

WAC 390-18-010 Sponsor identification of advertising, political advertising, electioneering communications, and independent expenditures. (1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of political advertising, electioneering communication, or independent expenditure" is, as used in the act and in these rules, and defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, independent expenditures that are for political advertising (~~and/or~~), or electioneering communications, subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) All advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). Additional requirements apply for the following:

(a) Political committees that sponsor political advertising costing or having a fair market value of one thousand dollars or more supporting or opposing a ballot (~~measure~~) proposition must clearly identify the "top five contributors" to that political committee, as well as the "top three donors" of all political committees identified as a "top five contributor," pursuant to WAC 390-18-025.

(b) Advertising undertaken as an independent expenditure or electioneering communication shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors," as well as the "top three donors" to political committee contributors, and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to identify the "top five contributors" to that political committee (~~pursuant to WAC 390-18-025~~), as well as the "top three donors" to political committee contributors. This requirement does not apply to bona fide political parties sponsoring independent expenditures.

(3) Required sponsor identification shall be displayed in printed advertisements:

(a) In an area set apart from other printed matter;

(b) On the first page or fold of advertising consisting of more than one page that is intended to be presented as a single item (e.g., 3-page letter with return envelope). Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient;

(c) By respective sponsor on advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously.

(4) Required sponsor identification shall be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification shall be clearly identified, spoken or displayed on advertising on web sites, social media and other digital communication. Political committee web sites and other on-

line forums created by a political committee must include sponsor identification.

(6) With advertising for which no payment is demanded or for which a cost or fair market value is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed, disseminated or broadcast.

(7) If more than one person sponsors specific advertising, the identity of each sponsor must be identified. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is not earmarked for the advertising and is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-18-025 Advertising—Identification of "top five contributors" and "top three donors to PAC contributors." This section provides how sponsors should identify the "top five contributors" when required to be included in political advertising, as provided in WAC 390-18-010. When the "top five contributor" list includes one or more political committees, the sponsor must further identify and separately include in the advertisement the collective "top three donors to PAC contributors" to all such political committees. This section provides how the sponsor should identify such "top three donors to PAC contributors."

(1) For purposes of RCW 42.17A.320 (~~((2), (4), (5) and (6))~~), "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions (~~(exceeding seven hundred)~~) of one thousand dollars or more during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding (~~(seven hundred dollars)~~) the threshold value and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2) (a) If a political committee keeps records necessary to track contributions used according to the use intended by its contributors, (~~(and the committee subsequently makes independent expenditures for)~~) that committee may identify the top contributions to the advertisement (supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose), as opposed to identifying the overall top five contributors to the committee (~~(as is otherwise required by RCW 42.17A.320 and this section)~~), if such identified contributors made contributions that were intended and actually used to pay for the advertisement.

(b) The sponsor should not include contributions earmarked, tracked and used for purposes other than paying for the advertisement

for purposes for identifying the top five contributors. However, if a sponsor uses a contributor's contributions earmarked for ((independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to)) advertising for a different candidate or slate of candidates ((without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure)) than the candidate or candidates intended by the contributor, the sponsor must include such contribution in determining the "top five contributors" of the actual advertisement for which the contribution was used.

(3) For purposes of section 2, chapter 261, Laws 2019, "top three donors to PAC contributors" means the three individuals or entities, other than political committees, who gave the largest aggregate contributions to any political committee listed as a "top five contributor," of one thousand dollars or more during the twelve-month period preceding the date on which the advertisement was published or otherwise presented to the public.

(a) If any of the contributors to a "top five" political committee is itself a political committee, the sponsor must identify the top three contributors to that political committee. Such process continues until the sponsor has identified the top three nonpolitical committee contributors for each "top five" political committees. If more than three contributors to a "top five" political committee have given an amount equal to the largest aggregate contribution, the sponsor may select three of these contributors to identify as the "top three donors to PAC contributors."

(b) If there is more than one political committee identified as a "top five contributor," the sponsor must identify the top three nonpolitical committee contributors to each "top five" political committee, and then determine the "top three donors to PAC contributors" collectively from that list.

