



State Administration and Veterans' Affairs Interim Committee

PO BOX 201706

64th Montana Legislature

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To: Members of the Montana Legislature

From: K. Virginia Aldrich, Staff Attorney

Date: November 23, 2015

Re: MAR Notice No. 44-2-207, Commissioner of Political Practices

On November 23, 2015, the Commissioner of Political Practices (CoPP) provided an updated list of changes relating to the proposed rules within MAR Notice No. 44-2-207. Along with previous documents provided by the CoPP, including public comments and responses by the CoPP provided to the State Administration and Veterans' Affairs Interim Committee, I have attempted to collate those documents into this one document. Each rule is separated into its own page or series of pages. At the end of the rule, if public comment was received and associated with a rule in the CoPP's documents, you will find the CoPP's description of the comment and the CoPP's response.

If the CoPP intends to modify the proposed rule from the text that was originally published in MAR 44-2-207, you will find that there is highlighted text within the body of the rule. Any changes (strikes/additions) within the highlighted portion of the rule are **new** changes that the CoPP has made in light of public comment since publication in August. Any strikes or additions that are not highlighted were present in the original MAR publication.

There may be minor errors in collating the information in this document. Therefore, please note that any documents created by the Commissioner of Political Practices (also available on the Committee's polling website) supersede this document. Furthermore, this document has not been verified by the Commissioner of Political Practices.

If you have questions about how I have organized the document, please feel free to contact me.

The rules as proposed to be adopted provide as follows:

NEW RULE I (44.11.203) PRIMARY PURPOSE (1) The term "primary purpose" refers to a the major, principal, or important goal, function, or reason for existence ~~for~~ of a political committee.

(2) The commissioner may determine that a the primary purpose of a political 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) allocation of staff or members' activity, both during an election and otherwise;

(c) the statement of purpose, articles of incorporation, bylaws, or goals;

(3) The commissioner, in determining the primary purpose of a political committee, may also consider any one or more of the following criteria:

~~(d)~~ (a) reportable election activity;

~~(e)~~ (b) the history of the political committee and the number of elections in which it has participated or registered;

~~(f)~~ (c) receipt of contributions in response to an appeal or that are designated for a specified candidate, ballot issue, petition, or reportable election activity;

~~(g)~~(d) the number and cost of reportable election expenditures made;

~~(h)~~ (e) coordination with any candidates or other political committees;

~~(i)~~ (f) ordinary business actually conducted;

~~(j)~~(g) if a corporation, whether it was created and maintained as provided by law;

or

~~(k)~~(h) the date of founding, incorporation, or organization.

~~(3)~~ (4) If the commissioner finds, pursuant to ARM 44.11.204 and based on his or her analysis of the information provided on the political 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.

(5) The COPP's determination of the primary purpose of a political committee shall be based upon a preponderance of the evidence.

(6) Once notified of its classification by the COPP, a political committee may submit additional information and request to be reclassified pursuant to ARM 44.11.204.

AUTH: 13-37-114, MCA

IMP, Sec. 13-1-101, 13-37-114, 13-37-226, 13-37-232, MCA

COMMENT 23: Several commenters requested that the primary purpose rule be strengthened so that the provisions of the rule could not be evaded. New Rule I, 44.11.203.

RESPONSE 23: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rule as proposed.

COMMENT 24: Several commenters pointed out that the primary purpose "test" has become a significant means by which campaign groups try to avoid disclosure in Montana, claiming that their activity is *de minimis* or not the organizations primary purpose. The rules should ensure that all campaign groups are treated equally for disclosure purposes. New Rule I, 44.11.203.

RESPONSE 24: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rule as proposed.

COMMENT 25: A couple commenters pointed out that candidates have to fully report and disclose their contributors, where as a committee that claims only incidentally be involved in elections is only required to report and disclose its earmarked or solicited contributions. They point out that the Disclose Act was enacted to reaffirm the COPP as a neutral arbitrator, and make the determination of when a committee should be reporting all their donors as an independent committee. New Rule I, 44.11.203.

RESPONSE 25: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 26: One commenter questioned why the COPP has the right to examine an organization to determine its primary purpose. New Rule I, 44.11.203.

RESPONSE 26: This comment is rejected because the COPP has for decades had authority (see 44.10.329 ARM) to examine an organization in order to properly determine political committee status.

COMMENT 27: Several commenters were worried that the new law and proposed rules would require a membership organization to disclose their membership or donors. New Rule I, 44.11.203.

RESPONSE 27: This comment is rejected because there is no requirement of membership disclosure of entities who incidentally become a political committee. The rules do require disclosure of donors who make earmarked contributions or contributions in response to an appeal to support the committee's election activity.

COMMENT 28: A couple commenters stated that they made contributions to membership organizations, and that they are willing to have their name, occupation and amount of contribution disclosed, and that it is their expectation that all groups do the same. New Rule I, 44.11.203.

RESPONSE 28: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 29: Several commenters suggested that the determination of primary purpose made by the COPP is too open ended, provides too much latitude and discretion to the COPP which would result in unequal treatment between organizations. New Rule I, 44.11.203.

RESPONSE 29: The COPP accepts this comment and, as set out below, amends several parts of the rule regarding primary purpose.

COMMENT 30: Several commenters suggested that “election activity” as a consideration to determining a group’s “primary purpose” was overbroad in (2)(d) and (f). New Rule I, 44.11.203.

RESPONSE 30: The COPP accepts this comment and amends the rule to accommodate the suggestion by adopting inserting “reportable” in front of “election activity”.

COMMENT 31: Several commenters suggested that once the COPP classified a committee that there would be no basis for appeal. New Rule I, 44.11.203.

RESPONSE 31: The COPP accepts this comment, and amends the rule to add a reference to the review process found at ARM 44.10.329 (44.11.204).

COMMENT 32: One commenter suggested the addition of 13-1-101 and 13-37-114, MCA, to the implicated statutes, as that is where primary purpose is defined. New Rule I, 44.11.203.

RESPONSE 32: The COPP accepts this comment, and amends the rule as suggested.

COMMENT 33: One commenter suggested the COPP delete the word “major” and two commenters suggested the deletion of the term “important” from (1) of the proposed rule. New Rule I, 44.11.203.

RESPONSE 33: The COPP rejects this comment because a primary purpose determination distinguishes between incidental (that is, less than major or important) and independent political committees.

COMMENT 34: The statute says “primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members’ activity or the statement of purpose or goal of the person or individuals that form the committee”, 13-1-101(22)(b), MCA. The proposed rule changes the construction of the statute, only applying allocation to the budget. New Rule I, 44.11.203.

RESPONSE 34: The COPP accepts this comment, and adopts an amendment clarifying (2)(b) also is based on allocation.

COMMENT 35: Several commenters requested a percentage or tipping point at which a group’s primary purpose is determined thereby moving the group from being an incidental to an independent committee and requiring increased disclosure. New Rule I, 44.11.203.

RESPONSE 35: The COPP rejects the percentage determination because a very large group can carry out a major election activity with a small percent of its budget.

COMMENT 36: Many commenters requested that the COPP’s determination be based on a “preponderance of the evidence” standard. New Rule I, 44.11.203.

RESPONSE 36: The COPP accepts this comment and amends the rule adding (5) to accommodate the suggested change.

COMMENT 37: Many commenters objected to the change from “the” to “a” in the COPP’s proposed rule regarding primary purpose, stating that the rule was contrary to the enabling legislation. Several commenters pointed out caselaw which supports the COPP’s wording of the proposed rule, noting that an entities “primary purpose” need not be its exclusive or even a majority purpose, and that an organization may have a primary purpose to which it dedicates only a minority of its resources to over a given time period. New Rule I, 44.11.203.

