

Summary of Public Comment on Proposed Permanent Rules 2018 (Non-Commercial Advertising)

WAC Section	Source	Proposal	Reason	Staff Recommendation
<p style="text-align: center;">1.</p> <p>390-05-215 Receipt of campaign funds</p>	<p style="text-align: center;">Abbot Taylor</p>	<p>Clarify the timing when credit card and online payments are received, for purposes of reporting a contribution</p>	<p>A campaign could delay receipt of a credit card deposit from the merchant account and they would not be reportable until transferred.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>This is statutory language from ESHB 2938, added as an exception to the 5-day deposit requirement. Although it is not ambiguous on its face, it does not establish any particular deadline for when a credit card or online payment must be deposited. The concern is that without any deadline, campaigns could hold back contributions from reporting until they decided to transfer from the merchant account.</p> <p>Staff will continue to track practice under this new standard and including in legislative discussions.</p>
<p style="text-align: center;">2.</p> <p>390-16-034 Contributor information</p>	<p style="text-align: center;">Abbot Taylor</p>	<p>Change the reporting requirement on C-3 & C-4 form from listing the contributor's employer address to listing the "city and state" of employer.</p>	<p>Campaigns currently only report on city and state of employment.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>The PDC currently requires reporting the city and state of a contributor's employer. The appropriate scope of information contained in an employer's address is worth exploring and will added for future rulemaking consideration.</p>

<p>3. 390-16-059(5) Electioneering communication reporting</p>	<p>Building Industry Ass'n of WA (BIAW)</p>	<p>Clarify that “multiple sponsors” of an electioneering communication does not mean every contributor to a political committee is considered a sponsor of an ad run by that political committee.</p>	<p>The statutory definition of “sponsor” means the original source of payment of the ad.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>The statutory definition of “sponsor” includes a political committee that pays for the ad, so the committee’s donors would not be considered sponsors.</p>
<p>4. 390-16-205 Expenditures by Agents</p>	<p>Nic Van Putten (APA Petition)</p>	<p>Provide that material produced with tangible contribution made by the candidate’s agent (consultant) be reported as the product of the agent, not the sub-vendor who works with the agent.</p> <p>Alternatively, require reporting on the fair market value of the product rather than the amount allocated.</p>	<p>Reporting of vendor services misrepresents the value of the service, since the agent (consultant) charges the campaign for services, but negotiates a different rate with the vendor, which is often less than the FMV.</p> <p>Mere pass-through costs should still be reported the amount paid to the vendor</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>The issue presents a fact pattern that has not been an issue previously identified. The practice described includes negotiated contracts, which relate to a specific business model. There does not appear a need to change reporting requirements regarding agents and sub-vendors.</p>
<p>5. 390-16-207 In-kind contributions</p>	<p>Abbot Taylor</p>	<p>Clarify the correct form reference for declaring in-kind contributions</p>	<p>The rule states that in-kind contributions are reported on the C-3 form, but in-kind contributions are reported on the C-4</p>	<p>CHANGE RECOMMENDED</p> <p>In-kind contributions are reported on the C-4 expense report. The reference to C-3 reports is incorrect.</p>

<p>6. 390-18-030 Sponsor ID exemptions</p>	<p>Chad Magendanz</p>	<p>Exempt sponsor information on campaign stickers</p>	<p>Currently – only stickers smaller than 2.75x1 inches are exempt</p> <ul style="list-style-type: none"> Buttons and other comparable paraphernalia are already exempt – regardless of size. 	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>Staff has found that printers do offer sticker sizes that are smaller than the current threshold. There should be some threshold, but the threshold should be large enough for the sponsor identification to reasonably fit on the surface size of the sticker.</p> <p>The issue is worth exploring and will added for future rulemaking consideration.</p>
<p>7. 390-37-060 Enforcement Procedures</p>	<p>Conner Edwards (APA Petition)</p>	<p>Refer to the agency subpoena power in place of “initiate an investigation”</p> <p>Remove reference of “case status review” regarding initial hearings. Tie the initial hearing trigger to determination whether a “material violation occurred.”</p> <p>Provide that an initial hearing may not be held if it is believed no material violation occurred.</p> <p>Require the Executive Director (ED) to hold an adjudicatory hearing if the facts support an actual violation occurred and the matter is not appropriate for an alternative resolution (excluding dismissal).</p>		<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>The agency subpoena power does not accurately describe the extent of an investigation. Case status review is a term used to describe initial hearings.</p> <p>The ED does not determine whether a material violation occurred to initiate an investigation. The initial hearing is tied to the decision to investigate. The hearing is not required if there is no longer an investigation.</p> <p>The adjudicatory hearings are discretionary by statute. The ED is not mandated to initiate adjudication.</p>

