

#### **44.11.101 ORGANIZATIONAL RULE**

- (1) Organization of the Office of the Commissioner of Political Practices (COPP).
  - (a) History. The position of the Commissioner of Political Practices (commissioner) was created by the Legislature in 1975.
  - (b) Administrative Attachment. The Office of the Commissioner of Political Practices is attached to the Office of the Secretary of State for the administrative purposes set forth in 2-15-121 and 2-15-411, MCA.
  - (c) Commissioner. The commissioner is appointed for a term of six years and may be removed pursuant to 13-37-102 and 13-37-105, MCA.
- (2) Functions of the commissioner:
  - (a) the commissioner is to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana elections regarding candidates, political committees, or issues, and in conjunction with the county attorneys, to enforce the election and campaign finance laws as specified in Title 13, chapters 35 and 37, MCA. The powers and duties of the commissioner are provided in Title 13, chapter 37, part 1, MCA.
  - (b) The Commissioner also has enforcement responsibilities related to the Code of Ethics for government officers and employees in Title 2, chapter 2, part 1, MCA.
  - (c) In addition the Commissioner administers and enforces the provisions of the Montana Lobbyist Disclosure Act, Title 5, chapter 7, MCA.
- (3) Personnel Roster. Commissioner of Political Practices, P.O. Box 202401, Helena, Montana 59620-2401, <http://www.politicalpractices.mt.gov/default.mcp>.
- (4) All forms referenced in these rules are available for download on the COPP's web site.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, MCA; EMERG, Eff. 1/1/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, Eff. 6/30/82; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.101, 2015 MAR p. XXX, Eff. x/x/15.

#### **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.
- (2) In all other cases, the commissioner will issue "advisory opinions" under the following procedure:
  - (a) A person desiring an interpretation to determine the applicability of a rule or statute administered by the commissioner to the person's activity or proposed activity may request an advisory opinion. All requests for an advisory opinion shall be in writing and shall contain:
    - (i) The identity, address, and signature of the person requesting the opinion.
    - (ii) A complete statement of the facts and circumstances upon which the commissioner is to base an opinion.
    - (iii) The rule or statute for which the person seeks an opinion.

- (iv) The specific question presented for decision by the commissioner.
- (b) The commissioner may request a memorandum of authority containing basic research and points of law bearing on the request. The memorandum should include the requesting party's own conclusion on the question presented.
- (c) Within a reasonable time after the receipt of a request for an advisory opinion, the commissioner shall consider the request and, based upon the facts presented in the request, prepare an opinion in writing, except as provided in (i). The commissioner may seek public comment prior to issuing an advisory opinion, depending on the particular question presented for an opinion.
  - (i) The commissioner will not issue an advisory opinion, but will notify the inquirer of the determination, when:
    - (A) The issue is the subject of pending litigation.
    - (B) A prior opinion has been rendered that addresses the fact and question presented in a subsequent request.
    - (C) The facts are inadequate for a determination, or the request requires resolution of a factual dispute.
    - (D) The issue involves wholly abstract or hypothetical factual situations.
  - (d) An advisory opinion will be rendered upon the facts submitted in the request and over the signature of the commissioner. A copy of the opinion will be mailed to the inquirer and published in a manner which will provide wide public dissemination. The commissioner will maintain an index of all opinions and will make an opinion available upon request.
  - (e) An advisory opinion rendered in accordance with this rule is binding between the commissioner and the inquirer on the statement of facts alleged in the written request. An advisory opinion is not subject to judicial review. A person desiring judicial review of an advisory opinion shall file a formal petition for declaratory ruling, pursuant to 2-4-501, MCA, and this rule.
  - (f) A later advisory opinion or declaratory ruling overrules an earlier advisory opinion or declaratory ruling with which it is necessarily in conflict.
  - (g) A request for a declaratory ruling or an advisory opinion shall have no effect on the commissioner's investigation of and disposition of a formal complaint on the same issue or a related dispute filed pursuant to ARM 44.11.106.
- (3) In cases when the COPP engages in agency rulemaking, the commissioner adopts and incorporates by reference the Attorney General's Organizational and Procedural Rules ARM 1.3.201, 1.3.202, and 1.3.304 through 1.3.313 effective August 15, 2008.

History: Sec. 13-37-114, MCA; IMP, 2-4-201, MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.201, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.103 INTRODUCTION AND DEFINITIONS**

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

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

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

(3) "Attribution" is described in 13-35-225, MCA, and is further explained by ARM 44.11.601.

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

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

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

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

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

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

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

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

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

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

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

(15) "Election Activity" means any activity that may constitute reportable election activity under Title 13, MCA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Sec. 13-37-114, MCA; IMP, Sec. Title 13, Ch. 35 and 37, 13-1-101, 13-37-114 MCA; NEW, Eff. 2/6/76; TRANS and AMD from 44.10.301, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.104 CONSTRUCTION OF RULES**

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

History: Sec. 13-37-114, MCA; IMP, Sec. 1, Ch. 480, Laws of 1975; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.303, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.105 PRACTICE REGARDING APPLICATION OF RULES**

(1) In any matter not specifically addressed by these rules, the commissioner shall exercise discretion so as to execute the purposes of the applicable law, without exceeding the statutory authority identified in ARM 44.11.101.

