



State Administration and Veterans' Affairs Interim Committee

64th Montana Legislature

PO BOX 201706

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To: State Administration and Veterans' Affairs Interim Committee members

From: K. Virginia Aldrich, Staff Attorney

cc: Sheri Scurr

Date: November 13, 2015

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

The Commissioner of Political Practices (CoPP) provided several documents to the Committee relating to the public comments and proposed changes to proposed rules within MAR Notice No. 44-2-207. 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 top, you will find a comment attached to the title of the rule that will tell you whether the rule received public comment and whether the CoPP intends to modify the proposed rule or adopt it as originally published in MAR 44-2-207. 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. Any strikes or additions that are not highlighted were present in the original MAR publication.

Because of the volume of information and the amount of time before your meeting, there may be minor errors in collating the information in this document. Therefore, please note that any documents sent to you by the Commissioner of Political Practices 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.

Comment [AG1]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(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) coordination with any candidates or other political committees; (i) ordinary business actually conducted;

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

(k)(f) 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(2)(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 II STATEMENT OF CANDIDACY (1) "Candidate" is defined in 13-1-101, MCA.

(2) A candidate, whether or not the office for which the individual will seek nomination or election is known, shall file certification with the commissioner pursuant to 13-37-201, MCA, within five business days of becoming a candidate as defined by 13-1-101, MCA.

(3) A statement of candidacy shall include, but not be limited to:

(a) the complete name, office sought, and party affiliation (if applicable) of the candidate; and

(b) the complete name and address of the candidate's campaign treasurer and campaign depository, and the complete name and address of his or her deputy campaign treasurer and secondary campaign depository, if any.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 13-37-201, 13-37-202, 13-37-205, MCA

COMMENT 45: One commenter requested that the COPP adopt an amended rule that if a candidate fails to appoint a treasurer, that the candidate will perform the duties of the treasurer. New Rule II, 44.11.220.

RESPONSE 45: The COPP rejects this comment because Montana statutes require the appointment of a treasurer, 13-37-201, MCA.

COMMENT 46: One commenter suggested that the COPP adopt an amendment to the rule which would require only the disclosure of a mailing address on the form. New Rule II, 44.11.220.

RESPONSE 46: The COPP rejects this comment as unnecessary as the COPP allows the candidate to choose to provide either their mailing address, or both their mailing and physical address.

Comment [AG2]: To be adopted as proposed in original MAR publication. Comments received.

New Rule III (44.11.221) BUSINESS INTEREST DISCLOSURE (1) For purposes of this rule, "state officer" means elected officials, including candidates for statewide or state district offices, state district court candidates, Supreme Court candidates, department directors, or anyone appointed to fill any of these offices, 2-2-106, MCA.

Comment [AG3]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(2) All state officers must file a business disclosure statement, as provided in 2-2-106, MCA.

(a) Each candidate for a statewide election or a state office elected from a district must file a business disclosure statement within five days of the time that the candidate files for office.

(3) For additional rule requirements, see ARM 44.10.621.

AUTH: 13-37-114, MCA

IMP, 43-2-2-106, MCA

COMMENT 47: One commenter suggested that the rule authority should also include 2-2-136. And further suggested clarification of which "elected candidates" the rule applies to by referring to 2-2-106, MCA. New Rule III, 44.11.221.

RESPONSE 47: The COPP accepts this comment, and amends the rule as suggested.

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

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

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

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

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

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

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

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

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

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

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

(k) any other action allowed by statute to carry out the purposes of Montana's 1975 Campaign Finance and Candidate Disclosure Act as provided by sec. 1, Ch. 480, L. 1975.

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

AUTH: 13-37-114, MCA

IMP: 13-35-106, 13-35-107, 13-37-111, 13-37-121, 13-37-123, 13-37-126, 13-37-127, 13-37-128, MCA and Sec. 1, Ch. 480, L. 1975.

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

Comment [AG4]: To be adopted as proposed in original MAR publication. Comments received.

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

Comment [AG5]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(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).

Comment [AG6]: To be adopted as proposed in original MAR publication. Comments received.

(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:

Comment [AG7]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(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 these 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 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

(e) (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.

(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.

Comment [AG8]: To be adopted as proposed in original MAR publication. Comments received.

AUTH: 13-37-114, MCA

IMP: 13-1-101, 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 IX ELECTION COMMUNICATION (1) An election communication is a communication, made in media as defined in these rules, that is made to support or oppose a candidate or ballot issue, as those terms are defined in 13-1-101, MCA.

(2) An election communication means:

(a) a paid advertisement broadcast over radio, television, cable, or satellite;

(b) paid placement of content on the internet or other electronic communication network;

(c) a paid advertisement published in a newspaper or periodical or on a billboard;

(d) a mailing; or

(e) printed materials.

(3) An election communication does not mean any communication that is excluded from the definition of the term in 13-1-101, MCA.

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

AUTH: 13-37-114, MCA

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

COMMENT 88: One commenter suggested that nonpartisan voter registration and get out the vote drives are exempted from reporting and disclosure due to the reference in the definition of "support or oppose" found in Mont. Code Ann. § 13-1-101(49)(b). New Rule IX, 44.11.604.

RESPONSE 88: This COPP rejects this comment as support or oppose is not a factor in reporting required for electioneering communication.

Comment [AG9]: To be adopted as proposed in original MAR publication. Comments received.

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

(5) Upon request, the commissioner may issue a letter to a group or person reporting the cost of electioneering communications under these rules. The

Comment [AG10]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

letter may state that the reporting and disclosure required for an electioneering communication does not mean or imply that an express advocacy determination was made as to the communication that is covered by the cost reported.

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

(7) 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.

Comment [AG11]: To be adopted as proposed in original MAR publication. Comments received.

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.

Comment [AG12]: To be adopted as proposed in original MAR publication. Comments received.

(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.

5. The department proposes to transfer the following rules:

OLD NEW
44.10.309 44.11.107 COPYING OF PUBLIC RECORDS

AUTH: 13-37-114, MCA
IMP: 13-37-119(1), MCA

Comment [AG13]: No comments received. To be transferred as proposed.

OLD NEW
44.10.311 44.11.606 ELECTIONEERING-INTERPRETIVE RULE

AUTH: 13-37-114, MCA
IMP: 13-35-211, MCA

Comment [AG14]: No comments received. To be repealed as proposed.

OLD NEW
44.10.505 44.11.407 CASH CONTRIBUTION, RECEIPT

AUTH: 13-37-114, MCA
IMP: 13-37-207, MCA

Comment [AG15]: No comments received. To be repealed as proposed.

OLD NEW
44.10.538 44.11.705 ELIGIBLE ELECTED OFFICIALS

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

Comment [AG16]: No comments received. To be repealed as proposed.

OLD NEW
44.10.543 44.11.710 INTEREST PAID ON ACCOUNTS

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

Comment [AG17]: No comments received. To be repealed as proposed.

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

44.10.101 (44.11.101) ORGANIZATIONAL RULE (1) Organization of the Office of the Commissioner of Political Practices (COPP).

(a) History. The position of the Commissioner of Political Practices (commissioner) was created by the Legislature in 1975.

(b) Administrative Attachment The Office of the Commissioner of Political Practices is attached to the Office of the Secretary of State for the administrative purposes set forth in 2-15-121 and 2-15-411, MCA.

(c) Commissioner. The commissioner of Political Practices is appointed for a term of six years and may be removed pursuant to 13-37-102(2) and 13-37-105, MCA.

(2) Functions of the commissioner:

(a) ~~The the commissioner of Political Practices~~ is to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana ~~to support or oppose elections regarding~~ candidates, political committees, or issues, and in conjunction with the county attorneys, to enforce the election and campaign finance laws as specified in Title 13, chapters 35 and 37, MCA. The powers and duties of the commissioner are provided in Title 13, chapter 37, part 1, MCA.

(b) The Commissioner also has enforcement responsibilities related to the Code of Ethics for government officers and employees in Title 2, chapter 2, part 1, MCA.

(c) In addition the Commissioner administers and enforces the provisions of the Montana Lobbyist Disclosure Act, Title 5, chapter 7, MCA.

(3) Personnel Roster. Commissioner of Political Practices, ~~4205 Eighth Avenue,~~ P.O. Box 202401, Helena, Montana 59620-2401, <http://www.politicalpractices.mt.gov/default.mcp.x>.

(4) All forms referenced in these rules are available for download on the COPP's web site.

AUTH: 13-37-114, MCA

IMP: 2-4-201, MCA

Comment [AG18]: No comments received. To be adopted as proposed.

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

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

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

- (i) The identity, address, and signature of the person requesting the opinion.
- (ii) A complete statement of the facts and circumstances upon which the commissioner is to base an opinion.
- (iii) The rule or statute for which the person seeks an opinion.
- (iv) The specific question presented for decision by the commissioner.

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

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

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

- (A) The issue is the subject of pending litigation.
- (B) A prior opinion has been rendered that addresses the fact and question presented in a subsequent request.

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

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

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

~~(e)~~ (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 ~~(4)~~ of this rule.

~~(e)~~ (f) A later advisory opinion or declaratory ruling overrules an earlier

Comment [AG19]: No comments received. To be adopted as proposed.

advisory opinion or declaratory ruling with which it is necessarily in conflict.

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

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

AUTH: 13-37-114, MCA

IMP: 2-4-201, MCA

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.

Comment [AG20]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

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

- (a) ~~The statutory~~ election definitions as set forth in Title 13, MCA; and
- (b) ethics definitions as set forth in Title 2, MCA;
- (c) lobbying definitions as set forth in Title 5, MCA; and
- ~~(b)~~ (d) the definitions as set forth in these rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Election Activity" means any 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 expendeo at the time of its expenditure, or purchased or sold by the contributor at the time of its contribution.

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

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

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

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

(26) "In-kind" is defined in ARM 44.11.403, 44.11.503, and 44.11.701.

(27) "Media" includes three subtypes which are subject to all restrictions, definitions, requirements, and limitations on communications found in these rules:

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

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

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

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

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

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

(31) "Reportable Election Activity" includes but is not limited to accepting a contribution, a contribution in response to an appeal, or a designated contribution, or making an expenditure, a 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.

44.10.303 (44.11.104) CONSTRUCTION OF REGULATIONS RULES

(1) These rules shall be interpreted and applied to permit the commissioner to discharge the statutory functions of the office and to secure a just and speedy determination of all matters before the commissioner.

