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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ELECT 10-2020
CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

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ARCHIVES DIVISION
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& LEGISLATIVE COUNSEL

FILING CAPTION: Application of ORS 260.266 – Campaign Advertising Disclosures

EFFECTIVE DATE: 12/04/2020 THROUGH 06/01/2021

AGENCY APPROVED DATE: 12/04/2020

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Filed By:
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NEED FOR THE RULE(S):

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

JUSTIFICATION OF TEMPORARY FILING:

The Elections Division finds that following permanent rulemaking procedures would result in serious prejudice to the public interest as the new statutory provisions become effective on December 4, 2020. Candidates, committees, the public, and others have an immediate need for information and guidelines about how to comply with the new laws. There is not sufficient time to adopt this rule by regular rulemaking procedures; however permanent rulemaking proceedings will be initiated concurrently with this temporary rule.

The specific consequences and why those consequences would result in serious prejudice are as follows. If there are no rules established, the public would lack guidance about how to comply with the statute. The Secretary would also not have authority to uniformly apply the new laws or to properly enforce them. If this were to occur, the public, candidates, committees, and required filers would be severely impacted. There would be a lack of uniformity in reporting the required information, which would lead to confusion, inconsistent interpretation of election law, and a lack of appropriate and required transparency. Additionally, the lack of guidance could increase the cost of compliance because it may be necessary for candidates, committees, and others to reprint, republish, or otherwise redistribute materials in order to properly comply with the law. The public would lack the ability to receive the information, and in a format required by the law. All of these interested parties would suffer serious consequences as outlined above. The public would suffer because the requisite disclosures could not be effectively made and the election system would lack appropriate levels of transparency. Failure to act immediately would result in these consequences. Without the necessary guidelines and requirements, the public, candidates, committees, and others would be left without direction. Temporary rulemaking will avoid or mitigate these actions because the temporary rule sets out the applicable requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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

ADOPT: 165-012-0540

RULE TITLE: Application of ORS 260.266 – Campaign Advertising Disclosures

RULE SUMMARY: This Temporary Administrative Rule establishes guidelines for the implementation of ORS 260.266, implemented by the Oregon Legislature in 2019. Permanent Rulemaking to follow.

RULE TEXT:

(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

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>
Example	
<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>B The violation is the direct result of an error by the Secretary of State’s Office, Elections Division.</p>
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</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>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>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	<p>E The violation is the direct result of failure of a person charged with or hired to produce(ing) the communication.</p>
<p>Mitigating Circumstance Category:</p> <p>Explanation Summary:</p>	