

To: Administrative Procedure Officer  
Office of the Secretary of State

From: Jonathan Wayne, Executive Director

Date: April 8, 2005

Re: Chapter 1 Amendments (Routine Technical)  
Statement of Factual and Policy Basis for Amendments and  
Summary and Response to Comments

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### **Chapter 1, Section 1 – Definitions**

*Factual and Policy Basis:* in adopting Chapter 1, Section 1 of the Commission rules, the Ethics Commission has moved the definitions section from Chapter 3 to Chapter 1 in order to clarify that the definitions are to be applied to the entire body of the Commission's rules. The Commission has adopted new or amended definitions for the terms "association," "candidate", "member [of a membership organization]," and "write-in candidate."

The term "association" is used in Chapter 13 of the Election Law, but is not defined in that chapter or the Commission rules. The Commission has adopted a definition adapted from the Minnesota campaign finance law.

The Commission has adopted the definition of "candidate" in the Election Law (21-A M.R.S.A. §1(5)), except that it has expanded the definition to include write-in candidates to facilitate registration and campaign finance reporting by write-in candidates, as required by Chapter 3, Section 8(3).

The Commission also adopted the definition of "write-in candidate" in the Election Law (21-A M.R.S.A. §1(51)), except that it has omitted the requirement that the individual

submit a declaration of write-in candidacy to the Secretary of State's Office. The filing of this declaration can occur after the election, and the Commission seeks to have these individuals register as candidates and be subject to campaign finance reporting requirements when they begin their campaigns.

Under the Election Law, communications from membership organizations to their members are excluded from the statutory definition of "expenditure." (21-A M.R.S.A. §1012(3)(B)(3)) Because of this exclusion, the costs of membership communications do not need to be reported as expenditures and they do not trigger matching funds. In response to questions that arose before the Commission in 2004, the Commission has adopted the proposed definition of "member" that is based on the federal regulations (11 C.F.R. §114.1(e)).

*Comments:* the Alliance for Maine's Future (AMF) commented that the proposed definition of "member" was too narrow because it requires members to make a financial contribution to the organization or to have an organizational connection to the organization such as the right to vote for the leadership of the organization. AMF proposed that individuals should be considered members of a membership organization if they take some affirmative action to join the organization such as signing a written form or signing up through a Web site.

The Maine State Employees Association (MSEA) urged the Commission to adopt the proposed rule, and commented that the proposed rule does a good job of adapting the federal definition of member. The MSEA noted that there are significant rights, benefits, and exemptions that apply to membership organizations under the Election Law. It commented that it is important to have some limits on who is considered a member of an organization.

The Maine Citizen Leadership Fund commented in favor of adopting the proposed rule. It noted that the wording mirrors the Federal Election Commission's definition of a member. It stated that in order to prevent abuse of the membership communication

exception it is important to require all three elements of the federal definition: criteria for membership; affirmative acceptance; and significant financial or organizational attachment to the organization.

Michele and Joseph Greenier commented that definitions for “clean” and “candidate’s full name” should be inserted. They suggested that any candidate accepting Maine Clean Election Act funds should be required to register under the candidate’s full name as stated on his or her birth certificate.

*Response to Comments:* the Commission adopted the rules as proposed. Because membership communications are excluded from the definition of “expenditure”, they are not required to be reported as independent expenditures and do not trigger matching funds. This is an important privilege that should not necessarily be opened to all organizations. Under the federal regulation (11 C.F.R. §114.1(e)), the exemption is limited to organizations with members that have a financial or organizational connection to the organization, which appears to be a reasonable limitation.

The Greeniers’ suggestion that Maine Clean Election Act candidates should be required to register under their full names as stated on their birth certificate will be considered as an administrative policy by the Commission, so the Commission declines to adopt definitions for “clean” and “candidate’s full name.”

## **Chapter 1, Section 4 – Initiation of Proceedings**

### Paragraph 4(2)(D)

*Factual and Policy Basis:* in the 2004 election cycle, the Commission received two requests for investigations from individuals who apparently had no personal knowledge of the alleged facts underlying the requests. The requests did not identify the individuals who had provided the alleged facts. To encourage the submission of requests to the Commission with more complete and accurate factual predicates, the Commission has adopted Paragraph 4(2)(D), which states that requests for investigations filed with the Commission should be based upon the personal knowledge of the individual submitting

the request, and that statements which are not based upon the individual's personal knowledge should identify the sources of the information which are the basis of the request.

*Comments:* the Alliance for Maine's Future commented that the proposed amendment was an improvement and should encourage valid complaints.

Paragraph 4(2)(F)

*Factual and Policy Basis:* in 2004, the Commission received some requests for investigations which the Commission's Executive Director and Counsel agreed were clearly outside the jurisdiction of the Commission. The Commission has adopted Paragraph 4(2)(F), which would allow the Commission staff in those instances to refer the request to the appropriate authority or to return the request to the submitting party.

*Comments:* the Commission did not receive comments on this rule.

Paragraph 4(2)(G)

*Factual and Policy Basis:* in the 2004 elections, an increasing number of candidates chose to file their reports electronically on the Commission's Web site rather than by submitting paper forms. Because electronic reports are not signed, they do not contain a written certification that the report is accurate and complete. The Commission has adopted a rule stating that the use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

*Comments:* the Maine Democratic Party commented that the certification on the cover page of the reporting form should be the same as the *jurat* used in affidavits.

*Response to Comments:* the current certification required on campaign finance reports ("I certify that I have examined this report and to the best of my knowledge it is true, correct, and complete") is based on the certification prescribed by statute (21-A M.R.S.A. §1016)

and appears adequate. Accordingly, the Commission did not make any changes in response to this comment.

**Chapter 1, Section 11 – Reports of Ballot Question Campaign Activity by Persons and Organizations Other than PACs**

*Factual and Policy Basis:* under Title 21-A M.R.S.A. §1056-B, individuals and organizations that raise or spend more than \$1,500 to support or oppose a ballot question and that do not meet the definition of political action committee must file campaign finance reports with the Ethics Commission. In 2004, the Legislature amended the Election Law to require PACs, party committees, and candidates to file 24-hour reports (rather than 48-hour reports) of large contributions and expenditures in the last 11 days before an election. In keeping with the statutory change, the Commission has adopted the 24-hour reporting requirement for §1056-B filers.

*Comments:* the Commission did not receive any comments on this rule.