

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rules I through XII; the transfer of)	TRANSFER, TRANSFER AND
ARM 44.10.309, 44.10.311,)	AMENDMENT, AND REPEAL
44.10.505, 44.10.538, and 44.10.543;)	
the transfer and amendment of ARM)	
44.10.101, 44.10.201, 44.10.301,)	
44.10.303, 44.10.305, 44.10.307,)	
44.10.321, 44.10.323, 44.10.327,)	
44.10.329, 44.10.330, 44.10.331,)	
44.10.333, 44.10.334, 44.10.335,)	
44.10.336, 44.10.337, 44.10.338,)	
44.10.401, 44.10.403, 44.10.405,)	
44.10.407, 44.10.409, 44.10.413,)	
44.10.501, 44.10.503, 44.10.511,)	
44.10.513, 44.10.515, 44.10.517,)	
44.10.519, 44.10.521, 44.10.525,)	
44.10.531, 44.10.533, 44.10.535,)	
44.10.536, 44.10.537, 44.10.539,)	
44.10.540, 44.10.541, 44.10.542, and)	
44.10.544; and the repeal of ARM)	
44.10.325, 44.10.332, 44.10.411,)	
44.10.507, and 44.10.523 pertaining)	
to campaign finance reporting,)	
disclosure, and practices)	

TO: All Concerned Persons

1. On August 13, 2015, the Office of the Commissioner of Political Practices (COPP) published MAR Notice No. 44-2-207 pertaining to the public hearing on the proposed adoption, transfer, transfer and amendment, and repeal of the above-stated rules at page 1138 of the 2015 Montana Administrative Register, Issue Number 15.

2. On September 2 and 3, 2015, public hearings were held on the proposed adoption, transfer, transfer and amendment, and repeal of the above-stated rules in Helena. 41 written comments and 26 oral testimony comments were received by the September 10, 2015, deadline.

3. Concise Statement For or Against Adoption

The Office of the Commissioner of Political Practices (COPP) adopts the rules as described in this adoption notice.

The principal general reason articulated for adoption of these rules is transparency. This is accomplished by adding an earlier reporting period, requiring electronic reporting and expanding reporting to include a new group of

electioneering communication expenditures. These terms are all described in detail in the adopted rules.

The principal general reason articulated against adoption is that of privacy. Privacy is argued to be impacted because the rules are argued to interfere with the private rights of groups and individuals to make statements concerning candidates or campaigns without disclosure of the amount spent or the source of the funds spent and without the necessity of filing reports with the COPP.

Because there are several proposed rules, more specific reasons for and against adoption are set out in detail in the comments and responses set out in this adoption notice. There are 190 of these comments and responses published in this adoption notice and these are incorporated by reference into this general statement of reasons. There are differences in the rules as proposed and as adopted and those differences are identified and published in this notice of adoption. The agency notes that the rules, as adopted, reflect and conform to the comments of Senator Duane Ankney (see comments 89, 117, and 150), the principal sponsor of Senate Bill 289, the 2015 legislation that triggered many of the rules hereby adopted.

4. The COPP has adopted the following rules exactly as proposed: New Rule VI (44.11.601), IX (44.11.604), XI (44.11.607), XII (44.11.608).

5. The COPP has transferred ARM 44.10.309 (44.11.107), 44.10.311 (44.11.606), 44.10.505 (44.11.407), 44.10.538 (44.11.705), and 44.10.543 (44.11.710) exactly as proposed.

6. The COPP has transferred and amended ARM 44.10.303 (44.11.104), 44.10.305 (44.11.105), 44.10.331 (44.11.226), 44.10.335 (44.11.702), 44.10.336 (44.11.703), 44.10.403 (44.11.303), 44.10.405 (44.11.201), 44.10.407 (44.11.304), 44.10.409 (44.11.306), 44.10.501 (44.11.301), 44.10.517 (44.11.504), 44.10.521 (44.11.406), 44.10.536 (44.11.701), 44.10.539 (44.11.706), 44.10.540 (44.11.707), 44.10.541 (44.11.708), 44.10.542 (44.11.709), and 44.10.544 (44.11.711) exactly as proposed.

7. The COPP has repealed ARM 44.10.325, 44.10.332, 44.10.411, 44.10.507, and 44.10.523 exactly as proposed.

8. The COPP has adopted, amended, and transferred the following rules from the proposal notice with the following changes, based upon the comments received and after further review. New matter underlined, deleted matter interlined:

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

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

(a) remains as proposed.

(b) allocation of staff or members' activity, both during an election and otherwise; or

(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) through (k) remain as proposed but are renumbered (d) through (h).

~~(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.

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

NEW RULE II (44.11.220) STATEMENT OF CANDIDACY (1) and (2) remain as proposed.

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

(a) and (b) remain as proposed.

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.

(2) through (3) remain as proposed.

AUTH, ~~13-37-114~~ 2-2-136, MCA

IMP, ~~13-2-2-106~~ 2-2-106, MCA

NEW RULE IV (44.11.240) 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) and (b) remain as proposed.

(c) reclassify a political committee as provided in ~~13-37-226~~, MCA ARM 44.11.204;

(d) through (f) remain as proposed.

