

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. Sections Affected

Rulemaking Action

R2-20-101	Repeal
R2-20-101	New Section
R2-20-102	Repeal
R2-20-102	New Section
R2-20-103	Repeal
R2-20-103	New Section
R2-20-104	Repeal
R2-20-104	New Section
R2-20-105	Repeal
R2-20-105	New Section
R2-20-106	Repeal
R2-20-106	New Section
R2-20-107	Repeal
R2-20-107	New Section
R2-20-108	Repeal
R2-20-108	New Section
R2-20-109	Repeal
R2-20-109	New Section
R2-20-110	Repeal
R2-20-110	New Section
R2-20-111	Repeal
R2-20-111	New Section
R2-20-112	Repeal
R2-20-113	Repeal
Article 2	New Article
R2-20-200	Renumber
R2-20-201	New Section
R2-20-202	New Section
R2-20-203	New Section
R2-20-204	New Section
R2-20-205	New Section
R2-20-206	New Section
R2-20-207	New Section
R2-20-208	New Section
R2-20-209	New Section
R2-20-210	New Section

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R2-20-211	New Section
R2-20-212	New Section
R2-20-213	New Section
R2-20-214	New Section
R2-20-215	New Section
R2-20-216	New Section
R2-20-217	New Section
R2-20-218	New Section
R2-20-219	New Section
R2-20-220	New Section
R2-20-221	New Section
R2-20-222	New Section
R2-20-223	New Section
R2-20-224	New Section
R2-20-225	New Section
R2-20-226	New Section
R2-20-227	New Section
R2-20-228	New Section
R2-20-229	New Section
R2-20-230	New Section
R2-20-231	New Section

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

Authorizing statutes: A.R.S. §§ 16-956(D), 16-956(B)(4), 16-958(F). Rulemaking by the Citizens Clean Elections Commission (“Commission”) is not subject to Title 41, Article 3, Chapter 6, but instead is governed by A.R.S. § 16-956(D). Section 16-956(D) provides that the “Commission rulemaking is exempt from Title 41, Article 3, Chapter 6, except that the Commission shall submit the rules for publication and the Secretary of State shall publish the rules in the *Arizona Administrative Register*. The Commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed.” Rules 101-111 and Rules 201-231 were proposed by the Commission at a public meeting on March 13, 2001, and published on the Commission’s web page (www.ccec.state.az.us) on March 14, 2001. A public hearing will be held on May 14, 2001, for the final approval of the Rules before they are sent to the Department of Justice for preclearance.

Implementing statutes: A.R.S. §§ 16-940 through 16-961.

3. The effective date of the rules:

Rules 101-111 and Rules 201-231 were proposed by the Commission at a public meeting on March 13, 2001. The 60 day comment period expires on May 14, 2001. The rules will become effective upon preclearance by the U.S. Department of Justice.

4. List of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 479, January 28, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 740, February 25, 2000

Notice of Rulemaking Docket Opening: 7 A.A.R. 67, January 5, 2001

Notice of Rulemaking Docket Opening for Article 1 is published in this issue of the *Register*.

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

Name: Linda J. Beier
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5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Citizens Clean Elections Commission is complying with A.R.S. §§ 16-956(D), 16-956(B)(4) and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes and provisions of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through 16-961), to implement the reporting requirements of A.R.S. § 16-958(D) and (E), to provide procedures for the inspection of a candidate's bank accounts, campaign financial reports, and financial records relating to the candidate's campaign, and to provide procedures for enforcement of the Citizens Clean Elections Commission Act (A.R.S. § 16-940 through 16-961).

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. 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

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

Not applicable

9. A description of changes between the proposed rule, including supplemental notice, and final rule (if applicable):

The Article 1 has been repealed and a replaced with a new Article 1 consisting of proposed rules R2-20-101 through R2-20-111. Article 2 consists of proposed rules R2-20-201 through R2-20-231. Technical, grammatical, stylistic, and format changes recommended by staff, counsel and members of the public were implemented to make the rules more concise and easier to understand.

10. A summary of the principal comments and the agency responses to them:

Comments on Article 1 were made orally by members of the public at a February 28, 2001 public meeting, at a March 7, 2001 public meeting and at a March 13, 2001 public meeting. These comments were incorporated into the proposed rule package. Comments on Article 2 were made orally by members of the public at a March 14, 2001 public meeting, and were incorporated into the proposed rule package. The public comment period for R2-20-101 through R2-20-111, and R2-20-201 through R2-20-231 ends May 14, 2001.