History: Sec. 13-37-114, MCA; IMP, Sec. 1, Ch. 480, Laws of 1975; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.305, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.106 COMPLAINTS OF VIOLATIONS**

(1) An individual who believes a violation of a provision of Title 13, chapters 35 or 37, MCA, or a rule or regulation implementing one or more of those statutory provisions has occurred may file a written complaint in person or by mail with the commissioner. A complaint may be filed on a form available from the COPP. Except as provided in this rule, within five business days after receipt of a complaint, the commissioner shall acknowledge its receipt and transmit a copy to the alleged violator.

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

- (a) be typewritten or legibly handwritten in ink; and
- (b) contain the following information:
  - (i) the complete name and mailing address of the complainant;
  - (ii) the complete name and mailing address of the alleged violator, if known or readily discoverable;
  - (iii) a detailed description of the alleged violation, including citation to each statute and/or rule that is alleged to have been violated;
  - (iv) any evidentiary material; and
- (c) be signed and verified by the oath of or affirmation of the complainant, taken before any officer authorized to administer oaths.

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

(4) No investigation shall be required and a complaint may be dismissed if the complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, does not cite the statute or rule that is alleged to have been violated, is unsigned, or is not verified by the oath 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) With the exception of any material that the commissioner determines is subject to protection from disclosure based on constitutional or statutory law, a filed complaint and the summary of facts and statement of findings shall be public record.

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

History: Sec. 13-37-114, MCA; IMP, Sec. 13-37-111, MCA; NEW, Eff. 2/6/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.307, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.107 COPYING OF PUBLIC RECORDS**

(1) The commissioner shall charge an amount authorized by law for providing copies of public records. This charge is the amount necessary to reimburse the office for its actual costs incident to such copying.

History: Sec. 13-37-114, MCA; IMP, 13-37-119(1), MCA; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS from 44.10.309, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.201 STATEMENT OF ORGANIZATION - POLITICAL COMMITTEE, INFORMATION REQUIRED**

(1) A statement of organization required to be filed pursuant to 13-37-201 and 13-37-205, MCA, shall include, but not be limited to:

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

History: 13-37-114, MCA; IMP, 13-37-117, 13-37-201, 13-37-202, 13-37-205, MCA; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS from 44.10.405, 2015 MAR p. XXX, Eff. x/x/15.

#### **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 must register with the commissioner at the time and in the manner set out in these rules, see ARM 44.11.201 and 44.11.302.

(2) There are four types of political committees:

- (a) a ballot issue committee as defined in 13-1-101, MCA;
- (b) a political party committee as defined in 13-1-101, MCA;
- (c) an incidental committee as defined in 13-1-101, MCA; and
- (d) an independent committee as defined in 13-1-101, MCA.

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

- (a) by an individual who makes an independent expenditure solely with his or her own funds and by his or her own actions;
- (b) by a \$250 or less expenditure as defined by "political committee" in 13-1-101, MCA;
- (c) by a de minimis activity, as defined in these rules;
- (d) by an individual who is married making a contribution through his or her joint checking account; or
- (e) by a candidate and his or her campaign treasurer(s) making an expenditure or accepting a contribution in the candidate's campaign.

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

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

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

- (a) making one or more expenditures;
- (b) accepting one or more designated contributions; or
- (c) accepting one or more contributions in response to an appeal.

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

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

(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) The primary purpose standard is defined in ARM 44.11.203.

(10) The commissioner may classify each political committee in the manner defined in these rules, see ARM 44.11.204.

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

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

History: 13-37-114, MCA; IMP, 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-231, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 1997 MAR p. 1828, Eff. 10/7/97; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.327, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.203 PRIMARY PURPOSE**

(1) The term "primary purpose" refers to the major, principal, or important goal, function, or reason for existence of a political committee.

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

(a) allocation and source of budget;

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

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

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

(a) reportable election activity;

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

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

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

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

(f) ordinary business actually conducted;

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

or

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

(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.



History: Sec. 13-37-114, MCA; IMP, Sec. 13-1-101, 13-37-114, 13-37-226, 13-37-232, MCA; NEW, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.204 POLITICAL COMMITTEE, CLASSIFICATION**

(1) The commissioner shall classify a political committee upon the basis of information including the statement of organization as defined in these rules. The commissioner shall notify a political committee of its classification.

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

(3) The commissioner may reclassify a political committee if the status of that committee should change.

(4) If the commissioner, based upon the information provided on the statement of organization, is unable to classify a political committee, additional information may be requested by the commissioner. If additional information is requested, a political committee shall provide the requested information within 10 business days after its receipt of the request.