AUTH: 13-37-114, MCA
IMP: Sec. 1, Ch. 480, Laws of 1975

Comment [AG21]: No comments received. To be adopted as proposed.

44.10.305 (44.11.105) PRACTICE WHERE REGULATIONS DO NOT GOVERN REGARDING APPLICATION OF RULES (1) In any matter not specifically governed addressed by these regulations rules, the commissioner shall exercise discretion so as to execute the purposes of the act applicable law, without exceeding the statutory authority of the act identified in ARM 44.11.101.

AUTH: 13-37-114, MCA

IMP: Sec. 1, Ch. 480, Laws of 1975

COMMENT 132: One commenter suggested that the proposed rule provides greater discretion to the Commissioner, and that it may lead to uneven interpretation or application of the law. 44.10.305 (44.11.105).

RESPONSE 132: The COPP rejects this comment because the amendments to the regulation cleans up existing language, and clarifies that the Commissioner must act within the limits of the law and authority of the statutes over which the COPP has jurisdiction.

Comment [AG22]: To be adopted as proposed in original MAR publication. Comments received.

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.

~~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

Comment [AG23]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

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 [AG24]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

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:

Comment [AG25]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(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 44.10.534. 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 VIII].

(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

Comment [AG26]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

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(42), 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 [AG27]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

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.

44.10.330 (44.11.224) DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) Aggregate contributions for each election in a campaign are limited according to 13-37-216 and 13-37-218, MCA, and as explained by ARM 44.11.222. An "election" in a campaign, for the purposes of 13-37-216, MCA, is defined as either a primary election or a general election.

Comment [AG28]: To be adopted as proposed in original MAR publication. Comments received.

(2) For purposes of applying aggregate contribution limits per election the following apply:

(a) aggregate contribution limits for each election, as set forth in 13-37-216 and 13-37-218, MCA, apply to a primary election and to a general election as defined in ARM ~~44.10.334~~ 44.11.222;

(b) time periods for filing reports of contributions and expenditures are set forth in 13-37-226 and 13-37-228, MCA. As a general rule, contributions received by a candidate prior to and on the day of a primary election are designated for the primary election and are subject to the aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions designated for the general election during the primary election period (except for in-kind contributions) subject to the contribution limits for the general election;

(c) general election contributions received prior to the day of the primary election must be maintained in a separate account and shall not be used until after the day of the primary election;

(d) all contributions received by a candidate after the day of the primary election are designated as general election contributions and are subject to the aggregate contribution limit for the general election, except that a candidate may continue to receive contributions designated for the primary election subject to the limits after that election only for the purpose of paying primary election debts. General election contributions shall not be used to pay primary election debt;

(e) leftover funds that were designated for the primary election may be used for general election purposes if all primary debt has been paid.

(3) If a candidate receives contributions designated for the general election prior to the primary, and does not proceed to the general election, the candidate must return the contributions to the donors. These funds are not "surplus campaign funds:" as defined in ARM 44.11.702.

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-218, MCA

COMMENT 154: One commenter requests that the provisions of (2)(c) be amended to remove or create a threshold for the requirement of a separate account for primary and general funds. 44.10.330 (44.11.224).

RESPONSE 154: The COPP rejects this comment because Montana's contribution limits apply to "each" election, with the primary and general elections being separate elections. Mixing funds from the two separate elections has caused problems for candidates in past elections. The benefits of avoiding campaign practice violations by maintaining the rule far outweigh the minimal burden of establishing two accounts.

COMMENT 155: One commenter wanted to know if (3) applies to candidates who lose the primary or to a candidate who quits the campaign after the primary but before the general election. 44.10.330 (44.11.224).

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RESPONSE 155: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The rule applies to candidates who lose the primary. If a candidate exits the race during the general, they can use campaign funds to extinguish general campaign debt, and then dispose of the funds pursuant to these regulations.

~~44.10.331 (44.11.226) LIMITATIONS LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES~~ (1) Pursuant to the operation Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to legislative candidates for the state legislature are as follows:

- (a) a candidate for the state house of representatives may receive no more than ~~\$1,650~~ \$1,700;
 - (b) a candidate for the state senate may receive no more than ~~\$2,750~~ \$2,800.
- (2) These limits apply to total combined receipts for the entire election cycle of ~~2014~~ 2016.
- (3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, ~~13-37-218~~ MCA
IMP: 13-37-218, ~~45-30-401(8)~~ MCA

COMMENT 156: One commenter suggested that the COPP eliminate specific years and put different language in the rule so that the COPP would not have to update the rules every two years. 44.10.331 (44.11.226).

RESPONSE 156: The COPP rejects this comment because the COPP is required by statute to apply an inflation factor to the contribution limits, and, if necessary, adjust contribution limits every two years.

Comment [AG29]: To be adopted as proposed in original MAR publication. Comments received.

44.10.333 (44.11.225) LIMITATIONS ON CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES

(1) Political committees formed by "political party organizations", as that term phrase is defined in ~~13-37-216~~ 13-1-101, MCA, are subject to the aggregate contribution limits, which include in-kind contributions and expenditures, established in 13-37-216(3), MCA. Such committees are "political party committees", and include all county central committees, city central committees, women's clubs, and other committees, that fit within the definition of "political committee" in 13-1-101(48), MCA, and were formed by a political party organization.

(2) Candidates ~~will~~ shall be responsible for monitoring contributions from political party committees to ensure that the contribution limits are not exceeded.

(3) 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.

AUTH: 13-37-114, MCA
IMP: 13-37-216, MCA

COMMENT 162: One commenter pointed out that there should be a reference to the political party associational interest personal services exemption from the rule in (3). 44.10.338 (44.11.227).

RESPONSE 162: The COPP accepts this comment, and amends the regulation to add a reference to the exemption found in 44.10.321 (44.11.401). The COPP also amends 44.10.333 (44.11.225) to add a reference to the exemption.

Comment [AG30]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.334 (44.11.222) ELECTIONS TO WHICH AGGREGATE CONTRIBUTION LIMITS APPLY (1) The term "aggregate contributions" means

the total of all of the following contributions made by or received from a person for all elections each election in a campaign:–

(a) all contributions, as defined in 13-1-101, MCA, and further defined in ARM 44.11.401;

(b) all earmarked contributions, as defined in ARM 44.11.404;

(c) all expenditures encouraged in order to avoid a contribution, as specified in ARM 44.11.504; and

(d) all contributions that are coordinated as defined in 13-1-101, MCA, and further explained in ARM 44.11.501 and [NEW RULE VII].

(2) The term "contested primary", as used in 13-37-216(5), MCA, means a primary election in which two or more candidates compete for the same nomination. An election is not contested when, due to the number of candidates, the candidate automatically advances to the general election or position. For example:

(a) in partisan primary elections, if two or more candidates compete for one party's nomination, it is a "contested primary," resulting in two elections to which the contribution limits in 13-37-216 and 13-37-218, MCA, apply. For the two candidates seeking Party A's nomination in the primary election for a public office, it is a contested primary with respect to Party A's nomination; or

(b) if only one candidate seeks Party B's nomination for the same public office, it is not a contested primary with respect to Party B's nomination, and there is only one election to which the contribution limits in 13-37-216 and 13-37-218, MCA, apply; or

(c) in judicial and other nonpartisan primary elections, if a nonpartisan candidate automatically advances from the primary election to the general election pursuant to 13-14-117, MCA, it is not a contested primary election; or

(d) when an incumbent judicial officer is the only candidate who files a declaration for nomination in the primary election, and subsequently faces a vote, pursuant to 13-14-212, MCA, for or against retention in the general election, there is no "contested primary," and there is only one election to which the contribution limits in 13-37-216 and 13-37-218, MCA, apply.

AUTH: 13-37-114, MCA

IMP, 13-37-216, 13-37-218, MCA;

COMMENT 157: One commenter suggested changing the term "all" in (1) to "each" to be in harmony with 13-37-216, MCA. The commenter also suggested striking the reference to 13-37-218, MCA to avoid confusion over the single political committee contribution limit to candidates. 44.10.334 (44.11.222).

RESPONSE 157: The COPP accepts this comment, and amends the regulation accordingly.

Comment [AG31]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.335 (44.11.702) DISPOSAL OF SURPLUS CAMPAIGN FUNDS AND PROPERTY (1) Candidates shall dispose of surplus campaign funds within 120 days of filing the closing campaign report required by 13-37-228, MCA.

Comment [AG32]: To be adopted as proposed in original MAR publication. Comments received.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished, the provisions of ARM [NEW RULE XII] are followed, and no further contributions or expenditures will be received or made which relate to the campaign.

(b) No closing report needs to be filed following a primary election campaign if the candidate will advance to the general election.

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, pursuant to ARM [NEW RULE XII], no further campaign contributions will be received, and no further campaign expenditures will be made.

(3) Surplus campaign funds will be considered to have been "disposed of" on the date payment or donation of the item of property is made by the candidate or the candidate's committee to a permissible person, entity, or account.

(4) The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds or property. Payment of surplus campaign funds or property shall be evidenced by a receipt from the recipient containing the following information:

(a) the full name and mailing address of the recipient;

(b) the date the funds or property were received;

(c) the full name of the candidate from whose campaign the funds or property were received; and;

(d) the exact amount of funds or fair market value of the property received.

(5) Those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the commissioner, showing the disposition of surplus campaign funds or property. The report shall be accompanied by copies of all receipts required by (4) ~~of this rule~~. The supplement shall be filed within 135 days after the closing report is filed.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ~~ARM 44.10.336~~ 44.11.703, the provisions of this rule, and the rules in this chapter.

(a) For purposes of the restrictions on the disposal of surplus campaign funds and personal or real property set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240(2), MCA. For the purposes of this definition, a candidate's or an eligible elected official's "immediate family" includes any individual related or connected to a candidate or an eligible elected official as specified in 2-2-303(4), MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds and personal or real property set forth in 13-37-240, MCA, "campaign" means any effort to support or oppose the nomination or election of a candidate for public office, or to support or oppose passage of a ballot issue.

(c) Surplus campaign funds, including surplus campaign funds deposited in a constituent services account and any interest accrued as provided in ARM ~~44.10.543~~ 44.11.710, may only be disbursed as follows:

(i) return the funds to the contributors, so long as the refund to contributors will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ~~ARM 44.10.336~~ 44.11.703, or the rules in this chapter;

(ii) donate the funds and personal or real property to any organization or entity, so long as the use of the funds and personal or real property will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM ~~44.10.336~~ 44.11.703, or the rules in this chapter;

(iii) An elected official other than an eligible elected official may transfer the funds to an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign;

(iv) an eligible elected official may transfer the funds to a constituent services account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter;

(v) an eligible elected official may retain the personal or real property of the campaign to serve constituents as provided in Title 13, chapter 37, part 4, MCA, and the rules in this chapter.