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

None

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

None

13. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section	
R2-20-101.	Definitions
<u>R2-20-101.</u>	<u>Definitions</u>
R2-20-102.	Prior Activities
<u>R2-20-102.</u>	<u>Applicability</u>
R2-20-103.	Campaign Accounts
<u>R2-20-103.</u>	<u>Time Calculations</u>
R2-20-104.	Use of Funds
<u>R2-20-104.</u>	<u>Certification as a Participating Candidate</u>
R2-20-105.	Determining Contributions and Expenditures
<u>R2-20-105.</u>	<u>Certification for Funding</u>
R2-20-106.	In-kind Contributions
<u>R2-20-106.</u>	<u>Distribution of Funds to Certified Candidates</u>
R2-20-107.	Candidate's Use of Personal Motor Vehicle or Aircraft
<u>R2-20-107.</u>	<u>Use of Clean Elections Funds</u>

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R2-20-108.	Commission Procedures for Disbursements
R2-20-108.	Voluntary Termination of Participating Candidate Status
R2-20-109.	Procedures for Verifying Original Reporting Slips
R2-20-109.	Reporting Requirements
R2-20-110.	Reporting Procedures and Requirements
R2-20-110.	Campaign Accounts
R2-20-111.	Refunding Unused Campaign Funds
R2-20-111.	Books and Records Requirements
R2-20-112.	Books and Records Requirements Repealed
R2-20-113.	Withdrawal or Resignation of a Participating Candidate Repealed

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

Section

R2-20-200.	Renumber
R2-20-200.	R2-20-201. Scope
R2-20-202.	Initiation of Compliance Matters
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R2-20-204.	Initial Complaint Processing; Notification
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R2-20-207.	Internally Generated Matters; Referrals
R2-20-208.	Complaint Processing; Notification
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R2-20-210.	Written Questions Under Order
R2-20-211.	Subpoenas and Subpoenas Duces Tecum; Depositions
R2-20-212.	Service of Subpoenas, Orders and Notifications
R2-20-213.	Motions to Quash or Modify a Subpoena
R2-20-214.	The Probable Cause to Believe Recommendation; Briefing Procedures
R2-20-215.	The Probable Cause to Believe Finding; Notification
R2-20-216.	Conciliation
R2-20-217.	Enforcement Proceedings
R2-20-218.	Public Disclosure of Commission Action
R2-20-219.	Confidentiality
R2-20-220.	Ex Parte Communications
R2-20-221.	Representation by Counsel; Notification
R2-20-222.	Civil Penalties
R2-20-223.	Notice of Appealable Agency Action
R2-20-224.	Request for an Administrative Hearing
R2-10-225.	Informal Settlement Conference
R2-20-226.	Administrative Hearing
R2-20-227.	Review of Administrative Decision by Commission
R2-20-228.	Judicial Review
R2-20-229.	Debates Sponsored by the Commission
R2-20-230.	Exemption from Participating in a Debate
R2-20-231.	Request for Reconsideration

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. "Early contributions" means those contributions that are permitted pursuant to A.R.S. § 16-945.
3. "Family Member" means parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.
4. "Fair market value" means the price a willing buyer would pay and a willing seller would accept.
5. "Fund" means the Citizens Clean Election Fund established pursuant to A.R.S. § 16-949(D).

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6. ~~“Public Funds” includes all monies deposited into the Citizens Clean Election Fund and all other monies present in the candidate’s account when such funds are deposited. Early contributions and candidates’ personal monies expended prior to receipt of monies from the Fund shall not be deemed public funds.~~

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. “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).
3. “Current campaign account” means a campaign account used solely for election campaign purposes in the present election cycle.
4. “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.
5. “Early contributions” means private contributions that are permitted pursuant to A.R.S. § 16-945.
6. “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.
7. “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 candidates(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 (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.
8. “Family member” means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
9. “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.
10. “Fund” means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
11. “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.
12. “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 qualified for representation on the ballot.
13. “Prior campaign account” means a campaign account used solely for campaign election purposes in a prior election.
14. “Public funds” includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
15. “Opposed” means a candidate who will appear on the ballot and:
 - a. In a primary election for the State House of Representatives, a candidate who has opposition for the same office from two members of the same party or will be opposed in the general election by two or more other candidates for the same office. Such opposition in the general election can be from an independent candidate, a candidate from another party, or a candidate who is a member of a political party that is not eligible to appear on the ballot.
 - b. In a party primary election for any office but the State House of Representatives, a candidate who has opposition for the same office from a member of the same party, or will be opposed in the general election by an independent, a candidate from another party, or a candidate who is a member of a political party that is not eligible to appear on the ballot.
 - c. In the general election for state representative, a candidate who has at least two opponents on the ballot, competing for election in the same district.
 - d. In the general election for any office but state representative, has at least one opponent on the ballot, competing for the same office.

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16. “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.