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

History: 13-37-114, MCA; IMP, 13-37-226, MCA; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from ARM 44.10.329, 2015 MAR xxxx, Eff. x/x/15.

#### **44.11.220 STATEMENT OF CANDIDACY**

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-1-101, 13-37-201, 13-37-202, 13-37-205, MCA; NEW, 2015 MAR p. XXXX, Eff. x/x/15.

#### **44.11.221 BUSINESS 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) All state officers must file a business disclosure statement, as provided in 2-2-106, MCA.

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

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

History: 13-37-114, MCA; IMP, 2-2-106, MCA; NEW, 2015 MAR p. XXXX, Eff. x/x/15.

#### **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 each election in a campaign:

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

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

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

(d) all contributions that are coordinated as defined in 13-1-101, MCA, and further explained in ARM 44.11.501 and 44.11.602.

(2) The term "contested primary," as used in 13-37-216, MCA, means a primary election in which two or more candidates compete for the same nomination.

An election is not contested when, due to the number of candidates, the candidate automatically advances to the general election or position. For example:

(a) in partisan primary elections, if two or more candidates compete for one party's nomination, it is a "contested primary," resulting in two elections to which the contribution limits in 13-37-216, 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, MCA, apply; or

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

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

History: 13-37-114, MCA; IMP, 13-37-216, MCA; NEW, 1995 MAR p. 2048, Eff. 9/28/95; AMD, 1996 MAR p. 787, Eff. 3/22/96; TRANS and AMD from ARM 44.10.334, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.223 AGGREGATE CONTRIBUTION LIMITS FOR WRITE-IN CANDIDATES**

(1) A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, must file a declaration of intent pursuant to 13-10-211, MCA.

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

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

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

History: 13-37-114, MCA; IMP, 13-37-216, 13-37-218, 13-37-240, MCA; NEW, 1996 MAR p. 784, Eff. 3/22/96; TRANS and AMD from ARM 44.10.337, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.224 DESIGNATION OF CONTRIBUTIONS FOR PRIMARY AND GENERAL ELECTIONS**

(1) Aggregate contributions for each election in a campaign are limited according to 13-37-216 and 13-37-218, MCA, and as explained by ARM 44.11.222. An "election" in a campaign 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) Time periods for filing reports of contributions and expenditures are set forth in 13-37-226 and 13-37-228, MCA. As a general rule, contributions received by a candidate prior to and on the day of a primary election are designated for the primary election and are subject to the aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions designated for the general election during the primary election period (except for in-kind contributions) subject to the contribution limits for the general election;

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

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

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

(3) If a candidate receives contributions designated for the general election prior to the primary, and does not proceed to the general election, the candidate must return

the contributions to the donors. These funds are not "surplus campaign funds" as defined in ARM 44.11.702.

History: 13-37-114, MCA; IMP, 13-37-216, 13-37-218, MCA; NEW, 1996 MAR p. 784, Eff. 3/22/96; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from ARM 44.10.330, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.225 LIMITATIONS ON CONTRIBUTIONS FROM POLITICAL PARTY COMMITTEES**

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

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

(3) For the purposes of determining compliance with political party contribution limits established pursuant to 13-37-216, MCA, a "contribution" does not include a coordinated expenditure made solely by a political party committee in the form of provision of personal services by paid staff of the political party that benefit the associational interest of the political party but also constitute reportable election activity benefitting a particular candidate of the same political party.

History: 13-37-114, MCA; IMP, 13-37-216, MCA; NEW, 1995 MAR p. 2048, Eff. 9/28/95; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from ARM 44.10.333, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.226 LIMITS ON RECEIPTS FROM POLITICAL COMMITTEES**

(1) Based on the calculation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to candidates for the state legislature are as follows:

(a) a candidate for the state house of representatives may receive no more than \$1,700;

(b) a candidate for the state senate may receive no more than \$2,800.

(2) These limits apply to total combined receipts for the entire election cycle of 2016.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

History: 13-37-114, 13-37-218, MCA; IMP, 13-37-218, MCA; NEW, 1986 MAR p. 128, Eff. 1/31/86; AMD, 1988 MAR p. 595, Eff. 3/25/88; AMD, 1990 MAR p. 532, Eff. 3/16/90; AMD, 1992 MAR p. 1871, Eff. 8/28/92; AMD, 1995 MAR p. 2048, Eff. 9/28/95; AMD, 1996 MAR p. 787, Eff. 3/22/96; AMD, 1998 MAR p. 186, Eff. 1/16/98; AMD, 1999 MAR p. 2934, Eff. 12/17/99; AMD, 2001 MAR p. 2001, Eff. 10/12/01; AMD, 2005 MAR p.