(7) A candidate or an eligible elected official shall not contribute surplus campaign funds to a political committee, ~~including a leadership political committee maintained by a political officeholder~~. However, nothing in this section shall be construed as prohibiting the contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) Upon a determination that a candidate made a prohibited disposal of surplus campaign funds, the commissioner may employ any enforcement measures within his or her jurisdiction.

AUTH: 13-37-114, MCA

IMP: 13-37-240, 13-37-402, MCA

COMMENT 158: One commenter suggested a filing deadline of a multiple of 30 days instead of 135 days in the Disposal of Surplus Campaign Funds rule. 44.10.335 (44.11.702).

RESPONSE 158: The COPP rejects this comment because the enabling statute requires disposal within 120 days, and the additional 15 days allows time for candidates and committees to submit their reports to the COPP, 13-37-240 and 13-37-402, MCA.

COMMENT 159: One commenter wanted to know if a candidate who loses an election can retain equipment bought by the campaign for a future campaign use, and suggested a *de minimis* amount under which the cost of the equipment could be retained by the unsuccessful candidate. 44.10.335 (44.11.702).

RESPONSE 159: The COPP rejects this comment because the rules require that equipment purchased by a campaign for use in the campaign must be liquidated for the fair market value or donated at the end of the campaign, unless it is converted for use in constituent services. This separation of finances between separate campaigns preserves the integrity of contribution limits and disclosure.

COMMENT 160: One commenter stated that they had not received a receipt when

making a donation of funds to a charity, should those receipts be retained? 44.10.335 (44.11.702).

RESPONSE 160: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. A canceled check drawn on the campaign account would be evidence of the receipt of the funds by the charity, and should be in the campaign records.

44.10.336 (44.11.703) PERSONAL BENEFIT (1) Pursuant to 13-37-240,

MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a constituent services account, that benefit a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) Surplus campaign funds or constituent services account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) the candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or constituent services account funds received by the group or organization;

(b) the candidate, an eligible elected official, or a member of the candidate's or the an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or constituent services account funds received by the organization; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receive a benefit that is only incidental to their membership or participation within the group or organization. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the public or other members of the group or organization.

(3) Surplus campaign funds or constituent services account funds may be donated to a government entity under ARM ~~44.10.335(c)(ii)~~ 44.11.702, even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or constituent services account funds received;

(b) the candidate, an eligible elected official, or a member of the candidate's or the an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or constituent services account funds received; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receives a benefit that is only incidental to their employment by or participation as a board member. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the government entity's other employees or board members.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

Comment [AG33]: No comments received. To be adopted as proposed.

44.10.337 (44.11.223) AGGREGATE CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES (1) ~~For purposes of the limitations on contributions established in 13-37-216, MCA, and these rules, the term "election" is defined in 13-37-216, MCA, and the term "candidate" is defined in 13-1-101, MCA. Pursuant to 13-10-211, MCA, a write-in candidate must file a declaration of intent. A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, is subject to the aggregate contribution limits for both the primary election and the general election must file a declaration of intent pursuant to 13-10-211, MCA.~~

(2) The write-in candidate must close his or her primary election account, and follow the procedures to dispose of the funds according to ARM 44.11.701 and 44.11.702.

(3) The write-in candidate shall not use any primary election funds for his or her general write-in election campaign.

(4) The write-in candidate shall file a new statement of candidate and, if required, a business disclosure statement, and comply with the aggregate contribution limits for the general election.

AUTH: 13-37-114, MCA

IMP, 13-37-216, 13-37-218, 13-37-240, MCA

COMMENT 161: One commenter suggested that the COPP add 13-37-240, MCA to the implementing statute list, which reflects that an unsuccessful candidate may not transfer funds from an old campaign to benefit a new campaign. 44.10.337 (44.11.223).

RESPONSE 161: The COPP accepts this comment, and amends the regulation to add the additional authority.

Comment [AG34]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.338 (44.11.227) LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE

(1) Pursuant to the ~~operation~~ calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individual to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$650~~ \$660;

(b) a candidate for other statewide office may receive no more than ~~\$320~~ \$330;

(c) a candidate for all other public offices may receive no more than \$170.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$23,350~~ \$23,850;

(b) a candidate for other statewide offices may receive no more than ~~\$8450~~ \$8,600;

(c) a candidate for Public Service Commission may receive no more than ~~\$3350~~ \$3,450;

(d) a candidate for senate may receive no more than ~~\$1350~~ \$1,400;

(e) a candidate for all other public offices may receive no more than \$850.

(3) Pursuant to 13-37-216 and 13-37-218, MCA, all contributions must be included in computing these limitation totals, except the personal services exemption found in ARM 44.11.401.

(4) A candidate may make unlimited contributions to his or her own campaign, but shall report and disclose each contribution and expenditure according to these rules.

AUTH: ~~13-37-216~~, 13-37-114, MCA

IMP: 13-37-216, 13-37-218, MCA

COMMENT 162: One commenter pointed out that there should be a reference to the political party associational interest personal services exemption from the rule in (3). 44.10.338 (44.11.227).

RESPONSE 162: The COPP accepts this comment, and amends the regulation to add a reference to the exemption found in 44.10.321 (44.11.401). The COPP also amends 44.10.333 (44.11.225) to add a reference to the exemption.

Comment [AG35]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.401 (44.11.302) STATEMENTS AND REPORTS, FILING (1) Except as provided in this rule, each statement and report required by Title 13, chapters 35 and 37, MCA, and these rules shall be filed on forms prescribed by the commissioner. The forms may be obtained without cost and upon request from the commissioner of Political Practices, 1205 Eighth Avenue, P.O. Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942. The forms may also be downloaded from the office's web site at <http://www.politicalpractices.mt.gov>.

Comment [AG36]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(a) Pursuant to 13-37-226, MCA, candidates for a state office filled by a statewide vote of all the electors of Montana, incidental committees, independent committees, and statewide ballot issue committees shall file all reports electronically.

(b) Political party committees that receive a contribution or make an expenditure supporting or opposing a candidate for statewide office or a statewide ballot issue shall file all reports electronically in accordance with the procedure described in this rule.

(c) Except as provided in (1)(d) and (2), the following candidates shall also file all reports electronically:

- (i) candidates for the legislature;
- (ii) candidates for the public service commission; and
- (iii) candidates for district court judge.

(d) Candidates listed in (c) shall file all reports electronically only if the total amount of contributions received or the total amount of expenditures made exceeds \$500, for all elections in a campaign, excluding the filing fee paid by a candidate an individual.

(2) Pursuant to 13-37-226, MCA, electronic filing is mandatory for those candidates and committees listed in (1) except for those qualifying under (1)(d). Candidates listed in (1)(c) may submit a written request for a waiver from the requirement that reports be filed electronically. Electronic filing is mandatory for committees who are required to file electronically by statute. Committees who are required to file electronically by this rule, may apply for a waiver. The commissioner may provide a waiver if the candidate or committee establishes that they cannot file electronically for reasons such as they do not have reasonable access to the technology necessary to file electronically.

~~(a)~~ (3) A report is filed "electronically," as provided in 13-37-226, MCA, by providing the required information to the commissioner of Political Practices through the office's web site by using the "Campaign Tracker" icon "Campaign Electronic Reporting System (CERS)" link to electronically input the information. The commissioner's office will make training available for all users of the electronic filing system.

~~(2)~~ (4) All statements and reports required by Title 13, chapters 35 and 37, MCA, and these rules are shall be filed with the commissioner and, where required by statute, with the appropriate county election administrator, as specified in 13-37-225, MCA, and this rule.

(a) Except for reports filed electronically as provided in this rule, each statement and report filed shall be a legible copy bearing an original signature of the individual filing the statement or report.

(b) A statement or report is filed if it is submitted electronically or delivered to the commissioner and, if required, delivered to the appropriate county election administrator before 5:00 p.m. on the prescribed filing date, or if it is deposited in an

established U.S. post office, postage prepaid, no later than 5:00 p.m. three days before the prescribed filing date.

(c) If the candidate or committee **faxes in a report and fails to file the original report with the COPP, the candidate or committee thereby acknowledges the signature on the fax has the same force and effect as the original signature on the report or statement.**

~~(d) A~~ The commissioner's office shall acknowledge receipt of a delivered statement or report ~~shall be acknowledged by a dated receipt.~~

AUTH: 13-37-114, MCA

IMP: 13-37-117(4), 13-37-225(4), 13-37-226, 13-37-231(4), MCA

COMMENT 163: Two commenters pointed out that electronic reporting provides an opportunity to increase compliance and reduce administrative burdens for the office, while at the same time allowing the public immediate access to the disclosure, thereby fulfilling an important goal of the Disclose Act, without adding undo burdens on candidates, committees and organizations. 44.10.401 (44.11.302).

RESPONSE 163: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP will strive to meet its obligation to promote transparency of campaign finance information.

COMMENT 164: One commenter requested that the COPP ensure that the information that is gathered on reports and disclosures be capable of reaching voters easily accessible and meaningful way, as well as in a timely matter. 44.10.401 (44.11.302).

RESPONSE 164: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP will strive to meet its obligation to promote transparency of campaign finance information.

COMMENT 165: Two commenters suggested that a handwritten report faxed to the COPP would be counted as "electronic filing". 44.10.401 (44.11.302).

RESPONSE 165: This comment is rejected. The rule defines electronic reporting as being filed with the COPP through the "Campaign Electronic Reporting System" (CERS). The COPP will amend rule 44.10.511 (44.11.402) to clarify procedures for fax filing.

COMMENT 166: Several commenters stated that areas in Montana do not have access to internet, and electronic reporting is not possible and therefore should not be required. 44.10.401 (44.11.302).

RESPONSE 166: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. Any candidate who cannot access internet can file for a waiver of the requirement under the rule.

COMMENT 167: One commenter wanted the COPP to amend the waiver request to being mandatory rather than discretionary. 44.10.401 (44.11.302).

RESPONSE 167: The COPP rejects this comment because electronic filing serves transparency and therefore should be favored rather than disfavored.