RESPONSE 37: The COPP accepts this comment, and will amend the rule to accommodate the suggestion.

COMMENT 38: Several commenters stated that they had had incidental committees for ballot issue measures for anywhere from the past 3 or 4 election cycles, to the past 20 years. Their concern is with the COPP’s proposed items for consideration in determining a committee’s primary purpose regarding (2)(d) “election activity” and “(e) the history of the committee and the number of election in which it has participated or registered”, “(f) the receipt of contributions in response to an appeal or that are designated for a specific candidate, ballot issue, petition or election activity”, and “(g) the number and cost of reportable election expenditures made”. New Rule I, 44.11.203.

RESPONSE 38: The COPP accepts the suggested change to (3)(a) which will be amended to read “reportable election activity” as stated above. The COPP rejects the remaining suggested changes to (3) because all of these criteria assist the COPP, the public and committees assess whether or not an organization’s primary purpose is one of supporting or opposing candidates or ballot issues, rather than incidentally making an expenditure and becoming involved in an election.

COMMENT 39: Many commenters worried that if the COPP classified their reportable election activity as the work of an independent committee rather than an incidental committee, that their organizations could lose their tax reporting status. New Rule I, 44.11.203.

RESPONSE 39: This COPP rejects this comment as the COPP classification, as is the group’s tax status, is dependent on the group’s actions. Montana law requires disclosure regardless of a group’s tax status, 13-37-233, MCA.

COMMENT 40: Many commenters pointed out that the IRS treats ballot initiatives as lobbying rather than as an electioneering communication. This results in many of the organizations maintaining a separate PAC for candidate or independent expenditures, and utilizing incidental committee status for ballot issues or measures. New Rule I, 44.11.203.

RESPONSE 40: This is a comment that does not require acceptance or rejection by the

COPP regarding the substance of the rules as proposed.

COMMENT 41: One commenter suggested that the COPP include out of state election activity in consideration of a committee's primary purpose. New Rule I, 44.11.203.

RESPONSE 41: The COPP rejects this comment because the rule as proposed includes out of state reportable election activity as a factor in making a determination of an entity's primary purpose.

COMMENT 42: One commenter suggested changing "solicited or earmarked" to "in response to an appeal" and "designated". New Rule I, 44.11.203.

RESPONSE 42: The COPP accepted the earlier comment and the rules as proposed reflect these proposed changes.

COMMENT 43: One commenter referenced a rebuttable presumption which was in an earlier draft of the proposed primary purpose rule, stating that the timeframe was too long. New Rule I, 44.11.203.

RESPONSE 43: The COPP accepted the earlier comment and the rule as proposed reflect this proposed change.

COMMENT 44: Several commenters concurred with the proposed amendments of the Montana Trial Lawyers Association to avoid potential reclassification of an organization from incidental to independent committee status. New Rule I, 44.11.203.

RESPONSE 44: The COPP accepts this comment, and amends the rule to accommodate some of the MTLA suggestions for the reasons stated above, as well as the following reasons: (1) the word "a" was amended from the proposal notice to "the". (2) now contains clarification of the statutory language statute as enacted, and a new (3) is added to the rule which contain other similar criteria for committees, persons, the COPP and the public to consider when making a determination of whether their committee is incidental or independent. The proposed (3) is renumbered to (4) but otherwise adopted as proposed. (5) and (6) were added for the reasons stated above.

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 ARM 44.11.204;

(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 after an investigation authorized 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.

COMMENT 48: Two commenters recommended language be added to the rule specifying that the degree of punitive action shall be in keeping with the level and number of offenses. New Rule IV, 44.11.240.

RESPONSE 48: The COPP rejects this comment because enforcement, while nuanced, is proceeding efficiently under the proposed language.

COMMENT 49: One commenter stated that (1)(b) could require the production of records that could be 10, 15 or 20 years old and wholly unrelated to the complaint being investigated. New Rule IV, 44.11.240.

RESPONSE 49: The COPP rejects this comment because candidates and committees are only required to maintain records for a period of 4 years, or the term of the office, whichever is longer, 13-37-208, MCA.

COMMENT 50: One commenter stated that the rule shows a clear progression of statutory enforcement actions that the Commissioner can take, and appreciates them being gathered into one rule for clarity. New Rule IV, 44.11.240.

RESPONSE 50: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

NEW RULE V (44.11.408) 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 shall 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.

(d) When receiving a payment by credit card:

(i) the candidate shall report the service charge as a campaign expenditure.

(ii) a committee shall report the service charge as a campaign expenditure if paid from the campaign account; or

(iii) as an in-kind contribution received from the committee's associated organization.

(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, 13-37-232, MCA

COMMENT 51: Several commenters expressed concern that requiring candidates and committees to report electronic contributions as received on the date the contribution was made to the service provider will artificially inflate the public's perception of the recipient's financials. They suggested changing the rule to reporting the contribution on the date it is deposited in their campaign account and available to the recipient. New Rule V, 44.11.408.

RESPONSE 51: The COPP rejects this comment because the rule as proposed streamlines reporting obligations by eliminating the need to first report debt (13-37-229(1)(g), MCA (2015), and later report the physical receipt of the contribution 13-37-229, MCA. Further the rule allows the candidate to enter the contribution into their report in the true name of the donor.

COMMENT 52: Several commenters stated that it is imperative that all campaign donations be reported and disclosed as quickly as possible to the voters. New Rule V, 44.11.408.

RESPONSE 52: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 53: One commenter stated that this rule presumes that a candidate or committee are watching their account every day in order to be able to report correctly. New Rule V, 44.11.408.

RESPONSE 53: The COPP rejects this comment because it adds no new requirements. Montana law already requires that accounts be kept current within 5 days for reporting, and available for inspection, 13-37-228 and 13-37-209, MCA. Further, certain candidates and committees are required to report within 2 business days of receiving contributions or making expenditures in the final days of an election, 13-37-226, MCA.

COMMENT 54: One commenter pointed out that (4) requires the contribution to be returned to the contributor, and requested an amendment that allows an over the limit contribution to be donated to a charity as specified by the personal benefit rules. New Rule V, 44.11.408.

RESPONSE 54: The COPP rejects this comment because the over the limit funds cannot be accepted and controlled by the campaign but must be returned to the contributor.

COMMENT 55: One commenter stated that the rule that anonymous contributions should never be accepted conflicts with the 44.10.512 (44.11.406) Mass Collections at Fund-Raising Events rule. New Rule V, 44.11.408.

RESPONSE 55: The COPP rejects this comment because the mass fundraising rule allows collection of donations of under \$35 without reporting and disclosing the name of the contributor, but there is no exemption allowed under law for accepting and retaining anonymous contributions, 13-37-217, MCA.

COMMENT 56: One commenter stated that it is unclear whether or not the rule will apply to receiving contributions by credit card. They stated that IRS rules allow the associated organization to pay the administrative processing fees for a committee, and that the COPP's rules should be amended to show that. New Rule V, 44.11.408.

RESPONSE 56: The COPP rejects this comment because a payment by credit card is still an electronic contribution, so the rule would cover the acceptance in that manner.

This is a nuanced comment, and the COPP will adopt an amendment clarifying its application. For a candidate, the payment of processing fees by a committee would be an in-kind contribution subject to limits, and would violate Montana law if the entity were a corporation. For a committee the payment of processing fees by an associated organization would be a contribution from the organization to the committee, and should be reported as such. The COPP further adopts amendments to 44.10.513 (44.11.403) and 44.10.533 (44.11.503) explaining in simpler language how to properly report and disclose in-kind contributions and expenditures.