2094, Eff. 10/28/05; AMD, 2007 MAR p. 1684, Eff. 10/26/07; AMD, 2010 MAR p. 561, Eff. 2/26/10; AMD, 2011 MAR p. 2544, Eff. 11/26/11; AMD MAR p. 2320, Eff. 12/13/13; TRANS and AMD from ARM 44.10.331, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE**

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

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

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

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

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

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

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

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

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

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

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

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

History: 13-37-216, MCA; IMP, 13-37-216, 13-37-218, MCA; NEW, 2008 MAR p. 1034, Eff. 5/23/08; AMD, 2010 MAR p. 560, Eff. 2/26/10; AMD, 2011 MAR p. 2545, Eff. 11/26/11; AMD, 2013 MAR p. 2318, Eff. 12/13/13; TRANS and AMD from ARM 44.10.338, 2015 MAR p. XXX, Eff. x/x/15.

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

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

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

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

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

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

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

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

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

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

or

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

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

History: 13-37-114, MCA; IMP, 13-35-106, 13-35-107, 13-37-111, 13-37-121, 13-37-123, 13-37-126, 13-37-127, 13-37-128, MCA and Sec. 1, Ch. 480, L. 1975, MCA; NEW, 2015 MAR p. XXXX, Eff. x/x/15.

#### **44.11.301 UNIFORM SYSTEM OF ACCOUNTS**

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

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

History: 13-37-114, MCA; IMP, 13-37-117, MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1988 MAR p. 595, Eff. 3/25/88; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS, and AMD from ARM 44.10.501, 2015 MAR p. XXX, Eff. x/xx/15.

#### **44.11.302 STATEMENTS AND REPORTS, FILING**

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

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

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

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

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

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

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

(4) All statements and reports required by Title 13, chapters 35 and 37, MCA, and these rules shall be filed with the commissioner, as specified in 13-37-225, MCA, and this rule.

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

(b) A statement or report is filed if it is submitted electronically or delivered to the commissioner before 5:00 p.m. on the prescribed filing date, or if it is deposited in an established U.S. post office, postage prepaid, no later than 5:00 p.m. three days before the prescribed filing date.

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

(d) The commissioner's office shall acknowledge receipt of a delivered statement or report.

History: 13-37-114, MCA; IMP, 13-37-117, 13-37-225, 13-37-226, 13-37-231, MCA; NEW, Eff. 1/1/76; AMD, 1977 MAR p. 1241, Eff. 12/25/77; AMD, 1979 MAR p. 652, Eff.

7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01; AMD, 2012 MAR p. 634, Eff. 3/23/12; TRANS and AMD from ARM 44.10.401, 2015 MAR p. XXX, Eff. x/xx/15.

#### **44.11.303 AMENDMENTS TO STATEMENTS AND REPORTS**

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

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

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

History: 13-37-114, MCA; IMP, 13-37-201, 13-37-205, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA; NEW, Eff. 2/6/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; TRANS and AMD from ARM 44.10.403, 2015 MAR p. XXX, Eff. x/xx/15.

#### **44.11.304 LOCAL CANDIDATES AND POLITICAL COMMITTEES RECEIVING OR EXPENDING LESS THAN \$500**

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

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

History: 13-37-114, MCA; IMP, 13-37-226, MCA; NEW, Eff. 1/1/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; TRANS and AMD from ARM 44.10.407, 2015 MAR p XXX, Eff. x/xx/15.

#### **44.11.305 NONRESIDENT AND FEDERALLY FILING COMMITTEES, REPORTS**

(1) As used in this rule, "federally filing committee" means any committee that files reports with the federal election commission on a monthly or quarterly basis pursuant to the Federal Election Campaign Act of 1971, as amended.



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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-227, MCA; NEW, 1979 MAR p. 655, Eff. 7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from ARM 44.10.413, 2015 MAR p. XXX, Eff. x/xx/15.

#### **44.11.306 COMMITTEE SEMIANNUAL AND CLOSING REPORTS**

(1) Except as provided in (2), independent, incidental, ballot issue, and political party committees that are not required to file semiannual reports in March and September shall file a year-end closing report pursuant to 13-37-226, MCA. The closing date of books for the report is December 31 and the report shall be filed with the commissioner no later than January 31.

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-226, 13-37-228, MCA; NEW, 1979 MAR p. 655, Eff. 7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from ARM 44.10.409, 2015 MAR p. XXX, Eff. x/xx/15.

#### **44.11.401 CONTRIBUTION – DEFINITION**

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

(a) each contribution as described in 13-37-229 and 13-37-232, MCA;

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

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

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

(e) a coordinated expenditure, as defined in ARM 44.11.501 and 44.11.602.

(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 13-37-232, 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.

History: 13-37-114, MCA; IMP, 13-1-101, 13-37-219, 13-37-225, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, Eff. 5/7/76; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 1999 MAR p. 2287, Eff. 10/8/99; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.321, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.402 CONTRIBUTIONS, REPORTING**

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-226, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1977 MAR p. 1245, Eff. 12/25/77; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.511, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.403 IN-KIND CONTRIBUTION, REPORTING AND VALUATION**

(1) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and shall describe what was received consistent with the reporting requirements specified in ARM 44.11.402.

