



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: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: May 21, 2015
Re: Rule Making – May 28, 2015 Public Hearing

A public hearing is scheduled for the Commission's May 28, 2015 meeting, during which the following proposed rule amendments will be presented for public comment, consideration and possible adoption by the Commission:

1. WAC 390-37-020 Enforcement procedures – Initiation of a complaint and WAC 390-37-040 Enforcement procedures – Procedures for filing complaints with the commission.

The proposed amendments will:

- Require all complaints filed by the public to be sworn under oath, regardless of the subject matter. Currently, only complaints about candidates and elected officials must be sworn under oath;
- Explain, in more detail, what information should be included in a complaint; and
- Clarify that alleged violations may be brought to the attention of the Commission staff without the need to file a complaint.

2. WAC 390-18-050 Commercial advertisers – Public inspection of records. The proposed amendment clarifies that commercial advertisers' records related to electioneering communications are subject to the public inspection provisions of RCW 42.17A.345.

Draft language for the proposed amendments was considered and approved by the Commission at its March 26, 2015 meeting. The approved language and the attached hearing notices were included in the State Register published May 6. The hearing date was also noted on the agency's rule making docket, which is linked on the agency website and Facebook page. No comments have been received to date.

Action by the Commission. Staff requests the Commission adopt the proposed amendments to WACs 390-37-020, 390-37-040, and 390-18-050. Once adopted, the rules are effective 31 days after filing with the Code Reviser. If the Commission adopts the proposals during the scheduled hearing, staff intends to file final order no later than Friday, May 29. Filing by May 29 allows amended WAC 390-18-050 to take effect prior to the Commission's July 1 election-related rules moratorium.

Attachments: WSR 15-09-099 (Enforcement procedures)
Proposed amended WACs 390-37-020 and 390-37-040
WSR 15-09-079 (Commercial advertisers)
Proposed amended WAC 390-18-050



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Public Disclosure Commission

Preproposal Statement of Inquiry was filed as WSR 15-06-066 ; or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 390-37-020 Enforcement procedures – Initiation of a complaint
WAC 390-37-040 Enforcement procedures – Procedures for filing complaints with the commission.

Hearing location(s):

711 Capital Way, Rm 206
Olympia, Washington

Date: May 28, 2015 Time: 9:30 AM

Submit written comments to:

Name: Lori Anderson
Address: P O Box 40908, Olympia, WA 98504-0908 (mail)
711 Capitol Way, Rm. 206, Olympia, WA (physical)

e-mail lori.anderson@pdc.wa.gov
fax (360) 753-1112 by (date) May 26, 2015

Assistance for persons with disabilities: Contact
Jana Greer by telephone

TTY () _____ or (360) 586-0544

Date of intended adoption: May 28, 2015

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

WAC 390-37-040 currently requires a complaint filed with the Commission to be signed by the complainant/member of the public under oath, if the complaint relates to an elected official or a candidate for elective office. The proposed amendments would (1) require that all complaints, regardless of the subject, filed with the Commission be signed by the complainant/member of the public under oath and (2) clarify what information should be included with the complaint. These amendments attempt to (1) improve the efficiency of the complaint process by establishing more standardized procedures for filing complaints and (2) encourage more complete complaints.

Reasons supporting proposal:

The Commission believes these amendments will ultimately reduce the time needed to process complaints and make the preliminary analysis more efficient.

Statutory authority for adoption: RCW 42.17A.110(1)

Statute being implemented: RCW 42.17A.345

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **April 20, 2015**
TIME: **11:48 AM**

WSR 15-09-099

DATE
4/20/2015

NAME (type or print)
Lori Anderson

SIGNATURE *Lori Anderson*

TITLE Communications & Training Officer

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

No increased costs to the agency are expected.

Name of proponent: (person or organization) Public Disclosure Commission

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Lori Anderson	711 Capitol Way, Rm. 206, Olympia, Washington	(360) 664-2737
Implementation....Lori Anderson	711 Capitol Way, Rm. 206, Olympia, Washington	(360) 664-2737
Enforcement..... Philip Stutzman	711 Capitol Way, Rm. 206, Olympia, Washington	(360) 664-8853

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

The implementation of these rule amendments has minimal impact on small businesses. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCWs 28A.305.135 and 34.05.320.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain:

The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

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

WAC 390-37-020 Enforcement procedures—(~~Initiation of complaint~~) Alleging a violation. (~~(1) A complaint alleging a~~) Alleged violations of chapter 42.17A RCW may be brought to the attention of the commission staff by:

- ~~((a))~~ (1) A member of the public;
 - ~~((b))~~ (2) The commission staff;
 - ~~((c))~~ (3) A commission member, who shall then be disqualified from participating in the decision of an enforcement (~~hearing~~) matter that may arise from (~~the~~) a complaint regarding the alleged violation(s);
 - ~~((d))~~ (4) Referral from the office of the attorney general or any other law enforcement agency; or
 - ~~((e))~~ (5) A state agency, local agency or member of a state or local agency.
- ~~((2) The person or entity against whom a complaint is filed shall be known as the respondent.)~~

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

WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission. (1) A complaint filed with the commission(~~, relating to an elected official or a candidate for elective office, shall~~) must be in writing (and signed by the complainant under oath). Complainants are encouraged to use the complaint form provided by the commission on its web site.

