

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

Editor's Note: Because the Citizen's Clean Elections Commission is an independent agency, the following Notice of Exempt Rulemaking was exempt from the Governor's Regulatory Review Plan memoranda of January 22, 2009 and April 30, 2009. (See a copy of the memoranda in this issue on pages 1167 and 1168.)

[R09-62]

PREAMBLE

1. Sections Affected

R2-20-101
R2-20-104
R2-20-107
R2-20-109
R2-20-111
R2-20-113
R2-20-702.01

Rulemaking Action

Amend
Amend
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Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 16-940, et seq.

Implementing statute: A.R.S. § 16-956(C)

3. The effective date of the rules:

August 31, 2009

4. A list of all previous notices appearing in the *Register* addressing the exempt rule:

Not applicable

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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or
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6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

R2-20-101 prescribes definitions. This change defines "unopposed" in a way that is easier for candidates to understand. The change was made based on feedback from candidates.

R2-20-104 prescribes the requirements for obtaining certification as a participating candidate. R2-20-104 (D) has been changed to remove the requirement that campaign treasurers attend Commission training sessions. The Commission requires that the candidate attend but treasurers are not required to attend. This change makes the training process more efficient.

R2-20-107 prescribes the requirements for candidate debates. The change to R2-20-107(D) reflects long-standing Commission practice and will further encourage participation in debates by the candidates. The change to R2-20-107(E) provides an alternative penalty and provides flexibility to the Commission while incentivizing compliance with statutory requirements by candidates. The changes to R2-20-107(H) are intended to add clarity and understanding regarding excused absences from the debates.

R2-20-109 prescribes the requirements of reporting contributions and expenditures. The change to R2-20-109(A)(3) is intended to simplify the procedures for two candidates to engage in joint expenditures. This change was made based on suggestions from candidates. The change to R2-20-109(A)(4) was made based on feedback from candidates and is intended to provide more information to the public by requiring that candidates who use petty cash for expenditures provide the same level of detail for sub-vendors as is required for regular expenditures.

R2-20-111 prescribes the requirements for maintaining books and records. The change to R2-20-111(B) implements the change to R2-20-109(A)(4) and is intended to provide more detailed campaign finance information to the public.

R2-20-113 prescribes the requirements for calculation of equalizing funds. The change to R2-20-113(B)(1)(i) extends from 21 days to 51 days, the time to raise money to retire debt that will not trigger matching funds in the new election cycle. This change was made in response to candidate suggestions.

R2-20-702.01 prescribes the requirements for using assets in subsequent political campaigns. The changes are intended to enhance clarity.

Adoption and amendment of the above described rules is exempt from regular rulemaking procedures pursuant of A.R.S. § 16-956(C) of the Citizens Clean Elections Act.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Not applicable

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Changes between rules as initially proposed and as finally adopted by the Commission were primarily grammatical and stylistic. Additional changes were incorporated at the suggestion of members of the public and Commissioners to clarify terms and provisions of the rules.

11. A summary of the comments made regarding the rule and the agency response to them:

The Commissioners solicited public comment throughout the rulemaking process. Comments were generally supportive of the revised rules. Requests for clarifications and revisions and statements in support or opposition to specific provisions were duly considered by the Commission at open meetings and were acted upon as deemed appropriate.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

Not applicable

15. The full text of the rules follows:

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TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

- R2-20-101. Definitions
- R2-20-104. Certification as a Participating Candidate
- R2-20-107. Candidate Debates
- R2-20-109. Reporting Requirements
- R2-20-111. Books and Records Requirements
- R2-20-113. Calculation of Equalizing Funds

ARTICLE 7. USE OF FUNDS AND REPAYMENT

Section

- R2-20-702.01. Use of Assets

ARTICLE 1. GENERAL PROVISIONS

R2-20-101. Definitions

In addition to the definitions provided in A.R.S. §§ 16-901 and 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account designated by a political committee that is used solely for political campaign purposes as required in A.R.S. § 16-902(C).
4. "Candidate" means an individual who receives or gives consent for receipt of a contribution for the candidate's nomination for or election to any office in this state, and includes a candidate's campaign committee, the political committee designated and authorized by a candidate, or any agents or personnel of the candidate.
5. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
6. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
7. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
8. "Election cycle," for the purposes of providing equalizing funds, means the time period between 21 days after the preceding general election and the current general election date.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
 - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
 - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s):
 - i. That in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents, or
 - ii. In the 16 week-period immediately preceding a general election.
 - c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.

