

Attachment A

*****BELOW IS SELECTED TEXT FROM MAR NOTICE NO. 44-2-207
(RULE PROPOSAL NOTICE BY THE COMMISSIONER OF POLITICAL PRACTICES)
THE TEXT SELECTED PERTAINS ONLY TO THE 16 RULES INCLUDED IN THE LEGISLATIVE POLL*****

**This document provides hot links to each of the MCA sections cited
as the COPP's rulemaking authority and as the statute being
implemented by the proposed rule.**

3. GENERAL STATEMENT OF REASONABLE NECESSITY

The COPP has statutory authority to establish rules that implement the Montana Campaign Practices and Finance Act as enacted and amended by the Legislature. These rules set forth minimum disclosure and reporting standards which are important elements in providing for the public disclosure of funds used in campaigns for elected office or ballot issues. These rules provide clarity to candidates and political committees to facilitate the ability to achieve the Act's purpose of keeping the public's trust, fulfilling their public duty of reporting and disclosure, and promoting the public's right to know.

In 1976 the Office of the Commissioner of Political Practices (COPP) enacted its first set of administrative rules. The last major re-write of the rules occurred in 2001. In an effort to organize the current COPP rules to follow the logical flow of a campaign, the commissioner has determined that we will retire the old campaign finance reporting and disclosure rule numbers, from ARM Title 44, chapter 10, subchapters 1 through 5 to Title 44, chapter 11, subchapters 1 through 7.

The COPP proposes the transfer, amendment, adoption, and repeal of current COPP rules to conform to current law, including *Citizens United*, and to clarify application of the Montana Campaign Practices and Finance Act to candidates and political committees. Further, the 2015 Legislature passed SB 89, SB 151, and SB 289, all of which are effective October 1, 2015, and the amendment, adoption, and repeal of COPP rules are necessary to define and clarify compliance standards in accord with these new laws.

The COPP recognizes and commends James Scheier, Bureau Chief for Agency Legal Services, for his assistance, guidance, and commitment over the previous 28 years working with the commissioners and staff of the COPP and to the benefit of the people of Montana. This commendation includes gratitude for Mr. Scheier's assistance in formulating these rules.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I PRIMARY PURPOSE (1) The term "primary purpose" refers to a major, principal, or important goal, function, or reason for existence for a committee.

(2) The commissioner may determine that a primary purpose of a committee is to support or oppose candidates or ballot issues based upon any one or more of the following criteria:

- (a) allocation and source of budget;
- (b) staff or members' activity, both during an election and otherwise;
- (c) the statement of purpose, articles of incorporation, bylaws, or goals;
- (d) election activity;
- (e) the history of the committee and the number of elections in which it has participated or registered;
- (f) receipt of contributions in response to an appeal or that are designated for a specified candidate, ballot issue, petition, or election activity;
- (g) the number and cost of reportable election expenditures made;
- (h) coordination with any candidates or other political committees; (i) ordinary business actually conducted;
- (j) if a corporation, whether it was created and maintained as provided by law; or
- (k) the date of founding, incorporation, or organization.

(3) If the commissioner finds, pursuant to ARM 44.11.204 and based on his or her analysis of the information provided on the committee's statement of organization (Form C-2), or any other information known or provided to the commissioner's office, that an organization's primary purpose is to support or oppose a candidate or ballot issue, then that organization shall file and report as an independent committee, ballot issue committee, or political party committee, pursuant to these rules, and not as an incidental committee.

AUTH: [13-37-114, MCA](#)

IMP: [13-37-226, 13-37-232](#), MCA

REASON: The COPP is including the adoption of this rule into the subchapter specific to political committees to make the rules easier to navigate and more user-friendly. The primary purpose rule defines an independent committee, as opposed to an incidental committee.

The COPP considered alternative methods for the criteria used in (2) of this rule. Those alternatives included using percentages or a "totality of the circumstances" balancing test to determine primary purpose. The COPP chose the alternative in this proposed rule because election activity varies from cycle to cycle and is infinitely varied over time.

The COPP considered establishing a rebuttable presumption that any corporation, entity, or organization that was formed in the six months prior to an election in which it

solicits contributions for or made a reportable election expenditure would have been established for the purpose of supporting or opposing candidates or issues (an independent, party, or ballot issue committee).

The method chosen for the COPP's proposed rule reflects a balancing of the people's informational interest in disclosure with an entity's associational privacy. Montanans' right to evaluate different speakers and messages participating in an election is dependent not upon an organization's overall conduct, but upon the organization's conduct in and around Montanans' elections. The COPP is further adopting this rule to satisfy public need, clarify the statutory requirements, increase transparency, and identify the minimum reporting and disclosure baseline consistent with the law.

NEW RULE IV CONSEQUENCES FOR FAILURE TO FILE REQUIRED STATEMENTS, REPORTS, OR DISCLOSURES (1) The commissioner, following inspection of the candidate or committee's required statements, disclosures, or reports or lack thereof, may take actions, including but not limited to any of the following:

(a) declare the statement, disclosure, or report to be incomplete or inadequate and require the preparation of a new statement, disclosure, or report, as provided in 13-37-121 and 13-37-123, MCA;

(b) require the production of a candidate or committee's campaign records, accounts, books, correspondence, memoranda, bank account statements, or any other information as provided in 13-37-111 and 13-37-123, MCA;

(c) reclassify a political committee as provided in 13-37-226, MCA;

(d) issue an order of noncompliance as provided in 13-37-121, MCA;

(e) provide notice to the Secretary of State or other election administrator that a candidate's name should be withheld from a primary election ballot as provided in 13-37-126, MCA;

(f) provide notice to the Secretary of State or other election administrator that a certificate of nomination or election should be withheld following the general election as provided in 13-37-127, MCA;

(g) issue a finding of sufficient evidence of violation of Montana's Campaign Practice and Finance laws as provided by 13-37-111 and 13-37-123, MCA;

(h) initiate a civil or criminal court action to enforce Montana's Campaign Practice and Finance laws as provided by 13-37-128, MCA;

(i) request the District Court to remove an elected official from office, if the official is found by the court to have violated the laws as provided in 13-35-106, MCA;

(j) request that the District Court void an election pursuant to 13-35-107, MCA; or

(k) any other action allowed by statute to carry out the purposes of Montana's 1975 Campaign Finance and Candidate Disclosure Act as provided by sec. 1, Ch.

480, L. 1975.

(2) This rule is not intended to limit the powers of others to enforce the laws of Title 13, chapters 35 and 37, MCA, where allowed by law, nor to encompass all potential legal consequences for actions outside the jurisdiction of the commissioner.

AUTH: [13-37-114](#), MCA

IMP: [13-35-106](#), [13-35-107](#), [13-37-111](#), [13-37-121](#), [13-37-123](#), [13-37-126](#), [13-37-127](#), [13-37-128](#), MCA and Sec. 1, Ch. 480, L. 1975 (**Legislative staff note: Sec. 1, Ch. 480, L. 1975 is copied and pasted in below.

Section 1. There is a new R.C.M. section numbered 23-4776 that reads as follows:

23-4776. Statement of purpose. It is the purpose of this act to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues, and to consolidate and clarify the authority to enforce the election and campaign finance laws as specified in Title 23, R.C.M. 1947.)