(c) The sponsor should not include contributions to a "top five" political committee contributor for purposes of identifying the "top three donors to PAC contributors" if both:

(i) The contribution to the "top five" committee was reported as an earmarked contribution for a purpose other than the advertisement in question; and

(ii) The "top five" committee has provided written verification to the sponsor before the initial publication or public presentation of the advertisement, confirming that such contribution was tracked and used for such other purpose.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-18-027 Definition—Medium that does not include a visual image. (1) For electioneering communications identifying sponsors and top five contributors as required by RCW 42.17A.320, a "medium that does not include a visual image" means ((radio)) audio only, such as radio, which is transmitted without a visual component.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW 42.17A.320, a "medium that does not include a visual image" means audio only, such as radio or telephone transmissions, without a visual component.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-18-030 Advertising—Exemptions from sponsor identification and alternatives for online advertising. (1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) (~~because such identification is impractical~~): (~~Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers - size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files,~~)

(a) Campaign paraphernalia that includes a printing surface area of 3" x 3" square inches or smaller, or where such identification is otherwise impractical;

(b) Newspaper ads of one column inch or less (excluding online ads) (~~, noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders,~~);

(c) Reader boards where message is affixed in movable letters (~~, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers of a comparable size as worn by an individual, sunglasses, sun visors, swizzle sticks,~~);

(d) State or local voter's pamphlets published pursuant to law (~~, tickets to fund raisers, water towers, whistles,~~); and

(e) Yard signs - size 4' x 8' or smaller (~~, yo-yos, and all other similar items~~).

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320 in a manner that is compatible with the device and technology used to display the advertising.

(4) Political advertising created and distributed by an individual using their own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than one hundred dollars to produce and distribute the advertising or less than fifty dollars to produce and distribute online advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 (16) (a) (ii) or (iii) or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

((+)) (i) A letter, flier, handbill, text, email or other digital communications from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(4)); or

((+)) (ii) Disseminated on the individual's social media site, personal web site, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

AMENDATORY SECTION (Amending WSR 16-22-046, filed 10/28/16, effective 11/28/16)

WAC 390-18-040 Use of the terms "reelect," "retain," and "return." (1) The term "reelect" when used in an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in an advertisement by a non-incumbent candidate who has previously been elected to the office being sought provided that in the same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in an advertisement represents that the candidate is the incumbent but does not necessarily imply that the candidate attained the office by election.

(4) The term "return" in an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was necessarily attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in an advertisement, use the term "reelect," "retain" or "return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

AMENDATORY SECTION (Amending WSR 18-24-074, filed 11/30/18, effective 12/31/18)

WAC 390-18-050 Commercial advertisers—Public inspection of records.

(1) "Commercial advertiser" as that term is used in the act and these rules means any person, as defined in the act, including individuals and entities, that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboard, direct mail advertising, printing, paid internet or digital communications, or any other means of mass communications used for the purpose of appealing, directly or indirectly for votes or for financial or other support in any election campaign.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if it has been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the advertising or communications to the original purchaser must maintain the information as required in this section.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, as defined in RCW 42.17A.005, must maintain current books of account and related materials as required by this section. Such information must be available for public inspection by any person, without reference to, or permission from, the PDC, and provided:

(a) In person during normal business hours; and

(b) If requested electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary web site;

(B) On a web site controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary web site directing users to the web site on which the information is provided; or

(C) On the PDC's open access platform, if one is provided by the PDC for such purpose.

(4) Information regarding political advertising or electioneering communications must be made available within twenty-four hours of the time when the advertisement or communication initially has been publicly distributed or broadcast, and within twenty-four hours of any

update or change to such information. Such records must be maintained for a period of no less than (~~three~~) five years after the date of the applicable election.

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

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;

(b) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employee identification number, or other verifiable identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

(c) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and

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

(6) In addition to subsection (5) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) 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: Air 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.

(g) For digital communication platforms: A description of the demographic information (e.g., age, gender, race, location, etc.) of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement of communication.

(7) At the request of the PDC, each commercial advertiser required to comply with this section shall provide to the PDC copies of the information described above.