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12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
14. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
20. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
21. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
22. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
23. "Unopposed" means: in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.
 - a. ~~With reference to an election for House of Representatives or Corporation Commission, opposed by a number of candidates who will appear on the ballot fewer than the number of available seats for such office in the same electoral district, as applicable; and~~
 - b. ~~With reference to an election for any other office subject to the Act, opposed by no candidates who will appear on the ballot.~~
 - a. For purposes of funding pursuant to A.R.S. § 16-951, "unopposed" means that the candidate is unopposed for both the primary election and the general election.
 - b. For purposes of equal funding allocations pursuant to A.R.S. § 16-952(A), "unopposed" means that the candidate is unopposed in the party primary.
 - c. For purposes of equal funding allocations pursuant to A.R.S. § 16-952(B), "unopposed" means that the candidate is unopposed in the general election.

R2-20-104. Certification as a Participating Candidate

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:
 1. Make the change to participating candidate status during the exploratory and qualifying periods only;
 2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
 3. Return all Political Action Committee (PAC) monies received;
 4. Not have spent contributions exceeding the early contribution limit, or any part of a contribution exceeding the early contribution limit;
 5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
 1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C);
 2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(8); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
 3. Remitting the money to the Fund;
 4. Disposing of the money in accordance with A.R.S. § 16-915.01; or
 5. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.
- C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission approved application and a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the

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candidate:

1. Agrees to use all Clean Elections funding for direct campaign purposes only;
2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;
3. Will comply with all requirements of the Act and Commission rules;
4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
8. Will submit the name and mailing address of the person who is entitled to receive equalizing fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.

D. If certified as a participating candidate, the candidate shall:

1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
5. Attend at least one candidate training class sponsored by the Commission, ~~and cause the candidate's campaign treasurer to attend at least one candidate training class, during the election cycle.~~ If the candidate ~~or the treasurer~~ is unable to attend a training class, the candidate ~~or treasurer~~ shall:
 - a. Notify the Commission that the candidate ~~or treasurer~~ is unable to attend a training class. The Commission then will send that person the Commission training materials; and
 - b. The candidate ~~or treasurer~~ shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
6. Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.

E. Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of personal funds and loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).

F. Officeholder Expenses. Prior to April 30 of an election year, an elected official may raise or spend money to defray the expense of performing officeholder duties and the event or item purchased shall be completed or otherwise used and depleted prior to April 30 of an election year, as follows:

1. The candidate may first exhaust all surplus monies from prior campaign accounts pursuant to subsection (B) of this rule or may use personal monies for officeholder expenses;
2. Money raised shall be only from individuals and the maximum raised from an individual during the election cycle shall not exceed one-half the early contribution limit;
3. The sum of the money raised or spent shall not exceed two times the early contribution limit applicable to the officeholder's current office;

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4. For an officeholder's future campaign as a:
 - a. Participating candidate
 - i. Money raised pursuant to this subsection will not be deemed early contributions, and
 - ii. Personal money spent pursuant to this subsection shall not apply to personal money expenditure limits provided in A.R.S. § 16-941(A)(2).
 - b. Nonparticipating candidate
 - i. Money raised or spent pursuant to this subsection will not be calculated in matching funds to opponents as provided in A.R.S. § 16-952, and
 - ii. Money raised or spent pursuant to this subsection will not trigger the reporting requirements provided in A.R.S. §§ 16-941(D) and 16-958.
5. Any money raised or spent in excess of the limits established in this Section, however, shall be calculated as early contributions or personal monies for participating candidates, or for matching funds and reporting requirements for nonparticipating candidates;
6. Money raised or spent for officeholder expenses shall be reported under campaign finance reporting requirements pursuant to A.R.S. Title 16, Chapter 6, Article 1 as follows:
 - a. The officeholder shall establish an account for officeholder expenses, which shall be separate from any candidate campaign account;
 - b. The account shall be designated on the statement of organization as "Officeholder Expense Account;" and
 - c. Any money remaining in the officeholder expense account after April 30 of an election year shall either not be spent for the remainder of the calendar year, or shall be remitted to the Clean Elections Fund;
7. Money in the officeholder expense account shall not be used for direct campaign purposes or in connection with the officeholder's future campaign for elective office; and
8. Permissible uses of the money in the officeholder expense account include:
 - a. Expenditures for office equipment and supplies;
 - b. Expenditures for work-related travel;
 - c. Donations to tax-exempt charitable organizations; or
 - d. Expenditures to meet or communicate with constituents.
- G. A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- H. Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