REASON: The COPP is proposing adoption of this rule to clarify the authority of the commissioner to regulate and enforce Montana's Campaign Practice and Finance laws. The commissioner's authority is spread throughout Title 13, chapters 35 and 37, MCA, and the purpose of this rule is to reduce confusion and enhance understanding of the COPP.

NEW RULE V ELECTRONIC CONTRIBUTIONS, REPORTING (1) A candidate or political committee may accept electronic contributions from online payment service providers and payment gateways as contributions.

(a) A contribution made through a payment gateway, such as Bitcoin or other electronic peer-to-peer systems, shall be converted to U.S. dollars at the prevailing rate within twenty-four hours of receipt.

(b) A contribution made through an online service provider, such as Paypal or Google Wallet, shall be deposited in the campaign account.

(c) Any electronic contribution must be deposited in the designated campaign account within five business days of actual receipt or conversion.

(2) All electronic contributions shall be reported according to the requirements for contributions set out in these rules.

(a) An electronic contribution shall be reported as received on the day the electronic contribution is made to the online service provider or payment gateway, regardless of whether the contribution has actually been received.

(b) The full value of the contribution shall be reported as received from the contributor, not the amount as received from the service.

(c) Each service charge or conversion fee incurred or discounted by the

payment service provider shall be reported as a campaign expenditure in accordance with these rules.

(3) Anonymous contributions shall never be accepted.

(4) If the electronic contribution amount exceeds the candidate contribution limit, the contributor must be issued a refund for the excess funds via check or through an online payment system from the campaign account. If it is not possible to return only a portion of the funds, the entire contribution must be returned.

(5) All candidates and political committees that receive electronic contributions are subject to the same limits, prohibitions, reporting, and disclosure requirements as monetary contributions, as outlined in these rules.

AUTH: [13-37-114](#), MCA

IMP: [13-37-207](#), [13-37-229](#), MCA

REASON: The COPP is proposing the adoption of this rule to address the current digital nature of campaign fundraising and to reduce confusion from candidates and committees on how to report them. The rule provides specific instructions on how to handle the receipt and reporting of electronic contributions. See also the reason for ARM 44.10.511 (44.11.402).

NEW RULE VI ATTRIBUTION ON ELECTION MATERIAL (1) Pursuant to 13-35-225, MCA, election communications, electioneering communications, and independent expenditures (referred to collectively herein as "election materials") must disclose the person who paid for the election materials, by including the appropriate attribution language set out in (2).

(2) All attributions must include the words "paid for by" followed by the appropriate identifying information. For election materials financed by:

(a) a candidate or a candidate's campaign, the attribution must include either: (i) the name and address of the candidate; or

(ii) the name and address of the candidate's campaign.

(A) An attribution using the name of the candidate's campaign must include the first and last name of the candidate if the name of the campaign does not include at least the candidate's last name.

(B) Additional information, such as the name of the campaign treasurer, may be included within the attribution language, but it is not required.

(iii) Examples of an appropriate attribution for a candidate are:

Paid for by John Smith
P.O. Box 10000
Helena, MT 59605 or

Paid for by Smith for Senate
P.O. Box 20000
Helena, MT 59605

- (b) a political committee, the attribution must include:
- (i) the name of the committee, the name of the committee treasurer, and the address of either the committee or its treasurer.
 - (ii) An example of an appropriate attribution for a political committee is:

Paid for by Support Our Schools
Sarah Jones, Treasurer
P.O. Box 30000
Helena, MT 59605

- (c) a political committee that is a corporation or union, the attribution must include:
- (i) the name of the corporation or union, its chief executive officer or equivalent, and the physical address of the corporation or union's principal place of business.
 - (ii) Examples of an appropriate attribution for a political committee that is a corporation or union are:

Corporation:
Paid for by Pretty Good Manufacturing
Co. Susan Smith, CEO
1000 Industry Drive
Helena, MT 59605

Union:
Paid for by Montana Grocery Workers Union
James Miller, President
2000 Shopping Cart Avenue
Helena, MT 59605

(d) For election materials funded or facilitated solely by an individual acting on his or her own behalf, the attribution must include the name and address of the individual who paid for the materials.

(3) All election materials are required by 13-35-225, MCA, to clearly and conspicuously include the appropriate attribution language. To ensure compliance with this statutory directive, the commissioner establishes the following requirements and specifications:

(a) for written election materials, including but not limited to those published, broadcast, or otherwise disseminated through print media or digital media, as defined in these rules:

- (i) the reader or observer should have no difficulty locating and reading the attribution language;
- (ii) the attribution language should be of sufficient type size to be clearly readable by the recipient or reader of the communication;
- (iii) the language should be contained in a printed area or segment set apart from the other contents of the election materials;
- (iv) the language should be printed with a reasonable degree of color contrast between the background and the printed statement; and
- (v) in the case of yard signs or other campaign signs, the attribution language should appear on the side of the sign that contains the campaign message.

(b) for broadcast election materials, including but not limited to those published, broadcast, or otherwise disseminated through broadcast media or digital media, as defined by these rules:

- (i) the attribution language for broadcast election communications containing audio content shall be spoken in the communication;
- (ii) the attribution language for broadcast election materials containing visual content shall be displayed in the communication. The language may simultaneously be spoken, but it is not required.

(4) In partisan candidate elections, election communications and electioneering communications financed by a candidate or a political committee organized on the candidate's behalf must state either the candidate's party affiliation or include the candidate's party symbol.

(a) To meet the party affiliation disclosure requirement, election materials should state the name or a reasonable and comprehensible abbreviation of the name of one of the qualified political parties in Montana: "Democrat," "Libertarian," or "Republican."

(b) To meet the party symbol disclosure requirement, election materials should include either the symbol for one of the qualified political parties in Montana or the capitalized first letter of one of the parties. Acceptable symbol designations are:

- (i) Democrat: the donkey symbol or "D";
- (ii) Libertarian: the Statue of Liberty symbol or "L"; or
- (iii) Republican: the elephant symbol or "R."

(c) The commissioner may determine that other language or a symbol included within a particular election material complies with the statutory directive, as long as there is some objective basis for the use of the language or symbol and the identity of the party is readily discernable.

(d) The party affiliation or symbol may appear with the attribution language, or within the body of the message content in the election materials.

(5) Printed election material that contains information about another candidate's voting record must include all the information specified in 13-35-225, MCA. The signed statement referred to in the statute may consist of a facsimile of an actual hand signature or an electronic signature. An acceptable electronic signature will be in the following format: "/s/ John Smith." An electronic signature that appears on written election materials shall have the same effect as an actual

hand signature or a facsimile of a hand signature.

(6) Election materials consisting of documents or other articles of campaign advertising that are too small for the inclusion of the attribution language and other information required by 13-35-225, MCA, need not include the information; however, the person who financed the election material must file a copy of the material with the commissioner, together with the information required by the statute, at the time of its public distribution. For purposes of this rule, "at the time" means at or before the earliest date and time the election material is scheduled to be published, broadcast, or disseminated to the public.