COMMENT 168: One commenter wanted to know if there would be a form to complete for a waiver, or if the candidate has to call the office to apply. 44.10.401 (44.11.302).

RESPONSE 168: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP will accept a written request for a waiver.

COMMENT 169: One commenter thought that the rule required an electronic filer to later file a signature on paper confirming the report. 44.10.401 (44.11.302).

RESPONSE 169: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. CERS allows for a candidate, committee or treasurer to electronically sign their report, there is no need for a follow up signature on paper.

COMMENT 170: One commenter asked for clarification (1)(a) as to whether incidental and independent committees must file electronically routinely, or only if they have made an expenditure related to statewide candidates. 44.10.401 (44.11.302).

RESPONSE 170: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the regulations as proposed. The rule at (1)(a) requires all committees to report electronically.

COMMENT 171: One commenter pointed out that the reference to "committee" in (2), but the rule does not provide for a committee to apply for a waiver. 44.10.401 (44.11.302).

RESPONSE 171: The COPP accepts this comment and amends the regulation to add certain committees as entities to which a discretionary waiver applies.

COMMENT 172: Two commenters stated that any candidate or representative from a ballot issue committee should be able to seek a waiver from the electronic reporting requirement if they do not have access to a computer or internet capabilities. 44.10.401 (44.11.302).

RESPONSE 172: The COPP rejects this comment to the extent it implies that waivers should be automatic. The COPP has discretion under the rule to grant a waiver to certain candidates for reasons such as lack of internet access. The COPP accepts this comment and amends the regulation to add certain committees as entities to which a discretionary waiver applies.

COMMENT 173: Two commenters expressed concern about the reporting and disclosure of contributors addresses, occupation and employer for contributors with orders of protection from a court of law, or of persons involved in law enforcement. 44.10.401 (44.11.302).

RESPONSE 173: The COPP rejects this comment because this information has been generally required for decades without encountering the sort of problems posed by the comment. Further, P.O. Box addresses are accepted by the COPP for individuals.

COMMENT 174: One commenter expressed concern about the timeline for implementing electronic reporting, as the rules have not yet been adopted and training is not yet available. The commenter suggests that the electronic reporting requirement be delayed until the training seminars on new regulations and CERS is available throughout the state. 44.10.401 (44.11.302).

RESPONSE 174: The COPP rejects this comment for the following reasons: 1) The electronic filing requirement has been in place for statewide candidates and committees who support or oppose particular statewide candidates since 2013; 2) The COPP staff is already working to develop support for candidates who have difficulty with electronic filing; and 3) The public interest served by increased transparency argues against delay.

COMMENT 175: One commenter stated that electronic filing is convenient for the COPP, but not always convenient for a candidate. They stated that a similar bill died during the session, so they think that the electronic filing requirement should be strongly encouraged but not required. 44.10.401 (44.11.302).

RESPONSE 175: The COPP rejects this comment because SB 289 (passed by the 2015 legislature) provides authority for this regulation and there are waivers available for candidates.

COMMENT 176: One commenter requested that the COPP limit the availability of candidates to obtain waivers, because paper reporting makes information less searchable and takes longer to make available to the public of Montana. 44.10.401 (44.11.302).

RESPONSE 176: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

44.10.403 (44.11.303) AMENDMENTS TO STATEMENTS AND REPORTS

(1) Amendments correcting a report filed pursuant to 13-37-225 and 13-37-226, MCA, for a previous reporting period shall be filed ~~with the next report~~ as soon as possible following the date upon which the person filing the report became aware of the inaccuracy. The correction shall identify the date of the report and schedule containing the information to be corrected and the reason for the correction.

(2) Any material change in information previously submitted in a statement of candidate or statement of organization filed pursuant to 13-37-201 or 13-37-205, MCA, and ARM ~~44.10.405~~ 44.11.201 and 44.11.220 shall be reported by filing an amended statement with the ~~appropriate filing officers~~ commissioner within five business days after the change.

(3) Candidates and committees who electronically file with the commissioner using the CERS system may use the "Update or Amend Report" button to immediately submit a correction to a previous report.

AUTH: 13-37-114, MCA

IMP: 13-37-201, 13-37-205, 13-37-225, 13-37-226, 13-37-229(10), 13-37-230(7), 13-37-232, MCA

Comment [AG37]: No comments received. To be adopted as proposed.

44.10.405 (44.11.201) STATEMENT OF ORGANIZATION - POLITICAL COMMITTEE. INFORMATION REQUIRED (1) A statement of organization required to be filed pursuant to 13-37-201 and 13-37-205, MCA, shall include, but not be limited to:

- (a) The complete name and address of a political committee.
- (b) The complete names and address of all related or affiliated political committees, and the nature of the relationship or affiliation.
- (c) The complete name and address of its campaign treasurer and campaign depository, and the complete name and address of its deputy campaign treasurer and secondary campaign depository, if any.
- (d) The complete names, addresses, and titles of its officers, if any.
- (e) A statement of whether a committee is incorporated.
- (f) The name, office sought, and party affiliation (if any) of each candidate ~~whom a committee is supporting or opposing;~~ on whom the committee makes a reportable election expenditure, or if a committee is supporting the entire ticket of any party, the name of the party.
- (g) Ballot issue or issues concerned, if any, and whether a committee is in favor of or ~~opposition to~~ opposes such issue or issues.

AUTH: 13-37-114, MCA

IMP: 13-37-117(4), 13-37-201, 13-37-202(4), 13-37-205, MCA

Comment [AG38]: No comments received. To be adopted as proposed.

44.10.407 (44.11.304) AFFIDAVIT BY LOCAL CANDIDATE CANDIDATES
OR AND POLITICAL COMMITTEE COMMITTEES NOT ANTICIPATING
CONTRIBUTIONS OR EXPENDITURES IN EXCESS OF \$500 RECEIVING OR
EXPENDING LESS THAN \$500 (1) If a local candidate or a political committee

which is specifically organized to support or oppose a particular local candidate or local issue anticipates receiving contributions in a total amount of less than \$500 and anticipates ~~expending funds~~ making expenditures in a total amount of less than \$500 for all elections in a campaign, the candidate or an officer of the political committee shall file an affidavit of such intent at the same time the statement of candidate or statement of organization is filed as required by 13-37-201 and 13-37-205, MCA.

(2) If a local candidate or an officer of a local political committee files an affidavit pursuant to ~~(1)~~ of this rule and subsequently receives contributions in a total amount or makes expenditures in a total amount in excess of \$500 for all elections in a campaign, such candidate or officer shall, within five business days of the date when such expenditures or contributions exceed \$500, file an initial report disclosing all contributions and expenditures to that date and shall file all future reports required by 13-37-226~~(2)~~, MCA.

AUTH: 13-37-114, MCA
IMP: 13-37-226~~(3)~~, MCA

Comment [AG39]: No comments received. To be adopted as proposed.

44.10.409 (44.11.306) COMMITTEE SEMIANNUAL AND CLOSING REPORTS -INDEPENDENT COMMITTEES (1) Except as provided in (2) below, independent, incidental, ballot issue, and political party committees ~~which are not incidental committees~~ that are not required to file semiannual reports in March and September shall file a year-end closing report pursuant to 13-37-226(5)(e), MCA. The closing date of books for the report is December 31 and the report shall be filed with the ~~appropriate filing officers~~ commissioner no later than January 31.

(a) The report shall cover all contributions received and expenditures made since the closing date of books for the most recently filed report.

(b) The closing date of books for the report shall mark the cutoff date for the purpose of computing aggregate contributions and expenditures, and future reports shall use that date as a beginning point for the purpose of aggregation.

(2) No committee shall be required to file the report required by (1) if the committee was required to file a post-election report pursuant to 13-37-226(5)(b), MCA, during the second half of a calendar year and no further contributions have been received or expenditures to support or oppose a candidate or ballot issue have been made by it between the closing date of books for the post-election report and December 31. The post-election report shall be considered as its closing report and the closing date of books for that report shall be used as the cutoff date for the purpose of aggregating contributions and expenditures for future reports.

(3) ~~An independent~~ A committee ~~which that~~ will not participate in future elections and ~~which that~~ wishes to end its status as a ~~reporting~~ committee may file a statement of termination with its closing report. Any further activity by a terminated committee will require a new statement of organization.

(4) A committee may file its closing report at any time prior to the date prescribed by statute once it has finished making contributions and expenditures during an election cycle.

AUTH: 13-37-114, MCA

IMP: 13-37-226(4)(e), 13-37-228, MCA

COMMENT 177: One commenter wanted to know if a September report could also be a year-end report if there are no more expenditures. 44.10.409 (44.11.306).

RESPONSE 177: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. That said, the answer is "Yes", see (1) of the rule.

Comment [AG40]: To be adopted as proposed in original MAR publication. Comments received.

44.10.413 (44.11.305) NONRESIDENT AND FEDERALLY FILING

COMMITTEES, REPORTS (1) As used in this rule, "federally filing committee" means ~~a state party central committee, a qualified multi-candidate committee under 2 U.S.C. Sec. 441(a)(4), or any other committee which~~ that files reports with the federal election commission on a monthly or quarterly basis pursuant to the Federal Election Campaign Act of 1971, as amended.

Comment [AG41]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(a) If a federally filing committee's reports filed with the federal election commission fully disclose the source and disposition of all ~~funds contributions and expenditures used to influence in~~ elections in Montana, the commissioner shall accept copies of such reports in lieu of the periodic reports prescribed by the Campaign Finances and Practices Act. Such reports need to be filed with the commissioner only for periods in which a federally filing committee receives contributions from Montana sources or ~~expends funds to influence~~ makes expenditures in elections in Montana. A copy of a statement of organization (FEC Form 1) shall accompany the first report, and copies of any amendments thereto shall be filed with the commissioner.

(b) This rule does not affect the duty of any such committee under ~~2 U.S.C. Sec. 439~~ 52 USCS Sec. 30113 to file copies of reports with the Montana Secretary of State.

(c) If a federally filing committee cannot satisfy the requirements set forth in these rules, it shall file reports on the COPP's forms for the periods in which the committee makes expenditures and contributions in elections in Montana. Such reports shall contain the information required by 13-37-229 through 13-37-232, MCA, and these rules.