COMMENT 57: Several commenters provided informational testimony stating that receiving payment from an online payment portal can happen anywhere from immediately up to 21 days. Most seemed to receive a physical check within 5 days. One commenter pointed out that you can set up an email alert to notify you of receipt of a contribution, and that you only have to check it once a week to keep your records current according to the rules. New Rule V, 44.11.408.

RESPONSE 57: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

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

COMMENT 58: One commenter suggested requiring attribution on election materials by "an individual acting on his or her own behalf" could raise freedom of speech concerns. New Rule VI, 44.11.601.

RESPONSE 58: The COPP rejects this comment because the regulation is applied with due deference to anonymity protection afforded by *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 344, 347 (1995). See e.g. *Colstad v. Devers*, COPP-2013-CFP-026.

COMMENT 59: One commenter suggested that the attribution rule require the disclosure of a physical address for organizations to avoid the appearance that some committees are in-state entities rather than out of state entities. New Rule VI, 44.11.601.

RESPONSE 59: The COPP rejects this comment because Montana law requires "for election communications, electioneering communications, or independent expenditures financed by a political committee that is a corporation or a union " that the attribution requires "the address of the principal place of business", 13-35-225, MCA, and the rule clarifies that it is the "physical address" of the corporation or union's principal place of business.

COMMENT 60: One commenter suggested that the COPP's traditional commitment to working informally with candidates and committees when it comes to attribution omissions during a campaign, while important, need not necessarily be in the proposed rule. New Rule VI, 44.11.601.

RESPONSE 60: The COPP rejects this comment because recent legislation (§13-35-225(5), MCA) added the COPP's informal approach as a statutory requirement.

COMMENT 61: One commenter stated that (3)(a)(ii) requires attribution language to be large enough to read, and requested an amendment allowing an exemption for social media communications. New Rule VI, 44.11.601.

RESPONSE 61: The COPP rejects the comment because the attribution is required by 13-35-225(1), MCA, and there is no exception in the law for website materials. (See also COPP-2014-AO-0015).

COMMENT 62: One commenter, responding to an earlier draft version of the rule, submitted a comment that requiring (3)(b)(i) attributions to be spoken at the end of the message could have potential First Amendment implications. New Rule VI, 44.11.601.

RESPONSE 62: This COPP accepted the comment and changed the rule as proposed to reflect that the attribution must be spoken within the communication.

COMMENT 63: One commenter requested that the COPP amend the proposed rule to state that party designations required by (4)(b) apply only to state and local candidates. New Rule VI, 44.11.601.

RESPONSE 63: The COPP rejects this comment because it not necessary as campaign

practice laws and rules only apply to state and local candidates.

COMMENT 64: One commenter wanted the COPP to add the requirement in (3)(b) that visual content communication should also be required to speak the attribution language in the communication. New Rule VI, 44.11.601.

RESPONSE 64: The COPP rejects this comment because the disclosure provided by the written attribution meets the purposes of the statute.

COMMENT 65: One commenter wanted the proposed rule to allow "GOP" when referring to the Republican Party in communications. New Rule VI, 44.11.601.

RESPONSE 65: The COPP rejects this comment because neither the Libertarian nor Democratic Parties have a similar nickname for their political party and the designations need to be consistent.

COMMENT 66: One commenter wanted to know if attributions would be required on "educational materials". New Rule VI, 44.11.601.

RESPONSE 66: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. If the educational materials are election communications or electioneering communications, 13-35-225, MCA, requires attribution of the item provided to the voters of Montana.

COMMENT 67: One commenter wanted to know if their old campaign signs would be unusable because the attribution is printed on the back. New Rule VI, 44.11.601.

RESPONSE 67: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. You can easily bring the old signs into compliance by placing a sticker with the attribution on the front of the sign.

NEW Rule VII (44.11.602) COORDINATION (1) A "coordinated expenditure" means any election communication, electioneering communication, or reportable election activity that is made by a person:

(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 the 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, but only requires proof of one element, 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. When determining whether a communication or reportable election activity is coordinated the following may be considered, whether:

(a) it is based on information that is provided by the candidate or agent of the candidate directly or indirectly to the person funding or facilitating the communication or activity, or any person involved in creating, producing or disseminating it;

(b) it was 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 communication or reportable election activity retains the paid services of a person or individual who:

(i) currently, or during the six months immediately preceding the election in which the candidate's name will appear on the ballot, received compensation from the candidate or the candidate's agent; and

(ii) the person or individual is involved in creating, producing, or disseminating the communication or reportable election activity.

(d) the communication or reportable election activity replicates, reproduces, republishes or disseminates, in whole or in substantial part, any material designed, produced and paid for, or distributed by the candidate, except as set forth in (3)(e).

(e) the candidate or the candidate's agent has made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement of the communication or activity.

(f) the person funding or facilitating the communication or reportable election activity has:

(i) established a written firewall policy designed to prevent the flow of information about the candidate's campaign plans, projects, activities, or needs from the persons

providing services to the candidate to persons involved in the creation, production, or dissemination of the communication or reportable election activity; and

(ii) prior to the preparation or distribution of any communication or reportable election activity has distributed the firewall policy to all relevant employees, consultants, and clients affected by the policy; and

(iii) filed the firewall policy with the COPP.

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

(a) an independent uncoordinated expenditure or an independent reportable 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 the candidate's agent 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) of personal or professional relationships between a candidate and other persons;

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

~~(b)~~ (c) after publication or distribution, the person funding or facilitating the communication or reportable election 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)~~ (d) the funding or facilitating of the communication or reportable election 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 reportable 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

COMMENT 68: One commenter stated that (1)(a) is superfluous and confusing. Its elimination clarifies which criteria must be met for an expenditure to be treated as coordinated. Another commenter stated that the reference to "political committee" in (1)(b) is vague and could be read to cover committees other than a candidate's principal campaign committee. Another commenter suggested adopting plain language for (1)(c). New Rule VII, 44.11.602.

RESPONSE 68: The COPP accepts these comments as applied to 1(a), 1(b) and 1(c). Accordingly the COPP has rewritten 1(a-c) in a single plain language paragraph (1) that drops the words objected to by the commenters. The COPP rewrite is based on the proposed paragraph (1) language submitted by the Montana Trial Lawyers Association (MTLA).

COMMENT 69: One commenter asked if coordinated expenditures have to have both parties in agreement in order to report the expenditure or contribution. New Rule VII, 44.11.602.

RESPONSE 69: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. See (1)(b) and (c) of the proposed rule, and (1) of the adopted rule.

COMMENT 70: One commenter states that the suggestion in (2) that coordination can be

found based on "relationships" between a campaign and a person making an independent expenditure runs afoul of the constitutional principles set forth in *Colorado Republican*, and should be deleted. Another commenter objects to the focus of (2) stating that coordination as it is found today is based on the conduct or actions of candidates and committees who coordinate. The rule should focus on the conduct of the parties, not the relationship between them. New Rule VII, 44.11.602.

RESPONSE 70: The COPP accepts the comments and drops (2) entirely. The paid agent provision is incorporated into new paragraph (2) which defines the actions that trigger a particular relationship leading to coordination.

COMMENT 71: A couple commenters requested that the COPP clearly define the phrase "an agent of the candidate or political committee". New Rule VII, 44.11.602.