(7) If information required by 13-35-225, MCA, is omitted from election materials, or if information required by (6) is not filed with the commissioner, the person who is responsible for or who financed the material shall, upon discovering the deficiency:

(a) file notification of the deficiency with the commissioner within two business days of discovery;

(b) bring the election material into compliance or file the information required by (6); and

(c) withdraw any noncompliant material from circulation as soon as possible.

(8) If notification required by (7)(a) is not provided and the commissioner becomes aware of the existence of election material that does not comply with 13-35-225, MCA, whether by complaint or otherwise, the commissioner will contact the person who is responsible for or financed the material and provide notice of the deficiency.

(a) The notice will require that the material be brought into compliance within the time limits provided in 13-35-225, MCA.

(b) The notice will state that failure to bring the material into compliance will subject the person who financed the election materials to a civil penalty action pursuant to 13-37-128, MCA.

(c) The noncompliant election material must not be disseminated or broadcast until it has been corrected and brought into compliance.

(9) The office of the commissioner, when notified, will work informally with candidates, political committees, and others to ensure compliance with the requirements of 13-35-225, MCA, and to promptly bring deficient election materials into compliance.

AUTH: [13-37-114](#), MCA

IMP: [13-35-225](#), MCA

REASON: The COPP is proposing adoption of this rule to satisfy public need, set forth the procedural requirement for attribution on campaign materials, to provide clarification and consistency throughout these rules, and to provide uniformity with the statutes.

NEW RULE VII COORDINATION (1) A "coordinated expenditure" means any election communication, electioneering communication, or election activity that is:

(a) funded or facilitated by:

(i) an expenditure as defined in 13-1-101, MCA, and further defined in ARM 44.11.501;

(ii) a payment of money by any person; or

(iii) a purchase, distribution, loan, advance, promise, pledge, gift, or provision of anything of value by any person.

(b) in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee.

(c) The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, such as content, price, or timing, but only requires one of those elements to be met as a fact of a coordinated expenditure.

(2) Whether an election communication, electioneering communication, or election activity may constitute a "coordinated expenditure" depends upon conduct, communications, or relationships involving a person and a candidate or political committee or an agent of a candidate or political committee, or involving an individual who acted within the previous twelve months as a paid agent or consultant to the candidate or a political committee supporting the candidate.

(3) A "coordinated expenditure" does not mean any election communication, electioneering communication, or election activity consisting of:

(a) an independent expenditure or an independent election activity funded or facilitated by a person;

(b) services, food, or lodging provided in a manner that they are not contributions by a person within the meaning of contribution as defined by 13-1-101, MCA, or these rules;

(c) the cost funded or facilitated by a person for any bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical of general circulation;

(d) activity by an individual acting solely on his or her own behalf independently of any candidate or political committee; or

(e) the independent use of statements, images, or other information that is appropriated from a public source.

(4) A "coordinated expenditure" does not exist solely because:

(a) the person funding or facilitating the activity has previously made a contribution to the candidate;

(b) after publication or distribution, the person funding or facilitating the activity informs the candidate or an agent of the candidate that the person has made an expenditure or funded the activity, provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure

or funding the activity; or

(c) the funding or facilitating of the activity is made at the request or suggestion of a candidate or an agent of a candidate for the benefit of another candidate or political committee where the other potentially benefitted candidate or political committee has no involvement.

(5) There shall be a rebuttable presumption that any funding or facilitating of an election activity is not independent of the candidate on whose behalf, or for whose benefit, the activity is conducted, when:

(a) it is based on information that is provided by the candidate or an agent of the candidate directly or indirectly to the person funding or facilitating the activity;

(b) it is made by or through any candidate's agent in the course of the agent's involvement in the current campaign;

(c) the person funding or facilitating the activity retains the services of a person who consults with or provides services benefitting the candidate related to campaign activity or fundraising strategy for that same election, except as provided in (6);

(d) the activity replicates, reproduces, republishes, or disseminates, in whole or in substantial part, any material designed, produced, paid for, or distributed by the candidate;

(e) the candidate or political committee or an agent of a candidate or political committee has made or participated in any discussion or in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of any communication broadcast or conveyed as part of the activity;

(f) the person funding or facilitating the activity has an employee or agent who is also involved in activities described in (5)(a) through (e) on behalf of the candidate; or

(g) the candidate, during the twelve months prior to the election, raised money for election activity for the person funding or facilitating the election activity.

(6) There shall also be a rebuttable presumption that any funding or facilitating of an election activity is not independent of the candidate on whose behalf, or for whose benefit, the activity is conducted, when a person involved in funding or facilitating the activity also acted within the previous twelve months as a paid agent, consultant, employee, or vendor to the candidate or political committee supporting the candidate where there is no contemporaneous writing creating a documented firewall signed by the person and filed with the commissioner stating that the person is not involved with activity described in (1) through (5) with respect to the candidate. A vendor engaging only in arms-length transactions as a third-party supplier or service provider to candidate(s) or political committee(s) may satisfy this requirement by signing and filing a single written firewall statement for any applicable twelve-month election cycle.

(7) A "coordinated expenditure" shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in the election communication, electioneering communication, or election activity. Both

the candidate and the committee shall report the coordinated expenditure and/or in-kind contribution as the case may be.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#), [13-37-225](#), [13-37-226](#), [13-37-229](#), [13-37-232](#), MCA.

REASON: The COPP is proposing adoption of this rule to follow the directives of SB 289, to satisfy public need, and to set forth the procedural requirements for reporting coordinated expenditures and contributions.

Montana's history of actual and perceived corruption in elections prompted citizens to pass by initiative the 1912 Corrupt Practices Act. Undisclosed coordination threatens the integrity of the people's election reporting and disclosure laws that Montanans have traditionally and repeatedly upheld. Based on past experience, coordination carries a consequence for the people of Montana, candidates, and committees.

The COPP considered a 24-month rebuttable presumption of coordination when a person was involved in various election activities, and later associated with or made a reportable election activity expenditure or solicited contributions for a candidate. Given the population size of Montana and relationships that exist between Montanans, the COPP has proposed the adoption of a lessor 12-month time frame for the rebuttable presumption to attach.

In order to document a person's awareness of the obligation to avoid coordinated election activity, when necessary, the COPP proposes the adoption of a contemporaneous statement to be filed with the COPP which acknowledges and establishes a firewall in (6) of this rule. The firewall statements are not required, but will allow persons and vendors who regularly participate or provide services in Montana's elections to create a rebuttable presumption that the election activity they intend to participate in is not and will not be coordinated.

The COPP's proposed rule balances competing interests by creating rebuttable presumptions and allowing the public filing of firewall statements to protect all participants in our electoral system. The COPP is further adopting this rule to clarify statutory requirements, increase transparency, and to identify the minimum disclosure baseline consistent with the law.

NEW RULE VIII DE MINIMIS (1) A "de minimis act" is defined in 13-1-101, MCA. The commissioner may consider the following factors in determining whether specific acts, contributions, or expenditures are de minimis and therefore do not trigger registration, reporting, attribution, or disclosure requirements, or warrant enforcement as a campaign practices violation:

(a) whether the act, contribution, or expenditure has an ascertainable fair market value, and if so the amount of that value;

(b) in the case of an act that results in the provision of services, whether the act results in either a detriment to the provider of the services, such as an out-of-pocket expense or the preclusion of other activities;

(c) whether the act, contribution, or expenditure at issue is a single, one-time event or occurrence or multiple events or occurrences;

(d) the extent to which a particular campaign practices violation deprives the public of disclosure;

(e) other factors and circumstances the commissioner determines are relevant.

