

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ETH 1 – Campaign Financing

3. Subject

Amend Wis. Admin. Code ETH 1.20 (9), 1.26 (2), 1.26 (6), 1.60 (1) (b), 1.70 (1), and 1.855 (2) to reflect the changes of 2015 Wisconsin Act 117; and create ETH 1.96 to clarify the attribution requirements of s. 11.1303, Stats.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

N/A

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

2015 Wisconsin Act 117 removed certain provisions of campaign finance law that are referenced in parts of WIS. ADMIN. CODE ETH 1. This rule will remove references to outdated forms and statutory provisions as well as create a provision clarifying the attribution requirements of s. 11.1303, Stats. The Commission also may exempt certain items and other communications to which s. 11.1303 (2) may not apply.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

N/A

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Commission finds that the proposed rule will have no economic impact on small businesses.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Promulgating the rule would remove outdated portions of Chapter ETH 1 and provide clarity as to the requirements for attributions for the regulated community. The alternative would be to not create such a rule, but instead continue to not enforce the outdated provisions and analyze attributions on a case-by-case basis. Such inaction could continue to promote confusion among the regulated community and may lead to inadequate attribution of political communications.

14. Long Range Implications of Implementing the Rule

Promulgating the rule would bring WIS. ADMIN. CODE ETH 1 fully up to date with the changes made by 2015 Act 117 and would provide long-term certainty as to what is required to comply with s. 11.1303, Stats.

15. Compare With Approaches Being Used by Federal Government

The Federal Elections Commission (FEC) provides a great deal of guidance as to the disclaimers required by federal law. Federal law requires the disclaimer to identify the person(s) who paid for a communication and whether the communication was authorized by one or more candidates (e.g., "Paid for by the Sheridan for Congress Committee.")

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Under federal law, any public communication made by a political committee – including communications that do not expressly advocate for the election or defeat of a clearly identified federal candidate or solicit a contribution – must display a disclaimer. The FEC also requires that disclaimers appear on political committee’s websites, and in certain email communications. All public communications that expressly advocate the election or defeat of a clearly identified candidate, electioneering communications, and all public communications that solicit any contribution require a disclaimer.

Disclaimers are not required when it cannot conveniently be printed (e.g., pens, buttons, similar small items), the display is not practical (e.g., apparel, water towers, skywriting), or when the item is of minimal value and does not contain a political message and is used for administrative purposes (e.g., a check). A disclaimer need not be on the front page of multi-page communications, as long as it is on one of the pages.

Similar to Wisconsin law, a disclaimer is also required when a communication is authorized by a committee even if the committee does not pay for it (e.g., “Paid for by the XYZ State Party Committee and authorized by Sheridan for Congress Committee”) or when another organization makes an express advocacy communication without the authorization of the candidate (e.g., “Paid for by the QRS Committee (www.QRScommittee.org) and not authorized by any candidate or candidate’s committee.)

Federal disclaimers are required to be “clear and conspicuous” regardless of the medium in which the communication is transmitted. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. A printed disclaimer must be contained within a printed box set apart from the contents of the communication.

Example:

Paid for by the Save the Seahorses Committee and authorized by the
McKay for Senate Committee.

The print of the disclaimer must be of sufficient size to be “clearly readable” by the recipient of the communication, and the print must have a reasonable degree of color contrast between the background and the printed statement. Federal regulations specifically provide a safe harbor for disclaimers using black text in 12-point font on a white background in printed material measuring no more than 24 inches x 36 inches. In the alternative to a white background, a safe harbor is also available where the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication.