R2-20-102. Prior Activities

- ~~A. Except as provided in subsection B, Neither the Act nor these rules apply to a participating candidate’s fund-raising activities completed on or before February 16, 1999.~~
- ~~B. For purposes of calculating equalizing funds pursuant to A.R.S. § 16-952 or reporting under the Act, contributions or expenditures made after the date of the last general election are considered “contributions during the election cycle to date” or “expenditures... made through the end of the primary election period” unless otherwise provided in these rules.~~
- ~~C. Before a candidate files an application to become a participating candidate, the candidate shall ensure that any amount in the candidate’s campaign account or exploratory account in excess of permitted personal monies, early contributions, and debt retirement contributions is:
 - 1. Spent lawfully in a way that does not constitute a direct campaign purpose;
 - 2. Remitted to the Fund, in the case of permitted early contributions; or
 - 3. Transferred out of the account as disposal of surplus monies.~~
- ~~D. An expenditure made from a candidate’s campaign account or exploratory account existing on or after February 16, 1999 and in compliance with A.R.S. Title 16, Chapter 6, before the end of the qualifying period will not prevent a candidate from becoming a participating candidate under the Act.~~
- ~~E. A candidate may use assets such as signs, pamphlets, and office equipment from an earlier election cycle only after the candidate’s current campaign account acquires the assets for an amount equal to the fair market value of the assets. If the candidate was a participating candidate during the earlier election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the earlier election cycle, the cash payment shall be made to the prior campaign account.~~

R2-20-102. Applicability

The Citizens Clean Elections Act and these rules apply to all candidates seeking office for governor, attorney general, secretary of state, treasurer, superintendent of public instruction, corporation commissioner, mine inspector, and legislator.

R2-20-103. Campaign Accounts

- ~~A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single campaign account and any petty cash account as are permitted by law.~~
- ~~B. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.~~
- ~~C. During the exploratory period, a candidate may receive debt retirement funds for a campaign during an earlier election cycle if the funds are deposited in the account for that campaign.~~
- ~~D. A candidate shall not deposit funds described in subsection (C) in the account described in subsection (A).~~
- ~~E. A candidate shall file a report any campaign finance report required by statute on financial activity for a current election cycle separately from any report on financial activity for a previous election cycle.~~
- ~~F. The Commission shall not consider a contribution to a candidate to retire debt from a previous election cycle to be a “contribution during the election cycle to date” or “expenditures... made through the end of the primary election period” for purposes of calculating equalizing funds under A.R.S. § 16-952(B) or reporting under A.R.S. §§ 16-941(B)(2)(b) and 16-958(A).~~

R2-20-103. Computation of time

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term “legal holiday” includes New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than 7 days: when the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Special rule for service by regular mail: whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, 3 days shall be added to the prescribed period.
- D. Special rule for service by certified mail: whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of paper by or upon the Commission, the time period shall begin on the date the recipient signs for the certified mail. If the recipient does not date the certified mail receipt, the postmark on the certified mail receipt will be used as the date of receipt.

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R2-20-104. Use of Funds

- A:** Participating candidates shall use campaign account funds only for direct campaign purposes. Expenditures for direct campaign purposes include but are not limited to:
1. Written materials, pins, bumper stickers, handbills, brochures, posters, yard signs, newsletters and tabloids;
 2. Travel expenses including mileage reimbursement and lodging when out of town;
 3. Communication expenses, advertising, purchase of media space and time, direct mail services, postage, telephone banks and calling services, and long distance charges;
 4. Headquarter expenses and lease and utility expenses;
 5. Expenses of volunteers, food for staff and volunteers, and staff salaries and other compensation;
 6. Office supplies;
 7. Accounting, reporting, clerical, campaign advisory, and other consulting services; and
 8. Public relations expenses, membership dues, and amounts allowable under subsection (C) for attendance at political events.
- B:** A participating candidate shall not use campaign account funds for:
1. Costs of legal defense in any campaign law enforcement proceeding;
 2. Indirect campaign purposes including
 3. The candidate's personal support;
 4. The candidate's personal appearance;
 5. Capital assets having a value in excess of \$500.00 and a useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 6. A contribution to the campaign of another;
 7. An independent expenditure;
 8. A loan to another;
 9. A gift in excess of \$25 per person;
 10. Any payment or transfer for which compensating value is not received;
 11. Compensation to the candidate;
 12. Compensation to a candidate's family member; or
 13. A contribution to any political party.
- C:** A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- D:** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.