RESPONSE 71: The COPP rejects this comment because an agent is defined elsewhere in statute at 28-10-101, MCA.

COMMENT 72: One commenter stated that membership communications are specifically excluded from the definition of expenditure in 13-1-101, MCA, and that the coordination rule does not follow the exceptions in the statute. Several commenters requested the COPP adopt an exemption from the coordination rule for information which is obtained from publically available sources. New Rule VII, 44.11.602.

RESPONSE 72: The COPP rejects these comments as requesting unnecessary actions because the exclusions found in the definition of expenditure are incorporated into reportable election activity and, further, (3)(e) set out the public source exemption. The COPP adopts (3) largely as proposed, but inserts "reportable" in front of election activity, and changes "political committee" in (d) to "candidate's agent".

COMMENT 73: The relationship comments made in regard to (2) apply also to (4). One commenter proposed a change to (4)(b) to provide examples of what "after publication or distribution means". New Rule VII, 44.11.602.

RESPONSE 73: The COPP amends(4) by inserting a new (a) clarifying that the rule does not exist solely because of relationships, and re-lettering the proposed (4) as (a) through (d). The COPP rejects the request for examples because examples are best given in the manuals prepared by the COPP for use by candidates and committees.

COMMENT 74: A number of comments were made concerning (5). Several commenters expressed concern that if any activity found in (5)(a-g) is alleged in a complaint, and no additional evidence is provided or found by the COPP, that the COPP would be obligated to find that the expenditure was coordinated, which is inconsistent with the First Amendment. Several commenters claimed that an associational activity like fundraising cannot be used to as evidence of coordination, unless the solicited funds were intended for use in the candidate's campaign (referring to (5)(g)). Similar associational activity comment regarding (5)(c) creating a rebuttable presumption that a communication is

coordinated if the candidate's paid fundraiser is also raising money for the third party sponsoring the communication. Two commenters proposed a change to subsection (5)(d). Another comment said subsection (5)(f) and the current version of section 6 are duplicative of subsection (5)(c) and should be deleted. One commenter requested clarification on (5)(e) and whether the term "mode" in the proposed coordination rule is synonymous with "media". Another commenter stated the coordination rule's 12 month "cooling off period" (5)(g) will make conduct that took place before the rule was enacted a violation of law. A few commenters stated that the rebuttable presumption would lead to "the onus of proving innocence would fall to the ... organization or candidate" and "a guilty until proven innocent starting point". Several commenters expressed concern with the 12 month rebuttable presumption time frame in the coordination rule. At the same time several commenters pointed out the use of a publically filed firewall statement to overcome the rebuttable presumption. Suggestions varied from support for leaving the rebuttable presumption at twelve months, or reducing it to six or four months, and finally eliminating it entirely. One commenter stated that under (5)(g) a political figure who donates an item to a non-profit fundraiser, and then 11 months later the non-profit makes an expenditure supporting the political figure, that the expenditure would be considered coordinated without evidence to the contrary. One commenter requested that rebuttable presumption be defined somewhere so that on lawyers will understand what they are up against. New Rule VII, 44.11.602.

RESPONSE 74: The COPP responds to the comments submitted on (5) of the rule by accepting and rejecting in the manner of adopting language for (5) that does not include the rebuttable presumption approach and lessens the cooling off period to 6 months. In making these changes the COPP notes that rule, as rewritten, still defines a greatly strengthened approach to coordination. Given Montana's enforcement strengths the COPP believes this rule is sufficient at this time. Still, the COPP notes that other states, such as California, are adopting the rebuttable presumption approach in dealing with coordination. It may be that Montana will need to again reconsider this rule if the approaches set out in the rule are not sufficient to control coordination. The COPP's rewritten (5) again begins with proposed language submitted by the MTLA. The COPP's rewritten (5) is now listed as paragraph (2) of the rule.

COMMENT 75: One commenter suggested that the firewall statement does not provide candidates or committees with sufficient protection against a coordination finding. Several commenters questioned the ability of the COPP to request a firewall statement from a vendor or person under no obligation to the office. Several commenters worried about the burden of filing a firewall statement on small local vendors as well as on large vendors. Two commenters asked how someone will document a firewall with the COPP, and will the COPP be providing a form, or will everyone have to create their own. One commenter questioned whether or not a vendor's failure to file a firewall statement with the COPP would lead to an automatic administrative penalty to the candidate. One commenter said that the presumption of coordination, even though rebuttable, is contrary to the constitutional principle that speech and its expressive activity is protected and should be

deleted. One commenter suggested that the vendor firewall statement should be limited to vendors who are involved in independent expenditure campaigns, and not to vendors used by candidates. One commenter suggested that the firewall statements would be unworkable because an individual will not know a year in advance where they will be working or for whom. One commenter stated that it would be impossible for a candidate or committee to ascertain whether or not they were using the same vendor. One commenter said (6) would make it incredibly difficult for organizations to hire qualified staff, and to effectively engage citizens and participate in the political process. New Rule VII, 44.11.602.

RESPONSE 75: The COPP deletes (6) in its entirety, incorporating the surviving concepts into the new (2). The COPP has addressed rebuttable presumption issue in its response to (5), above. The COPP has removed the vendor firewall requirement but notes that such a firewall will become a “best practices” requirement of vendors such that sophisticated vendors will voluntarily adopt and file such a firewall anyway.

COMMENT 76: One commenter argued that an expenditure that is reported as independent, and later found to be coordinated, would put the committee or candidate in violation of (7), opening the committee up to further potential liability. New Rule VII, 44.11.602.

RESPONSE 76: The COPP adopts (7) as proposed, but it is renumbered (5). The COPP rejects the specific comment because any liability under 13-37-128, MCA, is based on the facts of the action, not on an artifice of law.

COMMENT 77: One commenter proposed a lengthy list of questions about how one proposed expenditure would be treated under the new rules, including 7 separate inquiries, and covering coordination, primary purpose, value, electronic and hard copy voters guides, non-resident committees, reporting, etc. New Rule VII, 44.11.602.

RESPONSE 77: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 78: One commenter suggested the adoption of a strict three part test for actual coordination – knowledge of time, cost, and content. New Rule VII, 44.11.602.

RESPONSE 78: The COPP rejects this comments because it lacks the sophistication to deal with the nuances of the manner in which coordination occurs.

COMMENT 79: One commenter suggested that the policy of the COPP in exempting *de minimis* actions should be that the informational benefit provided to the voters is greater than the costs of administration by the COPP and alleged violator, as well as the costs to Montanans for identification of the violator. New Rule VII, 44.11.602.

RESPONSE 79: This COPP rejects this comment because it is already reflected in the language of the rule.

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 similarly showing limited value or minimal harm.~~

~~(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, 13-37-114, MCA

COMMENT 80: One commenter argued that (1)(b) expresses the reasoning of *Canyon Ferry*, but does not recognize the broad pro-disclosure holding of *Citizens United* for both express and issue advocacy. New Rule VIII, 44.11.603.

RESPONSE 80: The COPP rejects this comment because it considered *Canyon Ferry* and *Citizens United* when writing the rules.

COMMENT 81: One commenter suggested consideration of an element that gets at the information interest more directly by taking account of the size of the action relative to the size of the constituency or campaign. New Rule VIII, 44.11.603.

RESPONSE 81: The COPP rejects this comment because it is already reflected in the language of the rule.

COMMENT 82: One commenter pointed out that persons can engage in election activity which costs up to \$250 without triggering reporting and disclosing requirements. New Rule VIII, 44.11.603.