<p>8. 390-37-060 Enforcement Procedures</p>	<p>Conner Edwards (APA Petition)</p>	<p>Permit a citizen’s appeal of any warning letter issued by the ED for any proven material violation.</p> <p>The appeal is to the full commission and must be heard at the next scheduled meeting, unless the appeal is within 10 days of such meeting.</p> <p>The ED is encouraged to defend the decision to dismiss with a warning.</p>		<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>The statute authorizes the ED to dismiss matters that do not warrant a full investigation. An open appeal process to the Commission would counter the legislative intent to provide an efficient resolution mechanism for appropriate cases.</p> <p>The process authorized in statute has been implemented for a few months and more time would be appropriate to determine if and how the process should be changed.</p>
<p>9. 390-37-060 Enforcement Procedures</p>	<p>Conner Edwards (APA Petition)</p>	<p>Requires public notice and public access for initial hearings.</p> <p>Requires public notice for adjudicatory proceedings.</p>		<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>Making the initial hearing open to the public could have a chilling effect on the ability of the PDC and the parties to reach an agreeable resolution.</p>

Summary of Public Comment on Proposed Rules 2018 (Commercial Advertising)

WAC Section	Source	Proposal	Reason	Staff Recommendation
<p style="text-align: center;">1.</p> <p>390-18-050(1) Commercial advertiser definition</p>	<p>Google</p> <p>IA</p> <p>WSAB</p> <p>BCAW</p> <p>Technet</p> <p>Allied Daily News</p>	<p>Shift burden of identifying political ads to the ad sponsors, not commercial advertisers (CA).</p> <ul style="list-style-type: none"> • Provide a safe harbor for CAs relying on sponsor self-reporting (just like political ad disclaimer requirements). • Allow CAs to rely in good faith on the representations of its users if the CA has a public policy regarding use of its services for political ads. <p>(IA, BCAW & TechNet proposed language)</p>	<p>It is too difficult for a CA to identify all political ads and ECs on its platform.</p> <p>CAs cannot make legal judgments regarding what is a political ad.</p> <p>Many ads are self-service, and do not directly interact with the CA, or are sold through third parties and not under control of the news organization.</p> <p>Other state laws require political ads to self-report to the CA.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>All CAs are subject to the same standard.</p> <p>The statute recognizes good faith efforts to comply as a mitigating factor to consider in enforcement matters</p> <p>Some online platforms prohibit political advertising, and therefore demonstrate an ability to identify political advertising content.</p>
<p style="text-align: center;">2.</p> <p>390-18-050(3) Maintaining documents and books of account</p>	<p>League of Women Voters</p>	<p>Change posting to require availability in person, online AND published on the website.</p>	<p>The rule should not limit availability to in-person inspection – require online posting.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>A publication requirement would be a significant change in current practice and would be overly burdensome on some businesses.</p> <p>The inspection requirement is similar to inspection under the Public Records Act, which does not require public agencies to publish records online or otherwise.</p>

<p>3. 390-18-050(3) Maintaining documents and books of account</p>	<p>Conner Edwards (APA Petition)</p>	<p>Establish that the requester is permitted to take notes and pictures of the CAs books of account.</p> <p>Permit CAs to provide digital access or copies of documents in place of scheduling appointments for inspection.</p>	<p>Current PDC advice that CAs do not have to allow pictures is wrong and against the spirit of the law. Pictures serve as evidence to support a complaint.</p> <p>Pictures serve as evidence to support a complaint.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>CAs must make documents and books of account available for public inspection. Unlike the Public Records Act (PRA), the statute does not expressly provide a right to copy the information inspected.</p> <p>Such an expansion could significantly increase the burden on businesses and could warrant including similar standards and cost recovery mechanisms applicable to public agencies under the PRA.</p>
<p>4. 390-18-050(5) Timing and availability of books of account</p>	<p>Google BCAW</p>	<p>Provide a time interval after initial publication for making books of account available</p> <ul style="list-style-type: none"> Update disclosure not later than weekly <p>Require disclosure only after the CA has received all reportable information.</p>	<p>Making information available at the time of initial distribution is unrealistic, especially considering the broad scope of information required to be provided.</p> <p>It requires time to gather and verify information.</p>	<p>CHANGE RECOMMENDED</p> <p>Require that information in books of account must be made available within 24 hours of initial publication, and any update to any required information must be made within 24 hours.</p> <p>The 24-hour period is similar to the time period to disclose political ads within 60 days of an election. RCW 42.17A.260</p>

