



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 16-17-031 ; or

Original Notice

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Supplemental Notice to WSR _____

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) **Proposed [amended]** WACs 390-37-041 Enforcement procedures-Allegations submitted to the attorney general's office and/or prosecuting attorneys; 390-37-050 Enforcement procedures-Respondent's notice of complaint; 309-37-060 Enforcement procedures-Alternative responses to noncompliance-Investigation of complaints-Initiation of adjudicative proceeding; 390-37-100 Enforcement procedures-Conduct of hearings (adjudicative proceedings); 390-37-105 Prehearing conference-Rule; 390-37-132 Enforcement hearings (adjudicative proceedings)-Depositions and interrogatories-Notice; 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings); 390-37-142 Brief enforcement hearing (adjudicative proceeding)-Procedure; 390-37-144 Brief adjudicative proceeding-Administrative review procedures; 390-37-150 Reconsideration and judicial review of decisions. **Proposed [repealers]** WACs 390-37-155 Electronic filing brief enforcement hearing penalty schedule; 390-37-160 Statement of financial affairs (F-1) penalty schedule; 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule; 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule; and 390-37-175 Lobbyist employer report (L-3) penalty schedule. **Proposed [new]** WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding)-Penalty schedule.

Hearing location(s): Office of the Public Disclosure Commission, 711 Capitol Way, Rm. 206, Olympia, WA 98504

Submit written comments to:

Name: Evelyn Fielding-Lopez

Address: P O Box 40908, Olympia, WA 98504

e-mail evelyn.lopez@pdc.wa.gov

fax (360) 664-2735 by (date) November 30, 2016

Date: Thursday, December 8, 2016 Time: 9:30 AM

Assistance for persons with disabilities: Contact

Jana Greer by email at Jana.Greer@pdc.wa.gov

TTY () _____ or (360) 753-1985

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Differentiate citizen action notices referred by the attorney general or prosecuting attorney solely for investigation from complaints filed with the Public Disclosure Commission and clarify the commission's limited investigatory role when a citizen action notice is referred. Update enforcement procedural rules to make consistent with the state's model administrative procedures and recent public records case law, modernize time period calculations for requests of reconsideration of decisions by replacing "21 business days" with "within 10 days of service"; make consistent the use of "day" and "business day" throughout WAC 390-37; consolidate five current brief administrative proceeding penalty schedules into one and insert penalty amounts for additional violations that may be adjudicated in brief proceedings.

Reasons supporting proposal: The proposed rules:

- better inform the public by clarifying and explaining what procedures are followed when a citizen action notice is referred for investigation;
- make procedures more predictable by ensuring that terms "day" and "business day" are used consistently throughout WAC 390-37 and clarifying process and time period calculation;
- implement best practices by aligning hearing rules with the state's model administrative procedures; and
- make enforcement procedures more "user-friendly" by consolidating five current penalty schedules into a single, enhanced schedule that includes penalty amounts for all types of violations that may be heard in a brief adjudicative proceeding and provides greater opportunity for respondents to take advantage of the statement of understanding enforcement alternative.

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

Statute being implemented: RCWs 42.17A.755 and 42.17A.765

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

DATE

October 31, 2016

NAME (type or print)

Lori Anderson

SIGNATURE

TITLE Communications & Training Officer

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 31, 2016

TIME: 9:48 AM

WSR 16-22-055

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

No fiscal impact is expected to result from the proposed rule.

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, WA 98504	(360) 664-2737
Implementation....Evelyn Lopez	711 Capitol Way, Rm. 206, Olympia, WA 98504	(360) 664-2735
Enforcement..... Evelyn Lopez	711 Capitol Way, Rm. 206, Olympia, WA 98504	(360) 664-2735

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 _____

X No. Explain why no statement was prepared.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 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 _____

X No: Please explain:

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(1)(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 390-37-041 ((Enforcement)) Citizen action notice 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)) prosecuting attorney forwards the ((complaint)) citizen action notice to the commission, commission staff may:

((1)) (a) Conduct an investigation and report the findings to the commission within time frames provided for in RCW 42.17A.765;

((2)) 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))) (b) Conduct an initial review and report to the commission whether the initial review indicated that a violation of chapter 42.17A RCW may have occurred;

(c) Recommend to the commission whether to recommend to the referring attorney general or prosecuting attorney to commence a civil action; and

(d) Take any other steps consistent with the agency's authority and resources.

(2)(a) 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. Any commission action to determine whether a recommendation will be made to the attorney general or prosecuting attorney will be made in an open public meeting within the time allotted by law.

(b) A report of investigation or initial review may be provided at any time to the attorney general or prosecuting attorney, at their request.

(3) When a citizen action notice is filed alleging the same or substantially similar violations alleged earlier by the same person in a complaint filed with the commission, the commission staff may continue its investigation of the complaint and may initiate an adjudicative proceeding as provided for in WAC 390-37-060.

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

(a) ~~If the executive director ((shall return)) determines that any complaint ((that)) is obviously unfounded or frivolous((–)), the executive director will inform the complainant why ((the complaint is returned)) no further investigation is warranted.~~

(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 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 ((ealendar)) days prior to the hearing. The e-mail shall provide the name of the party submitting the documents, the total number 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.

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 SECTION

WAC 390-37-143 Brief enforcement hearings (adjudicative proceeding)—Penalty schedule. The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
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
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
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
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
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 an accurate and complete 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 accurate and complete disclosure reports:			
Political committee registration (C-1pc).	\$150	\$300	\$600
Statement of contributions deposit (C-3).	\$150	\$300	\$600
Summary of total contributions and expenditures (C-4).	\$150	\$300	\$600
Independent expenditures and electioneering communications (C-6).	\$150	\$300	\$600
Last minute contribution report (LMC).	\$150	\$300	\$600
Out-of-state committee report (C-5).	\$150	\$300	\$600
Annual report of major contributors (C-7).	\$150	\$300	\$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	\$150	\$300	\$600

Violation	1st Occasion	2nd Occasion	3rd Occasion
Public agency lobbying report (L-5).	\$150	\$300	\$600
Grass roots lobbying report (L-6).	\$150	\$300	\$600
Failure to file electronically.	\$350	\$650	\$1,000
Exceeding contribution limits.	\$150	\$300	\$600
Exceeding mini reporting threshold.	\$150	\$300	\$600
Failure to comply with political advertising sponsor identification requirements.	\$150	\$300	\$600
Failure to include required candidate's party preference in political advertising.	\$150	\$300	\$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345.	\$150	\$300	\$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	\$150	\$300	\$600

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

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

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

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

- (d) 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;

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

- (f) 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;

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

- (h) 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;

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

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

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

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

(3) 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.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) 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:

- (a) Was found in violation during a previous reporting period;
- (b) The violation remains in effect following any appeals; and

(c) 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.