RESPONSE 82: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 83: Two commenters stated that the use of the word "may" in (3) ignores the volunteer exemption from "contribution" found in 13-1-101, MCA. New Rule VIII, 44.11.603.

RESPONSE 83: The COPP rejects this comment because 13-1-101 offers limited exemptions ("a volunteer's "time" or "meals and lodging provided by individuals in their private residence"). It does not generally exempt a "contribution" from individuals that fall outside of those exemptions.

COMMENT 84: One commenter stated that the only time a volunteer's time could not be considered *de minimis* is if they were a professional who under normal circumstances receives payment for their services. New Rule VIII, 44.11.603.

RESPONSE 84: The COPP rejects this comment because even professionals who chose to volunteer their time are exempt from the requirement that their time be reported as a contribution to the campaign. See *Settlement Stip. MONTPIRG*, July 2003, pp. 6-8. Each person has 24 hours of time in a day and can choose to volunteer some of that time.

COMMENT 85: One commenter stated that the proposed rule provided for a common-sense determination of whether the activity is significant to warrant reporting, and what would be exempted from reporting. New Rule VIII, 44.11.603.

RESPONSE 85: This is a comment that does not require acceptance or rejection by the

COPP regarding the substance of the rules as proposed.

COMMENT 86: One commenter wanted to know if campaign signs placed at intersections and throughout fields in Montana would be required to be reported and disclosed if there is no money exchanged for the placement. New Rule VIII, 44.11.603.

RESPONSE 86: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. See (3)(c).

COMMENT 87: Two commenters objected to (1)(e) "other factors and circumstances" and (2) "case by case basis" would open the door to unequal application or regulation depending on who is serving as Commissioner. New Rule VIII, 44.11.603.

RESPONSE 87: The COPP rejects this comment because the COPP is required to look at the facts and apply the law in any given situation in order to make a sufficiency decision and to make a determination on whether or not to take "appropriate legal action", 13-37-124, MCA, *see also Doty v. Mont. COPP*, 2007 MT 341; *LeFer v. Murry*, 978 F. Supp. 2d 1177 (2013); and *Montanans for Cmty. Dev. v. Motl*, 2014 U.S. Dist. LEXIS 32986 (D. Mont. 2014).

NEW RULE X (44.11.605) 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 regular or normal communication by a local government or a state agency that only includes non-election information about a candidate, ballot issue, or election. A communication concerning a bond issue by local government or a state agency is not regular and normal communication and is subject to reporting and disclosure as an electioneering communication. 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) An electioneering communication may also be an independent expenditure.~~

~~(5) 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)(6)~~ 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)(7)~~ 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.

(8) The COPP shall maintain a form which will allow a political committee to report an electioneering communication without designating the expenditure as in support of or in opposition to candidate(s) or issue(s).

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA

COMMENT 89: The primary sponsor of the Disclose Act, SB 289, Sen. Ankney stated that when "things look like you are trying to influence and election, when done right before the election, have to be disclosed too". He went on to express that the rules and the Act were about accountability, and making information available to the voters of Montana in a way they can use the information. New Rule X, 44.11.605.

RESPONSE 89: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 90: One commenter pointed out that if an organization is truly trying to change the mind of voters, that their educational activity will take place at all times, not just within election timeframes. New Rule X, 44.11.605.

RESPONSE 90: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 91: One commenter pointed out that the electioneering communication rule presses the electorate to ignore partisan generated information, and to rely instead on unbiased primary sources. New Rule X, 44.11.605.

RESPONSE 91: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 92: One commenter suggested the insertion of "objective" between the words "reasonable" and "interpretation" in the electioneering communication rule. New Rule X, 44.11.605.

RESPONSE 92: The COPP rejects this comment for the reason that "reasonable interpretation" is a standard of common use.

COMMENT 93: One commenter states that the word "not" in a particular electioneering communication definition (1)(c) is unclear and should be deleted or clarified. New Rule X, 44.11.605.

RESPONSE 93: The COPP rejects this comment because, after review of (1)(c), the

COPP determines that the use of “not” is appropriate and important as written.

COMMENT 94: Several commenters thought that the rule did not include exemptions for election activity which should be exempt from disclosure. Items such as a news media and blog exemption, membership communication exemptions were mentioned. New Rule X, 44.11.605.

RESPONSE 94: The COPP rejects this comment because the statutory definition of electioneering communication 13-1-101(14), MCA, lists exemptions. Subsection (3) of the proposed rule includes those statutory exceptions by reference to the statute.

COMMENT 95: Several commenters suggested that the COPP should adopt an amendment which allows for lobbying communications to be exempted from reporting as an electioneering communication, as the IRS rules allow committees to lobby. New Rule X, 44.11.605.

RESPONSE 95: The COPP rejects this comment because there is no reason to treat "grassroots lobbying communications" differently from any other electioneering communication which occurs within 60 days of voting. The entity is not restricted in carrying out the communication, it simply has to report and disclose. In contrast, allowing the exemption creates a loophole in reporting and disclosure.

COMMENT 96: Many commenters suggested the COPP adopt an exemption for legislative communications. New Rule X, 44.11.605.

RESPONSE 96: The COPP rejects this comment because there is no reason to treat "legislative communications" differently from any other electioneering communication which occurs within 60 days of voting. The entity is not restricted in carrying out the legislative communication, it simply has to report and disclose. In contrast, allowing the exemption creates a loophole in reporting and disclosure. The COPP notes that the standard means of legislative communications are exempted. Exemptions allow organizations to communicate with their membership, without reporting and disclosure. Further, if the legislative communication were to reference the issue and the upcoming legislative vote, without mentioning the candidate or ballot issue, it would not be an electioneering communication. Still further government sponsored broadcast communication such as testimony at legislative hearings is exempted.

COMMENT 97: Several commenters requested that the COPP adopt an exemption for nonpartisan voter registration drives, candidate forums, and voter information pamphlets or guides which encourage voters, and increases the likelihood that they vote. Further the organizations provide information on where to vote, and how to register. The exemption that they want added by rule is for organizations who send out voter guides that outline where candidates stand on important issues or ballot measures. New Rule X, 44.11.605.

RESPONSE 97: The COPP rejects this comment because there is no reason to treat

"voter focused" communication differently from any other electioneering communication which occurs within 60 days of voting and because most of the concerns raised by the comment are addressed by exemptions. The entity is not restricted in carrying out the communication, it simply has to report and disclose. In contrast, allowing the exemption creates a vast loophole in reporting and disclosure. The COPP notes that voter communications which do not reference a candidate or ballot issue are not electioneering communications. Thus, such communications that solely encourage individuals to register to vote, or to vote are excluded from reporting and disclosure, 13-1-101(14)(b)(i). Further, candidate forum communications solely advertising the forum or debate are exempted, 13-1-101(15)(b)(iv), MCA. The COPP will adopt an amendment clarifying that listing all political parties committees in a voter information pamphlet, without reference to candidates or ballot issue is exempted from electioneering communications in (3)(d).

COMMENT 98: One commenter questioned whether or not the "60 days of the initiation of voting in an election" includes the absentee voting period including the military absentee voting period. New Rule X, 44.11.605.

RESPONSE 98: The COPP rejects this comment because the rule (2)(a) refers to 13-19-206, MCA which is when the election officials mail absentee ballots, not when the military absentee voting becomes electronically available.

COMMENT 99: One commenter suggested that the COPP add language to clarify what "non-election information" in subsection (3)(d) means. New Rule X, 44.11.605.

