

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

FILED

07/05/2024 9:49 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposes updates to requirements for campaign communication disclosures.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/23/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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255 Capitol St. NE, Suite 126
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Filed By:
Alma Whalen
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/20/2024

TIME: 2:00 PM - 2:30 PM

OFFICER: Alma Whalen

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 490936136

NEED FOR THE RULE(S)

This rule proposes amendments to specify the requirements for disclosures required to be included on certain political communications. The amendments stem from questions, requests for clarification, and requests for updates from the public, Division staff, and regulated stakeholders. These amendments are needed to enable regulated stakeholders to comply with and understand the law, and to keep the public informed about how the agency's interpretation and enforcement of the law. Several of these proposed amendments are aimed at increasing public transparency ahead of the 2024 general election and in future elections.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 260.266 and ORS 260.995 available online at www.oregonlegislature.gov or from the agency.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule promotes racial equity. The terms of the rule promote racial equity by protecting against implicit bias and ensuring that the same guidelines and procedures apply consistently to all regulated stakeholders. The terms of this rule also promote racial equity by ensuring that the voting public has access to information about who is paying for campaign

communications.

FISCAL AND ECONOMIC IMPACT:

The proposed rule may cause minimal fiscal or economic impact to candidates, committees, other filers, state agencies, local governments, or the public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There may be a minimal fiscal impact for the Elections Division to implement and answer questions regarding compliance with this rule, or for other unanticipated reasons. There may be a minimal fiscal impact for candidates, political committees, other political entities, or members of the public who must take action to comply with this rule.

(2)(a) Because individuals, not businesses, are typically assessed penalties, it is not expected that this rule will impact small businesses. However, there may be a minimal indirect fiscal impact for an unknown, but likely a small number of businesses involved in activities that would require them to comply with this rule.

(2)(b)-(c) The cost that any business, required to comply with this rule, may be responsible for is dependent upon specific circumstances and cannot readily be determined.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved as this rule does not directly affect small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The fiscal impact of the proposed amendments is expected to be minimal at most.

AMEND: 165-012-0525

RULE SUMMARY: The proposed amendments clarify requirements for disclosures required on certain campaign communications.

The amendments propose removing the requirement to disclose committee ID numbers on campaign materials and removing the requirement to include both audible and written disclosures on communications 30 seconds or less in length.

The amendments also specify who to list as the payer of a communication when it is provided as an in-kind contribution to another person, requirements to be followed when campaign material is later re-used and specifies the size of disclosures required for communications such as a signs and billboards larger than six square feet.

The proposed changes also seek to use terms more consistently throughout the rule text.

The Elections Division is seeking feedback on all changes proposed by this rule and is specifically interested in receiving feedback on Section 2(c), Section 4, and Section 6.

CHANGES TO RULE:

165-012-0525

Application of ORS 260.266 - Campaign Advertising Disclosures

(1) The purpose of this rule is to establish guidelines for the implementation of ORS 260.266, ~~implemented by the Oregon Legislature in 2019.~~ ¶

(2) Definitions: ¶

(a) "de minimis" means having a fair market value of ~~less than \$1.00~~ approximately \$1.00 or less. ¶

(b) "Digital communication" means a communication that is placed or promoted on an internet or digital platform, including but not limited to search engine marketing, display advertisements, video or audio advertisements, native advertising, and sponsorships. For purposes of the preceding sentence, internet or digital platform' means a public-facing website, internet-enabled application, or other digital application, including but not limited to a social network, ad network, or search engine that displays, or causes to be displayed, digital communications. ¶

(c) "Name" means: ¶

(A) For candidates, the full name of the candidate's principal campaign committee as the committee is registered in ORESTAR ~~and the committee ID number.~~ ¶

(B) For political action committees and petition committees, the full name of the committee as the committee is registered in ORESTAR ~~and the committee ID number.~~ ¶

(C) For organizations, the full name by which the organization is registered with the Oregon Secretary of State's Office, Corporations Division, or comparable agency in the applicable state. If the organization does business under a different name, as reflected in the organization's website or social media, then that name shall be included in the disclosure. ¶

(D) For groups of individuals or other entities not set out in sections 2(c)(A) through (C) above, the name the group or entity most often uses in conjunction with their website or social media accounts, or used in conjunction with their financial records or other official business documentation. ¶

(E) When a communication is provided as an in-kind contribution or donation, the communication is considered to be paid for by the person actually paying for the communication. ¶

(d) "Payment" means "expenditure" as defined and treated under Oregon election law. ¶

(e) "Wearable merchandise" includes but is not limited to any form of clothing, hats, gloves, scarves, masks and other face coverings. ¶

(f) "Lawn signs" means signs 6 square feet in size or smaller. ¶

(3) Excluded items: ¶

(a) Subject to section (3)(b) below, an item is "too small" to feasibly include the ~~identifying information~~ disclosures required by ORS 260.266 and this rule if the required information cannot be printed, engraved, or otherwise included on the item using the standards set out in this rule relating to readability. ¶