~~(2) (A complaint filed with the commission, other than a complaint specified in subsection (1) of this section, shall be made in writing.~~

~~(3)) A complaint (filed under the provisions of either subsection (1) or (2) of this section shall) must include:~~

(a) A statement of the nature of the alleged violation or violations, date, time and place of each occurrence and name of person or persons responsible;

(b) All available documentation and other evidence which the complainant is able to supply (~~to demonstrate a reason for believing that a violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred; and~~) that supports the allegations made in the complaint. Information about where documents or evidence can be obtained should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, e-mail addresses, and U.S. mail address, if known, of any witnesses or other persons who have knowledge of facts that support the complaint;

(d) The complainant's name, e-mail address, U.S. mail address, and telephone number(, and other contact information for the complainant.); and

(e) The signature of the complainant certifying under penalty of perjury under the laws of the state of Washington that the information

provided with the complaint is true and correct to the best of his or her knowledge and belief.

(3) The person or entity against whom a complaint is filed is known as the respondent.



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Public Disclosure Commission

Preproposal Statement of Inquiry was filed as WSR 14-23-091 ; or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 390-18-050 Commercial advertisers – public inspection of records.

Hearing location(s):

711 Capital Way, Rm 206
Olympia, Washington

Date: May 28, 2015 Time: 9:30 AM

Submit written comments to:

Name: Lori Anderson
Address: P O Box 40908, Olympia, WA 98504-0908 (mail)
711 Capitol Way, Rm. 206, Olympia, WA (physical)

e-mail lori.anderson@pdc.wa.gov
fax (360) 753-1112 by (date) May 26, 2015

Assistance for persons with disabilities: Contact
Jana Greer by telephone

TTY () _____ or (360) 586-0544

Date of intended adoption: May 28, 2015

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposed amendment will make necessary updates to clarify when electioneering communication records of a commercial advertiser must first be made available for inspection and what records may be inspected under RCW 42.17A.345.

Reasons supporting proposal:

Before 2005, former RCW 42.17.110 (recodified to RCW 42.17A.345) allowed for public inspection of a commercial advertiser’s political advertising records. The Electioneering Communications Act (Chapter 445, Laws of 2005) authorized the public to also inspect records of electioneering communications a commercial advertiser accepts or provides. Necessary updates to WAC 390-18-050 were overlooked during the Commission’s 2006 rule making to implement the Act. The rule currently applies to just express advocacy political advertising and does not yet specifically reference electioneering communications as required by RCW 42.17A.345(1). The proposed amendment is necessary to harmonize the rule with current statutory requirements and clarify when electioneering communication records of a commercial advertiser must first be made available for inspection and what records may be inspected.

Statutory authority for adoption: RCW 42.17A.110(1)

Statute being implemented: RCW 42.17A.345

Is rule necessary because of a:

Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

DATE
4/16/2015

NAME (type or print)
Lori Anderson

SIGNATURE *Lori Anderson*

TITLE Communications & Training Officer

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 16, 2015

TIME: 11:19 AM

WSR 15-09-079

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Updating the rule to reflect current statutory requirements may avoid complaints of non-compliance by alleviating confusion over what records may be inspected.

No increased costs to the agency are expected.

Name of proponent: (person or organization) Public Disclosure Commission

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Lori Anderson	711 Capitol Way, Rm. 206, Olympia, Washington	(360) 664-2737
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Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain:

The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) Pursuant to RCW 42.17A.345, any person, without reference to or permission from the public disclosure commission, is entitled to inspect ((the advertising records of)) a commercial ((advertiser)) advertiser's political advertising or electioneering communications documents and books of account.

(2) No commercial advertiser shall be required to make available for public inspection information regarding advertising or electioneering communications prior to the time when the advertisement or communication has initially received public distribution or broadcast.

(3) The documents and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) The name and address of the person who sponsored the advertising or electioneering communication;

(c) The total cost of the advertising or electioneering communication, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(4) In addition to subsection (3) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include a description of the major work components or tasks, as specified in (a) through (f) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.