(2) These criteria will be considered and applied on a case-by-case basis.

(3) Acts, contributions, or expenditures that may, depending on the circumstances, be considered de minimis include, but are not limited to:

(a) the creation of electronic or written communications or digital photos or video, on a voluntary (unpaid) basis by an individual, including the creation and outgoing content development and delivery of social media on the internet or by telephone;

(b) the provision by an individual or political committee of personal property, food, or services with a cumulative fair market value of less than \$35 in the aggregate for any single election;

(c) the location value of the display of lawn or yard signs on real property, but only if the property owner does not normally and does not in fact charge a fee for display of signs;

(d) any value attributable to the display of campaign bumper stickers or signs on a vehicle, but only if the vehicle owner does not normally and does not in fact charge a fee for display of bumper stickers or signs;

(e) typographical errors or incomplete or erroneous information on a campaign finance report that is determined not to be misleading or that does not substantially affect disclosure;

(f) any failure to comply with the attribution requirements of 13-35-225, MCA, that is determined to nevertheless provide sufficient disclosure regarding who made or financed the communication;

(g) expenses associated with volunteer services or efforts, including but not limited to the cost of gas, parking, and meals.

(4) Fair market value will be determined according to the description of the term in ARM 44.11.403 and 44.11.503.

AUTH: [13-37-114](#), MCA
IMP: [13-1-101](#), MCA

REASON: The COPP is proposing adoption of this rule to follow the directive of SB 289, to satisfy public need, and to set forth the types of campaign activity which the commissioner may consider de minimis actions. The COPP is further adopting this rule to provide guidance to candidates and campaigns on campaign actions which have been determined to be de minimis in the past, which have not triggered reporting and disclosure obligations.

- NEW RULE X ELECTIONEERING COMMUNICATION** (1) An electioneering communication is a paid communication that:
- (a) is publicly distributed by one or more of the modes of communication listed in the statute;
 - (b) is made within 60 days of the initiation of voting in an election;
 - (c) does not support or oppose a candidate or ballot issue, as "support or oppose" is defined in 13-1-101, MCA;
 - (d) can be received by more than 100 recipients in the district voting on the candidate or ballot issue;
 - (e) meets one or more of the following criteria:
 - (i) refers to one or more clearly identified candidates in the election; (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in the election; or
 - (iii) refers to a political party, ballot issue, or other question submitted to the voters in the election; and
 - (f) may also include an independent expenditure.
- (2) In (1)(b) the phrase "made within 60 days of the initiation of voting in an election" shall mean the following:
- (a) in the case of mail ballot elections, the initiation of voting occurs when official ballot packets are mailed to qualified electors pursuant to 13-19-206, MCA;
 - (b) in other elections the initiation of voting occurs when absentee ballot packets are mailed to or otherwise delivered to qualified electors pursuant to 13-13-214, MCA.
- (3) An electioneering communication does not mean any communication that is excluded from the definition of the term in 13-1-101, MCA. In addition, an electioneering communication does not mean:
- (a) a communication that refers to or depicts the name, image, likeness, or voice of one or more clearly identified candidates, but that is susceptible to no reasonable interpretation other than as unrelated to the candidacy or the election;
 - (b) a communication that refers to a political party, ballot issue, or other question submitted to the voters at an election, but that is susceptible to no

reasonable interpretation other than as unrelated to the issue or the election;

(c) the voter information pamphlet prepared and distributed by the Secretary of State; or

(d) any other communication by a local government or a state agency that only includes non-election information about a candidate, ballot issue, or election. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.

(4) The determination whether a particular communication is an electioneering communication or is excluded from the definition of the term will be based on the purpose, timing, and distribution of the communication, as well as the facts and circumstances surrounding its creation and distribution.

(5) Upon request, the commissioner may issue a letter to a group or person reporting the cost of electioneering communications under these rules. The letter may state that the reporting and disclosure required for an electioneering communication does not mean or imply that an express advocacy determination was made as to the communication that is covered by the cost reported.

(6) A person who makes an electioneering communication is subject to the reporting and disclosure requirements of Title 13, chapters 35 and 37, MCA, and these rules.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#), [13-37-225](#), [13-37-226](#), [13-37-229](#), [13-37-232](#), MCA

REASON: The COPP is proposing adoption of this rule to follow the directives of SB 289, to satisfy public need, and to clarify statutory requirements specific to electioneering communications in comparison to election communications. The two types of communications have separate and distinct statutory reporting and disclosure obligations. The rule is proposed to prevent confusion of candidates or committees on the similarly named communication types, for clarification and consistency throughout these rules, and to provide uniformity with the statutes. The COPP added (5) to this rule to allow entities or organizations to request a letter from the COPP in instances where reporting and disclosure of electioneering communications are required by law, but no administrative determination has been made by the commissioner.

NEW RULE XI FAIR NOTICE PERIOD BEFORE ELECTION (1) For purposes of this rule, "campaign advertising" refers to reportable election activity, as defined in ARM 44.11.103.

(2) The "fair notice requirement" is described in 13-35-402, MCA. For the purpose of that section, the date used to determine the date "intended for public distribution" for material distributed by:

(a) print media is the date of the postmark.

(i) If no postmark is provided on the mailing, the date the mailing is mailed or "dropped," as reported by the mail distributor, is the equivalent of the postmark date.

(b) broadcast media, digital media, or published material is "at the time" the material is published or broadcast or disseminated to the public.

(i) "At the time" means at or before the earliest date and time the message is scheduled to be published, broadcast, or disseminated to the public.

(c) hand dissemination, see 13-35-402, MCA.

AUTH: [13-37-114](#), MCA

IMP: [13-35-402](#), MCA

REASON: The COPP is including the adoption of this rule into this subchapter on general campaign practices to make the rules easier to navigate and more user-friendly. The COPP is further adopting this rule to satisfy public need, clarify the application of key terms and phrases in the statute, increase transparency and promote fair play in the electoral process, and to identify the minimum disclosure baseline consistent with the law.

NEW RULE XII PERSONAL USE OF CAMPAIGN FUNDS (1) Except as provided in (4), no goods, services, funds, property, or other contributions received by a candidate or political committee may be used for the personal use or expense of any candidate, immediate family of a candidate, or staff of a candidate's campaign.

(2) Expenditures for personal use are those that have no direct connection with, or effect upon, expenditures to support or oppose candidates or issues, and those that would exist irrespective of a candidate's campaign or an individual's involvement in a candidate's campaign. Campaign expenditures are those that serve to support or oppose a candidate or issue. An expenditure for personal use or expense occurs when, for example, the expenditure:

(a) covers normal living needs of the candidate, the candidate's immediate family, or any other individual;

(b) covers food or clothing that are not specially required by or related to a campaign activity;

(c) covers the cost of travel, lodging, food, and registration, including attendance at any conference or event, that does not serve a campaign interest.