RESPONSE 99: The COPP accepts this comment, and amends the rule to read: "any other communication by a local government or state agency that contains information about a public official or election". Governmental agencies are already prohibited by law from spending public funds for or against a candidate or ballot issue. This change clarifies the intended reach of the original language. Government can continue its normal communication without reporting and disclosure, with the exception of some ballot issue (bonding for schools and counties) where government can continue to communicate but the cost of that communication will now need to be reported and disclosed to the public.

COMMENT 100: A couple of commenters wondered if public service announcements which appear to increase near an election cycle will be reported and disclosed as electioneering communications. New Rule X, 44.11.605.

RESPONSE 100: The COPP rejects this comment because the exemptions for state and local government public service announcements, which are performed as a duty of their office, are excluded from the definition of electioneering communications (3)(d).

COMMENT 101: Many commenters suggested that the reporting and disclosure of electioneering communications would provide inaccurate, dishonest and useless information to voters, because the organization does not actually support or oppose a particular candidate or ballot issue. New Rule X, 44.11.605.

RESPONSE 101: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP notes that these comments would allow “dark money” use to continue.

COMMENT 102: Several commenters wondered whether (4)'s "facts and circumstances" standard could result in the COPP's mishandling of reports including electioneering communications, with no clear standard on how it will be determined. New Rule X, 44.11.605.

RESPONSE 102: The COPP rejects this comment because the COPP will need to make decisions based on law and precedent.

COMMENT 103: One commenter stated that the COPP should not be allowed to make a determination after the fact of an electioneering communication being issued (4). New Rule X, 44.11.605.

RESPONSE 103: The COPP rejects this comment as contrary to the COPP campaign practice complaint process, something that has been in place for decades.

COMMENT 104: A couple commenters suggest deletion of (5) in the proposed rule, as it does not cure the problem for 501(c)(3) organizations that the rule would create. Several commenters expressed support for the request of a letter from the COPP should the committee desire one. One commenter suggested that the COPP just issue a letter to everyone. New Rule X, 44.11.605.

RESPONSE 104: The COPP rejects these comments because the rule provides for a letter at the choice of the entity. Montana law requires reporting regardless of the tax status of an entity, 13-37-233, MCA.

COMMENT 105: Many commenters suggested that an organization which does not support or oppose candidates would be required to do one of three things in regard to a lobbying communication: 1) report the electioneering communication, and provide useless information to voters; 2) quiet their speech and not send a communication; or 3) decide not to report the electioneering communication and hope that a campaign finance complaint was not filed against them. New Rule X, 44.11.605.

RESPONSE 105: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 106: Several commenters stated that reporting electioneering communications to the COPP would require the committee to designate their expenditure as "supporting or opposing" a candidate or ballot issue, thereby violating their IRS status. New Rule X, 44.11.605.

RESPONSE 106: This COPP rejects this comment because an electioneering communication (as opposed to an election communication) does not require a support or oppose designation.

COMMENT 107: A couple commenters suggested that the COPP create a special form for 501(c) organizations to report their electioneering communications which are informational and do not evidence a bias or preference with respect to the views of any candidate or group of candidates. New Rule X, 44.11.605.

RESPONSE 107: The COPP rejects the comment as to a special form but notes that the general campaign finance reporting form will be modified to accommodate electioneering communication reporting, and the rule will be amended to reflect its existence.

COMMENT 108: A couple commenters stated that the statute and rules would prevent 501(c) organizations ability to make educational information available to non-members within 90 days of an election, which would also include information on their websites. They stated that they relied on the information provided in order to make an educated decision about how to cast their ballot. New Rule X, 44.11.605.

RESPONSE 108: This COPP rejects this comment as inaccurate. There are exemptions that may apply and, further, the organization is not restricted in communication but simply required to report and disclose. Montana law requires reporting regardless of tax status, 13-37-233, MCA.

COMMENT 109: A couple commenters pointed out that an organization may publish a voting record report after a legislative session, which would remain online for an extended period of time on their website, but that the publication of which would have occurred well outside the 60 day window. New Rule X, 44.11.605.

RESPONSE 109: The COPP rejects this comment because it involves application of fact, not law, depending on the nuances of republication, 13-1-101(15), MCA.

COMMENT 110: One commenter requested that the COPP adopt an exemption for existing 501(c)(3) organizations conducting allowable election activities. New Rule X, 44.11.605.

RESPONSE 110: The COPP rejects this comment because preferential treatment undermines the purpose of reporting and disclosure and raises constitutional issues. Montana law requires reporting regardless of tax status, 13-37-233, MCA.

COMMENT 111: One commenter in commenting on an earlier draft of the proposed rule, stated that in order to ensure clarity, the COPP should adopt a subsection providing that an electioneering communication includes an independent expenditure. New Rule X, 44.11.605.

RESPONSE 111: The COPP accepted the comment and adopted the suggestion at (1)(f).

COMMENT 112: One commenter, in commenting on an earlier draft of the proposed rule, stated that the COPP should consider adopting "susceptible of no reasonable

interpretation other than as unrelated to the candidacy or the election" standard instead of a "reasonable person" standard. New Rule X, 44.11.605.

RESPONSE 112: The COPP accepted the comment COPP and modified the rule at (3).

COMMENT 113: One commenter objected to electioneering communication's inclusion of a "facts and circumstances" standard. New Rule X, 44.11.605.

RESPONSE 113: The COPP rejects this comment because the "facts and circumstances" standard is based on the general definition, including exclusions found in the statute and rule.

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

COMMENT 114: One commenter wanted the COPP to leave the Fair Notice rule as it is, and requesting that the COPP extend the notice period to 15 days prior to the election. New Rule XI, 44.11.607.

RESPONSE 114: The COPP rejects this comment because the 10 day period is set by statute (13-35-402, MCA) and cannot be changed by regulation.

COMMENT 115: One commenter expressed support for the rule and the statute which require committees to provide candidates with notice of new election materials sent in the final days of an election, in order to be able to better respond to the material. New Rule XI, 44.11.607.

RESPONSE 115: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

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

COMMENT 116: One commenter suggested doubling the limits in the personal use of campaign funds on personal expenses. New Rule XII, 44.11.608.

RESPONSE 116: The COPP rejects this comment because it is based on confusion. There can be no personal use of campaign funds so doubling zero is still zero. The comment is likely addressed to personal contributions which are limited as to third parties but may be made by a candidate in any amount to his or her own campaign.

COMMENT 117: The primary sponsor of the Disclose Act, SB 289, Sen. Ankney commented that "we don't use our campaign contributions to line our pockets, our donors expect more from us". New Rule XII, 44.11.608.

RESPONSE 117: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 118: Another commenter stated that they do not support individuals using campaign funds for personal gain. They also pointed out that there are some household items that candidates or small committees use when they are conducting campaigns such as printers or basic office equipment that should be able to be used without breaking the law. New Rule XII, 44.11.608.

RESPONSE 118: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. In general the candidate or committee will need to determine when this type of use passes *de minimis* such that a value should be reported and disclosed to the public.

COMMENT 119: One commenter wanted to know how it will be determined under (2)(c) when an expenditure does not serve a campaign purpose. New Rule XII, 44.11.608.

RESPONSE 119: This is a comment that does not require acceptance or rejection by the

COPP regarding the substance of the rules as proposed. In general it will be up to the campaign to be able to identify a campaign purpose for the expenditure.

COMMENT 120: One commenter wanted to know if a piece of campaign equipment had to be sold to determine a fair market value. New Rule XII, 44.11.608.

RESPONSE 120: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The item can be sold, donated, or converted to constituent use pursuant to the rule.