R2-20-107. Candidate Debates

- A. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections unless there is no participating candidate in the election for a particular office.
- B. In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:
 1. There are at least two candidates of the political party's nomination; and
 2. At least one of the candidates is a participating candidate.
- C. The following candidates will not be invited to participate in debates as follows:
 1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
 2. In the general election, write-in candidates.
- D. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.
- E. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be ineligible to receive any further equalizing funds for that election or shall be fined \$500.00. For purposes of this Section, each primary or general election shall be considered a separate election.
- F. A participating candidate may request to be exempt from participating in a required debate by doing the following:
 1. Submit a written request to the Commission at least one week prior to the scheduled debate; and
 2. State the reasons and circumstances justifying the request for exemption.
- G. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
 1. Beyond the control of the candidate;
 2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
 3. Good cause, as defined in A.R.S. § 16-918(E).
- H. A participating candidate who fails to participate in a required debate may submit a request for ~~reconsideration~~ excused absence to the Commission.
 1. The candidate's request for ~~reconsideration~~ excused absence shall:

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- a. State the reason the candidate failed to participate in the debate; and
 - b. State the reason the candidate failed to request an exemption in advance; and
 - ~~b-c.~~ Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
2. After examining the request for ~~reconsideration~~ excused absence, the Commission ~~will~~ may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
 - a. Beyond the control of the candidate;
 - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
 - c. Good cause, as defined in A.R.S. § 16-918(E).
- I. When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.
- J. In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the rules established by the Commission.

R2-20-109. Reporting Requirements

- A. Reporting of transactions; software provided or approved by the Secretary of State. All campaign finance reports shall be filed in electronic format in accordance with A.R.S. § 16-958(E). The Commission shall coordinate with the Secretary of State to make electronic-filing computer software available to candidates. Campaign finance reports shall be available on the Secretary of State's web site. All candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account using the campaign finance computer software provided or approved by the Secretary of State as follows:
1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. The Commission may treat such expenditures as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.
 2. Original and supplemental campaign finance reports filed pursuant to A.R.S. §§ 16-941 and 16-958 shall include the same information regarding receipts and disbursements as required by A.R.S. § 16-915.
 3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate provided that:
 - a. The candidate shall report an expenditure as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
 - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure and all other outstanding obligations of the candidate's campaign committee; and
 - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
 - d. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days.
 4. In the event that a candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.
 5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.
- B. Participating candidate reporting requirements. In addition to the campaign finance reports filed pursuant to A.R.S. § 16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
1. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of persons who have made qualifying contributions to the candidate.
 2. End of qualifying period. At the end of the qualifying period, a participating candidate shall file a recap campaign finance report consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies.
 - a. The recap campaign finance report for the qualifying period shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
 - b. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will remit all unspent early contributions to the fund, pursuant to A.R.S. §

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16-945(B). Any unspent personal monies shall be returned to the candidate or the candidate's family member within five days.