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

(h) through (2) remain as proposed.

NEW RULE V (44.11.408) ELECTRONIC CONTRIBUTIONS, REPORTING

(1) through (1)(b) remain as proposed.

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

(2) through (2)(c) remain as proposed.

(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) through (5) remain as proposed.

IMP, 13-37-207, 13-37-229, 13-37-232, MCA

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

~~(a) funded or facilitated by:~~

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

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

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

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

~~(c) The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, ~~but only requires one of 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 reportable election activity; and

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

(iii) filed the firewall policy with the COPP.

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

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

(b) and (c) remain as proposed.

(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) remains as proposed.

(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.

NEW RULE VIII (44.11.603) DE MINIMIS (1) through (1)(d) remain as proposed.

(e) other factors and circumstances ~~the commissioner determines are relevant~~ similarly showing limited value or minimal harm.

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

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

(a) through (f) remain as proposed.

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

(4) remains as proposed but is renumbered (3).

IMP, 13-1-101, 13-37-114, MCA

NEW RULE X (44.11.605) ELECTIONEERING COMMUNICATION

(1) through (1)(e)(ii) remain as proposed.

(iii) refers to a political party, ballot issue, or other question submitted to the voters in the election; ~~and.~~

~~(f) may also include an independent expenditure.~~

(2) through (3)(c) remain as proposed.

(d) any other regular or normal communication by a local government or a state agency that ~~only includes non-election~~ information about a candidate, ballot issue, or election. A communication concerning a bond issue by local government or a state agency is not regular and normal communication and is subject to reporting and disclosure as an electioneering communication. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.

(4) An electioneering communication may also be an independent expenditure.

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

(5) and (6) remain as proposed but are renumbered (6) and (7).

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

44.10.101 (44.11.101) ORGANIZATIONAL RULE (1) through (4) remain as proposed.

AUTH, 2-4-201, 13-37-114, MCA

44.10.201 (44.11.102) ADVISORY OPINIONS AND SELECTED INCORPORATION OF CERTAIN ATTORNEY GENERAL RULES, REGARDING DECLARATORY RULINGS AND RULEMAKING

(1) 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 adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.227 through 1.3.229 effective August 15, 2008, and are available online from the secretary of state at <http://www.mtrules.org/>.

(2) remains as proposed.

(3) In cases when the COPP engages in agency rulemaking, the commissioner adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.201, 1.3.202, and 1.3.304 through 1.3.313 effective August 15, 2008, and are available online from the secretary of state at <http://www.mtrules.org/>.

44.10.301 (44.11.103) INTRODUCTION AND DEFINITIONS (1) through (12) remain as proposed.

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

(14) remains as proposed.

(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) through (21) remain as proposed.

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

(23) through (30) remain as proposed.

(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) and (33) remain as proposed.

IMP, 13-1-101, Title 13, ch. 35 and 37, 13-37-114, MCA

44.10.307 (44.11.106) COMPLAINTS OF VIOLATIONS (1) through (2)(b) remain as proposed.

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

(3) remains as proposed.

(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.

(5) and (6) remain 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) through (e) remain as proposed.

(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.

IMP, 13-1-101, 13-37-219, 13-37-225, 13-37-229, 13-37-232, MCA

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

- (a) remains as proposed.
- (b) expenses incurred by a candidate or political committee with respect to polls, surveys, and the solicitation of funds for reportable election activity;
- (c) through (h) remain as proposed.

(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

that is less than fair market value 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. An "in-kind ~~contribution~~ expenditure" includes, but is not limited to, the forgiveness of any loan or debt owed by a candidate or political committee.

(3) and (4) remain as proposed.

(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.

IMP, 13-1-101, ~~13-37-429~~ 13-37-229, 13-37-232, MCA

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) through (5) remain as proposed.

(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) through (c) remain as proposed.

(7) An independent committee is a political committee that has the primary purpose of supporting or opposing candidates or ballot issues but is neither a ballot issue nor a political party political committee. Independent committee reportable election activity may consist of:

(a) and (b) remain as proposed.

(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.

(9) and (10) remain as proposed.

44.10.329 (44.11.204) POLITICAL COMMITTEE, CLASSIFICATION

(1) and (2) remain as proposed.

(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) and (5) remain as proposed.

44.10.330 (44.11.224) DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS (1) Aggregate contributions for ~~each election~~ elections 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 is either a primary election or a general election.

(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 44.11.222;

(b) through (3) remain as proposed.

44.10.333 (44.11.225) LIMITATIONS ON CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES (1) and (2) remain as proposed.

(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.

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) through (2) remain as proposed.

(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) remains as proposed.

(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.

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

44.10.337 (44.11.223) AGGREGATE CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES (1) through (4) remain as proposed.

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

44.10.338 (44.11.227) LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) through (2) remain as proposed.

(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) remains as proposed.

44.10.401 (44.11.302) STATEMENTS AND REPORTS, FILING (1) remains as proposed.

(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) and (c) remain as proposed.

(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~~ As provided by 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.

(3) through (4)(b) remain as proposed.

(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) remains as proposed.

