



# EXPEDITED RULE MAKING

**CR-105 (June 2004)**  
(Implements RCW 34.05.353)  
**EXPEDITED RULE MAKING ONLY**

**Agency:** Public Disclosure Commission

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

[new] WAC 390-05-255 Definition of terms “day” and “business day”

[amend] WACs 390-12-250 Declaratory order-Petition requisites-Consideration-Disposition, 390-16-033 Earmarked contributions-Reporting-Form; 390-16-240 Earmarked contributions-Definition and use; 390-16-312 Handling contributions of uncertain origin; 390-28-060 Hearing to modify reporting-Administrative law judge proceedings, 390-32-030 Complaint publication – Fair Campaign Practices Code-Alternative to investigation or adjudicative proceeding

### NOTICE

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

Name: Evelyn Fielding Lopez

Agency: Public Disclosure Commission

Address: email: evelyn.lopez@pdc.wa.gov

U.S. mail: P O Box 40908, Olympia, WA 98504-0908

**AND RECEIVED BY** (Date) January 5, 2016

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Proposed new rule defines the terms “day” and “business day” as they are used throughout chapter 42.17A RCW and Title 390 WAC. Proposed amendments clarify and make consistent the terms “day” and “business day.” Proposed amendments remove variations “working days” and “calendar days.”

**Reasons supporting proposal:** Proposals simplify the rules and make them easier to understand by using consistent terms throughout. Proposals do not change the effect of the rules.

**Statutory authority for adoption:** RCW 42.17A.110

**Statute being implemented:** Chapter 42.17 RCW

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

### CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** October 31, 2016

**TIME:** 10:45 AM

**WSR 16-22-057**

**DATE**

October 31, 2016

**NAME (TYPE OR PRINT)**

Lori Anderson

**SIGNATURE**

**TITLE**

Communications & Training Officer

(COMPLETE REVERSE SIDE)

**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 98504-0908	(360) 664-2737
Implementation.... Evelyn Fielding-Lopez	711 Capitol Way, Rm 206, Olympia, WA 98504-0908	(360) 664-2737
Enforcement..... Evelyn Fielding-Lopez	711 Capitol Way, Rm 206, Olympia, WA 98504-0908	(360) 664-2737

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

The Commission anticipates no enforcement or fiscal impacts.

NEW SECTION

**WAC 390-05-255 Definition of terms "day" and "business day."**

(1) "Day" as that term is used in chapter 42.17A RCW and Title 390 WAC, unless otherwise specified, means a calendar day, including Saturday, Sunday and legal holidays.

(2) "Business day" as used in chapter 42.17A RCW and Title 390 WAC, means a calendar day, excluding Saturday, Sunday and legal holidays defined in WAC 357-31-005.

**WAC 390-12-250 Declaratory order—Petition requisites—Consideration—Disposition.** (1) Any person may submit a petition for a declaratory order pursuant to RCW 34.05.240 in any form so long as it:

(a) Clearly states the question the declaratory order is to answer((7)); and

(b) Provides a statement of the facts which raise the question.

(2) The executive director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The executive director will present the petition to the commission at the first meeting when it is practical to do so and will provide the petitioner with at least five business days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The commission may issue either a binding or a nonbinding order or decline to issue any order.

(6) The commission may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five business days notice of such meeting shall be provided to the petitioner.

(7) If an order is to be issued, the petitioner shall be provided a copy of the proposed order and invited to comment.

(8) The declaratory order cannot be a substitute for a compliance action and is intended to be prospective in effect.

(9) The commission will decline to consider a petition for a declaratory or to issue an order when (a) the petition requests advice regarding a factual situation which has actually taken place, or (b) when a pending investigation or compliance action involves a similar factual situation.

AMENDATORY SECTION (Amending WSR 16-04-027, filed 1/25/16, effective 2/25/16)

**WAC 390-16-033 Earmarked contributions—Reporting—Form.** The official form for reporting the details surrounding an earmarked contribution, as required by RCW 42.17A.270, is designated "Special Report E," revised ((2/16)) 2/17. This report shall be filed within two ((working)) business days of receiving a contribution earmarked for another candidate or committee. Copies of this form are available on the commission's web site, [www.pdc.wa.gov](http://www.pdc.wa.gov), and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908.

**EARMARKED CONTRIBUTION**

<b>SPECIAL REPORT</b> 2/16	E	PDC OFFICE USE 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
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1. Name of committee filing this report (Candidate or committee which received a contribution earmarked for another.)

Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

2. Original source of earmarked contribution

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

3. Contribution Date	Amount/Value	Description (Fully describe in-kind contributions)	If contribution is to benefit a state office candidate, designate whether it's for Primary or General Election. Primary _____ General _____

4. Name of candidate or committee to be benefited \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

If candidate, what office is the person seeking? \_\_\_\_\_

5. Certification: I certify that the information contained herein is true, complete and correct to the best of my knowledge.

Treasurer's signature \_\_\_\_\_ Date \_\_\_\_\_

The purpose of this report is to highlight receipt of an earmarked contribution. (That is, a contribution given to one candidate or political committee with the understanding, intent or instruction that it be used to benefit another candidate or committee.) This report is filed in addition to any other required reporting of the transaction.

A separate "Special Report E" is filed for each earmarked contribution received by any candidate or political committee.

File this report within two working days of receiving the earmarked contribution. Mail or deliver the original to PDC. Send a copy to the benefiting candidate or committee, also within two working days.