R2-20-104. Certification as a participating candidate

- A.** Prior activities. Candidates who sought office in a prior election cycle as nonparticipating candidates and who seek certification as a participating candidate in the current election shall ensure before filing an application to become a participating candidate pursuant to A.R.S. § 16-947, that any monies in the candidate's current election campaign account in excess of permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), are:
1. Spent lawfully in a way that does not constitute a direct campaign purpose;
 2. Remitted to the Fund, in the case of permitted early contributions; or
 3. Transferred out of the account as disposal of surplus monies.
 4. Any monies in the prior election campaign account shall not be used in the current election for direct campaign purposes.
- B.** 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 period only;
 2. Return the amount of each contribution in excess of the \$100 individual contribution limit for participating candidates;
 3. Return all Political Action Committee (PAC) monies received.
 4. Not have spent any contributions exceeding \$100, or any part of contributions exceeding \$100;
 5. Comply with all provisions of A.R.S. § 16-941.

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- C.** Surplus monies. Surplus monies from a candidate's campaign account for a prior election cycle may be used by that candidate for certain expenses without affecting that candidate's eligibility to become a participating candidate under the Act. Use of monies from a prior account is permissible only if the monies:
1. Are spent during the exploratory period;
 2. Are not used for the purpose of influencing an election;
 3. Do not otherwise meet the definition of "expenditure" under A.R.S. § 16-901(8); and
 4. The event or item purchased is completed or otherwise used and depleted prior to the commencement of the qualifying period.
- D.** Application. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall submit a Commission-approved application to the secretary of state and submit a copy to the Commission. At the time the candidate submits his or her application for certification, the candidate shall file, with the Commission, 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 candidate:
1. Has not, to date, accepted qualifying contributions as defined in A.R.S. § 16-946, and agrees not to accept any qualifying contributions until certified as a participating candidate by the Commission;
 2. Agrees to use all Clean Election funding for direct campaign purposes only;
 3. Has filed with the Commission a campaign finance report, showing all campaign activity to date in the current election cycle.
 4. Will comply with all requirements of the Act and Commission rules;
 5. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
 6. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
 7. 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;
 8. Will permit an audit and examination of all receipts and expenditures including those made by the candidate, the candidate's authorized committee and any agent or person authorized to make expenditures on behalf of the candidate or committee. The candidate and the candidate's authorized committee shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate and authorized committee shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid;
 9. 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 paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the committee treasurer.
 10. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate.
 11. Will file all campaign finance reports with the secretary of state in an electronic format.
- E.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods that do not exceed \$100, in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations. The total contributions for a candidate for governor shall not exceed \$40,000. For all other candidates, the total early contributions shall not exceed 10 percent of the sum of the original primary and general election spending limits;
 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 \$500 for legislative candidates and no more than \$1000 for statewide office candidates;
 4. Conduct all 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.
- F.** Personal loans. A participating candidate may loan his or her campaign committee monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). These loans shall promptly be repaid with 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 or his or her campaign committee shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- G.** Monies raised for official duties. During the exploratory period only, an elected official may raise money to defray the expense of performing official duties as follows:
1. The candidate must first exhaust all surplus monies from a prior campaign account;
 2. Money raised shall not exceed \$100 per individual that contributes;
 3. Money raised shall not exceed 2 times the early contribution limit for the office sought by a participating candidate;

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4. Monies raised pursuant to this subsection will not be deemed early contributions, as long as such monies are spent prior to the end of the exploratory period and are not used for direct campaign purposes.

H. A participating candidate may raise early contributions for election to one office and choose to run for election to another office during the exploratory period only.

R2-20-105. ~~Determining Contributions and Expenditures~~

~~A. The Commission shall use A.R.S. Title 16, Chapter 6 and rules made under that Chapter to determine whether a candidate has received a contribution for all purposes of the Act.~~

~~B. The Commission shall use the provisions of the Act and the rules in this Chapter to determine whether a candidate or another has made an expenditure for purposes of the Act. If there is no applicable provision in the Act or these rules, the Commission shall apply the law and rules of the Office of the Secretary of State.~~

~~C. "Contribution" does not include a candidate's use of the candidate's personal telephones, personal electronic equipment, personal utilities subscriptions, and similar property and services acquired or maintained primarily for personal or family purposes and not for campaign purposes.~~

R2-20-105. Certification for funding

A. After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in A.A.C. R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.

B. A participating candidate must submit to the secretary of state, a list of names of persons who made qualifying contributions, an application for funding prescribed by the secretary of state, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. 16-950 no later than one week after the end of the qualifying period. A candidate may develop his or her own 3-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Citizens Clean Elections Act and ensure that the original qualifying slip is tendered to the secretary of state, a copy remains with the candidate, and that a copy is given to the contributor.

C. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state.

D. The secretary of state has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C).

E. The secretary of state will notify the candidate and the Commission regarding the approval or denial of Clean Election funds.