COMMENT 121: One commenter stated that it was not a good idea for the Commissioner to make a factual determination based on his or her own interpretation. New Rule XII, 44.11.608.

RESPONSE 121: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The Commissioner must follow law and provide deference to precedent.

COMMENT 122: One commenter stated that they believed that travel to attend a debate, appear as a speaker, or to meet with grassroots group should be allowed as a reasonable use of campaign funds. New Rule XII, 44.11.608.

RESPONSE 122: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. As long as a candidate is traveling to those events as a candidate for office "that...serves a campaign purpose", the expenditure would be allowed under the proposed rule.

COMMENT 123: One commenter suggested that the COPP allow candidates to retain property purchased by the campaign for use in a future campaign. New Rule XII, 44.11.608.

RESPONSE 123: The COPP rejects this comment because Montana law (13-37-240 and 241, MCA) does not allow campaign funds from one campaign to be used in future campaigns.

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, and are available online from the secretary of state at <http://www.mtrules.org/>.

(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, and are available online from the secretary of state at <http://www.mtrules.org>.

AUTH: 13-37-114, MCA

IMP: 2-4-201, MCA

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.

(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
- (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 activity that may constitute reportable election activity under Title 13, MCA. ~~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 expende at the time of its expenditure, or purchased or sold by the contributor at the time of its contribution.

(22) "Immediate Family" is defined as described 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 contribution, 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, Sec. Title 13, Ch. 35 and 37, 13-1-101, 13-37-114 MCA

COMMENT 124: One commenter expressed confusion over the definition of "person", "individual" and "support or oppose" as used in the rules. 44.10.301 (44.11.103).

RESPONSE 124: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. All of the terms are defined in 13-1-101, MCA.

COMMENT 125: Several commenters requested firm guidelines and solid definitions to provide candidates and committees with the ability to comply with the rule. Additionally, there was a question of where "fair market value" was defined, and why "election activity" was defined in the rules. One comment was received requesting that the definition of "election activity" be deleted entirely. 44.10.301 (44.11.103).

RESPONSE 125: The COPP rejects these comments because guidelines and definitions for candidates and committees are found in 13-1-101, MCA, as well as 44.10.301 (44.11.103). "Election Activity" is a term used in SB 289, Section 14 in the disclosure for incidental committees, 13-37-232, MCA. It is further defined in the rules and includes both "reportable election activity", and "election activity" which will fall outside of the scope of regulation by the COPP. Further, the rule includes a definition of "fair market value".

COMMENT 126: Two commenters stated that the definition of "election activity" was vague, that it contradicted the statute and was unnecessary. One commenter pointed out that the entire rule had to be read to understand it, and not to simply read the first sentence of the definition. 44.10.301 (44.11.103).

RESPONSE 126: The COPP rejects the first comment because election activity that triggers reporting and disclosure ("reportable election activity") or triggers limits (contributions or expenditures) is separately defined in accordance with appropriate constitutional considerations. The enabling statute states that election activity can consist of activity outside of the listed items. The COPP will amend the definition of election activity and reportable election activity to clarify the distinction.

COMMENT 127: Several commenters suggested that the definition of "election activity" in the rule is overly broad, that it would include voting, or volunteering time on a campaign, lobbying, and perhaps infringing upon First Amendment rights. 44.10.301 (44.11.103).

RESPONSE 127: The COPP rejects this comment because election activity that triggers reporting and disclosure ("reportable election activity") or triggers limits (contributions or expenditures) is separately defined in accordance with appropriate constitutional considerations.

COMMENT 128: One commenter wanted the rule to reflect all of the statutory definitions in this proposed rule. 44.10.301 (44.11.103).

RESPONSE 128: The COPP rejects this comment because under Montana law "rules may not unnecessarily repeat statutory language", 2-4-305(2), MCA. Here, the COPP determines it is unnecessary to repeat the statute.

COMMENT 129: One commenter wants the COPP to adopt a definition of "business days", such as Monday through Friday, excepting holidays provided by the State of Montana. 44.10.301 (44.11.103).

RESPONSE 129: The COPP rejects this comment because business days as used in the enabling statute and this regulation has the meaning suggested by the commenter, but the COPP determines it is not necessary to adopt the proposed language as it is a phrase of common knowledge.

COMMENT 130: One commenter wanted to know if the definition of "media" included regulation of their email, Facebook or Twitter accounts, and how the definition would apply to a friend who was talking about their race on a social media account. 44.10.301 (44.11.103).

RESPONSE 130: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. An individual who talks about candidates or issues would only have to report and disclose the communication if it was a reportable election activity.

COMMENT 131: One commenter wanted to know if "reportable election activity" was enforceable, and how many investigators the COPP would have to hire because anyone can do an anonymous mailing. 44.10.301 (44.11.103).

RESPONSE 131: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

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) be signed and verified by the oath of or affirmation of the complainant, taken before any officer authorized to administer oaths.

(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.

(4) No investigation shall be required and a complaint may be dismissed if 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 or affirmation of such person, taken before any officer authorized to administer oaths or affirmations. 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

COMMENT 133: One commenter requested that the COPP list who is an "officer authorized to administer oaths" in order to help the public understand who can file a complaint with the COPP. 44.10.307 (44.11.106).

RESPONSE 133: The COPP rejects this comment because the COPP has never had an issue with a complainant's lack of understanding of verification of a complaint. Further, the Complaint forms] provide a Notary Public block for signature of the complainant. In reviewing this comment, the COPP noted minor grammatical errors in the rule, and it was amended for clarification in this adoption notice.

COMMENT 134: One commenter wanted the COPP to amend the proposed rule to include that the complaint form is available on the COPP's website. 44.10.307 (44.11.106).

RESPONSE 134: The COPP rejects this comment because 44.10.101 (44.11.101) (4) states that "all forms referenced in the rules are available for download on the COPP's website". 44.10.307 (44.11.106).

COMMENT 135: One commenter noted the growing problem with people filing complaints with the COPP just to have them on the record, even if the complaints were frivolous. The commenter noted that people then use "there were 52 complaints made to the COPP against candidate X", the commenter felt that such an assertion was very disingenuous and verging on defamation. 44.10.307 (44.11.106).

RESPONSE 135: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

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 described in 13-37-229 and 13-37-232, 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) 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 reportable election activity benefitting a particular candidate of the same political party.

(3) For the purposes of determining compliance with contribution reporting required by 13-37-225 through 13-37-229 13-37-232, 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) Whether or not the candidate has determined the office sought or the political committee has determined what reportable election activity it will participate in at the time the contribution is received has no effect on the 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, 13-37-219, 13-37-225, 13-37-229, 13-37-232, MCA

COMMENT 136: One commenter suggested that the proposed contribution rule does not include a requirement for electronic reporting as the expenditure rule 44.10.323 (44.11.501) does, and that last minute contributions are just as informative as last minute expenditures in a candidate's campaign. 44.10.321 (44.11.401).

RESPONSE 136: The COPP rejects this comment because the requirements that certain candidates and committees file their reports electronically with the COPP are found elsewhere in the rules at 44.10.401 (44.11.302). When a candidate or committee is required to report electronically, the requirement includes the 2 day reports of contributions or expenditures as required by 13-37-226, MCA.

COMMENT 137: One commenter stated that by including "coordinated expenditure" based on "election activity" as a contribution to a candidate or committee, the reporting and disclosure of donor requirements apply to candidates and committees. 44.10.321 (44.11.401).