(3) A candidate or candidate's campaign may purchase goods or services and lease personal and real property that provide a mixed benefit to the candidate provided:

(a) the amount attributed to an individual's personal use or expense shall be determined in writing and reimbursed by the individual to the campaign, unless the personal benefit is de minimis;

(b) a mixed benefit to the candidate means use of goods, services, or property

for personal use or expense as well as to support or oppose candidates or issues; or
(c) the personal benefit is de minimis as determined according to ARM [NEW RULE VIII].

(4) The prohibition of this rule is not applicable to:

(a) reimbursements to a candidate, or staff or volunteers of a candidate's campaign, for goods and services purchased for campaign expenditures;

(b) gifts or bonuses of less than \$250 in a calendar year to campaign staff; or

(c) expenditures expressly authorized elsewhere in these rules.

(5) Prior to filing a closing report of a candidate's campaign:

(a) any personal and real property purchased with campaign funds that has a residual fair market value of \$50 or more may be disposed of by one of the following methods:

(i) sale of the property at fair market value, in which case the proceeds shall be treated the same as other campaign funds and disposed of according to ARM 44.11.702 regarding surplus campaign funds. If campaign property is sold to the candidate, a member of the candidate's immediate family, or paid campaign staff, the campaign must receive at least 75 percent of the original purchase price or value of the in-kind contribution as determined per ARM 44.11.403; or

(ii) donation of the property under one of the options set out in ARM 44.11.702 pertaining to disposal of surplus campaign funds.

(b) the disposition of all campaign property under this rule must be reported on the closing report required by ARM 44.11.306, including the method of disposition (sale or donation), the complete date of the disposition, the name and address of the purchaser or donee, and a description of the property. If the property is sold, the information shall include the sale price received; if the property is donated, the information shall include the fair market value of the property at the time of the transfer.

(c) for purposes of this rule, the "residual" fair market value is based upon the value of the property at the time it is sold or donated, accounting for items of similar description, age, and condition. The sale of property through an online commercial auction shall be considered as a favorable factor in determining that the sale price received was the fair market value of the property sold.

(d) any personal or real property purchased with campaign funds that is not disposed of under this rule, shall be disposed of according to ARM 44.11.702.

(6) Whether an expenditure of campaign funds is to be considered a personal use or expense, and therefore prohibited, is a factual determination to be made by the commissioner.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#), [13-37-229](#), [13-37-240](#), MCA

REASON: The COPP is adopting this rule to satisfy public need and to explain statutory requirements regarding the use of campaign funds for campaign purposes. A "contribution" is "anything of value to support or oppose a candidate or ballot issue," 13-1-101, MCA. In turn, an "expenditure" is made by a candidate or political

committee "to support or oppose a candidate or ballot issue," id. The receipt of contributions from the public involves an obligation to expend the funds for the purpose which the contributions were given and in a manner that supports the public trust, 2-3-103, MCA. This obligation is reflected in the statutory definition of "expenditure" itself: "Expenditure' does not mean:...payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family," 13-1-101(17)(b)(ii), MCA.

The use of campaign funds for personal expenditures such as meals, lodging, and utilities does enable a candidate of lesser means to be able to take time off of their primary job and campaign for public office. This alternative has been thoroughly considered, but was ultimately rejected based on the requirements of the statute and in the face of the larger public trust obligation of expending campaign funds in a manner that supports the candidacy, rather than the candidate. In order to protect the public trust in making contributions, the COPP proposes the above rule. The COPP believes such a rule is needed to clarify existing responsibilities and obligations of candidates and committees in regards to use of campaign funds, which will increase transparency and trust in the electoral process.

6. The rules as proposed to be transferred and amended provide as follows, new matter underlined, deleted matter interlined:

44.10.201 (44.11.102) ADVISORY OPINIONS AND SELECTED INCORPORATION OF CERTAIN ATTORNEY GENERAL MODEL RULES, IN PART REGARDING DECLARATORY RULINGS AND RULEMAKING (1) The In cases when a formal declaratory ruling proceeding is requested by a person through the filing of a petition as prescribed in ARM 1.3.226, the commissioner of political practices herein adopts and incorporates by reference the Attorney General's Model Organizational and Procedural Rules Introduction through rule 7 by reference to such rules as stated in ARM 1.3.101 through 1.3.210 and the Attorney General's Model Procedural Rules 22 through 24 by reference to such as stated in ARM 1.3.227 through 1.3.229 in cases when a formal declaratory ruling proceeding is requested by a person through the filing of a petition as prescribed in ARM 1.3.226 ARM 1.3.227 through 1.3.229 effective August 15, 2008.

(2) In all other cases, the commissioner will issue "advisory opinions" under the following procedure:

(a) A person desiring an interpretation to determine the applicability of a rule or statute administered by the commissioner to the person's activity or proposed activity may request an advisory opinion. All requests for an advisory opinion shall be in writing and shall contain:

- (i) The identity, address, and signature of the person requesting the opinion.
- (ii) A complete statement of the facts and circumstances upon which the

commissioner is to base an opinion.

(iii) The rule or statute for which the person seeks an opinion.

(iv) The specific question presented for decision by the commissioner.

(b) The commissioner may request a memorandum of authority containing basic research and points of law bearing on the request. The memorandum should include the requesting party's own conclusion on the question presented.

(c) Within a reasonable time after the receipt of a request for an advisory opinion, the commissioner shall consider the request and, based upon the facts presented in the request, prepare an opinion in writing, except as provided in ~~(b)~~(i). The commissioner may seek public comment prior to issuing an advisory opinion, depending on the particular question presented for an opinion.

(i) The commissioner will not issue an advisory opinion, but will notify the inquirer of the determination, when:

(A) The issue is the subject of pending litigation.

(B) A prior opinion has been rendered that addresses the fact and question presented in a subsequent request.

(C) The facts are inadequate for a determination, or the request requires resolution of a factual dispute.

(D) The issue involves wholly abstract or hypothetical factual situations.

~~(e)~~ (d) An advisory opinion will be rendered upon the facts submitted in the request and over the signature of the commissioner. A copy of the opinion will be mailed to the inquirer and published in a manner which will provide wide public dissemination. The commissioner will maintain an index of all opinions and will make an opinion available upon request.

~~(d)~~ (e) An advisory opinion rendered in accordance with this rule is binding between the commissioner and the inquirer on the statement of facts alleged in the written request. An advisory opinion is not subject to judicial review. A person desiring judicial review of an advisory opinion shall file a formal petition for declaratory ruling, pursuant to 2-4-501, MCA, and ~~(1)~~ of this rule.

~~(e)~~ (f) A later advisory opinion or declaratory ruling overrules an earlier advisory opinion or declaratory ruling with which it is necessarily in conflict.

(f) (g) A request for a declaratory ruling or an advisory opinion shall have no effect on the commissioner's investigation of and disposition of a formal complaint on the same issue or a related dispute filed pursuant to ARM ~~44.10.307~~ 44.11.106.

(3) In cases when the COPP engages in agency rulemaking, the commissioner adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.201, 1.3.202, and 1.3.304 through 1.3.313 effective August 15, 2008.