Television communications have similar guidelines for a “clearly readable” disclaimer at the end of the communication that must be displayed for a period of at least four seconds at a height of at least four percent of the picture height. Radio communications must contain an audio disclaimer, although no specifications are given for an audio disclaimer other than the general “clear and conspicuous” disclaimer requirement.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota (MINN. STAT. § 211B.04)

Minnesota law requires a committee to include a disclaimer on campaign literature distributed by the candidate or committee. The required form of the disclaimer is: “Prepared and paid for by the committee, (address).” If the material was produced and distributed without cost, the words “paid for by” may be omitted. The disclaimer requirement does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate. A disclaimer is also not required for bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed; skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

Minnesota recently revised this requirement effective June 1, 2018. The revised disclaimer requirement makes the following changes:

- The disclaimer address must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.
- Adds an independent expenditure disclaimer (e.g., “This is an independent expenditure prepared and paid for by(name of entity participating in the expenditure,(address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”
- The disclaimer requirement is met for an entire website or social media page when the disclaimer required appears once on the homepage of the site.
- For written communications other than an outdoor sign, website, or social media page, the disclaimer must be printed in 8-point font or larger.

Illinois (10 ILCS 5/9-9.5)

Illinois law requires that any committee that makes an expenditure for any kind of communication directed at voters and mentioning the name of a candidate in the next upcoming election must ensure that the communication clearly identifies the committee as having paid for it. This applies to any committee that pays for any part of the advertisement, including its production and distribution. This disclosure is not required if the item is too small to contain it. The disclosure is also not required for telephone surveys that use random sampling or other scientific survey methods to gauge public opinion about a candidate or public policy question. Finally, this disclosure requirement does not apply to expenditures for preparation or distribution of any printed communication paid for by a political committee controlled by a member of the Illinois General Assembly, provided the communication is directed at constituents and is made in connection with the performance of governmental or public service functions. Vendors who produce political communications are required to keep records of the name and address of the person who made or requested the purchase and the amount paid.

Michigan (MICH. COMP. LAWS § 169.247, MICH. ADMIN. CODE r. 169.36)

Michigan law requires candidates and committees to place an identification on printed material referring to an election, candidate, or ballot question (e.g., “Paid for by the CTE Joe Smith, 123 Winners Lane, Lansing Michigan 48933.”) If the printed material is an independent expenditure, the statement must also include a disclaimer (e.g., “Not authorized by any candidate committee.”) Free social media such as Facebook, Twitter, or emails do not require an identification or disclaimer. An individual, other than a candidate, acting independently

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

and not acting as an agent or any candidate or committee, is not required to provide an identification for printed material, but still must include an identification for radio/tv ads, robo-calls, or other paid electronic media. Michigan also requires certain identifications for certain mass communications referencing a clearly identified candidate or ballot question within 30/60 days of a primary/general election when the communication is targeted to the relevant electoral district.

Identifications and disclaimers must be in a place and in a print clearly visible to and readable by an observer. No specific font size is required, but the identification and/or disclaimer should be separate from any text and Michigan's elections website specifically provides the example that a billboard identifier should be visible from the road. Michigan also lists a host of items that are exempted from the identification requirement due to size or difficulty of placement (e.g., aerial banners, pens, etc.)

Iowa (IOWA CODE § 68A.405, IOWA ADMIN. CODE r. 351-4.38 *et seq.*)

Iowa law requires a "paid for by" attribution statement on printed or displayed material that expressly advocates for or against a clearly identified candidate or ballot issue. The attribution shall identify the person paying for the material by name and address. If the material is an independent expenditure the attribution shall include that the material was not authorized by any candidate, candidate's committee, or ballot issue committee.

Iowa's attribution requirement does not apply to:

- Editorials, news articles, or other print or electronic media that are not paid political advertisements.
- Small items upon which the inclusion of the statement is impracticable (e.g., pens, buttons, etc.)
- T-shirts, caps, and other articles of clothing.
- An individual who acts alone and spends less than \$100 of his or her own money to advocate the passage or defeat of a ballot issue.
- Any material subject to federal regulations regarding an attribution requirement

Television, video, or motion picture advertising is required to display the attribution statement on screen for at least four seconds. Multi-page material need only include the attribution on a single page. For a website, the attribution need only appear on the home page of the site.

17. Contact Name

David P. Buerger

18. Contact Phone Number

(608) 267-0951

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ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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