R2-20-106. ~~In-kind Contributions~~

~~A. The use of a candidate's real or personal property except a motor vehicle or aircraft by the candidate or the candidate's campaign committee in an election campaign is not an in-kind contribution by the candidate if:~~

- ~~1. The property was originally acquired with personal (not business, labor union or political) funds and used by the candidate or a family member primarily for personal, family, or household purposes, and~~
- ~~2. The property continues to be used by the candidate or a family member primarily for personal, family or household purposes.~~

~~B. The use of the following property of a candidate or a family member in the candidate's campaign is not an in-kind contribution and expenses associated with its use shall not be reimbursed:~~

- ~~1. The principal residence of the candidate including any office in the personal residence and the mortgage or rental payment, utilities, and all expenditures relating to the principal residence;~~
- ~~2. The phone service at the principal residence and service charges including long distance service and toll charges;~~
- ~~3. One fax machine;~~
- ~~4. One personal computer;~~
- ~~5. One cellular phone and charges; and~~
- ~~6. All miscellaneous service charges and maintenance and repair expenses associated with any of the above.~~

R2-20-106. Distribution of funds to certified candidates

A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:

1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:

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- a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the secretary of state; or
- b. If the application is submitted after the current year March 1 voter registration list is determined the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
2. Determine that the required number of qualifying contributions have been received and paid to the secretary of state for deposit in the Fund; and
3. Determine whether the candidate is opposed in the election.
- B.** In making the reviews, verifications and determinations in subsection (A) (3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- C.** The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- D.** Within 7 days after a primary election and before the secretary of state completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least 2 percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least 2 percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the 3rd highest vote total.
- E.** Promptly after the secretary of state completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the fund within 10 days after such determination is made. That candidate shall make no promissory payments from the general election fund from the date of the canvass.
- F.** The Commission may refuse to distribute funds to participating candidates in cases of fraud or illegal activity committed by the participating candidate.

R2-20-107. Candidate's Use of Personal Motor Vehicle or Aircraft

- A.** If a motor vehicle owned or leased by a candidate is used in the candidate's campaign, the per mile amount allowed at the time by the Arizona Department of Administration to state employees as reimbursement shall be considered an in-kind contribution of the candidate unless a reasonable reimbursement of at least 10¢ per mile from the candidate's campaign account is paid within 30 days. A campaign committee may reimburse a candidate for campaign use of a personal motor vehicle if records to substantiate mileage and use for campaign purposes are kept and filed with a request for reimbursement. A campaign committee may not reimburse the costs of gasoline, oil, repairs, maintenance, or insurance as a campaign expense.
- B.** Aircraft owned or leased by a candidate and used in the candidate's campaign is an in-kind contribution by the candidate equal to the fair market hourly rental rate charged commercially for similar aircraft unless reimbursed from the candidate's campaign committee.

R2-20-107. Use of public funds

- A.** A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B.** A participating candidate shall not use funds in the candidate's campaign account for:
 1. Costs of legal defense in any campaign law enforcement proceeding.
 2. Food for staff and volunteers exceeding the monetary limits set forth in A.R.S. § 38-624.
 3. Indirect campaign purposes, including, but not limited to:
 - a. The candidate's personal support;
 - b. The candidate's personal appearance;
 - c. Capital assets having a value in excess of \$500 and a useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - d. A contribution or transfer of funds to the campaign of another;
 - e. An independent expenditure;
 - f. A loan to self or to another. This does not include the loans acceptable under A.A.C. R2-20-104(F);

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- g. A gift;
 - h. Any payment or transfer for which compensating value is not received;
 - i. Compensation to the candidate;
 - j. Compensation to a candidate's family member unless employed as a campaign staff member for fair market value;
 - k. A contribution to any political party;
 - l. Retroactive payments of any kind;
 - m. Excessive expenditures in excess of any of the limitations or in excess of fair market value of goods or services received;
 - n. Post-election expenditures. Expenditures incurred after the close of the primary (if the candidate did not win the primary election) or general election periods, unless it can be shown it was a cost associated with winding down the campaign;
 - o. Civil or criminal penalties;
 - p. Illegal purposes;
 - q. Transferring funds to another committee; or
 - r. Paying bills, loans or debt from a prior campaign cycle.
- C.** Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.
- D.** A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$150 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- E.** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- F.** Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:
- 1. The activity includes express advocacy of the election or defeat of a second candidate;
 - 2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
 - 3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
 - 4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
 - 5. The timing of the material or activity in relation to the election of a second candidate;
 - 6. The distribution of the material or the activity is targeted to a second candidate's electorate; or
 - 7. The amount of control a second candidate has over the material or activity.