(2) Committees headquartered outside the state of Montana ~~which that~~ are not federally filing committees and ~~which expend funds to influence that make~~ expenditures and contributions in elections in Montana may satisfy the requirements of the Montana Campaign Practices Act in one of two ways:

(a) if the committee files reports with a state officer in its home state, the commissioner may accept copies of such reports in satisfaction of the requirements of the Montana Campaign Finances and Practices Act if those reports fully disclose the source and disposition of all ~~funds expenditures and contributions used to influence in~~ elections in Montana. Such reports need to be filed only for periods in which the committee ~~expends funds to influence~~ makes expenditures and contributions in elections in Montana. A copy of a statement of organization or equivalent statement shall accompany the first such report, and copies of any amendments thereto shall be filed with the commissioner as they occur.

(b) if a nonresident committee cannot satisfy the requirements set forth in (a), it shall file reports on Montana forms for the periods in which the committee makes expenditures and contributions in elections in Montana. Such reports shall contain the information required by 13-37-229 through 13-37-232, MCA, and these rules.

~~(3) A copy of a report or statement filed pursuant to this rule need not be filed with a county election administrator in Montana.~~

AUTH: 13-37-114, ~~43-37-227~~, MCA
IMP: 13-37-227, MCA

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.

44.10.501 (44.11.301) UNIFORM SYSTEM OF ACCOUNTS (1) Each person required to file reports pursuant to Title 13, chapter 37, MCA, and these rules, shall maintain a system of accounts as prescribed and published in manual form by the commissioner. The manual may be obtained without cost and upon request from the commissioner of Political Practices, 1205 Eighth Avenue, P.O. Box 202401, Helena, Montana 59620-2401, telephone (406) 444-2942, or online at www.politicalpractices.mt.gov.

(2) The uniform system of accounts provides, on a current basis, the detail and summary information necessary for preparing, directly from the accounting records, the reports required by Title 13, chapter 37, MCA, and these rules.

AUTH: 13-37-114, MCA
IMP: 13-37-117(2), MCA

Comment [AG42]: No comments received. To be adopted as proposed.

44.10.503 (44.11.409) MONETARY DEPOSITS AND EXPENDITURES, ONLY BY CAMPAIGN TREASURER, THROUGH DEPOSITORY (1) Any candidate or agent of any candidate or political committee who receives a contribution on behalf of a candidate or political committee shall, before the end of the fifth business day, transfer it to the campaign treasurer with full disclosure of the source, as required by 13-37-229 and 13-37-232, MCA, and ARM 44.11.404 and 44.11.407.

Comment [AG43]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

~~(1)~~ (2) No contribution received or expenditure made by a candidate or political committee shall be deposited or expended except by the appointed campaign treasurer or duly authorized deputy treasurer through the designated primary or secondary depository.

~~(2)~~ (3) All funds received by the campaign treasurer shall be deposited as specified in 13-37-207, MCA, except that funds received prior to and on the fifth day before the date of filing of any report shall be deposited and reported on that report.

~~(3)~~ (4) Except as stated in (5), All all expenditures, ~~except expenditures from the petty cash fund,~~ shall be made by check drawn on the designated campaign depository by check, debit card, wire transfer, or other electronic means that clearly identifies the person receiving the payment, and no check or other withdrawal shall be drawn payable to the order of cash.

~~(a)~~ (5) Expenditures from the petty cash fund shall be documented by a receipt voucher designating the date the monies were withdrawn, the exact amount of the withdrawal and by whom the monies were withdrawn, the name of the person or vendor to whom the monies were paid, and the purpose for which the monies were used. The receipt vouchers shall be attached to the cancelled check or other withdrawal receipt which provided the monies for the petty cash fund for the period and shall be maintained as a permanent record of the treasurer.

~~(b) No check shall be drawn payable to the order of cash, except that the withdrawal of monies for the purpose of providing a petty cash fund shall be by check drawn on the primary depository and payable to the order of cash.~~

(6) All records shall be kept current and available for inspection as provided in 13-37-111, 13-37-208, and 13-37-209, MCA.

AUTH: 13-37-114, MCA
IMP, 13-37-111, 13-37-205, 13-37-207, 13-37-208, 13-37-209, 13-37-215, 13-37-226, 13-37-229, 13-37-231, 13-37-232, MCA

COMMENT 178: One commenter wanted a definition of "transfer" in (1). 44.10.503 (44.11.409).

RESPONSE 178: The COPP rejects this comment for the following reasons: the rule states that once a candidate or agent of a candidate or committee "receives a contribution" they are required to "transfer" it to the campaign treasurer. The language is from the old ARM 44.10.507, which has been consolidated into this rule, and been in place since 1976.

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.

COMMENT 180: One commenter wanted to know if a candidate is required to keep copies of canceled “petty cash” checks (3) in their records, or just the bank statements showing the checks were cashed. 44.10.503 (44.11.409).

RESPONSE 180: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. Petty cash usage by a campaign requires the retention of receipts in the campaign records showing how the cash funds were expended, with the receipts attached to the cancelled check or withdrawal receipt.

44.10.511 (44.11.402) CONTRIBUTIONS, REPORTING (1) A contribution becomes a contribution on the date it is received; or, in the case of an in-kind contribution, on the date the consideration is received by the candidate or political committee.

(2) A contribution received by check drawn on a joint checking account shall be deemed and reported as a contribution from the person signing the check, unless otherwise specified in writing at the time the contribution is received.

(3) In the case of property held jointly by a candidate and another, a contribution therefrom will be presumed to be a contribution from the candidate so long as the property was owned jointly prior to the time that the candidate became a candidate as defined in 13-1-101(5), MCA.

(4) A contribution shall be reported for the reporting period during which it is received.

(5) For the purposes of 13-37-226, MCA, the report required to be filed within two business days shall be filed as follows:

(a) it shall be ~~delivered~~ electronically filed within two business days after the receipt thereof, to the commissioner's office; or

(b) if the candidate or committee faxes in a report and fails to file the original report with the COPP, the candidate or committee thereby acknowledges the signature on the fax has the same force and effect as the original signature on the report or statement.

(c) It shall be reported again on the post-election report.

AUTH: 13-37-114, MCA

IMP: 13-37-226(1)(a) and (2)(a), 13-37-229, 13-37-232, MCA

COMMENT 165: Two commenters suggested that a handwritten report faxed to the COPP would be counted as "electronic filing". 44.10.401 (44.11.302).

RESPONSE 165: This comment is rejected. The rule defines electronic reporting as being filed with the COPP through the "Campaign Electronic Reporting System" (CERS). The COPP will amend rule 44.10.511 (44.11.402) to clarify procedures for fax filing.

Comment [AG44]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.513 (44.11.403) IN-KIND CONTRIBUTION, REPORTING AND VALUATION (1) ~~For the purposes of Title 13, chapter 37, MCA, and these rules, an in-kind contribution shall be reported as follows:~~

~~(a) (1) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and, in addition to shall describe what was received consistent with the reporting requirements specified in ARM 44.10.511, shall identify it as to its nature 44.11.402.~~

~~(2) A candidate who makes personal expenditures benefitting his or her campaign, shall also report and disclose the expenditures as in-kind contributions or loans to the campaign, see ARM 44.11.501.~~

~~(b) (3) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.~~

~~(4) The value of an in-kind contribution shall be determined as follows: calculated and recorded in writing. The written record is a campaign record as defined by 13-37-208, MCA. The calculation and written record shall show one of the following values for the in-kind contribution:~~

~~(a) it shall be reported as its fair market value the actual monetary cost, value or worth of the item of property, rights or service contributed at the time of the in-kind contribution;~~

~~(b) it shall be reported as the difference between the if there is no actual cost or value as set out in (a), then the reasonable fair market value of the item of property, right or service based on an appropriate comparison made at the time of the in-kind contribution and the amount charged the contributee;~~

~~(c) it shall be reported as the actual monetary value or worth at the time of the contribution in the event that the candidate or ballot committee paid for a portion of the value established by (b), then the difference between the amount paid and the value set by (b); or~~

~~(d) if in the event that, due to extraordinary circumstances none of these provisions would be it is not appropriate or possible to determine the value set by (b), then or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received must be made of the property, right or service received by the candidate or ballot committee.~~

~~(5) Upon receiving or making an in-kind contribution, its The value shall be calculated and reduced to writing reflecting the calculation method used under (4) and the writing shall be retained by the treasurer and available for inspection as provided by 13-37-111, 13-37-208, and 13-37-209, MCA. The value shall also be reported and disclosed as a contribution as defined and required by consistent with ARM 44.11.502.~~

AUTH: 13-37-114, MCA

IMP: 13-37-208, 13-37-209, 13-37-211, 13-37-229(40), MCA

COMMENT 181: One commenter suggested the word "at" be changed to "as" in the rule when commenting on an earlier draft. 44.10.513 (44.11.403).

RESPONSE 181: The COPP accepted this comment when made earlier, with the "as" language reflected in the rule as proposed.

Comment [AG45]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.515 (44.11.405) LOANS AS CONTRIBUTIONS, REPORTING

(1) Loans to a candidate are subject to the same limits as contributions and are aggregated into a candidate's total contributions pursuant to 13-37-216 and 13-37-218, MCA; except limits do not apply to contributions or a loan made by a candidate to his or her own campaign.

(2) For the purposes of Title 13, chapter 37, MCA, and these rules, a loan shall be reported as follows:

(a) a candidate or political committee shall report a loan on the appropriate reporting schedule and, in addition to the reporting requirements specified in ARM ~~44.10.511~~ 44.11.402, shall identify it as to its ~~nature~~ purpose.

(i) The terms and conditions of all loans, including an oral agreement to lend money, shall be reduced to writing and the terms and conditions of the loan included in the documents to be retained and made available for inspection.

(ii) Any loan agreement must be signed by the candidate or political committee and the person or entity making the loan at the time the loan is made, or, if the initial agreement is an oral agreement, within five business days thereafter.

(iii) A written loan agreement must be signed prior to any transfer of funds.

(b) A loan made to a candidate or political committee by a person, other than in the regular course of the lender's business, shall be deemed a contribution by that person.

(c) A loan made to a candidate or political committee by any person in the regular course of the lender's business shall be deemed a contribution by the obligor on the loan and by any other person endorsing the loan.

(3) A loan made to a candidate or political committee that is not repaid by the candidate or committee, including the forgiveness of any loan, becomes an in-kind contribution to the candidate or committee, see ARM 44.11.501.

AUTH: 13-37-114, MCA

IMP: 13-37-111, 13-37-217, 13-37-229~~(5) and (10)~~, MCA

COMMENT 182: One commenter asked if a candidate writes a check to their own campaign, and designates it as a loan, will the canceled check be enough to prove the loan, or will a written agreement be required to be signed and notarized. 44.10.515 (44.11.405).