3. Primary election and general election recap campaign finance reports. Each participating candidate shall file a campaign finance report consisting of a recap of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made from such candidate's campaign fund to the Clean Elections Fund. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will return all unspent monies to the Fund.
 - a. The recap campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
 - b. The recap campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).
- C. Amending Reports. If a candidate determines that a previously filed campaign finance report contains inaccurate information, then the candidate shall amend the campaign finance report to provide accurate information.
 1. Except when a new election period has started, a participating candidate who received Clean Elections funding based upon an inaccurate campaign finance report shall remit to the Commission the excess funds as determined by the amended campaign finance report within five days after filing the amended campaign finance report.
 2. If the participating candidate does not have sufficient funds in his or her account to return the required monies, the balance owed shall be withheld from future equalizing funds due to the participating candidate in the election period during which the excess funds were awarded.
- D. Independent expenditures.
 1. Any individual, group of individuals, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in R2-20-101(11), shall file campaign finance reports with the Secretary of State in accordance with A.R.S. § 16-958.
 2. Any individual, group of individuals, corporation, political party or membership organization that makes independent expenditures for literature or an advertisement relating to any one candidate or office within 10 days before the day of any election to which the expenditures relate shall send to the Commission by overnight delivery; and by facsimile or e-mail, no later than one day after it is mailed, broadcast or published, as applicable, a copy of the campaign literature or advertisement together with a statement declaring the cost of producing and distributing such campaign literature or advertisement. The copy of the literature or advertisement sent to the Commission pursuant to this Section shall be a reproduction that is clearly readable, viewable or audible, as applicable.
 3. Any individual, group of individuals, corporation, political party or membership organization that fails to file a campaign finance report pursuant to this subsection (D) shall be subject to a civil penalty as described in A.R.S. § 16-942(B), as applicable.
- E. The following will be considered to be a "contribution during the election cycle to date" or "expenditures ... made through the end of the primary election period" for purposes of reporting under A.R.S. §§ 16-941(B)(2) and 16-958(A):
 1. A contribution to a candidate to retire debt from a prior election cycle if deposited into the current campaign account;
 2. Any contributions received and placed in a future, current, or prior, campaign account during the current election cycle;
 3. Surplus funds transferred into the current campaign account;
 4. Contributions received or expenditures made beginning 21 days after the date of the prior general election.
- F. Timing of reporting expenditures.
 1. Except as set forth in subsection (F)(2) below, a candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
 2. In the alternative to reporting in accordance with subsection (F)(1) above, a candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
 - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
 - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
 - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of:

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- i. The date upon which payment is made; or
- ii. The date upon which payment is due.

G. Transportation expenses.

1. Except as otherwise provided in this subsection (G), the costs of transportation relating to the election of a statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
2. If a candidate travels for campaign purposes in a privately owned automobile, the candidate may use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate (which is 44.5¢ per mile in 2007), in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the candidate chooses to use campaign funds for reimbursement, the candidate shall keep an itinerary of the trip, including name and type of event(s) attended, miles traveled and the rate at which the reimbursement was made.
3. If a candidate travels for campaign purposes in a privately owned airplane, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
4. If a candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as expenditure.

H. Use of Campaign Consultants and Contractors. Participating candidates may hire consultants to provide services to their campaigns. The campaign finance report shall reflect payments made to the consultant for services provided directly by the consultant. If, however, the consultant pays for goods and services to be provided by a sub-contractor or different vendor the campaign finance report shall include the same detail set forth in A.R.S. § 16-948(C) for each subcontractor or sub-vendor.

R2-20-111. Books and Records Requirements

- A.** All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B.** All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
 1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
 - a. All contributions or other monies received by or on behalf of the candidate.
 - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into a campaign account.
 - c. Cumulative totals contributed by each individual or political committee.
 - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
 - e. All periodic bank statements or other statements for the campaign account.
 - f. ~~All activity related to petty cash accounts.~~
 - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
 2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
 3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
 4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
 5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
 6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C.** Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the

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Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
 - a. All papers, records, or other items sought in the public inspection request;
 - b. No later than two business days after the date of the subpoena; and
 - c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