R2-20-108. ~~Commission Procedures for Disbursements~~

- A.** ~~The Commission shall not disburse monies to a qualifying candidate before January 2 of an election year.~~
- B.** ~~Within ten days from the date the secretary of state certifies candidates for the ballot a participating candidate who receives monies from the Fund and who is not certified for the ballot shall refund the full amount received from the Fund minus any amounts expended or obligated to pay any campaign-related debts incurred prior to the date the campaign ended.~~
- C.** ~~Before disbursing funds during a candidate's qualifying period, the Commission shall review the candidate's application for funding and all relevant facts and circumstances and:~~
- 1. ~~Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:~~
 - 2. ~~If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the secretary of state; or~~
 - 3. ~~If the application is submitted after the current year march 1 voter registration list is determined the commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.~~
 - 4. ~~Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and~~

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5. Determine whether the candidate is opposed in the election. The Commission shall consider a candidate as being opposed in the election for purposes of this section when a qualified participating candidate is opposed for the same office in that candidate's primary, or will be opposed in the general election because another candidate for the same office is seeking the nomination of another party, or will be opposed in the general election because an independent candidate is seeking the same office.
- D.** In making the reviews, verifications and determinations in subsection (C), paragraph 3, the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- E.** On its own initiative or a written request from a candidate, the Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- F.** Within 7 days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse monies for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes has at least 2 percentage points, of the total votes cast, greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse monies for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least 2 percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the 3rd highest vote total.
- G.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse monies for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received monies from the commission pursuant to subsection F and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot based on a recount as set forth in A.R.S. § 16-661, the participating candidate shall return all unused monies to the fund within 10 days after such determination is made public.

R2-20-108. Voluntary termination of participating candidate status

- A.** Voluntary termination of participating candidate status may only occur before the end of the qualifying period. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within 7 days. If the Commission takes no action in the 7-day time period, the withdrawal is automatic and the candidate shall immediately begin the process of returning public funds to the Fund.
- B.** A candidate, whose withdrawal has been approved by, or occurred by lack of action of the Commission, shall:
1. No longer be eligible to receive public funding.
 2. Return all Clean Elections funds, spent and unspent, to the Fund within 30 calendar days after he or she ceases to be a participating candidate.
- C.** A participating candidate who withdraws prior to submitting qualifying contributions and an application for funds to the secretary of state shall use the candidate's best efforts to return all qualifying contributions collected to the contributors within 30 days of the candidate's withdrawal. If a contributor cannot be located, the qualifying contributions collected by the candidate shall be remitted to the Fund.
- D.** Failure to comply with the requirements of this Section may result in an enforcement action against the participating candidate.

R2-20-109. Procedures for Verifying Original Reporting Slips

- A.** If the total number of reporting slips submitted by a candidate to the Secretary of State minus the number of disqualified reporting slips used in the random sample required by Section 16-950(C) equals less than the number of qualifying contributions required for the office sought by the candidate, the Commission shall deny the candidate's application for funding without further verification.
- B.** If a candidate submits a list to the Secretary of State under A.R.S. § 16-950(B) that contains fewer names of persons making qualifying contributions than is required for the office sought by the candidate, the Secretary of State may refuse to accept the list, original reporting slips, or amount tendered for deposit in the Fund.
- C.** Provided that the qualifying period has not expired, a certified candidate whose application for funding is denied may reapply for funds pursuant to A.R.S. § 16-950 and may resubmit reporting slips not disqualified in a prior application.
- D.** Qualifying contributions received with disqualified reporting slips shall be deposited in the Fund.
- E.** Qualifying contributions collected by a candidate seeking election to one office may not be used by that candidate for any other office.

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R2-20-109. Reporting requirements

- A.** End of qualifying period. At the end of the qualifying period, a participating candidate shall file a report with the Commission consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account that will refund all unspent early contributions to the Fund, pursuant to A.R.S. § 16-945(B).
- B.** 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 the assets for an amount equal to the fair market value of the 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.
- C.** Reporting of expenditure; time of use. For the purpose of providing equalizing funds, an expenditure made by a nonparticipating or participating candidate shall be considered to have been made when the service or commodity bought with the expenditure for is used. Thus, if a service or commodity is paid for in the primary election, but is not used until the general election period, the expenditure shall be reported as being made in the general election period, and funds will be equalized accordingly. Any expenditures for "consultant services" shall include a detailed description of what is included in the consulting service and details as to which election, primary or general, each part of the consulting service is directed.
- D.** Independent expenditures.
1. Any individual, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding \$500 in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in A.A.C. R2-20-101(7), shall file reports with the secretary of state in accordance with A.R.S. § 16-958.
 2. These reports must identify the office and the candidate or group of candidates whose election or defeat is being advocated, and state whether it is election or defeat that is being advocated. The Commission views an expenditure that advocates the election or defeat of a candidate as being made on behalf of the candidate.
 3. The person who fails to file a report pursuant to this subsection shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B).
- 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 account or expenditures made 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 election.
- F.** Recap report. Each participating candidate shall include 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 Citizens Clean Elections Fund. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account that will refund to the Fund all unspent funds provided by the Fund.
- G.** Electronic format. All 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 and their committees. If a report is specifically requested by a candidate or campaign committee, the Commission will deliver copies of reports required under A.R.S. § 16-958. Otherwise, such reports shall be available on the secretary of state's web site.

