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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

12/04/2020 10:52 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposing a new rule related to campaign advertising disclosures required by ORS 260.266.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/26/2021 4:00 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.

CONTACT: Michelle Teed
503-986-1518
elections.sos@oregon.gov

255 Capitol St. NE, Suite 501
Public Service Building
Salem, OR 97310

Filed By:
Bob Roberts
Rules Coordinator

HEARING(S)

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

DATE: 01/25/2021

TIME: 3:30 PM - 4:30 PM

OFFICER: Michelle Teed

ADDRESS: Secretary of State's Office,
Elections Division

255 Capitol St. NE, Suite 501

Public Service Building

Salem, OR 97310

SPECIAL INSTRUCTIONS:

The rulemaking hearing will be held via GoToMeeting, with information to be provided with distribution of the Notice. If accommodations are needed, please contact the Elections Division at 503-986-1518.

NEED FOR THE RULE(S):

Proposing this new rule to conform to new campaign finance legislation ORS 260.266.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2716 (2019), available on the Oregon Legislature's website.

FISCAL AND ECONOMIC IMPACT:

The proposed rule may cause minimal fiscal or economic impact to candidates, committees, other filers, state agencies, local government, 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 for answering questions regarding compliance with this rule, or for other unanticipated reasons. There may be a minimal fiscal impact for individuals 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) 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. (2)(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):

They were not, as this rule does not directly affect small businesses.

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

The fiscal impact due to the proposed changes is expected to be minimal, at most.

ADOPT: 165-012-0525

RULE SUMMARY: New statutory provisions related to campaign advertising take effect on December 4, 2020. This proposed rule sets forth requirements and other information about how to comply with the new laws.

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 minimus" means having a fair market value of less than \$1.00.¶

(b) "Digital Communication" means a communication using text or images and distributed in some way other than in hard copy, such as via television, advertisement in news feeds, social media, on the internet in any way, by phone, text message, or through any other electronic device or electronic medium.¶

(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.¶

(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 financial records or other official business documentation.¶

(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.¶

(3) Excluded items.¶

(a) Subject to section (3)(b) below, an item is "too small" to feasibly include the identifying information required by ORS 260.266 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) The following are not considered too small to include the information required by ORS 260.266 and this rule: any communication, distributed in print or other format, such as by phone, social media, television advertisements, and printed advertisements in a newspaper or other publication.¶

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

(a) The format of the statement shall be in sentence form, and include information required by statute and rule. The statement shall read: "Paid for by:", followed by the required information. If the names of contributors are required, that statement shall immediately follow the statement about who paid for the advertisement, and read: "The Top 5 contributors are:" followed by the required information.¶

(b) The font style of the statement shall be one that is generally recognizable and discernable. Examples of acceptable fonts are Times New Roman and Calibri. 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 shall be no smaller than 10 point font. 12-point font on printed material measuring no more than 24 inches by 36 inches is the best way to meet this requirement.¶

(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.¶

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

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

(g) Television communications must contain a clearly readable written statement 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 disclaimer statement. The written statement must occupy at least four percent of the vertical picture height.¶

(5) Audio statements required by ORS 260.266 must be clearly audible to the average person and shall incorporate the following:¶

(a) Closed or text captioning where possible.¶

(b) The statement 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)(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 851(D) is the Hearing Request Form, Other Campaign Finance Violations, to be used to request an in-person or telephone hearing, or submit notarized testimony, to contest violations of ORS 260.266.¶

(7) 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.

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 DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

HEARING REQUEST FORM, OTHER CAMPAIGN FINANCE VIOLATIONS

SEL 851(D)

rev 12/20

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>_____</p> <p>_____</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>	