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

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

(4) The value of an in-kind contribution shall be 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) the actual monetary cost, value or worth of the item of property, rights or service contributed at the time of the in-kind contribution;

(b) 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;

(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 set by (b), then a precise description must be made of the property, right or service received by the candidate or ballot committee.

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

History: 13-37-114, MCA; IMP, 13-37-208, 13-37-209, 13-37-211, 13-37-229, MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; AMD, 1977 MAR p. 1246, Eff. 12/25/77; TRANS and AMD from 44.10.513, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.404 EARMARKED CONTRIBUTION, REPORTING**

(1) For the purposes of 13-37-217, 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) A contribution is not earmarked when it is to be used solely at the discretion of the initial recipient.

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

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

(i) report it as an "earmarked contribution"; and

(ii) report the name and address of the candidate or political committee for which the earmarked contribution is ultimately intended; and

(iii) inform the candidate or political committee ultimately receiving the transfer of the earmarked contribution of the full name and mailing address (and occupation and principal place of business, if any) of the original contributor.

- (b) the candidate or political committee ultimately receiving an earmarked contribution shall report it pursuant to the provisions of ARM 44.11.402 and shall:
  - (i) report it as an "earmarked contribution"; and
  - (ii) report it as a contribution in the name of the original contributor, disclosing the full name, mailing address (and occupation and principal place of business, if any); and
  - (iii) Report the full name and mailing address of the intermediary candidate or political committee.

History: 13-37-114, MCA; IMP, 13-37-217, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, Eff. 5/7/76; AMD, 1977 MAR p. 1240, Eff. 12/25/77; TRANS and AMD from 44.10.519, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.405 LOANS AS CONTRIBUTIONS, REPORTING**

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

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-111, 13-37-217, 13-37-229, MCA; NEW, Eff. 1/1/76; TRANS and AMD from 44.10.515, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.406 MASS COLLECTIONS AT FUND-RAISING EVENTS, REPORTING**

(1) For the purposes of 13-37-229, MCA:

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

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

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

History: 13-37-114, MCA; IMP, 13-37-207, 13-37-229, MCA; NEW, Eff. 1/1/76; AMD, 1979 MAR p. 653, Eff. 7/1/79; AMD, 1988 MAR p. 595, Eff. 3/25/88; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.521, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.407 CASH CONTRIBUTION, RECEIPT**

(1) No candidate or political committee shall receive a cash contribution in excess of \$25 unless the candidate or political committee prepares a receipt. Such receipt shall contain the following information:

(a) The full name and mailing address (occupation and principal place of business, if any) of the contributor.

(b) The date the contribution was received.

(c) The name of the person who received the contribution on behalf of the candidate or political committee.

(d) The exact amount of the contribution.

(2) The receipt is to be kept as a part of the treasurer's records as specified in 13-37-207, MCA.

History: 13-37-114, MCA; IMP, 13-37-207, MCA; NEW, Eff. 1/1/76. TRANS from 44.10.505, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.408 ELECTRONIC CONTRIBUTIONS, REPORTING**

(1) A candidate or political committee may accept electronic contributions from online payment service providers and payment gateways as contributions.

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

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

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

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

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

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

(c) Each service charge or conversion fee incurred or discounted by the payment service provider shall be reported as a campaign expenditure in accordance with these rules.

(d) When receiving a payment by credit card:

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

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

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

(3) Anonymous contributions shall never be accepted.

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

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

History: 13-37-114, MCA; IMP, 13-37-207, 13-37-229, 13-37-232, MCA; NEW, Eff. x/x/15.

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

(3) All expenditures, except expenditures from the petty cash fund, shall be made by check drawn on the designated depository.

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

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

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

History: 13-37-114, MCA; IMP, 13-37-111, 13-37-205, 13-37-207, 13-37-208, 13-37-209, 13-37-215, 13-37-226, 13-37-229, 13-37-231, 13-37-232, MCA; NEW, Eff. 1/1/76; TRANS and AMD from 44.10.503, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.501 EXPENDITURE – DEFINITION**

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

- (a) each expenditure as described in 13-37-229 and 13-37-232, MCA;
- (b) expenses incurred by a candidate or political committee with respect to polls, surveys, and the solicitation of funds for reportable election activity;
- (c) expenses incurred in the drafting, printing, distribution, and collection of signatures for any petition for nomination or a ballot issue;
- (d) a candidate's own expense, except as provided in 13-1-101, MCA, and as further explained in (4);
- (e) payment of interest on a loan or other credit received;
- (f) an in-kind expenditure, as defined in (2);
- (g) an independent expenditure, as defined in (3); and
- (h) a coordinated expenditure, as defined in (4).

(2) The term "in-kind expenditure" means a third party reportable election activity expenditure, such as payment for goods or services, that does not go through the campaign depository. In the event that the third party election activity involves the furnishing of services, property, or rights without charge or at a charge 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) The term "independent expenditure" has the meaning set out in 13-1-101, MCA.