44.10.413 (44.11.305) NONRESIDENT AND FEDERALLY FILING COMMITTEES, REPORTS (1) through (1)(b) remain as proposed.

(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) and (2)(a) remain as proposed.

(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.

44.10.503 (44.11.409) MONETARY DEPOSITS AND EXPENDITURES, ONLY 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.

(2) through (6) remain as proposed.

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

44.10.511 (44.11.402) CONTRIBUTIONS, REPORTING (1) through (4) remain as proposed.

(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) remains as proposed.

44.10.513 (44.11.403) IN-KIND CONTRIBUTION, REPORTING AND VALUATION (1) through (3) remain as proposed.

(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, right 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.

IMP, 13-37-111, 13-37-208, 13-37-209, ~~13-37-211~~, 13-37-229, MCA

44.10.515 (44.11.405) LOANS AS CONTRIBUTIONS, REPORTING

(1) through (3) remain as proposed.

IMP, 13-37-111, 13-37-217, 13-37-229, 13-37-231, MCA

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.

(2) and (3) remain as proposed.

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

44.10.525 (44.11.505) DEBTS AND OBLIGATIONS OWED TO 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 to a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) through (4) remain as proposed.

IMP, 13-37-229, 13-37-231, 13-37-232, MCA

44.10.531 (44.11.502) EXPENDITURES, REPORTING (1) through (3) remain as proposed.

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

(5) through (9) remain as proposed.

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

(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~~

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

44.10.533 (44.11.503) IN-KIND EXPENDITURE, REPORTING AND VALUATION (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) and (3) remain as proposed.

~~(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.

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

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.

(2) through (5) remain as proposed.

IMP, 13-37-229, 13-37-231, 13-37-232, MCA

44.10.537 (44.10.704) (44.11.704) APPLICABILITY OF RULES (1) through (4) remain as proposed.

9. The COPP has thoroughly considered the comments and testimony received. A summary of the comments received and the COPP's responses are as follows:

COMMENT 1: Several commenters expressed thanks to the COPP for getting the proposed rules to them by mail and e-mail and on the web site, 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: The 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 e-mails 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: The COPP rejects this comment because the COPP does not have jurisdiction over federal law which makes determinations regarding an entity's 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.

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 organization's 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 ARM 44.10.329) 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 implementing statutes, as that is where primary purpose is defined. New Rule I, 44.11.203.

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

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

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

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

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

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

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

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

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

COMMENT 37: Many commenters objected to the change from "the" to "a" in the COPP's proposed rule regarding primary purpose, stating that the rule was contrary to the enabling legislation. Several commenters pointed out case law which supports the COPP's wording of the proposed rule, noting that an entity's "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 to 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: The COPP rejects this comment as the COPP classification is, as is the group's tax status, 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 reflects 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." Section (2) now contains clarification of the statutory language statute as enacted, and a new (3) is added to the rule which contains 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.

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 47: One commenter suggested that the rule authority should also include 2-2-136, MCA. 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.

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

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

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

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

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

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

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 ARM 44.10.513 (44.11.403) and ARM 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 e-mail 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.

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 web site 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: The 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.

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 publicly 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 as evidence of coordination, unless the solicited funds were intended for use in the candidate's campaign (referring to (5)(g)). Similar associational activity comments were received 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 (5)(d). Another comment said (5)(f) and the current version of (6) are duplicative of (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 publicly 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 non-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 comment 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: The COPP rejects this comment because it is already reflected in the language of the rule.

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, MCA, 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).

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 13-1-101(49)(b), MCA. New Rule IX, 44.11.604.

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

COMMENT 89: The primary sponsor of the Disclose Act, SB 289, Sen. Ankney stated that when "things look like you are trying to influence an 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. Section (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), MCA. 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: The 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 web sites. 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: The 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 web site, 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 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.

COMMENT 114: One commenter wanted the COPP to leave the Fair Notice rule as it is, and requested 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 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.

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 ARM 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 e-mail, 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.

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 clean up existing language, and clarify that the Commissioner must act within the limits of the law and authority of the statutes over which the COPP has jurisdiction.

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 web site. 44.10.307 (44.11.106).

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

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 ARM 44.10.401 (44.11.302). When a candidate or committee is required to report electronically, the requirement includes the 2 day reports of contributions or expenditures as required by 13-37-226, MCA.

COMMENT 137: One commenter stated that by including "coordinated expenditure" based on "election activity" as a contribution to a candidate or committee, the

reporting and disclosure of donor requirements apply to candidates and committees. 44.10.321 (44.11.401).

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

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

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

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

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

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

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

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

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

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

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

COMMENT 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.

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).

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.

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).

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.

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 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 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.

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 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 ARM 44.10.321 (44.11.401). The COPP also amends ARM 44.10.333 (44.11.225) to add a reference to the exemption.

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 undue 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 ARM 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 of (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 are 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.

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 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 ARM 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.

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 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.

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).

RESPONSE 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.

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 ARM 44.10.525 (44.11.505), and later reported as an expenditure when the obligation is paid.

COMMENT 189: One commenter stated (regarding (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.

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).

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.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jonathan Motl
Jonathan Motl
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State November 24, 2015.