RESPONSE 182: The COPP rejects this comment because there is no regulation requiring that the writing be notarized. A check to a candidate's committee, from themselves, and endorsed on the back for deposit into the campaign account would meet the requirements of the rule.

COMMENT 183: One commenter stated that it did not make sense for a candidate to have a contract with their campaign for loans to their campaign. 44.10.515 (44.11.405).

RESPONSE 183: The COPP rejects this comment because a candidate who intends that their own money is lent to their campaign (as opposed to contributed) needs to record that arrangement in a writing maintained in the campaign records.

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COMMENT 184: One commenter stated that oral agreements to loan money should be in writing and documented in the campaign records. 44.10.515 (44.11.405).

REPOSENSE 184: The COPP rejects this comment because change is not needed as this requirement is already found in (2)(a)(i) of the rule as proposed.

44.10.517 (44.11.504) EXPENDITURE ENCOURAGED TO AVOID CONTRIBUTION, REPORTING (1) If a candidate or political committee, or member thereof, advises, counsels, or otherwise knowingly encourages any person to make an expenditure for the purpose of avoiding direct contributions, or for any other reason, the expenditure shall be considered a contribution by that person to the candidate or political committee encouraging the expenditure.

(2) Such contributions shall be reported pursuant to the provisions of ARM ~~44.10.513~~ 44.11.403.

AUTH: 13-37-114, MCA
IMP: 13-37-229(10), MCA

Comment [AG46]: No comments received. To be adopted as proposed.

44.10.519 (44.11.404) EARMARKED CONTRIBUTION, REPORTING

(1) For the purposes of 13-37-217 and, 13-37-229 and 13-37-232, MCA, and these rules, an "earmarked contribution" is a contribution made with the express, implied, oral, written, direct, or indirect designation or instruction, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue committee, political party committee, independent committee, or petition for nomination. An earmarked contribution is the same as a designated contribution.

- ~~(a) A contribution is not earmarked when the initial recipient is:~~
 - ~~(i) The candidate for the benefit of whom it is to be expended;~~
 - ~~(ii) A political committee which supports a single candidate for the benefit of whom it is to be expended;~~
 - ~~(iii) A political committee which supports or opposes a single ballot issue or petition for nomination for the benefit of which it is to be expended; or~~
 - ~~(iv) A political committee which supports or opposes more than one candidate and/or issue or petition for nomination and there is no direction, express or implied, that all or part of the contribution will be expended for the benefit of a specified candidate and/or issue or petition for nomination.~~

~~(2) A contribution is not earmarked when it is to be used solely at the discretion of the initial recipient.~~

~~(2)~~ (3) An earmarked contribution shall be reported as follows:

(a) the intermediary candidate or political committee receiving an earmarked contribution shall report it pursuant to the provisions of ARM ~~44.10.514~~ 44.11.402 and, in addition, shall:

- (i) report it as an "earmarked contribution"; and
- (ii) report the name and address of the candidate or political committee for which the earmarked contribution is ultimately intended; and
- (iii) inform the candidate or political committee ultimately receiving the transfer of the earmarked contribution of the full name and mailing address (and occupation and principal place of business, if any) of the original contributor.

~~(b) The intermediary candidate or political committee, when transferring an earmarked contribution or thing of value received, shall report it pursuant to the provisions of ARM 44.10.531 and, in addition, shall:~~

- ~~(i) Report it as an "earmarked contribution";~~
- ~~(ii) Inform the candidate or political committee ultimately receiving the transfer of the earmarked contribution of the full name and mailing address (occupation and principal place of business, if any) of the original contributor.~~

~~(e)~~ (b) the candidate or political committee ultimately receiving an earmarked contribution shall report it pursuant to the provisions of ARM ~~44.10.514~~ 44.11.402 and, in addition, shall:

- (i) report it as an "earmarked contribution"; and
- (ii) report it as a contribution in the name of the original contributor, disclosing the full name, mailing address (and occupation and principal place of business, if any); and
- (iii) Report the full name and mailing address of the intermediary candidate or political committee.

AUTH: 13-37-114, MCA

IMP, 13-37-217, 13-37-229, 13-37-232, MCA

Comment [AG47]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

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.

44.10.521 (44.11.406) MASS COLLECTIONS AT FUND-RAISING EVENTS-
ITEMIZED ACCOUNT OF PROCEEDS, REPORTING (1) For the purposes of 13-
37-229(8), MCA:

(a) "Mass collections" made at a fund-raising event include the proceeds received from passing the hat or from the sale of items such as campaign pins, flags, emblems, hats, banners, raffle tickets, auction items, refreshments, baked goods, admission tickets and similar items sold at a dinner, rally, auction, dance, bake sale, rummage sale or similar fund-raising event. ~~Provided,~~ provided that mass collections do not include the proceeds of purchases of \$35 or more for any candidate or political committee.

(b) "Itemized account of proceeds" means the date and approximate number of individuals in attendance at a fund-raising event, a description of the method utilized to gain the proceeds of a mass collection (i.e.; passing the hat, sale of raffle tickets, auction items, etc.) and the total amount received from each method utilized.

(2) For purposes of preparing the statement of deposit required by 13-37-207(2), MCA, a record identifying the name of and amount received from each person must be maintained for a purchase of \$35 or more at an event for any candidate or political committee. The proceeds of purchases of less than \$35 may be recorded and deposited in lump sum without identifying the name of the contributor.

AUTH: 13-37-114 MCA

IMP: 13-37-207, 13-37-229(7) and (10), MCA

Comment [AG48]: No comments received. To be adopted as proposed.

44.10.525 (44.11.505) DEBTS AND OBLIGATIONS OWED TO A CANDIDATE OR POLITICAL COMMITTEE.

(1) Pursuant to 13-37-229 and 13-37-232, MCA, each report required by 13-37-226, MCA, shall disclose all debts and obligations owed to a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A ~~reporting~~ candidate or political committee shall report the full name and mailing address (and occupation and principal place of business, if any) of each person who owes a debt or obligation to the candidate or political committee at the end of a reporting period, including the amount, date contracted, and ~~nature purpose~~ nature purpose of each debt and obligation owed by each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported, and the basis for the estimated amount shall be reduced to writing and retained for inspection.

(3) All invoices or billing statements must be maintained and available for inspection.

(4) If the debt or obligation is an oral agreement for services, the agreement must be contemporaneously reduced to writing at the time it is made, and must be signed by the parties and retained for inspection.

AUTH: 13-37-114, MCA

IMP, 13-37-229, 13-37-232, MCA

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.

Comment [AG49]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

44.10.531 (44.11.502) EXPENDITURES, REPORTING (1) A campaign expense paid personally by an individual in his or her own campaign is always coordinated with, and is a campaign expense of, the campaign that must be reported and disclosed as an expense by the campaign in the same manner as an expense paid through the campaign depository account.

Comment [AG50]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(2) An obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure.

(3) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.

(4) At The date of each expenditure shall be reported on the date and for in the reporting period during which it is made.

~~(3)~~ (5) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to ARM 44.10.503 44.11.409.

(6) All expenditures must be supported by a contemporaneous written agreement, invoice, billing statement, or similar documentation appropriate to the transaction that describes the services provided, the billing period identifying the specific dates on which services were provided, an itemized basis for the payments made, and other pertinent information.

(7) For purposes of the disclosure requirements of 13-37-229 and 13-37-232, MCA, the "purpose" of each expenditure as reported on the commissioner's campaign finance reporting forms shall specifically describe the purpose, quantity, subject matter, as appropriate to each expenditure, and must be detailed enough to distinguish among expenditures for similar purposes. For example, two expenditures for direct mail advertisements should not both be reported as "Flyers."

(4) (8) Reporting independent expenditures:

(a) Independent expenditures, as defined in ARM 44.10.323, shall be reported in accordance with the procedures for reporting other expenditures;

(b) In addition, a person making an independent expenditure shall report the name of the candidate or committee the independent expenditure was intended to benefit, and the fact that the expenditure was independent; and

(c) the candidate or political committee benefiting from the independent expenditure does not have to report the expenditure.

(9) For the purposes of 13-37-226, MCA:

(a) the reports required to be filed within two business days shall be filed electronically, pursuant to ARM 44.11.302;

(b) independent, political party, and incidental committees shall, within two business days of making an expenditure of \$500 or more for a reportable election activity, file a Form C-7E if the expenditure is made between the 17th day before the election and the day of the election; and

(e) all expenditures and contributions reported under (a) shall also be included on the post-election report.

AUTH: 13-37-114, MCA

IMP: 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-230(7), 13-37-232, MCA

COMMENT 185: One commenter suggested changing the phrasing of "intended to benefit" in the proposed rule to "clearly identified" with "support or oppose" as applicable. 44.10.531 (44.11.502).

RESPONSE 185: The COPP rejects this comment for the following reasons: the COPP determines that the suggested change will lead to more confusion, as candidates and committees have worked with the same language for almost 40 years.

COMMENT 186: One commenter asked if a candidate purchased items for their campaign and failed to get the receipt to the treasurer, if the candidate would be at fault when the receipt is found and they request reimbursement from the campaign account. 44.10.531 (44.11.502).

RESPONSE 186: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. If the candidate failed to timely report and disclose a campaign expenditure, the candidate would be in violation of the law. The COPP amends (4) as proposed to clarify in simpler language the requirement.

COMMENT 187: One commenter requested that the COPP provide a form for candidates and committees to fill out specifying all the information required for each expenditure, such as purpose, quantity and subject matter. The commenter asserted that without a form which lays out what is required by statute and rule, the candidate or committee would violate the law without knowing the requirements. 44.10.531 (44.11.502).

RESPONSE 187: This comment is rejected by the COPP for the reason that the COPP provides this background information to candidates and committees through administrative rules, guidebooks and direct staff response to questions.

COMMENT 188: One commenter suggested an amendment to (7)(b) allowing for the estimated reporting of unpaid bills. 44.10.531 (44.11.502).

RESPONSE 188: The COPP rejects this comment because an estimate of an expenditure is reported as an outstanding obligation under 44.10.525 (44.11.505), and later reported as an expenditure when the obligation is paid.

COMMENT 189: One commenter stated (regarding subsection (9)) that not all political committees are required to report within 2 business days of making an expenditure of \$500 or more between the 17th day and the election. (i.e. only independent, incidental and political party committees who do not report under (1) and (2)), and then only for electioneering communications. 44.10.531 (44.11.502).