(4) The term "coordinated expenditure" is an expenditure that is "coordinated" as defined in 13-1-101, MCA, or involves "coordination" as defined in ARM 44.11.602.

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

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



sufficient to balance the total amount of campaign expenses personally paid by the candidate.

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

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

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

History: 13-37-114, MCA; IMP, 13-1-101, 13-37-129, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, Eff. 5/7/76; AMD, 1977 MAR p. 1240, Eff. 12/25/77; AMD, 1979 MAR p. 652, Eff. 7/1/79; AMD, 1986 MAR p. 128, Eff. 1/31/86; AMD, 1999 MAR p. 2287, Eff. 10/8/99; TRANS and AMD from 44.10.323, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.502 EXPENDITURES, REPORTING**

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

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

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

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

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

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

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

(8) Reporting independent expenditures:

(a) shall be reported in accordance with the procedures for reporting other expenditures;

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-225, 13-37-226, 13-37-228, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, 1977 MAR p. 1247, Eff. 12/25/77; AMD, 1986 MAR p. 128, Eff. 1/31/86; AMD, 1999 MAR p. 2287, Eff. 10/8/99; TRANS and AMD from 44.10.531, 2015 MAR p. XXX, Eff. x/x/15.

#### **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 made consistent with the reporting requirements specified in ARM 44.11.502.

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

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

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

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

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

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

(4) The value of an in-kind expense shall be calculated and 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:

(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.

History: 13-37-114, MCA; IMP, 13-37-208, 13-37-209, 13-37-211, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, Eff. 2/6/76; TRANS and AMD from 44.10.533, 2015 MAR p. XXX, Eff. x/x/15.

#### **44.11.504 EXPENDITURE ENCOURAGED TO AVOID CONTRIBUTION, REPORTING**

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

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

History: 13-37-114, MCA; IMP, 13-37-229, MCA; NEW, Eff. 1/1/76; TRANS and AMD from 44.10.517, 2015 MAR p. XXX, Eff. x/x/15.

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

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

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

History: 13-37-114, MCA; IMP, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; AMD, 2001 MAR p. 2049, Eff. 10/12/01; TRANS and AMD from 44.10.525, 2015 MAR p. XXX, Eff. x/x/15.

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-229, 13-37-232, MCA; NEW, Eff. 1/1/76; TRANS and AMD from 44.10.535, 2015 MAR p. XXX, Eff. x/x/15.

**44.11.601 ATTRIBUTION ON ELECTION MATERIAL**

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

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

(a) a candidate or a candidate's campaign, the attribution must include either:

(i) the name and address of the candidate; or

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

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

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

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

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

or

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

(b) a political committee, the attribution must include:

(i) the name of the committee, the name of the committee treasurer, and the address of either the committee or its treasurer.

(ii) An example of an appropriate attribution for a political committee is:

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

(c) a political committee that is a corporation or union, the attribution must include:

(i) the name of the corporation or union, its chief executive officer or equivalent, and the physical address of the corporation or union's principal place of business.

(ii) Examples of an appropriate attribution for a political committee that is a corporation or union are:

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

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

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

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

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

(i) the reader or observer should have no difficulty locating and reading the attribution language;

(ii) the attribution language should be of sufficient type size to be clearly readable by the recipient or reader of the communication;

(iii) the language should be contained in a printed area or segment set apart from the other contents of the election materials;

(iv) the language should be printed with a reasonable degree of color contrast between the background and the printed statement; and

(v) in the case of yard signs or other campaign signs, the attribution language should appear on the side of the sign that contains the campaign message.

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

(i) the attribution language for broadcast election communications containing audio content shall be spoken in the communication;

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

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

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

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

(i) Democrat: the donkey symbol or "D";

(ii) Libertarian: the Statue of Liberty symbol or "L"; or

(iii) Republican: the elephant symbol or "R."

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

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

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

(6) Election materials consisting of documents or other articles of campaign advertising that are too small for the inclusion of the attribution language and other

information required by 13-35-225, MCA, need not include the information; however, the person who financed the election material must file a copy of the material with the commissioner, together with the information required by the statute, at the time of its public distribution. For purposes of this rule, "at the time" means at or before the earliest date and time the election material is scheduled to be published, broadcast, or disseminated to the public.

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

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

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

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

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

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

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

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

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

History: Sec. 13-7-114, MCA; IMP, Sec. 13-35-225, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.602 COORDINATION**

(1) A "coordinated expenditure" means any election communication, electioneering communication, or reportable election activity that is made by a person 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 an agent of the candidate. 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, to be met as a fact of a coordinated expenditure.

(2) When determining whether a communication or reportable election activity is coordinated the following may be considered, whether:

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

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

(c) the person funding or facilitating the communication or reportable election activity retains the paid services of a person or individual who:

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

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

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

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

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

(i) established a written firewall policy designed to prevent the flow of information about the candidate's campaign plans, projects, activities, or needs from the persons providing services to the candidate to persons involved in the creation, production, or dissemination of the communication or activity; and

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

(iii) filed the firewall policy with the COPP.