RESPONSE 137: This comment is accepted and the COPP modifies the regulation by adding the word "reportable" before "election activity".

COMMENT 138: Several commenters responded to the codification of the COPP's Administrative Opinion, COPP-2014-AO-009 dated May 19, 2014. One commenter stated that the COPP was impermissibly limiting the statute's language through the adoption of this rule. 44.10.321 (44.11.401).

RESPONSE 138: The COPP rejects this comment because, in the COPP's judgment, the proposed regulation has substantive and procedural authority. Substantively, this regulation takes previously unreported and undisclosed activity and requires reporting and disclosure (see COPP-2014-AO-009). Procedurally, the COPP held a public hearing on the draft proposed Advisory Opinion on March 4, 2014; adopted the Advisory Opinion as proposed and provided notice that the COPP would adopt this administrative regulation. Following this notice, the 2015 Legislature met, considered changes to the definition of "contribution" now found at 13-1-101(9)(a)(iv) MCA, and decided to leave the definition as it was with the limiting Advisory Opinion in place. Under these circumstances the 2015 Legislature knew of the limiting construction of the Advisory Opinion such that the following proposed rule could not be contradictory since its requirements were envisioned by the legislature before the rule was proposed.

COMMENT 139: One commenter objected to (1)(b) which requires a candidate to report contributions of tickets, advertisements, dinners, luncheons and rallies. 44.10.321 (44.11.401).

RESPONSE 139: The COPP rejects this comment because this regulation has been in existence for multiple campaign cycles and is simply being transferred to the new rule number.

COMMENT 140: One commenter stated that the political party personal services exemption from the contribution limits would lead to dark money wheeling and dealing. 44.10.321 (44.11.401).

RESPONSE 140: The COPP rejects this comment because the money used for personal services must be reported by the political party as a contribution to the candidate, and the candidate must report its receipt, therefore the money will be fully reported and disclosed. The exemption applies only to the contribution limits placed on political parties, not to reporting and disclosure.

COMMENT 141: One commenter stated that (4) would allow a candidate to file a C-1 without designation to receive the maximum amount of contributions for any office. 44.10.321 (44.11.401).

RESPONSE 141: The COPP rejects this comment because the exploratory candidate is subject to 13-37-219, MCA such that contributions are "subject to the lowest contribution limit of the offices the candidate is considering seeking".

COMMENT 142: One commenter stated that the requirement that political parties report and disclose the time spent on each candidate that serves the party's associational interest will be onerous. 44.10.321 (44.11.401).

RESPONSE 142: The COPP rejects this comment because ballot committees have been reporting in this manner for multiple campaign cycles. Further, the public's interest in transparency outweighs any burden on the political committee.

COMMENT 179: Two commenters pointed out the need to reference 13-37-229 and 13-37-232, MCA when referencing reporting obligations throughout the rules.

RESPONSE 179: The COPP accepts this comment, and amends proposed rules 44.10.413 (44.11.305), 44.10.321 (44.11.401), 44.10.519 (44.11.404), 44.10.503 (44.11.409), 44.10.525 (44.11.505), and 44.10.535 (44.11.506) to reflect the statutory reference.

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 reportable 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 reportable 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

COMMENT 143: One commenter stated that the definition of expenditure in 13-1-101, MCA, which specifically excludes membership communications, is expanded by the proposed rule, because it does not contain the limitations of 13-1-101, MCA. 44.10.323 (44.11.501).

RESPONSE 143: The COPP rejects this comment because the rule at (1) references and includes the exclusions to expenditure found in 13-1-101, MCA. (1)(a)-(h) provide a list of commonly missed expenditures that candidates and committees fail to report and disclose.

COMMENT 144: One commenter suggested that the COPP clarify by rule the phrase "other periodical publication of general circulation" found in the definition of expenditure in 13-1-101(17)(b)(iii), MCA. 44.10.323 (44.11.501).

RESPONSE 144: The COPP rejects this comment because the phrase has been used without issue in past elections.

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. A political committee exists under Title 13, chapters 35 and 37, MCA, and these rules by virtue of its receipt of one or more contributions or through making one or more 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 reportable 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.

(7) An independent committee is a political committee that has the primary

purpose of supporting or opposing candidates or ballot issues but is neither a ballot issue nor a political party political committee. Independent committee reportable election 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 reportable 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

COMMENT 145: A few commenters requested an additional definition in the political committee definition and types rule of "in response to an appeal" specifying which contributions are subject to regulation. 44.10.327 (44.11.202).

RESPONSE 145: The COPP rejects this comment because Section 14 of SB 289 (now codified as 13-37-232, MCA) uses the words "in response to an appeal" in a manner providing sufficient definition.

COMMENT 146: One commenter wanted a definition of "designated" in (6)(b). 44.10.327 (44.11.202).

RESPONSE 146: The COPP rejects this comment because Section 14 of SB 289 (now codified as 13-37-232, MCA) uses the word "designated" in a manner providing sufficient

definition.

COMMENT 147: Two commenters suggested that the use of "election activity" in the proposed rule would rule out all "reportable election activity" for committees. 44.10.327 (44.11.202).

RESPONSE 147: The COPP accepts this comment and modifies the rule to use "reportable election activity" in (6), (7) and (8).

COMMENT 148: One commenter suggested that the COPP delete the reference to "women's clubs", found in a previous draft, to make the rules gender neutral. 44.10.327 (44.11.202).

RESPONSE 148: The COPP accepts this comment, as it had already accepted a similar informal comment, and the rule as proposed included the change in language.

COMMENT 149: Two commenters wanted to know why the COPP used "expenditures" rather than "an expenditure" in referring to how committees become committees. 44.10.327 (44.11.202).

RESPONSE 149: The COPP accepts this comment and modifies the rule by adding "one or more" before the words "contributions" and "expenditures" in (1).

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 reclassify a political committee if the status of that committee should change pursuant to ARM 44.11.204 or pursuant to (5).

(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

COMMENT 150: The primary sponsor of the Disclose Act, SB 289, Sen. Ankney commented that the amendment to the rule classifying political committee closes a loophole that is being manipulated in Montana today, and makes clear that an entity cannot simply choose a lower level of disclosure in Montana's elections. Sen. Ankney stated that entities should be held to the same disclosure level as your neighbor who contributes to your campaign. 44.10.329 (44.11.204).

RESPONSE 150: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the regulations as proposed. The COPP does amend the rule as adopted to eliminate the internal reference to the rule itself as unnecessary language.

COMMENT 151: One commenter wanted to know why the COPP should be able to designate a committee as incidental vs. independent. 44.10.329 (44.11.204).

RESPONSE 151: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the regulations as proposed. The COPP notes that it has had the responsibility for classifying political committees since 1976.

COMMENT 152: One commenter believed it appropriate that the COPP classify committees regardless of their tax status, and requiring reporting and disclosure from organizations who are actually engaged in election and electioneering activities. They pointed out that if a small number of large donors sufficiently dominated Montana's campaigns, that those persons may be able to determine the election outcome by

selecting a slate of candidates and then ensuring that they have the resources and support necessary to be elected to office. They stated that Montanans have the right to have the information about who is supporting a candidate or issue prior to going to the polls. 44.10.329 (44.11.204).

RESPONSE 152: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the regulations as proposed.

COMMENT 153: One commenter stated that the COPP should not be able to classify a single person, working on their own behalf as a political committee because they are spending their own time to inform people and share public information. 44.10.329 (44.11.204).

RESPONSE 153: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the regulations as proposed. The COPP notes that a single individual working solely on their own behalf would not be classified as a political committee.