R2-20-113. Calculation of Equalizing Funds

- A. During the primary election period, the Commission shall pay any participating candidate in the same party primary of a nonparticipating candidate, the amount of the nonparticipating candidate's expenditures in excess of the amount over the primary election spending limit, not to exceed three times the original primary election spending limit, as follows:
 1. The nonparticipating candidates' expenditures, which are defined as:
 - a. Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state;
 - b. A promise or agreement to make an expenditure resulting in an extension of credit; and
 - c. The value of any in-kind contribution received.
 2. If an independent expenditure is made against one or more participating candidates for a single office, each participating candidate will be eligible to receive equalizing funds, if applicable, for the amount of the independent expenditure. The participating candidates who were the subject of the expenditure will be the only candidates eligible to receive the equalizing funds, if applicable, for the cost of that independent expenditure. If so required by this subsection, the Commission may issue equalizing funds based on an independent expenditure in an amount greater than the amount of such independent expenditure.
 3. If an independent expenditure is made in favor of one or more nonparticipating candidates, all participating candidates in the party primary of the candidate favored by the independent expenditure will be eligible to receive equalizing funds, if applicable, for the amount of the independent expenditure. If so required by this subsection, the Commission may issue equalizing funds based on an independent expenditure in an amount greater than the amount of such independent expenditure.
 4. If an independent expenditure is made in favor of a single participating candidate, all of the other participating candidates in that party primary will be eligible to receive equalizing funds, if applicable, for the cost of that independent expenditure. If so required by this subsection, the Commission may issue equalizing funds based on an independent expenditure in an amount greater than the amount of such independent expenditure.
- B. During the general election period, a participating candidate will receive equalizing funds when the opposing nonparticipating candidate has received in contributions to date, less the amount of expenditures the nonparticipating candidate made through the end of the primary election period, an amount that exceeds the general election spending limit. The Commission shall pay any participating candidate seeking the same office an amount equal to any excess over the general election spending limit, not to exceed three times the original general election spending limit, as follows:
 1. The nonparticipating candidate's contributions include:
 - a. Surplus funds transferred from previous campaign accounts and deposited into the current campaign account;
 - b. Individual contributions;
 - c. \$25 or less contributions;
 - d. In-kind contributions;
 - e. Political committee contributions;
 - f. Personal monies;
 - g. Candidate or family loans;
 - h. Other loans; and
 - i. Contributions to retire campaign debt, irrespective of whether placed in a prior, current or future campaign

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account. Contributions to retire debt from the immediately preceding election cycle and received within ~~24~~ 51 days following the general election shall be disregarded for purposes of calculating equalizing funds in the subsequent election cycle.

2. In accordance with A.R.S. § 16-952, the nonparticipating candidate's contributions shall not include offsets to contributions, including a refund of a contribution to an individual contributor or to a political committee contributor.
 3. In accordance with A.R.S. § 16-952(C)(4), when a participating candidate is opposed in the general election by an independent candidate or nonparticipating candidate who was not opposed in the party primary, expenditures made during the primary election period by the nonparticipating candidate or independent candidate will not be included in the calculation of equalizing funds.
 4. If an independent expenditure is made against one or more participating candidates for a single office, each participating candidate will be eligible to receive equalizing funds, if applicable, for the amount of the independent expenditure. The participating candidates who were the subject of the expenditure will be the only candidates eligible to receive the equalizing funds, if applicable, for the cost of that independent expenditure. If so required by this subsection, the Commission may issue equalizing funds based on an independent expenditure in an amount greater than the amount of such independent expenditure.
 5. If an independent expenditure is made in favor of one or more nonparticipating candidates, all participating candidates in the election(s) for the same office(s) will be eligible to receive equalizing funds, if applicable, for the amount of the independent expenditure. If so required by this subsection, the Commission may issue equalizing funds based on an independent expenditure in an amount greater than the amount of such independent expenditure.
 6. If an independent expenditure is made in favor of a single participating candidate, all of the other participating candidates in the election for that office will be eligible to receive the equalizing funds, if applicable, for the cost of that independent expenditure. If so required by this subsection, the Commission may issue equalizing funds based on an independent expenditure in an amount greater than the amount of such independent expenditure.
- C. Independent expenditures made against a nonparticipating candidate during the primary or general election periods will not be considered in the calculation of equalizing funds for a participating candidate.
- D. In accordance with A.R.S. § 16-952(C)(6), during the primary and general election periods, expenditures promoting or opposing candidates for more than one office shall be allocated by the Commission among candidates for different offices based on the relative size or length and relative prominence of the reference to candidates for different offices. Equalizing funds shall be issued to each participating candidate, if applicable, in an amount equal to the proportion of the expenditure that is targeted at the office sought by such participating candidate. If so required by this rule, the Commission may issue equalizing funds based on an expenditure in an amount greater than the amount of such expenditure.
- E. The Commission shall cease to disburse equalizing funds for an election period after the Wednesday following the primary or general election day.
- F. The Commission may decline to issue equalizing funds on the basis of expenditures that the Commission determines to be of de minimis value.

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-702.01. Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign ~~acquires~~ pays for the assets ~~for~~ in an amount equal to the fair market value of the assets, which amount shall in no event be less than ~~one-fourth~~ one-fifth the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.