RESPONSE 189: The COPP rejects and accepts this comment and modifies the rule in conformance according to statute.

44.10.533 (44.11.503) IN-KIND EXPENDITURE, REPORTING AND VALUATION

Comment [AG51]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(1) A candidate or political committee shall report an in-kind expenditure on the appropriate reporting schedule and shall describe what was received made consistent with the reporting requirements specified in ARM 44.11.502.

(2) The total value of the services, property, or rights expended in-kind shall be deemed to have been consumed in the reporting period in which expended.

(3) The value of an in-kind expenditure shall be determined as follows:

(i) (a) it shall be reported at as its fair market value at the time of the expenditure; or

(ii) (b) it shall be reported at as the difference between the fair market value at the time of the expenditure and the amount charged the expende; or

(iii) (c) it shall be reported at as the actual monetary value or worth at the time of the expenditure; or

(iv) (d) if due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind expenditure as made.

(e) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the expende at the time of its expenditure.

(4) ~~Upon making an in-kind expenditure, its~~ The value of an in-kind expense shall be calculated and ~~reduced to~~ recorded in writing. Because an in-kind expense becomes a contribution to the receiving candidate or ballot committee, this regulation works in tandem with ARM 44.11.403 and the record keeping requirements of that regulation apply. The calculation and written record shall show one of the following values for the in-kind expense: ~~The value shall be reported consistent with ARM 44.11.502. The writing must reflect the calculation method used under (3) and the writing shall be retained by the treasurer and available for inspection as provided in 13-37-111, 13-37-208, and 13-37-209, MCA.~~

(a) the actual monetary cost, value or worth of the item of property, right or service at the time of the in-kind expense;

(b) if there is no actual cost or value as set out in (a) then the reasonable fair market value of the item of property, right or service based on an appropriate comparison made at the time of the in-kind expense;

(c) in the event that the candidate or ballot committee paid for a portion of the value established by (b), then the difference between the amount paid and the value set by (b); or

(d) in the event that, due to extraordinary circumstances, it is not appropriate or possible to determine the value established by (b), then a precise description must be made of the property, right or service expended.

(5) The value under (4) shall be reported and disclosed as a contribution as defined and required by ARM 44.11.502.

AUTH: 13-37-114, MCA

IMP, 13-37-208, 13-37-209, 13-37-211, 13-37-229, 13-37-232, 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.

44.10.535 (44.11.506) DEBTS AND OBLIGATIONS OWED BY A CANDIDATE OR POLITICAL COMMITTEE, REPORTING (1) Pursuant to 13-37-229 and 13-37-232, MCA, each report required by 13-37-226, MCA, shall disclose all debts and obligations owed by a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

Comment [AG52]: To be amended and adopted with comment received (changes from original publication are highlighted strikes/adds).

(2) A reporting candidate or political committee shall report the full name and mailing address (and occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and nature purpose of each debt and obligation owed to each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported, and the basis for the estimated amount shall be reduced to writing and retained for inspection.

(3) All invoices or billing statements must be maintained and available for inspection.

(4) If the debt or obligation is an oral agreement for services, the agreement must be contemporaneously reduced to writing at the time it is made, and must be signed by the parties and retained for inspection.

(5) A loan made to a candidate or political committee that is not repaid by the candidate or committee, including the forgiveness of any loan, becomes an in-kind contribution to the candidate or committee, see ARM 44.11.401.

AUTH: 13-37-114, MCA
IMP, 13-37-229, 13-37-232, MCA

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.

44.10.536 (44.11.701) DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this subchapter:

(1) "Compensation" includes all direct or indirect payments of salaries, fees, wages, and benefits to an individual or a person to provide constituent services. The term includes all payments made to an individual or a person to provide constituent services on behalf of an eligible elected official, including but not limited to, payments for overtime, compensatory time, retirement, health insurance, membership fees for social, civic, and professional organizations, life insurance, professional liability insurance, unemployment or worker's compensation insurance, personal use of a vehicle, rental car payments, disability insurance, travel, meal, and lodging reimbursement, and other benefits.

(2) "Constituent" means an individual who resides in, is employed in, provides goods or services in, attends school in, or has an ownership interest in property or a business in the district or geographic area represented by an eligible elected official.

(3) "Constituent services" has the meaning generally defined in 13-37-401(4), MCA, and more specifically defined in ARM ~~44-10-540~~ 44.11.707.

(4) "Constituent services account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) "Eligible elected official" means an individual elected or appointed to a statewide office, the Public Service Commission, or the Legislature.

(6) "In-kind donation" means the furnishing of services, property, equipment, supplies, rights, or anything of value without charge or at a charge which is less than fair market value to an eligible elected official for the purpose of providing constituent services.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a constituent services account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) "Pre-existing account" means an account related to a public official's office that existed before May 14, 2007 (the effective date of 13-37-401 and 13-37-402, MCA).

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

Comment [AG53]: No comments received. To be adopted as proposed.

44.10.537 (44.10.704) APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a constituent services account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

Comment [AG54]: No comments received. To be adopted as proposed.

(2) The rules in this chapter do not apply to the constituent services stipend and reimbursement provided by the state of Montana to a legislator, starting July 1, 2017, pursuant to 5-2-204, MCA, which is administered by Legislative Services.

~~(2)~~ (3) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and ARM ~~44.10.539(1)(b), (1)(d), (1)(f), 44.10.335, and 44.10.336~~ 44.11.702, 44.11.703, and 44.11.706 apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited;

(b) an account related to an elected official's office if the elected official has been elected to any public office other than the public offices listed in ARM ~~44.10.538~~ 44.11.705 and surplus campaign funds have been deposited in the account; or

(c) the expenditure of surplus campaign funds by a candidate or an elected official.

~~(3)~~ (4) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, constituent account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) the Montana Code of Ethics, 2-2-101, et seq., MCA, including the provisions governing the receipt of gifts of substantial value and the receipt of fees or compensation other than the official compensation provided by law;

(b) the provisions of Title 13, chapter 35, part 2, MCA, concerning the improper influence of voters before and after an election and the prohibition against corporate and union contributions to candidates;

(c) the provisions of Title 13, chapter 37, part 2, MCA; and

(d) the provisions of Title 5, chapter 7, MCA.

AUTH: 13-37-114, MCA

IMP: 13-35-227, 13-37-401, 13-37-402, MCA

44.10.539 (44.11.706) PROHIBITIONS (1) The following prohibitions apply to a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM ~~44.10.335~~ 44.11.702 and ~~44.10.336~~ 44.11.703, and the rules in this chapter:

(a) An eligible elected official may not establish any other account related to the eligible elected official's public office after May 14, 2007, except for a campaign account.

(b) Only surplus campaign funds as defined in ARM ~~44.10.335(2)~~ 44.11.702 may be deposited in a constituent services account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in ARM ~~44.10.543~~ 44.11.710. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office, ~~including funds in a leadership political committee account~~, into a constituent services account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a constituent services account or to provide constituent services; or

(iii) solicit or receive an in-kind donation to provide constituent services.

(c) A constituent services account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) Constituent services account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM ~~44.10.335~~ 44.11.702, and ~~44.10.336~~ 44.11.703, and the rules in this chapter. Constituent services account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in ARM ~~44.10.542~~ 44.11.709.

(f) Constituent services account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

(2) Subsections (1)(d) and (1)(f) apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited; or

(b) the expenditure of surplus campaign funds by any elected official described in ARM ~~44.10.537(2)(b)~~ 44.11.704.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

COMMENT 190: One commenter suggested amendment of the rule to allow candidates to use constituent account funds until they file for office with the Secretary of State. 44.10.539 (44.11.706).

Comment [AG55]: To be adopted as proposed in original MAR publication. Comments received.

RESPONSE 190: The COPP rejects this comment because 13-37-402, MCA specifically states that a candidate may not use a constituent account when a campaign account is open. The requested change requires legislative action.

44.10.540 (44.11.707) AUTHORIZED EXPENDITURES (1) A constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

(a) communications with constituents or on behalf of constituents, including but not limited to, printing, postage, paper, internet, facsimile, delivery, or other costs incurred to communicate with or on behalf of constituents. Communication costs do not include payment for public advertisements or public announcements of any kind unless such public advertisements or announcements are limited to publicly announcing the date, time, place, and general purpose of a meeting in an eligible elected official's district at which the public will be allowed to participate in a public discussion of matters of interest to an eligible elected official's constituents;

(b) travel, meal, and lodging expenses as provided in (2);

(c) equipment and supplies as provided in (3) and (4);

(d) office expenses related to the lease or purchase of office space as provided in (3) and (4);

(e) utility costs associated with the use of equipment, supplies, and office space to provide constituent services;

(f) compensation paid to an individual, other than an eligible elected official or a member of an eligible elected official's immediate family; and

(g) expenses related to education, workshops, and conference participation that are incurred to represent and serve constituents; and

(h) any other expenses incurred to provide constituent services subject to the requirements and prohibitions of the rules in this chapter.

(2) Constituent services account funds may be used to pay travel, meal, and lodging expenses subject to the following:

(a) An eligible elected official may be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services at the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.

(b) An individual, other than a member of an eligible elected official's immediate family, may be reimbursed for travel, meal, and lodging expenses incurred under a written agreement with an eligible elected official to provide constituent services if such reimbursement does not exceed the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.

(c) A member of an eligible elected official's immediate family may not be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services.

(3) If constituent services account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with constituent account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with constituent account funds must be disbursed as provided in ARM ~~44.10.335(6)(c)~~ 44.11.702.

(4) If constituent services account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in ARM ~~44.10.542~~ 44.11.709.

Comment [AG56]: No comments received. To be adopted as proposed.

Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes constituent services account funds to be used or expended in violation of the prohibitions in ARM ~~44.10.539, 44.10.335 and 44.10.336~~ 44.11.702, 44.11.703, and 44.11.706, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) Constituent services account funds may not be used to pay:

(a) compensation to an eligible elected official for time spent or services rendered to provide constituent services, except as expressly provided in the rules in this chapter;

(b) compensation or any other payment to a member of an eligible elected official's immediate family for time spent or services rendered to provide constituent services;

(c) the cost of polls or public opinion surveys designed or intended to determine the attitudes and opinions of constituents or the public. However, nothing in this subsection prohibits an eligible elected official from encouraging a constituent to express an opinion about matters of interest to the constituent or matters that may be the subject of official action by the eligible elected official;

(d) the cost of all or any portion of an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(~~7~~), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or person or political committee supporting or opposing a candidate or ballot issue;

(e) any direct or indirect travel, lodging, meals, entertainment, or other expenses related to the sponsorship of, attendance at, or participation in an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(~~7~~), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or a person or political committee supporting or opposing a candidate or ballot issue;

(f) any direct or indirect expenditure to support or oppose a candidate or ballot issue;

(g) the cost of entertaining constituents or any other individual or person.