(b) Notwithstanding the exemptions in section (6) of this rule, the following are not considered too small to include the ~~information~~ disclosures required by ORS 260.266 and this rule: any communication, distributed in print or other format, such as by social media, television advertisements, and printed advertisements in a newspaper or other publication. ¶

(c) Text messages sent by an individual. ¶

(d) Payments for a communication may not be purposefully split to qualify for the \$500 exemption described in ORS 260.266(7)(b)(B)(ii). ¶

(4) Printed or digital ~~statement(s)~~ disclosures required by ORS 260.266 must be easy to read, if the communication appears in a print or digital format, and shall incorporate the following: ¶

(a) The format of the ~~statement~~ disclosure shall be in sentence form, and include information required by statute and rule. The ~~statement~~ disclosure shall read: "Paid for by", followed by the required information. If the names of contributors or donors are required, that ~~statement~~ disclosure shall immediately follow the ~~statement~~ disclosure about who paid for the ~~advertisement~~ communication, and read: "The top contributors are" or "The top donors are", whichever is applicable, followed by the names of the top five contributors or donors, or less than five, if there are not five contributors or donors who have made aggregate contributions or donations of \$10,000 or more in the election cycle in which the communication is made. ¶

(b) The font style of the ~~statement~~ disclosure shall be one that is generally recognizable and discernable. Fonts that can be read by software applications only if the particular font has been purchased by the reader are not acceptable. ¶

(c) The font size of printed disclosures on communications including mailers, postcards, and flyers shall be no smaller than 10-point font. ~~12-point font on printed material measuring no more than~~ The font size of printed disclosures on communications including billboards and signs larger than six square feet shall be no smaller than 24 three inches by 36 inches is the best way to meet this requirement tall or one-fourth of the size of the largest text in the communication, whichever is smaller. The font size for a digital ~~statement~~ disclosure shall be in letters at least as large as the majority of text in the communication. ¶

(d) The color of the font must have a reasonable degree of color contrast between the background and the printed

statement. Black text on a white background is the best way to satisfy this requirement for printed material.disclosure. ¶

(e) A disclaimerosure need not appear on the front page or cover of a multiple-page document, as long as the disclaimerosure appears within the communication. ¶

(f) Each communication that would require a disclaimerosure if distributed separately must still display the disclaimerosure when included in a package of materials. ¶

(g) Television communications must contain a clearly readable written statementdisclosure that appears at the end of the communication, for a period of at least four seconds with a reasonable degree of color contrast between the background and the disclaimerosure statement. The written statementdisclosure must occupy at least four percent of the vertical picture height. ¶

(5) Audio statementsdisclosure required by ORS 260.266 must be clearly audible and shall incorporate the following: ¶

(a) The format of the statementdisclosure shall be in sentence form, and include information required by statute and rule. The statementdisclosure shall state: "Paid for by", followed by the required information. If the names of contributors or donors are required, that statementdisclosure shall immediately follow the statementdisclosure about who paid for the advertisementcommunication and state: "The top contributors are" or "The top donors are", whichever is applicable, followed by names of the top five contributors or donors, or less than five, if there are not five contributors or donors who have made aggregate contributions or donations of \$10,000 or more in the election cycle in which the communication is made. ¶

(b) Closed or text captioning where possible. ¶

(c) The statementdisclosure should be in a volume and cadence sufficient for a reasonable person to hear and understand it. The volume of the disclosure can be evaluated in relation to the rest of the message. ¶

(6) If the communication described in ORS 260.266 includes both audio and visual components that are communications in support of or in opposition to a clearly identified candidate ~~(as defined in ORS 260.266~~

~~(7)(b)(A))~~ then the communication shall comply with both (4) and (5) of this rule, the communication shall: ¶

~~(a) If over 30 seconds long, comply with both sections (4) and (5) of this rule regardless of the medium; ¶~~

~~(b) If 30 seconds or less and not a digital communication, comply with both sections (4) and (5) of this rule except for the provision requiring top contributors or donors to be audibly disclosed; or ¶~~

~~(c) If 30 seconds or less and a digital communication, comply with either: ¶~~

~~(A) Both sections (4) and (5) of this rule except for the provision requiring top contributors or donors to be audibly disclosed; or ¶~~

~~(B) Only section (7) of this rule except that the active link included in the statement does not need to be audibly disclosed. ¶~~

(7) To satisfy the requirements of ORS 260.266(2)(d), the digital communication shall: ¶

(a) State the name of the person that paid for the digital communication; and ¶

(b) Include an active link for the recipient of the digital communication to immediately view the remainder of the information required under ORS 260.266 and this rule with minimal effort. The link must meet the same requirements for legibility set forth in ORS 260.266 and this rule. ¶

(8) Notwithstanding ORS 260.266(4)(b), for the purposes of identifying contributors or donors required to be disclosed, the person making the communication shall disclose the names of the top aggregate contributors or donors. If more than five qualify as the largest aggregate contributors or donors, the person making the communication shall disclose the names of the contributors or donors that made their contributions or donations closest to the date of initial printing or transmission of the communication. ¶

(9) Nothing in this rule prevents a person from re-using communications previously created so long as the disclosure displayed on the communication is accurate as of 10 days before the communication is disseminated. ¶

