

**Administrative Procedures Act Petition**  
**Amending WAC 390-37-060 (as established via emergency rule)**  
**Modifying Rules for Initial Hearings**

**Proposed Amendment**

WAC 390-37-060 *“Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding”*

(1) Upon receipt of a complaint, the PDC staff will conduct an initial review of the complaint pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC’s jurisdiction, the executive director will inform the complainant and respondent why no further action is warranted.

(b) The executive director may resolve a matter as a remedial violation or technical correction pursuant to RCW 42.17A.755.

(c) The executive director may resolve any complaint that alleges minor 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.

(d) 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.

(e) The executive director may ~~initiate an investigation~~ use their subpoena authority to gather information whenever an initial review of a complaint indicates that a material violation may have occurred.

(2) If the executive director determines an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) If the executive director determines ~~an investigation is warranted~~ that a material violation occurred, an initial hearing (case status review) shall be held pursuant to WAC 390-37-071 within 90 days. If, during analysis of available records and testimony provided, it is believed that no material violation occurred, no initial hearing shall be held.

(4) Following the initial hearing ~~(case status review), and further investigation if needed,~~ the executive director ~~may~~ shall initiate an adjudicative proceeding (or brief adjudicative proceeding) whenever the

facts support that an actual violation has occurred and the matter is not appropriate for a ~~dismissal~~ or an alternative resolution.

(5) 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.

**EXPLANATION TO FOLLOW – FILED ON 5/30/2018 FOR SCHEDULING PURPOSES ONLY**

**– CE**

**Administrative Procedures Act Petition**  
**Amending WAC 390-37-060 (as established via emergency rule)**  
**Providing for Transparency at Initial Hearings**

**Proposed Amendment**

WAC 390-37-060 *“Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding”*

(1) Upon receipt of a complaint, the PDC staff will conduct an initial review of the complaint pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC’s jurisdiction, the executive director will inform the complainant and respondent why no further action is warranted.

(b) The executive director may resolve a matter as a remedial violation or technical correction pursuant to RCW 42.17A.755.

(c) The executive director may resolve any complaint that alleges minor 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.

(d) 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.

(e) The executive director may initiate an investigation whenever an initial review of a complaint indicates that a material violation may have occurred.

(2) If the executive director determines an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) If the executive director determines an investigation is warranted, an initial hearing (~~case status review~~) shall be held pursuant to WAC 390-37-071 within 90 days. The initial hearing shall be:

(a) Publically noticed on the commission’s website 10 business days before it is held,

(b) Audio recorded, publically uploaded to the commission’s website and,

(c) Open for members of the public to attend and provide comment.

(4) Following the initial hearing (~~case status review~~), and further investigation if needed, the executive director may initiate an adjudicative proceeding whenever the facts support that an actual violation has occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) The respondent, ~~and complainant~~, and members of the public 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 to the respondent and complainant; members of the public shall be notified electronically via the commission's website or subscriber listserv.

**EXPLANATION TO FOLLOW – FILED ON 5/31/2018 FOR SCHEDULING PURPOSES ONLY**

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**Administrative Procedures Act Petition**  
**Amending WAC 390-37-060 (as established via emergency rule)**  
**Appealing Warning Letters**

**Proposed Amendment**

WAC 390-37-060 “Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding”

(1) Upon receipt of a complaint, the PDC staff will conduct an initial review of the complaint pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC’s jurisdiction, the executive director will inform the complainant and respondent why no further action is warranted.

(b) The executive director may resolve a matter as a remedial violation or technical correction pursuant to RCW 42.17A.755.

(c) The executive director may resolve any complaint that alleges minor violations of chapter 42.17A by issuing a ~~formal written~~ warning letter. 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 letter. A respondent's failure to meet conditions may result in a complaint being reopened.

(d) If the executive director has issued a warning letter to dismiss a complaint of a proven material (non-remedial & non-technical) violation, any member of the public may appeal this determination in writing to the full commission, highlighting specific reasons why the dismissal of a proven material violation with no penalty fails to encourage compliance and incentivize other covered entities to follow the law. The appeal shall be heard at the next scheduled regularly scheduled commission meeting if submitted electronically at least 10 calendar days before the date of the meeting. The petitioner shall be allotted 2 minutes to make oral arguments.

The executive director (or their designee) is encouraged to defend their dismissal in writing, if time and resources allow. The executive director (or their designee) is encouraged to explain how dismissing a case of proven material violation with no penalties will encourage compliance and incentivize other covered entities to follow the law. The executive director (or their designee) is also encouraged to explain why it was inappropriate to negotiate or pursue a penalty consistent with the penalty schedule established in WAC 390-37-143.

After hearing the appeal, the commission may – by a vote of the majority of members present – accept or reject the appeal. If the appeal is accepted, the warning letter is considered null and void and the case

remains open. The respondent will be notified electronically if the appeal is accepted. If the appeal is rejected, no further action is necessary.

~~(d)~~(e) 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.

~~(e)~~(f) The executive director may initiate an investigation whenever an initial review of a complaint indicates that a material violation may have occurred.

(2) If the executive director determines an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

(3) If the executive director determines an investigation is warranted, an initial hearing (~~case status review~~) shall be held pursuant to WAC 390-37-071 within 90 days.

(4) Following the initial hearing (~~case status review~~), and further investigation if needed, the executive director may initiate an adjudicative proceeding whenever the facts support that an actual violation has occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) 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.

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