**NOTE: Candidates for legislative and statewide executive office are subject to state contribution limits. Earmarked contributions count toward the applicable limit and are attributed to the original source of the contribution (unless another person controlled the choice of recipient). It's a violation for anyone to accept a contribution in excess of the relevant limit. Verify with the campaign of a legislative or statewide office candidate before accepting a contribution earmarked for the benefit of such a candidate.**

**EARMARKED CONTRIBUTION**

**SPECIAL REPORT**  
 2/17 **E**

PDC OFFICE USE

1. Name of committee filing this report (Candidate or committee which received a contribution earmarked for another.)

Address

City County Zip

2. Original source of earmarked contribution

Name

Address

City State Zip

3. Contribution Date	Amount/Value	Description (Fully describe in-kind contributions)	If contribution is to benefit a state office candidate, designate whether it's for Primary or General Election. Primary _____ General _____

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Address

City County Zip

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

**WAC 390-16-240 Earmarked contributions—Definition and use.** (1) Earmarked contributions, as that term is used in RCW 42.17A.270 and 42.17A.460, means any contribution given to an intermediary or conduit, either a political committee, candidate or third party, with a

designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which is intended to result in or which does result in all or any part of the contribution being made to or for the promotion of a certain candidate, state official, or ballot proposition.

(2) For purposes of RCW 42.17A.405 and 42.17A.410, an earmarked contribution is deemed to be for the promotion of, and attributable to any limit applicable to the candidate, authorized committee, bona fide political party, caucus of the state legislature or political committee designated by the original contributor.

(3) If an earmarked contribution is given to an intermediary or conduit to be spent on behalf of a candidate and the entire amount given is not used for this purpose, the remainder of the contribution shall be given to the designated candidate unless its use is redesignated by the original contributor. If the conduit or intermediary exercise any direction or control over the use of the remainder of the contribution, then the amount of the remainder shall be considered a contribution from the original contributor and the conduit or intermediary to the recipient.

(4) The intermediary or conduit receiving the earmarked contribution shall notify the candidate or political committee for whose use or benefit the contribution is designated within two (~~working~~) business days after receipt of the contribution.

(5) If an earmarked contribution is refused by the designated recipient candidate or political committee, the earmarked contribution must be returned by the intermediary or conduit to the original contributor within five (~~working~~) business days of refusal.

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

**WAC 390-16-312 Handling contributions of uncertain origin.** No contribution shall be deposited by any candidate or treasurer who believes, from the face of the contribution instrument or for any other reason, the contribution was made in a fictitious name, by one person through an agent, relative, political committee, or any other person so as to conceal the source of the contribution or to exceed the contribution limits provided in RCW 42.17A.420, 42.17A.405, or 42.17A.410. The candidate or treasurer shall return such contributions within ten (~~calendar~~) days to the original contributor if his or her identity is known. Otherwise, the contribution instrument shall be endorsed and made payable to "Washington state treasurer" and the contribution sent to the public disclosure commission for deposit in the state's general fund.



**WAC 390-28-060 Hearing to modify reporting—Administrative law judge proceedings.** (1) The commission may request through the office of administrative hearings the appointment of an administrative law judge to hear individual applicants.

(2) After such hearing is concluded, the administrative law judge shall prepare and distribute to the applicant and each commissioner a proposed decision determining the issue. The applicant shall have five business days to file with the commission specific objections to the administrative law judge's **proposed** decision and to request an opportunity to present additional evidence to the commission. When written objections are timely filed, the commission, at the time of review and ratification, shall consider the whole record or such portions as may be cited by the administrative law judge, applicant or executive director. The commission may also hear additional testimony.

(3) If the applicant files objections to the administrative law judge's proposed decision, the filing requirement from which the applicant has sought modification shall not be suspended unless the commission, upon notice of the filing of objections, determines that a temporary suspension is justifiable pursuant to the criteria set out in RCW 42.17A.120. Such suspension of filing requirements shall be granted only until the decision is finalized by formal action of the commission.

(4) At the next meeting at which the matter can be lawfully considered, the commission shall review and either ratify or modify or revise the proposed order.

**WAC 390-32-030 Complaint publication—Fair Campaign Practices Code—Alternative to investigation or adjudicative proceeding.** (1)

Written and signed complaints alleging a violation of one or more specific provisions of WAC 390-32-010. The Fair Campaign Practices Code may be submitted to the commission by any person.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint under subsection (1) of this section, the executive director shall forward a copy of the complaint to the respondent within twenty-four hours, accompanied by a request for a response to the complaint returned within five business days from the date of mailing.

(b) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five business days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under this subsection.

(2) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056, the executive director may authorize the processing of a complaint alleging violations of chapter 42.17A RCW or Title 390 WAC according to the complaint publication process provided in this section.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint authorized by the executive director for processing under this subsection, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five business days from the date of mailing.

(b) Complaints authorized by the executive director for processing under this subsection shall be forwarded to the respondent within ~~((ten business days of receipt, or))~~ eight days prior to the date that ballots must be available under RCW 29A.40.070(1) ~~((, whichever is earlier))~~.

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five business days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under (a) or (b) of this subsection, the publication of complaints or responses under this subsection shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under subsection (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant

statutes and rules, considering the factors set forth in WAC 390-37-056, the executive director may:

(a) Dispose of the complaint through an additional alternative response as provided in WAC 390-37-055; or

(b) Direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints received within eight days of the date that ballots must be mailed to voters under RCW 29A.40.070(1).

(5) The filing of a complaint with the commission under this section or any provision of chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.