(10) For purposes of assessing civil penalties in connection with violations of ORS 260.266 and this administrative rule, the person who paid for the communication shall be financially responsible for those civil penalties. If more than one person paid for the communication, all of those people shall be held jointly and severally responsible for those civil penalties. ¶

(a) If civil penalties are assessed for violation(s) of ORS 260.266, the following mitigating circumstances will be considered: ¶

(A) The violation is a direct result of a valid personal emergency of the candidate, treasurer, independent expenditure filer, or other individual responsible for making the required disclosure(s). A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate, treasurer, independent expenditure filer or other responsible individual which caused the violation to occur. A valid personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided; ¶

(B) The violation is the direct result of an error by the Secretary of State's Office, Elections Division; ¶

(C) The violation is the direct result of fire, flood, utility failure or other calamitous event, resulting in physical

destruction of, or inaccessibility to, campaign finance records. "Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight;¶

(D) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider. This does not include delivery by fax; and¶

(E) The violation is the direct result of the failure of a person charged with or hired to produce the communication.¶

(b) The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation.¶

(c) Form SEL 853 (attached) is the form to be used to request an in-person or telephone hearing, or submit notarized testimony, to contest violations of ORS 260.266.¶

(d) Civil penalties assessed in connection with violations of ORS 260.266 and this administrative rule may be assessed during the election cycle and are not required to be held in abeyance until the end of an election cycle. ¶

~~(101)~~ A committee or independent expenditure filer previously exempt from the requirements set forth in ORS 260.266 and this rule must include the appropriate disclosure on any communication made after exceeding the applicable contribution or expenditure threshold.¶

~~(112)~~ The requirements of ORS 260.266 and this rule apply regardless of the language in which the communication is made. The disclosures must be in the same language as the communication. If more than one language is used, the disclosure must be in all languages the communication is made in.

Statutory/Other Authority: ORS 183.341, ORS 183.470, ORS 246.150, ORS 260.266

Statutes/Other Implemented: ORS 260.266, ORS 260.995

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

HEARING REQUEST FORM, OTHER CAMPAIGN FINANCE VIOLATIONS

SEL 853

rev 01/22

If you wish to contest the charges in the Proposed Penalty Notice and assert that you have a valid mitigating circumstance, you must: **Complete this form and submit an answer.**

Committee Name		Committee ID	
Name		Case #	
Address	City	State	Zip Code
Phone	Email Address		

Type of Hearing (select one)

- I want a **Personal Appearance Hearing** that will be presided over by an independent Administrative Law Judge at the Office of Administrative Hearings in Salem, Oregon.
If a personal appearance hearing is requested you must deliver copies of any exhibits you intend to offer into evidence at the hearing no later than five business days before the date of the hearing.
- I want a **Telephone Hearing** that will be presided over by an independent Administrative Law Judge at the Office of Administrative Hearings in Salem, Oregon.
If a telephone hearing is requested you must deliver copies of any exhibits you intend to offer into evidence at the hearing no later than five business days before the date of the hearing.
- I want to submit **Notarized Testimony** in lieu of a telephone or personal appearance hearing.
I have attached my notarized testimony to this form.
I understand that by choosing this option I am waiving my right to a personal appearance or telephone hearing, and that the case will be decided by an independent Administrative Law Judge at the Office of Administrative Hearings based solely on my written notarized testimony, the Elections Division record and written testimony, and my rebuttal notarized testimony, should I choose to submit it.

I have completed this form and attached my answer.

Signature	Date Signed
<p>Answer Worksheet You may use the answer worksheet on the next page and/or attach additional sheets containing the required information.</p> <p>Signature _____</p> <p>STATE OF OREGON County of _____</p> <p>Signed and sworn to (or affirmed) before me on _____ by _____.</p> <p>_____ Notary Public of Oregon</p>	

Answer Worksheet	Mitigating Circumstances Categories
<p>You must submit an answer that admits or denies the findings found in the intent to impose a penalty notice.</p> <p>You must indicate which mitigating circumstance applies to each finding you deny.</p> <p>A general denial is not sufficient, and evidence not included in your answer may not be considered.</p> <p>If a mitigating circumstance applies to the findings, complete the circumstance category and explanation summary.</p>	<p>A The violation is a direct result of a valid personal emergency of the candidate, treasurer, independent expenditure filer, or other individual responsible for making the required disclosure(s). A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate, treasurer, independent expenditure filer or other responsible individual which caused the violation to occur. A valid personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided.</p>
<p>Example</p>	<p>B The violation is the direct result of an error by the Secretary of State’s Office, Elections Division.</p>
<p>Mitigating Circumstance Category: E</p> <p>Explanation Summary: The committee supplied five contributor names to the printer hired to produce the communication, but the printer only included four of the five names on the final version that was mailed out.</p>	<p>C The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. “Calamitous event” means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight.</p>
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	<p>D The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider. This does not include the delivery by fax.</p> <p>E The violation is the direct result of failure of a person charged with or hired to produce the communication.</p>
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	