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

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

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

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

(d) activity by an individual acting solely on his or her own behalf independently of any candidate or the candidate's agent; or

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

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

(a) of personal or professional relationships between a candidate and other persons;



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

(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

(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) 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.

History: 13-7-114, MCA; IMP, 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.603 DE MINIMIS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Sec. 13-7-114, MCA; IMP, Sec. 13-1-101, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.604 ELECTION COMMUNICATION**

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

(2) An election communication means:

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

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

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

(d) a mailing; or

(e) printed materials.

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

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

History: Sec. 13-7-114, MCA; IMP, Sec. 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.605 ELECTIONEERING COMMUNICATION**

(1) An electioneering communication is a paid communication that:

(a) is publicly distributed by one or more of the modes of communication listed in the statute;

(b) is made within 60 days of the initiation of voting in an election;

(c) does not support or oppose a candidate or ballot issue, as "support or oppose" is defined in 13-1-101, MCA;

(d) can be received by more than 100 recipients in the district voting on the candidate or ballot issue;

(e) meets one or more of the following criteria:

(i) refers to one or more clearly identified candidates in the election;

(ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in the election; or

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

(f) may also be an independent expenditure.

(2) In (1)(b) the phrase "made within 60 days of the initiation of voting in an election" shall mean the following:

(a) in the case of mail ballot elections, the initiation of voting occurs when official ballot packets are mailed to qualified electors pursuant to 13-19-206, MCA;

(b) in other elections the initiation of voting occurs when absentee ballot packets are mailed to or otherwise delivered to qualified electors pursuant to 13-13-214, MCA.

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

(a) a communication that refers to or depicts the name, image, likeness, or voice of one or more clearly identified candidates, but that is susceptible to no reasonable interpretation other than as unrelated to the candidacy or the election;

(b) a communication that refers to a political party, ballot issue, or other question submitted to the voters at an election, but that is susceptible to no reasonable interpretation other than as unrelated to the issue or the election;

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

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

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

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

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

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

History: Sec. 13-7-114, MCA; IMP, Sec. 13-1-101, 13-37-225, 13-37-226, 13-37-229, 13-37-232, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.606 ELECTIONEERING - INTERPRETIVE RULE**

(1) As used in 13-35-211, MCA, "electioneering" means the solicitation of support or opposition to a candidate or issue to be voted upon at the election or polling place in question, by means of:

(a) Personal persuasion, electronic amplification of the human voice, or the display or distribution of campaign materials.

(b) Offering or distribution of food, drink, or any other material benefit in a manner calculated to encourage recognition, support, or opposition to a candidate or issue.

(c) "Electioneering" does not include the display of ordinary bumper stickers on automobiles.

History: Sec. 13-7-114, MCA; IMP, Sec. 13-35-211, MCA; NEW, 1977 MAR p. 1236, Eff. 12/25/77; TRANS from 44.10.311, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.607 FAIR NOTICE PERIOD BEFORE ELECTION**

(1) For purposes of this rule, "campaign advertising" refers to "reportable election activity", as defined in ARM 44.11.103.

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

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

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

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

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

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

History: Sec. 13-7-114, MCA; IMP, Sec. 13-35-402, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.608 PERSONAL USE OF CAMPAIGN FUNDS**

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

(2) Expenditures for personal use are those that have no direct connection with, or effect upon, expenditures to support or oppose candidates or issues, and those that

would exist irrespective of a candidate's campaign or an individual's involvement in a candidate's campaign. Campaign expenditures are those that serve to support or oppose a candidate or issue. An expenditure for personal use or expense occurs when, for example, the expenditure:

- (a) covers normal living needs of the candidate, the candidate's immediate family, or any other individual;
- (b) covers food or clothing that are not specially required by or related to a campaign activity;
- (c) covers the cost of travel, lodging, food, and registration, including attendance at any conference or event, that does not serve a campaign interest.

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

- (a) the amount attributed to an individual's personal use or expense shall be determined in writing and reimbursed by the individual to the campaign, unless the personal benefit is de minimis;
- (b) a mixed benefit to the candidate means use of goods, services, or property for personal use or expense as well as to support or oppose candidates or issues; or
- (c) the personal benefit is de minimis as determined according to ARM

44.11.603.

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

- (a) reimbursements to a candidate, or staff or volunteers of a candidate's campaign, for goods and services purchased for campaign expenditures;
- (b) gifts or bonuses of less than \$250 in a calendar year to campaign staff; or
- (c) expenditures expressly authorized elsewhere in these rules.

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

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

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

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

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

(c) for purposes of this rule, the "residual" fair market value is based upon the value of the property at the time it is sold or donated, accounting for items of similar description, age, and condition. The sale of property through an online commercial

auction shall be considered as a favorable factor in determining that the sale price received was the fair market value of the property sold.

