



**State of Washington  
PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908

(360) 753-1111 • FAX (360) 753-1112

**Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdca.wa.gov](http://www.pdca.wa.gov)**

## **MEMO**

TO: PDC Commissioners  
FROM: Sean Flynn, General Counsel  
DATE: September 17, 2021  
RE: Staff recommendations for inclusion in proposed commercial advertiser rule changes

---

### **BACKGROUND**

The Commission has initiated rulemaking for the regulation of digital political advertising in relation to the commercial advertiser law, RCW 42.17A.345. The rulemaking process requires, consistent with the agency's commitment to robust stakeholder input, the Commission to publish its proposed changes and conduct a public hearing on the proposal. The following recommendations are provided to assist the Commission's decision on what proposed rules to submit for public comment. The two categories of recommendations are not necessarily the only changes that may be proposed, but reflect the main issues identified for updating the commercial advertiser rule.

The law generally requires commercial advertisers that produce or sell political advertising to maintain accounting records of such transactions and to make those records available to the public, and the PDC, upon request. The PDC has issued longstanding rules, which include the details of what information must be maintained by advertisers for different media. In 2018, the Commission adopted amendments to the existing rules in response to the rise of advertising on the Internet, and specifically social media. The 2018 rules added a category of specific requirements for such digital-based media, and also specified several methods by which a request for records could be fulfilled.

Since the implementation of the 2018 rules, the digital media landscape has continued to evolve, considerable public attention has continued to focus its use for political advertising, and staff has been researching the development of the digital advertising industry. As a product of this research, the PDC identified three areas of possible reform and solicited public comment on these areas, which was presented to the Commission last month. These following recommendations are informed by the ongoing research and feedback collected.

## RECOMENDATIONS

1. *Allow a reasonable additional time period for commercial advertisers to respond to a request where the sponsor has not identified an order as political advertising.*

The current rules require a commercial advertiser to maintain accounting for all political advertising it produces or sells, and to respond to a request to inspect such information: (1) in person during normal business hours, (2) by email promptly upon request, or (3) by publication on a website. Furthermore, the information must be made available within 24 hours of the time the advertisement is published.

The PDC sought public comment on the question whether campaigns should be required to notify commercial advertisers that an order is political advertising. While an express requirement compelling campaigns to disclose to a third party (rather than the PDC) may be outside the scope of this rulemaking, such feedback has helped to inform the related question whether the rules should allow commercial advertiser additional time to respond to a request where the sponsor has not identified its order as political advertising, despite the commercial advertiser's request for that information.

Public comment generally favored the idea of sponsor identification, which could assist compliance by alerting commercial advertisers that the transaction falls within their obligation to maintain records. Comments varied regarding the allowance of time to respond if the sponsor failed to alert the advertiser. On one end, several comments advised that such lack of identification should relieve commercial advertisers of any obligation to provide information about such advertising. Commentors on the opposite end claimed that commercial advertisers should not need any additional time to respond to a request. A middle perspective acknowledged it would be reasonable to provide additional time for a commercial advertiser to respond where the sponsor failed to alert the advertiser, but strongly cautioned against exempting the commercial advertiser from all inspection requirements.

Staff favors the middle approach and recommends that commercial advertisers have a reasonable additional time to respond to a request for advertising where the commercial advertiser requires self-identification of political advertising, but the sponsor has not so identified its covered ads. However, such allowance should not exempt responsibility to maintain and disclose information about such advertising. First, despite some expressed concerns that commercial advertisers do not have the capability to identify political ads, in all but extreme exceptions, political advertising is readily identifiable by very direct and express appeals to vote for or against a candidate or measure. Second, commercial advertiser disclosure is a critical safeguard in the very instances where the sponsor has failed to disclose it.

Another limitation should provide that such allowance applies only when a commercial advertiser has asked the sponsor whether an order is political advertising. Such a limitation would eliminate creating a potential negative incentive for commercial advertisers not to ask the sponsor whether their order is a political ad in order to invoke the extra time allowance. The requirement under law that commercial advertisers maintain records of political advertising, regardless of any self-identification, predates digital political advertising and indeed the Internet itself.

2. *Maintain the categories of detail about digital advertising required for commercial advertiser books of account with possible minor adjustments*

As noted above, the 2018 rule changes included specific details required to be maintained for digital media. Specifically, such requirements include: (a) demographic information of the audiences targeted; (b) demographic information of the audiences reached; and (c) total number of impressions. The rule also requires disclosure of certain information generally to all types of advertising, including: (a) the name of the campaign supported or opposed; (b) name and address of the sponsor or person paying for the ad; (c) total cost; and (d) dates of services provided.

Comments varied regarding the appropriate detail that should be disclosed, particularly as to demographic information. Some objected to the inclusion of demographic criteria because it could reveal sensitive campaign strategy, it raises potential privacy concerns for the targeted individual, and it is not required for other media such as mailings targeting a specific group or geographic region. Other comments urged the Commission to maintain required disclosure of demographic detail as a check on campaign spending activity. Furthermore, commentors noted that the target audience does not always match the reached audience and therefore disclosure should only be required for one or the other category. By contrast, other commentors instructed that target and reach information are both informative in linking the behavior and results of the advertising.

Staff recommends continuing the current level of detail for digital advertising. Targeting and reach are part of the fundamental services a digital advertiser provides, and surely what attracts so many campaigns to digital media. The required disclosure of demographic information is an appropriate balance of the public's interest in campaign activity and the protection of a campaign's strategy. Demographic data generally is based on static criteria and not as revealing as open-ended categories based on an individual's interest or behavior. Further consideration may be warranted as to determine where the line should be drawn between demographic and interest-based targeting or reach, which can be revisited upon consideration of the proposed rules once they are drafted. (For example, the rules currently refer to "demographic information (e.g., age, gender, race, location, etc.)," and the Commission might want to consider whether this language sufficiently advances the rule's purposes and captures the appropriate scope of information.)

As for the general categories of information, several comments questioned the need for certain disclosures, such as the identity of the campaign supported or opposed, and the method of payment. While such information is important in investigations, it may be worth further consideration whether all such requirements are important to be maintained for public inspection.

Finally, several comments suggested that the rules specify that commercial advertisers maintain a copy of the ad itself. Staff agrees that the ad is important information for disclosure, though the possible form of such retention may require further research and specification for proposal in the rules, as some platforms, e.g., utilize dynamic advertisement display.