

**Chapter 390-18 WAC
POLITICAL ADVERTISING**

Last Update: 5/30/23

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

390-18-015	Online political advertising. [Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-017, § 390-18-015, filed 5/24/13, effective 6/24/13.] Repealed by WSR 18-24-074, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304.
390-18-060	Electioneering communication reporting threshold and sponsors. [Statutory Authority: RCW 42.17.130 and 42.17.093. WSR 12-01-047, § 390-18-060, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-060, filed 5/23/06, effective 6/23/06.] Repealed by WSR 18-24-074, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304.

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, 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 must 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 \$2,000 or more supporting or opposing a ballot 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 must 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, 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 must 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 must be clearly identified or spoken in advertising on radio, by telephone, or on television.

(5) Required sponsor identification must be clearly identified, spoken or displayed on advertising on websites, social media and other digital communication. Political committee websites and other online 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.

[Statutory Authority: RCW 42.17A.110 and [42.17A.]125. WSR 23-12-036, § 390-18-010, filed 5/30/23, effective 6/30/23. Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-010, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-010, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-010, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 11-05-051, § 390-18-010, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-010, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370. WSR 03-12-034, § 390-18-010, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.370(1). WSR 00-22-055, § 390-18-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-18-010, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-010, filed 7/9/85.]

WAC 390-18-020 Advertising—Political party identification. (1) RCW 42.17A.320 requires sponsors of electioneering communications identifying a candidate or advertising supporting or opposing a candi-

date to clearly identify the candidate's political party or independent status in the advertising when the candidate has expressed a party or independent preference on the declaration of candidacy.

(2) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party.

[Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-020, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-020, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-020, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 99-12-067, § 390-18-020, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-18-020, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-020, filed 7/9/85.]

WAC 390-18-025 Advertising—Identification of "top five contributors" and "top three donors to PAC contributors." Sponsors must 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 explains how the sponsor should identify such "top three donors to PAC contributors."

(1) For purposes of RCW 42.17A.320, "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions of \$2,000 or more during the 12-month period preceding the date on which the advertisement is published or otherwise presented to the public. The sponsor may calculate the 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation. If more than five contributors give an amount equal to the largest aggregate contribution exceeding the threshold value and the funds are received during the relevant 12-month period, the political committee sponsoring the advertisement must 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, that committee may identify the top contributions to the advertisement, as opposed to identifying the overall top five contributors to the committee, if such identified contributors made contributions that were intended and actually used to pay for the advertisement.

(b) For purposes for identifying the top five contributors, the sponsor should not include contributions earmarked, tracked, and used for purposes other than paying for the advertisement. However, if a sponsor uses a contributor's contributions earmarked for advertising for a different candidate or slate of candidates 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 RCW 42.17A.350 "top three donors to PAC contributors" means the three individuals or entities, other than political committees, who gave the largest aggregate contributions to one or more political committee listed as a "top five contributor," totaling \$2,000 or more during the 12-month period preceding the date on which the advertisement was published or otherwise presented to the public. The sponsor may calculate the 12-month period from the date the advertisement is submitted to a third-party publisher for reasonably prompt publication, so long as there is no anticipated or intentional delay in the publication or presentation.

(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.

(4) For purposes of determining the "top three donors to PAC contributors," the sponsor must make reasonable efforts to identify the contributions made to a political committee. Reasonable efforts include searching through reports of contributions filed with the commission or any other state, as well as requests made to any political committee that has not disclosed its contributions to the commission or in any other state. After making reasonable efforts, the sponsor may reasonably rely on the information reported to the commission, and will not be liable for any omission or miscalculation because a contribution to any "top five" political committee has not been reported to the commission.

[Statutory Authority: RCW 42.17A.110 and [42.17A.]125. WSR 23-12-036, § 390-18-025, filed 5/30/23, effective 6/30/23. Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-025, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-025, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-025, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-025, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW

42.17.370. WSR 07-08-044, § 390-18-025, filed 3/28/07, effective 4/28/07. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-025, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 02-12-007, § 390-18-025, filed 5/23/02, effective 6/23/02.]

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 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-027, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-027, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-027, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-027, filed 5/23/06, effective 6/23/06.]

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," "top three donors to PAC 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) and 42.17A.350:

(a) Campaign paraphernalia, including novelty or sundry items intended for individual distribution and use, with a printing surface area smaller than 4" x 15" square inches, including expandable surface area such as a balloon when expanded, or where such identification is otherwise impractical to provide a readable text;

(b) Newspaper ads of one column inch or less (excluding online ads);

(c) Reader boards where a message is affixed in movable letters, or skywriting;

(d) State or local voter's pamphlets published pursuant to law; and

(e) Yard signs - size 4' x 8' or smaller.

(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 dis-

closures 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 website, 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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-030, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-030, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-017, § 390-18-030, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-030, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 11-05-051, § 390-18-030, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-030, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 04-12-057, § 390-18-030, filed 5/28/04, effective 6/28/04. Statutory Authority: RCW 42.17.390. WSR 95-01-074A, § 390-18-030, filed 12/16/94, effective 1/16/95. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-030, filed 7/9/85.]

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.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-040, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 16-22-046, § 390-18-040, filed 10/28/16, effective 11/28/16. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-040, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-18-040, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370. WSR 92-12-037, § 390-18-040, filed 5/29/92, effective 6/29/92. Statutory Authority: RCW 42.17.370(1). WSR 88-14-064 (Order 88-02), § 390-18-040, filed 7/1/88; WSR 86-12-059 (Order 86-03), § 390-18-040, filed 6/3/86.]

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) "Commercial advertiser" as that term is used in the act and these rules is defined under RCW 42.17A.005.

(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 the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when selling digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries,

a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) 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, but no later than two business days; or

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

(A) On the advertiser's primary website; or

(B) On a website 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 website directing users to the website on which the information is provided.

(5) A commercial advertiser may have, to the extent necessary, up to three business days to update its books of account upon receiving notice regarding any missing political advertising or electioneering communication, if:

(a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication;

(b) The purchaser did not provide such information; and

(c) The order was not reasonably identifiable to the commercial advertiser as political advertising or an electioneering communication.

(6) 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;

(b) A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(c) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employer 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;

(d) 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

(e) Date(s) the commercial advertiser rendered service, including the dates, where applicable, that the advertising or communication was presented to the public.

(7) In addition to subsection (6) 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, the statistical characteristics of a population (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 or communication.

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

[Statutory Authority: RCW 42.17A.110. WSR 22-05-021, § 390-18-050, filed 2/4/22, effective 3/7/22. Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-18-050, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-18-050, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110(8). WSR 15-12-058, § 390-18-050, filed 5/28/15, effective 6/28/15. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-050, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-050, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 99-12-068, § 390-18-050, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370. WSR 93-04-072, § 390-18-050, filed 1/29/93, effective 3/1/93.]