<p>5. 390-18-050(6) General disclosure information - cost</p>	<p>Google IA BCAW Technet</p>	<p>Require information on a cost range basis to enable adequate disclosure.</p> <p>Eliminate information on payments made.</p> <ul style="list-style-type: none"> Alternative language: “Commercial advertisers most indicate whether payment is due immediately, or after a specified period of time.” (IA proposed language) <p>Make CA’s disclose the committee treasurer or point of contact rather than who paid for the ad.</p>	<p>Cost structures may include cost-per-view, which is constantly updating and hard to capture in real-time disclosure.</p> <p>It is not practical to require real-time information on payments made.</p> <p>Certain cost structures reveal information related to business practices and sensitive competitive pricing information.</p> <p>Disclosing payment method could interfere with privacy interests.</p> <p>Keeping track of which agent placed an ad is not as relevant as who had the authority to place the ad.</p>	<p>CHANGE RECOMMENDED</p> <p>Clarify that the CA can provide a cost estimate if total costs are not paid when the political ad is published, and cost information can be updated as payment is received. Information can be timely updated within a certain time interval (see previous recommendation regarding a 24 hour update period).</p> <p>Cost and payment information is currently required and applies to all CAs without exception to any particular industry.</p> <p>The current rules already require CAs to maintain information of the sponsor of an advertisement, so it should not be necessary to include a point of contact or treasurer name in place of who made the payment.</p>
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<p>6. 390-18-050(7) Specific disclosure information for CAs</p>	<p>WSAB Allied Daily News</p>	<p>Eliminate the required maintaining copies of political ads.</p> <p>Require sponsors to keep copies of the ads</p> <p>Create a central repository of ads at the PDC.</p>	<p>There is no statutory authority to require retention of ads.</p> <p>Retaining copies of all political ads would be overly burdensome on broadcaster resources, especially smaller radio and television stations.</p> <p>Possession of political ads may raise copyright concerns</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>The retention of political ads is important information for the public to follow what kinds of ads are being disseminated. The burden imposed on CAs is mitigated by the option to provide information online, so it is not required to be stored at the CAs facility.</p> <p>A central repository maintained by the PDC possibly could relieve the burden on media to retain ads and provide a benefit to the public. However, such a project would require significant additional resources and would require reprioritization over the projects already identified for future implementation.</p>
<p>7. 390-18-050(7) Specific disclosure information for CAs</p>	<p>WSAB</p>	<p>Exempt CAs that already provide a copy of political ads to the Federal Communications Commission (FCC) public disclosure file.</p>	<p>Broadcasters are required to collect information on political ads under the FCC. The information is already available through the FCC website.</p> <p>This requirement would create a separate and duplicative process for compliance.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>Each CA has an affirmative duty to make documents and books of account available to the public.</p> <p>Providing information to the FCC for publication would create separate access outside the control of the CA. It would also raise a question whether the PDC would have enforcement authority over the FCC publication.</p>

<p>8. 390-18-050(7)(g) Specific disclosure information for CAs</p>	<p>Google IA TechNet</p>	<p>Require CAs to report the targeted gender, age, and location of the audience, instead of the approximate location and “audience targeted.”</p> <p>Include audience targeted “or reached.” (IA proposed language)</p> <p>Require CAs to report an approximation of the number of impressions instead of an actual number. (IA proposed language)</p> <p>Do not require information on the number of impressions. (BCAW proposed language)</p>	<p>Reporting on target audiences will reveal campaign strategies and will deter campaigns from using digital media.</p> <ul style="list-style-type: none"> Broadcast media is not required to make these disclosures. Audience reached is more relevant than relatively non-transparent targeting criteria <p>It is impracticable to report real-time accounting of the actual number of impressions.</p> <ul style="list-style-type: none"> Some ads are structured to place conditions on impressions, which change the overall purchase The number of impressions is not known at the time of purchase 	<p>CHANGES RECOMMENDED</p> <p>Require CAs to maintain information on the gender, age, location of audience targeted, and total number of impressions generated by the political ad. This will help to identify which targeting information is required for disclosure while protecting sensitive source material.</p> <p>The total number of impressions generated can be updated on daily intervals (see previous comment regarding a 24 interval for updating information).</p> <p>The required information should be conditioned upon whether the CA collects such information, as some digital advertisers may not track such targeted demographic information.</p>
<p>9. 390-18-050(7)(g) Specific disclosure information for digital media</p>	<p>Conner Edwards (APA Petition) Christine Hosler</p>	<p>Require online advertisers to provide targeting information, and any other preference, information, lists, or records provided by the person placing the ad, as well as any additional services provided.</p> <p>Providing a copy of the ad will assist requesters in determining the exact nature and extent of the services rendered, as provided under RCW 42.17A.345.</p>	<p>Providing more information will assist requesters in determining the exact nature and extent of the services rendered.</p> <p>Generally support the importance of online political ad source disclosure.</p>	<p>NOT RECOMMENDED FOR CURRENT RULEMAKING</p> <p>Much of this request is incorporated into the previous comment regarding the disclosure of specific information for digital media CAs.</p>