R2-20-110. Reporting Procedures and Requirements

- A.** Each elections official shall promptly transmit to the Commission (in electronic or tangible form) any campaign report that is tendered to the official including one that is not accepted for filing as a result of an incorrect filing, mistake, tardiness, defect, or omission.
- B.** In each campaign finance report, a candidate shall list:
1. Any extensions of credit made after the date of the previous report;
 2. All debts under bills or contracts that are due and payable on or before the date of the report; and
 3. All debts for goods or services received on or before the date of the report.
- C.** For the sole purpose of timing equalizing payments to a participating candidate under A.R.S. § 16-952, if at any time during a general election period the total expenditures of an opposing non-participating candidate who has surpassed the general election spending limit exceed the total contributions to the non-participating candidate during the election cycle to date, the Commission shall presume:
1. An extension of credit to the non-participating candidate is matched by a contribution to the non-participating candidate at the time the credit is extended; and

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2. ~~An unpaid debt of the non-participating candidate is matched by a contribution to the non-participating candidate on the date the debt becomes due and payable, or the date the goods or services giving rise to the debt are received, whichever is earlier.~~

~~D. Neither extensions of credit nor unpaid debts shall be presumed to be contributions to a candidate by the creditor for any other purpose by virtue of this rule.~~

R2-20-110. Campaign accounts

A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.

B. If a nonparticipating candidate conducts campaign financial activities for the current election cycle through more than one account, the Commission will consider all campaign financial activities for purposes of equalizing funds.

C. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.

D. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

R2-20-111. Refunding Unused Campaign Funds

A. With a campaign financial report filed immediately prior to, on, or first following an election day, each candidate shall include a recap of all expenditures made in connection with such election, all contributions received in the election cycle in which such election occurs, and if a participating candidate all payments made from such candidate's campaign fund to the Citizens Clean Elections Fund.

B. If the recap shows any amount unspent by a participating candidate, the report shall be accompanied by a check from the candidate's campaign account which will refund to the Fund all unspent monies provided by the Fund.

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. In all cases, such location shall be that of the principal headquarters of the candidate's campaign, and at such location all such information shall be made available for inspection by the Commission during the regular business hours of the Commission.

B. The location of each candidate's principal campaign headquarters may be maintained in the same county as that of the residence of the candidate or in Maricopa County.

C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be in writing and shall be delivered to the candidate and his or her campaign committee chair, with a copy to the Commission, 10 or more calendar days before the proposed date of the inspection. If the request is made 2 weeks before the primary or general election, the request shall be delivered at least 2 business days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

D. 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.

E. The inspection shall occur during the Commission's regular business hours and shall be limited to a 2 hour time period.

F. 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.

G. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.

H. Any person wishing to review the records of a candidate shall direct all requests to the candidate or that candidate's campaign committee. A copy of the request shall be sent to the Commission. If a public records request is denied, an individual may appeal the denial to the Superior Court under A.R.S. § 39-121 et. seq.

I. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

R2-20-112. Books and Records Requirements Repealed

~~A. All candidates shall maintain at a single location within the State the books, records of financial transactions, and other information required by law. Such location shall in all cases be that of the principal headquarters of the candidate's campaign, and at such location all such information shall be made available for inspection by the Commission during the regular business hours of the Commission.~~

~~B. The principal location of each candidate's principal campaign headquarters shall may be maintained in the same County as that of the principal residence of the candidate or in Maricopa County.~~

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R2-20-113. Withdrawal or Resignation of a Participating Candidate Repealed

- A.** A participating candidate who has been certified pursuant to A.R.S. § 16-947 may resign or withdraw by notifying the Commission and returning all public funds except any amounts expended or obligated to pay any campaign-related debts incurred prior to the date the campaign ended. A candidate who has applied and received certification as a participating candidate pursuant to A.R.S. § 16-947, may not seek election to any other public office during that election cycle, except as a participating candidate. A participating candidate who resigns prior to submitting an application for funds and qualifying contributions to the Secretary of State shall use the candidate's best efforts to return all qualifying contributions collected to the contributors. If the a contributor cannot be located, the qualifying contributions collected by the candidate shall be remitted to the Fund.
- B.** The Commission shall not disqualify for funding a participating candidate who before applying for funds, has notified the Commission that the candidate seeks to run for another office as a participating candidate.