However, nothing in this subsection prohibits an eligible elected official from using constituent services account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) travel, meals, or lodging expenses incurred by a constituent or any individual other than an individual who has a written agreement to provide constituent services on behalf of an eligible elected official.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.10.541 (44.11.708) OPENING AN ACCOUNT (1) An eligible elected official may establish a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed constituent services account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

- (a) the name and elective office held by the eligible elected official establishing the constituent services account;
- (b) the district or geographic area represented by the eligible elected official;
- (c) the full name, mailing address, and telephone number that appears on the constituent services account;
- (d) the full name and mailing address of any individual other than the eligible elected official who is authorized to make expenditures from the account (the eligible elected official establishing the account must be one of the signatories on the account);
- (e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
- (f) the full name, mailing address, and telephone number of the financial institution at which the constituent services account has been established;
- (g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
- (h) the amount of surplus campaign funds being deposited in the constituent services account;
- (i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ~~ARM 44.10.335(6)(e)(ii)~~ 44.11.702; and
- (j) for each payment of surplus campaign funds to a contributor or entity under the preceding subsection, the date on which the payment was made.

(2) The form must be signed by the eligible elected official and verified as required by 13-37-231(4), MCA.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

Comment [AG57]: No comments received. To be adopted as proposed.

44.10.542 (44.11.709) RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM ~~44.10.544~~ 44.11.711. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.

(2) Each report must contain, as a minimum, the following:

- (a) the amount of money in the account at the beginning of the reporting period;
- (b) the amount and rate of interest paid on money in the account during the reporting period pursuant to ARM ~~44.10.543~~ 44.11.710;
- (c) for each expenditure made during the reporting period:
 - (i) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures ~~have been~~ were made; ~~during the reporting period, including and~~
 - (ii) the amount, date, and general statement describing the constituent services that were the basis for ~~the~~ each expenditure; and
 - (iii) the total amount of expenditures made to each person; and
 - ~~(iv)~~ (iv) the amount of money in the account at the end of the reporting period.

(3) Each report must be signed by the eligible elected official and verified as written by 13-37-231~~(4)~~, MCA.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a constituent services account:

(a) The basis for any fair market value determination to be made under the rules in this chapter.

(b) A written log or other documents identifying the date on which constituent services were provided, the street address and city at which the constituent services were provided, a statement describing the constituent services provided, and the full name and mailing address of at least one constituent on whose behalf the constituent services were provided.

(c) If the expenditure involves payments to a person other than the eligible elected official, a written receipt or invoice from the payee.

(d) If the expenditure involves reimbursement for travel, meal, or lodging expenses, ~~such reimbursement it must be based on~~ supported by receipts or other written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, and rules adopted by the Montana Department of Administration.

(e) If the expenditure involves costs incurred to communicate with constituents, ~~such expenditures it must be based on~~ supported by receipts or other written documentation itemizing the basis for the communication expenditure.

(5) An eligible elected official may establish only one constituent services account and no secondary depositories or subaccounts may be established. An eligible elected official may only have one constituent services account open at a time, and while a campaign account is open no expenditures shall be made from the constituent services account established pursuant to 13-37-401 and 13-37-402, MCA.

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of four years

Comment [AG58]: No comments received. To be adopted as proposed.

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after the constituent services account is closed.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

44.10.544 (44.11.711) CLOSING AN ACCOUNT-DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in ARM ~~44.10.536(7)~~ 44.11.701. The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a constituent services account pursuant to ARM ~~44.10.335(6)(c)(ii)~~ 44.11.702. The closing report must also disclose the date on which the payment was made to each contributor or entity.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

Comment [AG59]: No comments received. To be adopted as proposed.

7. The department proposes to repeal the following rules:

44.10.325 POLITICAL COMMITTEE-DEFINITION

AUTH: 13-37-114, MCA
IMP: 13-1-101(12), MCA

Comment [AG60]: No comments received. To be repealed as proposed.

44.10.332 LEADERSHIP POLITICAL COMMITTEES

AUTH: 13-37-114, MCA
IMP: 13-37-216, MCA

Comment [AG61]: No comments received. To be repealed as proposed.

44.10.411 INCIDENTAL POLITICAL COMMITTEE, FILING SCHEDULE

AUTH: 13-37-114, 13-37-226(5), MCA

IMP: 13-37-226(5), MCA

Comment [AG62]: No comments received. To be repealed as proposed.

44.10.507 TRANSFER OF CONTRIBUTION TO CAMPAIGN TREASURER

AUTH: 13-37-114, MCA
IMP: 13-37-207, 13-37-229, MCA

Comment [AG63]: No comments received. To be repealed as proposed.

44.10.523 AGGREGATE CONTRIBUTIONS—DEFINITION, REPORTING

AUTH: 13-37-114, MCA

IMP: 13-37-216, 13-37-229(2) and (10), MCA

Comment [AG64]: No comments received. To be repealed as proposed.

Other public comments received not related to specific rules:

COMMENT 1: Several commenters expressed thanks to the COPP for getting the proposed rules to them by mail and email and on the website, for holding the public hearings, and for holding open the written comment period for an extended time.

RESPONSE 1: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 2: The proposed rules are well written, well organized, and keep similar subjects grouped logically together.

RESPONSE 2: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 3: One commenter expressed concern that the currently docketed campaign finance practice complaints should be determined within the existing rules.

RESPONSE 3: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP will apply existing rules to currently docketed campaign practice complaints.

COMMENT 4: One commenter expressed that the proposed rules reasonably respond to the challenge of developing clear rules for the vast majority of political actors, large and small, that seek to engage in political speech accountability without undue administrative burdens, while also providing flexible regulatory standards for the most sophisticated actors who may attempt to minimize disclosure contrary to the spirit of the law. Any effective regime of rules should balance both of those goals according to the activity regulated.

RESPONSE 4: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 5: Several commenters expressed support for the rules requirements to disclose donors, citing their right to know who is funding messages in elections regardless of the amount of money spent.

RESPONSE 5: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 6: Several commenters expressed concern that potential candidates are not willing to consider runs for elected office in Montana at this point, given the amount of unreported and undisclosed activity, and expressed gratitude for the provisions of the Disclose Act in attempting to close some of the obvious loopholes in our laws.

RESPONSE 6: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 7: Several commenters pointed out that the Disclose Act was a bipartisan effort of legislators and organizations of several sessions to increase reporting and disclosure in Montana elections.

RESPONSE 7: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 8: One commenter stated that you cannot just pick out pieces of the rules and say that this particular piece is too onerous, or this piece is too broad because the rules work together as a whole to provide a complete structure for reporting and disclosure in Montana.

RESPONSE 8: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 9: Several commenters pointed out that many of the objections received in response to the proposed rules came from organizations and persons who opposed the passage of the bill, and that they are fighting to make the rules to benefit themselves rather than the people of Montana.

RESPONSE 9: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 10: Several commenters objected to the format of the proposed amendment and adoption of the rules, stating that they would require the hiring of a lawyer to understand what was going on.

RESPONSE 10: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP is required to comply with the publication rules of the Montana Administrative Procedure Act.

COMMENT 11: One commenter stated that the best way to win an election was not through campaign material, but that having a good ground game and getting out and talking to the voters win elections.

RESPONSE 11: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 12: One commenter wanted the COPP to stop the people who violate the laws before worrying about where the money is coming from.

RESPONSE 12: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 13: One commenter stated that the Commissioner is an appointed position as an executive over free speech, and that it removes the ability to have a fair and open due process to candidates and committees.

RESPONSE 13: This COPP rejects this comment because the COPP's Sufficiency Decisions and following enforcement process provides for full due process.

COMMENT 14: Several commenters wanted strengthened reporting and disclosure for organizations who lobby or advocate to change or influence laws, rules or regulations in Montana. Another commenter stated that the proposed rules were not inclusive enough, because they did not address lobbying by dark money groups for legislative actions.

RESPONSE 14: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 15: One commenter believed that the COPP's rules limit the amount that an individual, person, candidate or committee could spend.

RESPONSE 15: This comment is rejected as the proposed rules do not further restrict any of Montana contribution limits or prohibitions.

COMMENT 16: Several commenters expressed support for the new laws and proposed rules which require increased transparency in campaign finance reporting in Montana elections.

RESPONSE 16: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed.

COMMENT 17: Several commenters stated that they did not believe that the COPP had authorization to engage in rulemaking outside of the provisions of the Disclose Act.

RESPONSE 17: The COPP rejects this comment because Montana law requires that the COPP biannually review its rules, and determine whether any new or existing rule should be adopted, amended or repealed, § 2-4-314, MCA.

COMMENT 18: One commenter wanted the COPP to define "public need" and "people's informational interest" as found in the COPP's Statements of Reasonable Necessity.

RESPONSE 18: 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 it has received phone calls and emails demonstrating great public need for the rules, as well as rules that help candidates, committees and the public participate in our elections on an even playing field.

COMMENT 19: Several commenters provided testimony that they believed the new laws would require the COPP to change a committee's IRS tax status.

RESPONSE 19: This COPP rejects this comment because the COPP does not have jurisdiction over federal law which makes determinations regarding an entities tax reporting obligations. Montana law requires reporting regardless of tax status, 13-37-233, MCA.

COMMENT 20: One commenter suggested that the Commissioner should adopt a rule requiring the Commissioner to take a lie detector test and have the results published prior to requirement of any information from any group.

RESPONSE 20: The COPP rejects this comment because the Commissioner operates within the authority provided by Montana law and that law does not require such a test.

COMMENT 21: One commenter provided comments on a copy of the proposed rules which had the strikethrough and underlining removed, which indicated the deletion of old language, and adoption of new language. The resulting comments are often unintentionally irrelevant.

RESPONSE 21: The COPP will address the comments which are substantive to the rules in the comments.

COMMENT 22: One commenter wanted to know if the COPP was addressing the recent ruling on contribution limits in the rulemaking process.

RESPONSE 22: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. The COPP did consider relevant law when drafting the rules.