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

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

History: Sec. 13-7-114, MCA; IMP, Sec. 13-1-101, 13-37-229, 13-37-240, MCA; NEW, 2015 MAR p. , Eff. //15.

#### **44.11.701 DEFINITIONS**

For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this subchapter:

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.536, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.702 DISPOSAL OF SURPLUS CAMPAIGN FUNDS AND PROPERTY**

(1) Candidates shall dispose of surplus campaign funds within 120 days of filing the closing campaign report required by 13-37-228, MCA.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished, the provisions of ARM 44.11.608 are followed, and no further contributions or expenditures will be received or made which relate to the campaign.

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

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, pursuant to ARM 44.11.608, no further campaign contributions will be received, and no further campaign expenditures will be made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-240, MCA; NEW, 1995 MAR p. 2048, Eff. 9/28/95; AMD, 2001 MAR p. 2049, Eff. 10/12/01; AMD, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.535, 2015 MAR p. ,AMD 2015 MAR p. Eff. //15.

#### **44.11.703 PERSONAL BENEFIT**

(1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a constituent services account, that benefit a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

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

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

(b) the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the



surplus campaign funds or constituent services account funds received by the organization; and

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-240, MCA; NEW, 1996 MAR p. 784, Eff. 3/22/96; AMD, 2008 MAR p. 2009, Eff. 9/12/08. TRANS from 44.10.336, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.704 APPLICABILITY OF RULES**

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

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

(3) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and ARM 44.11.702, 44.11.703, and 44.11.706 apply to:

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.537, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.705 ELIGIBLE ELECTED OFFICIALS**

(1) An individual elected to any of the following public offices may transfer surplus campaign funds to a constituent services account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) Governor;

(b) Lieutenant Governor;

(c) Attorney General;

(d) Secretary of State;

(e) State Auditor;

(f) Superintendent of Public Instruction;

(g) Chief Justice or Justice of the Supreme Court;

(h) Clerk of the Supreme Court;

(i) Public Service Commission; or

(j) The Montana House of Representatives or Senate.

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.44.10.538, 2015 MAR p.

#### **44.11.706 PROHIBITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.539, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.707 AUTHORIZED EXPENDITURES**

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

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

district at which the public will be allowed to participate in a public discussion of matters of interest to an eligible elected official's constituents;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AUTH: 13-37-114, MCA

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

REASON: See reason for ARM 44.10.536 (44.11.701).

#### **44.11.708 OPENING AN ACCOUNT**

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

- (a) the name and elective office held by the eligible elected official establishing the constituent services account;
  - (b) the district or geographic area represented by the eligible elected official;
  - (c) the full name, mailing address, and telephone number that appears on the constituent services account;
  - (d) the full name and mailing address of any individual other than the eligible elected official who is authorized to make expenditures from the account (the eligible elected official establishing the account must be one of the signatories on the account);
  - (e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
  - (f) the full name, mailing address, and telephone number of the financial institution at which the constituent services account has been established;
  - (g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;
  - (h) the amount of surplus campaign funds being deposited in the constituent services account;
  - (i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.11.702; and
  - (j) for each payment of surplus campaign funds to a contributor or entity under the preceding subsection, the date on which the payment was made.
- (2) The form must be signed by the eligible elected official and verified as required by 13-37-231, MCA.

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.541, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.709 RECORDS AND REPORTING**

- (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM 44.11.711. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.
- (2) Each report must contain, as a minimum, the following:
- (a) the amount of money in the account at the beginning of the reporting period;
  - (b) the amount and rate of interest paid on money in the account during the reporting period pursuant to ARM 44.11.710;
  - (c) for each expenditure made during the reporting period:
    - (i) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures were made; and

(ii) the amount, date, and general statement describing the constituent services that were the basis for each expenditure; and

(iii) the total amount of expenditures made to each person; and

(iv) the amount of money in the account at the end of the reporting period.

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

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

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

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

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

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

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

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

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

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.542, 2015 MAR p. , AMD 2015 MAR p., Eff. //15.

#### **44.11.710 INTEREST PAID ON ACCOUNTS**

(1) Interest paid on a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

(a) the interest is deposited directly into the constituent services account;

(b) the interest is paid by a bank, savings and loan, credit union, brokerage firm, or other financial or investment entity subject to regulation by the state of Montana or an agency of the United States government; and

(c) the interest paid is the entity's prevailing money market, savings, or certificate of deposit rate paid to other investors or depositors with similar interest bearing accounts.

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08. TRANS from 44.10.543, 2015 MAR p. , Eff. //15.

**44.11.711 CLOSING AN ACCOUNT–DISBURSEMENT OF SURPLUS  
ACCOUNT FUNDS**

(1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in ARM 44.11.701. The closing report must be filed on a form to be provided by the commissioner.

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

History: 13-37-114, MCA; IMP, 13-37-401, 13-37-402, MCA; NEW, 2008 MAR p. 2009, Eff. 9/12/08; TRANS from 44.10.543, 2015 MAR p. , Eff. //15.