AUTH: [13-37-114](#), MCA

IMP: [2-4-201](#), MCA

REASON: The COPP is transferring this rule to place it at the beginning of the rules to make the rules easier to navigate and more user-friendly. The COPP is proposing

amendment of this rule for brevity, clarification, and consistency throughout these rules.

44.10.301 (44.11.103) TERMS AND REFERENCES INTRODUCTION AND DEFINITIONS (1) All statutory references in these rules refer to the Montana Code Annotated, unless otherwise indicated.

~~(1)~~ (2) Terms used in these rules shall be construed, unless the meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the intent of the law, to mean the following:

~~(a) The statutory election definitions as set forth in Title 13, MCA; and~~

~~(b) ethics definitions as set forth in Title 2, MCA;~~

~~(c) lobbying definitions as set forth in Title 5, MCA; and~~

~~(b) (d) the definitions as set forth in these rules.~~

~~(2) All statutory references in these rules refer to the Montana Code Annotated, unless otherwise indicated.~~

(3) "Attribution" is described in 13-35-225, MCA, and is further explained by ARM [NEW RULE VI].

(4) "Ballot Committee" is a political committee specifically organized to support or oppose a ballot issue as defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(5) "Campaign Account" is as referred to in 13-37-205, MCA, and further defined in ARM 44.11.409.

(6) "Candidate" is as defined in 13-1-101, MCA, and as applied to contribution limits in 13-37-216 and 13-37-218, MCA.

(7) "Commissioner" means the Commissioner of Political Practices as created under 2-15-411 and 13-37-102, MCA.

(8) "Complainant" means any person that files a complaint with the commissioner alleging a violation of the statutes or rules within the commissioner's jurisdiction.

(9) "Contested Primary" is defined in ARM 44.11.222.

(10) "Contribution" is defined in 13-1-101, MCA, and further defined in ARM 44.11.401.

(11) "Coordinated" is defined in 13-1-101, MCA, and further defined in ARM 44.11.602.

(12) "De Minimis" is defined in 13-1-101, MCA, and further defined in ARM 44.11.603.

(13) "Earmarked Contribution" is as described in 13-37-217, MCA, and defined in ARM 44.11.404.

(14) "Election" is defined in 13-1-101, MCA.

(15) "Election Activity" means any action by any person, candidate, or political committee that concerns, relates to, or could be reasonably interpreted as an attempt

to influence or affect an election or that supports or opposes a candidate or ballot issue. Election activity includes reportable election activity.

(16) "Election Communication" is defined in 13-1-101, MCA, and further defined in ARM 44.11.604.

(17) "Electioneering" is defined in 13-1-101, MCA, and further defined in ARM 44.11.606.

(18) "Electioneering Communication" is defined in 13-1-101, MCA, and further defined in ARM 44.11.605.

(19) "Ethics Code" means the code of ethics, Title 2, chapter 2, part 1, MCA.

(20) "Expenditure" is defined in 13-1-101, MCA, and further defined in ARM 44.11.501.

(21) "Fair market value" means the retail price of such services, property, or rights in the market from which it ordinarily would have been either purchased by the expendeo at the time of its expenditure, or purchased or sold by the contributor at the time of its contribution.

(22) "Immediate Family" is defined in 2-2-302, MCA, and further defined in ARM 44.11.608 and 44.11.703.

(23) "Incidental Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(24) "Independent Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(25) "Independent Expenditure" is defined in 13-1-101, MCA.

(26) "In-kind" is defined in ARM 44.11.403, 44.11.503, and 44.11.701. (27) "Media" includes three subtypes which are subject to all restrictions, definitions, requirements, and limitations on communications found in these rules:

(a) print media includes physical editions of newspapers, magazines, journals, periodicals, newsletters, books, flyers, brochures, posters, direct mail pieces, letters, postcards, billboards, and other similar media;

(b) broadcast media includes television, radio, cable, satellite, and other similar media; and

(c) digital media includes content on the internet, electronic files, including digital versions of print media and broadcast media, and other similar media.

(28) "Periodical publication" is one that publishes at regular daily, weekly, monthly, or quarterly intervals year round.

(29) "Political Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(30) "Political Party Committee" is defined in 13-1-101, MCA, and further defined in ARM 44.11.202.

(31) "Reportable Election Activity" includes but is not limited to accepting a contribution, a contribution in response to an appeal, or a designated contribution, or making an expenditure, a coordinated expenditure, an independent expenditure, or an in-kind contribution or expenditure, or making an election communication or electioneering communication.

(32) "Respondent" means any person against whom a complaint is filed with

the commissioner.

(33) "Support or Oppose" is defined in 13-1-101, MCA.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#), MCA

REASON: This definition rule is newly expanded in these rules. The alternative considered was to list the definition multiple times by repeating the definition within each applicable rule. That alternative was rejected because the rules are easier to understand if a single definition rule is used. The COPP is transferring this rule to place it at the beginning of the COPP rules to make them easier to navigate and more user-friendly. The COPP is proposing amendment of this rule for consistency of terminology used throughout these rules.

44.10.307 (44.11.106) COMPLAINTS OF VIOLATIONS (1) A person An individual who believes a violation of a provision of Title 13, chapters 35 or 37, MCA, or a rule or regulation implementing one or more of those statutory provisions has occurred may file a written complaint in person or by certified mail with the commissioner. When a complaint is received, it shall be marked to show the date of receipt. Unless the complaint is determined to be insufficient pursuant to (3)(a) of A complaint may be filed on a form available from the COPP. Except as provided in this rule, within five business days after receipt of a complaint, the commissioner shall by certified mail, acknowledge its receipt and transmit a copy to the alleged violator. Saturdays, Sundays, and holidays shall be excluded in the calculation of the five-day period.

(2) A Whether submitted on the form available from the COPP or otherwise, a complaint shall:

(a) be typewritten or legibly handwritten in ink; and -

(b) contain the following information:

(i) The the complete name and mailing address of the complainant;

(ii) the complete name and mailing address of the alleged violator, if known or readily discoverable;

(iii) a detailed description of the alleged violation, including citation to each statute and/or rule that is alleged to have been violated;

(iv) any evidentiary material; and

(c) person filing the complaint shall be typewritten or legibly hand printed on the complaint; and the complaint shall be signed and verified by the oath of affirmation of the complainant such person, taken before any officer authorized to administer oaths. A complaint shall name the alleged violator, and should include the complete mailing address of the alleged violator, if known or readily discoverable.

The complaint shall describe in detail the alleged violation, and cite each statute

and/or rule that is alleged to have been violated. The complaint shall be filed together with any evidentiary material. A complaint may be filed on a form available on request from the commissioner's office.

(3) ~~Upon~~ Except as provided in (4), upon receipt of a complaint, the commissioner shall investigate, ~~except as provided in (3)(a) of this rule,~~ the alleged violation. The commissioner, ~~upon completion of the investigation,~~ shall prepare a written summary of facts and statement of findings, upon completion of the investigation, which shall be sent to the complainant and the alleged violator. Following the issuance of a summary of facts and statement of findings, the commissioner may take other appropriate action.

