 3<sup>rd</sup> occasion, a filer has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(e) 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 one thousand dollars.

(f) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

(i) Was found in violation during a previous reporting period;

(ii) The violation remains in effect following any appeals; and

(iii) 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.