~~(a)~~ (4) No investigation shall be required and a complaint may be dismissed if a the complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, does not cite the statute or rule that is alleged to have been violated, is unsigned, or is not verified by the oath of affirmation of such person, taken before any officer authorized to administer oaths. In addition, no investigation shall be required and may be dismissed if the complaint does not contain sufficient allegations to enable the commissioner to determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction. The commissioner may request additional information from the complainant or the alleged violator prior to making a determination whether to proceed with a full investigation and whether to dismiss a complaint under this rule.

~~(4)-A~~ (5) With the exception of any material that the commissioner determines is subject to protection from disclosure based on constitutional or statutory law, a filed complaint and the summary of facts and statement of findings shall be public record.

(6) All documents provided to and all communications with the COPP are public records as provided by 13-37-118 and 13-37-119, MCA. The Montana Constitution Article II, Sections 9 and 10 require the commissioner to balance the public's right to know with an individual's privacy rights on documents that are filed with the COPP office. The COPP has a detailed privacy policy available on the commissioner's web site.

AUTH: [13-37-114](#), MCA

IMP: [13-37-111\(2\)](#), MCA

REASON: The COPP is transferring this rule to place it at the beginning of the COPP rules to make the rules easier to navigate and more user-friendly. The COPP is proposing amendment of this rule, primarily calling attention to the COPP policy on privacy protection in regard to complaint information, to make grammatical changes, to remove the requirement of certified mail for filing a complaint, to explain confidentiality of public records, and to clarify the requirements in filing a complaint.

44.10.321 (44.11.401) CONTRIBUTION – DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "contribution" as defined in 13-1-101, MCA, includes, but is not limited to:

(a) each contribution as ~~listed~~ described in 13-37-229, MCA;

(b) The purchase of tickets or admissions to, or advertisements in journals or programs for testimonial or fund raising events, including, but not limited to dinners, luncheons, cocktail parties, and rallies held to support or oppose a candidate, issue, or political committee;

(c) a candidate's own money used on behalf of his or her candidacy, except as provided in 13-1-101(6)(b)(iv) and (10)(b)(ii), MCA; and

(d) an in-kind contribution, as defined in (2) of this rule ARM 44.11.403 and 44.11.503; and

(e) a coordinated expenditure, as defined in ARM 44.11.501 and [NEW RULE VII].

(2) ~~The term "in-kind contribution" means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee, except as provided in 13-1-~~

~~101(6)(a)(iii) and (6)(b)(i), MCA. For the purposes of determining compliance with~~

~~political party contribution limits established pursuant to 13-37-216, MCA, a~~

~~"contribution" does not include a coordinated expenditure made solely by a political party committee in the form of provision of personal services by paid staff of the political party that benefit the associational interest of the political party but also constitute election activity benefitting a particular candidate of the same political party.~~

~~(a) An "in-kind contribution", includes, but is not limited to:~~

~~(i) Forgiveness of any loan to or debt of a candidate or political committee;~~

~~(ii) Payment of a loan or other debt by a third person;~~

~~(iii) An expenditure made at the behest of a candidate or political committee as specified in ARM 44.10.517;~~

~~(iv) A "coordinated expenditure" as defined in ARM 44.10.323(4); and~~

~~(v) The cost of distributing, republishing or reproducing campaign material (print or broadcast) produced or prepared by a candidate or political committee unless the distribution, republication or reproduction costs are a communication by a membership organization or corporation under 13-1-101(6)(b)(iii) or (10)(b)(iv), MCA.~~

(3) For the purposes of determining compliance with contribution reporting required by 13-37-225 through 13-37-229, MCA, any coordinated expenditure not counted toward contribution limits pursuant to (2) must be reported as a contribution and shall be reported based upon the actual cost for such paid staff including, but not limited to, total compensation in the form of any salaries, wages, bonuses, benefits, expense reimbursement, or other supplemental payments, and a pro rata share of any taxes, fees, or assessments paid by the political party committee for each staff person.

(4) The fact that the public office being sought by the individual is not known by

~~the contributor or has not yet been~~ Whether or not the candidate has determined the office sought or the political committee has determined what election activity it will participate in at the time the contribution is received by the potential candidate at the time that the contribution is made or the fact that a candidate and/or issue being supported or opposed by a political committee is not known by the contributor or has not yet been determined by a political committee at the time that the contribution is made has no effect on the determination or reporting of that contribution responsibility to report the contribution, and any such contribution shall also be subject to the limitations of 13-37-219, MCA.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#)(3), [13-37-219](#), [13-37-225](#), [13-37-229](#), MCA

REASON: This rule consolidates contribution rules and includes in rule the commissioner's determination of an exception from applicable aggregate contribution limits for political party in-kind contributions spent for paid personal services provided by the political party committee to a candidate. This determination is set out in the COPP's Advisory Opinion COPP-AO-2014-009. The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, and proposing amendment of this rule for brevity, clarification, and consistency throughout these rules. The COPP is also amending this rule to provide clarity on the application of 13-37-216, MCA, to political party committees and to facilitate increased transparency in the disclosure of funds used in elections.

44.10.323 (44.11.501) EXPENDITURE – DEFINITION (1) For the purposes of Title 13, chapters 35 and 37, MCA, and these rules, the term "expenditure" as defined in 13-1-101, MCA, includes, but is not limited to:

(a) each expenditure as ~~listed~~ described in ~~13-37-230~~ 13-37-229 and 13-37-232, MCA;

(b) expenses incurred by a candidate or political committee with respect to polls, surveys, and the solicitation of funds for election activity;

(c) expenses incurred in ~~support of or opposition to~~ the drafting, printing, distribution, and collection of signatures for any petition for nomination or a ~~statewide~~ ballot issue;

(d) a candidate's own expense, except as provided in 13-1-101(6)(b)(iv) and ~~(10)(b)(ii)~~, MCA, and as further explained in (4);

(e) payment of interest on a loan or other credit received;

(f) an in-kind expenditure, as defined in (2) ~~of this rule~~;

(g) an independent expenditure, as defined in (3); and

(h) a coordinated expenditure, as defined in (4).

(2) The term "in-kind expenditure" means a third party reportable election activity expenditure, such as payment for goods or services, that does not go through the campaign depository. In the event that the third party election activity involves the furnishing of services, property, or rights without charge or at a charge which that is less than fair market value to a person, candidate, or political committee for the purpose of supporting or opposing any person, candidate, ballot issue or political committee, except as provided in 13-1-101(6)(a)(iii) and (6)(b)(i), MCA. in a manner that creates a reportable election expense, then the difference between the amount charged and the fair market value must be reported as an in-kind expenditure.

(a) An "in-kind contribution expenditure" includes, but is not limited to, the forgiveness of any loan or debt owed to by a candidate or political committee.

(3) The term "independent expenditure" means an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. An independent expenditure shall be reported as provided in ARM 44.10.531. has the meaning set out in 13-1-101, MCA.

(4) The term "coordinated expenditure" means an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee. A coordinated expenditure shall be reported as an in-kind contribution as provided in ARM 44.10.511 and 44.10.513. is an expenditure that is "coordinated" as defined in 13-1-101, MCA, or involves "coordination" as defined in ARM [NEW RULE VII].

(a) A campaign expense paid personally by an individual in his or her own campaign is always coordinated with and is a campaign expense under (1)(d) that must be reported and disclosed with the same information as an expense by the campaign in the same manner as an expense paid through the campaign depository account.

(b) The candidate must balance his or her campaign finance report by reporting the amount of the expense as an in-kind contribution and/or loan by the candidate sufficient to balance the total amount of campaign expenses personally paid by the candidate.

(i) Any such candidate personal expenditure repaid by the candidate's campaign shall be disclosed and reported both as a campaign expenditure and as a repaid loan, even if both events take place in a single reporting period.

(ii) Any such candidate personal expenditure that is not repaid by the candidate's campaign shall be disclosed and reported both as a candidate contribution and as a campaign expenditure.

(5) An expenditure does not include election activity carried out solely by one individual that is not coordinated with any candidate, ballot issue, or political committee.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#)(7), [13-37-129](#), [13-37-232](#), MCA

REASON: The COPP is transferring this rule to organize the rules on the same subject in the same subchapter, proposing amendment of this rule for brevity, clarification, and consistency throughout the rules, and to provide uniformity with the statutes. This rule consolidates expenditure rules, including expenditures created by coordination. This rule is further amended to reflect the repeal of 13-37-230, MCA, and the proposed adoption of a rule defining the distinction between coordinated and independent expenditures.

44.10.327 (44.11.202) POLITICAL COMMITTEE, DEFINITION AND TYPES

(1) A political committee has the meaning as defined in 13-1-101, MCA. For purposes of A political committee exists under Title 13, chapters 35 and 37, MCA, and these rules, political committees shall be one of three types: by virtue of its receipt of contributions or through making expenditures. A political committee, including each incidental or independent committee, must register with the commissioner at the time and in the manner set out in these rules, see ARM 44.11.201 and 44.11.302.

(2) There are four types of political committees:

(a) ~~principle campaign committee~~; a ballot issue committee as defined in 13-1-101, MCA;

(b) independent committee; and a political party committee as defined in 13-1-101, MCA;

(c) an incidental committee as defined in 13-1-101, MCA; and

(d) an independent committee as defined in 13-1-101, MCA.

(3) A political committee is not formed by the following:

(a) by an individual who makes an independent expenditure solely with his or her own funds and by his or her own actions;

(b) by a \$250 or less expenditure as defined by "political committee" in 13-1-101, MCA;

(c) by a de minimis activity, as defined in these rules;

(d) by an individual who is married making a contribution through his or her joint checking account; or

(e) by a candidate and his or her campaign treasurer(s) making an expenditure or accepting a contribution in the candidate's campaign.

(2) These types of political committees are defined as follows:

(a) a principle campaign committee is a political committee that is specifically organized to support or oppose a particular candidate or issue. There are three types of principal campaign committees:

~~(i) (4) A ballot issue committee is a political committee specifically organized to support or oppose a ballot issue, as defined in. A "ballot issue" is defined by 13-1-101, MCA.~~

~~(ii) A particular candidate committee is specifically organized to support or oppose a particular candidate. A particular candidate committee is not the same as a candidate's own campaign organization, which according to ARM 44.10.325(2) is not a political committee.~~

~~(iii) a leadership political committee is defined in ARM 44.10.332(1).~~

(5) A political party committee is a political committee formed by a political party organization. A political party organization is defined by 13-1-101, MCA. A political party committee includes a county central committee, city central committee, clubs, and any other political committee that was formed by a political party organization.

(6) An incidental committee is a political committee that does not have the primary purpose of supporting or opposing candidates or ballot issues. Incidental committee election activity may consist of:

(a) making one or more expenditures;

(b) accepting one or more designated contributions; or

(c) accepting one or more contributions in response to an appeal. (b)

(7) An independent committee is a political committee that is not specifically organized to support or oppose any particular candidate or issue but one that is organized for has the primary purpose of supporting or opposing various candidates and/or ballot issues but is neither a ballot issue nor a political party political committee. There are two types of independent committees: Independent committee activity may consist of:

(a) making one or more expenditures; (b) accepting one or more contributions.

~~(i) A political action committee ("PAC") is a committee composed of individuals who contribute their money for the purpose of supporting or opposing candidates or issue upon which the committee agrees.~~

~~(ii) A political party committee is a committee formed by a political party organization, as that term is defined in 13-37-216, MCA. Examples of political party committees are listed in ARM 44.10.333(1).~~

~~(c) An incidental committee is a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue.~~

(8) Provided its election activity is all within a single reporting period, a political committee may file a single report of its election expenditures or contributions, identifying the report as an opening and closing report.

(3) (9) "Primary purpose" shall be determined based upon such criteria as allocation of budget, staff or members' activity, and the statement of purpose or goals of the individuals or person. The primary purpose standard is defined in ARM 44.11.203.

(10) The commissioner may classify each political committee in the manner

defined in these rules, see ARM 44.11.204.

(a) Subunits of a main political committee, such as county committees or other divisions, that have authority to receive contributions and make expenditures independent of a parent political committee are a separate political committee.

(b) Subunits within those entities defined under "person" in these rules that have authority to receive contributions and make expenditures independent of the corporation or other entity are a separate political committee.

AUTH: [13-37-114](#), MCA

IMP: [13-1-101](#)(12), [13-37-225](#), [13-37-226](#)(4) and (5), [13-37-229](#), [13-37-231](#), [13-37-232](#), MCA

REASON: See the reason for ARM 44.10.405 (44.11.201). This rule adjusts the types of political committees to comply with the directives of SB 289. It also gathers political committee descriptions from several prior rules and places them into one rule. The rule also deals with "subunits" of political committees and other entities. The alternative considered was to refer the reader to statutory language. That alternative was rejected in favor of the information conveyed by the rule language. The COPP is amending this rule to satisfy public need, clarify the statutory requirements, increase transparency, and to identify the minimum reporting and disclosure baseline consistent with the law.

44.10.329 (44.11.204) POLITICAL COMMITTEE, CLASSIFICATION

(1) The commissioner shall classify a political committee upon the basis of information ~~provided, including on the statement of organization as defined in these rules, which is set forth in ARM 44.10.405 and which is required to be filed by a political committee pursuant to 13-37-201, MCA.~~ The commissioner shall notify, ~~in writing,~~ a political committee of its classification.

(2) The political committee shall be classified as one of the types of political committee specified in ARM ~~44.10.327~~ 44.11.202.

(3) The commissioner may, ~~in writing,~~ reclassify a political committee if the status of that committee should change pursuant to ARM ~~44.10.403(2), 44.11.204~~ or pursuant to (5) ~~of this rule~~.

(4) If the commissioner, based upon the information provided on the statement of organization, is unable to classify a political committee, additional information may be requested by the commissioner. If additional information is requested, a political committee shall provide the requested information within 10 business days after its receipt of the request. ~~Saturdays, Sundays, and holidays shall be excluded in the calculation of the 10-day period.~~

(5) A political committee, after it has received notice of its classification, may supply additional information and request to be reclassified.

AUTH: [13-37-114](#), MCA

IMP: [13-37-226](#)(4) and (5), MCA

REASON: See the reason for ARM 44.10.405 (44.11.201). The COPP is proposing amendment of this rule for clarification, and to make grammatical and rule reference changes.