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-200. Renumber

~~R2-20-200~~**R2-20-201. Scope**

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

R2-20-202. Initiation of compliance matters

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

R2-20-203. Complaints

- A.** Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Administrative Counsel, Citizens Clean Elections Commission, 4001 North Third Street, Suite 200, Phoenix, AZ 85012. The complainant should file 3 copies of the complaint.
- B.** A complaint shall conform to the following:
1. Provide the full name and address of the complainant; and
 2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C.** All statements made in a complaint are subject to the statutes governing perjury. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D.** The complaint shall conform to the following provisions:
1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
 2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
 3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
 4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

R2-20-204. Initial complaint processing; notification

- A.** Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of A.A.C. R2-20-203, and, if it complies with those requirements, shall within 5 days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and mail each respondent a copy of the complaint.
- B.** If a complaint does not comply with the requirements of A.A.C. R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the 5 day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be mailed with the notification to each respondent.

R2-20-205. Opportunity for no action on complaint-generated matters

- A.** A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 14 days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B.** The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 14 day period specified in subsection (A).
- C.** The respondent's response must be notarized. The respondent's failure to respond in accordance with subsection (A) within 14 days of receiving the complaint may be viewed as an admission to the allegations made in the complaint.

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R2-20-206. Administrative Counsel's recommendation on complaint-generated matters

- A.** Following either the expiration of the 14 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Administrative Counsel may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B.** The Administrative Counsel may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A).
- C.** Neither the complainant nor the respondent has the right to appeal the Administrative Counsel's recommendation made pursuant to subsections (A) or (B) because the recommendation is not a final administrative action.

R2-20-207. Internally generated matters; referrals

- A.** On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Administrative Counsel may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B.** If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Administrative Counsel shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

R2-20-208. Complaint processing; notification

- A.** If the Commission, either after reviewing a complaint-generated recommendation as described in A.A.C. R2-20-206 and any response of a respondent submitted pursuant to A.A.C. R2-20-205, or after reviewing an internally-generated recommendation as described in A.A.C. R2-20-207, determines by an affirmative vote of at least 3 of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding by letter, setting forth the Sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding.
- B.** If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Administrative Counsel shall so advise both complainant and respondent by letter.
- C.** The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

R2-20-209. Investigation

- A.** The Commission shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B.** The Commission's investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

R2-20-210. Written questions under order

The Commission may authorize its Chair to issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted.

R2-20-211. Subpoenas and subpoenas duces tecum; depositions

- A.** The Commission may authorize its Administrative Counsel or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B.** If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Administrative Counsel to take a deposition and have the power to administer oaths.
- C.** The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

R2-20-212. Service of subpoenas, orders and notifications

- A.** Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, or by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.

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B. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

R2-20-213. Motions to quash or modify a subpoena

A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.

B. The Commission may deny the application, quash the subpoena or modify the subpoena.

C. The person subpoenaed and the Administrative Counsel may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

R2-20-214. The probable cause to believe recommendation; briefing procedures

A. Upon completion of the investigation conducted pursuant to A.A.C. R2-10-209, the Administrative Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.

B. The Administrative Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.

C. Within 10 days from receipt of the Administrative Counsel's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.

D. After reviewing the respondent's brief, the Administrative Counsel shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

R2-20-215. The probable cause to believe finding; notification

A. If the Commission, after having found reason to believe and after following the procedures set forth in A.A.C. R2-20-214, determines by an affirmative vote of at least 3 of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Administrative Counsel to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957(A).

B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Administrative Counsel to notify both respondent and complainant by letter that the proceeding has ended. The Administrative Counsel's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.

C. If the Commission makes a finding that the respondent has violated a statute or rule over which the Commission has jurisdiction pursuant to subsection (A) of this rule, the respondent will be notified of his or her right to appeal the decision pursuant to the Arizona Administrative Procedure Act, A.R.S. § 41-1092.

R2-20-216. Conciliation

A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Administrative Counsel shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.

B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Administrative Counsel upon approval by the affirmative vote of at least 3 members of the Commission.

C. If the Commission makes a probable cause finding pursuant to A.A.C. R2-20-215(A) within 45 days prior to any election, the conciliation attempt pursuant to subsection (A) of this Section shall continue for at least 15 days from the date of the Commission's finding. In all other cases, conciliation attempts pursuant to subsection (A) of this Section shall continue for at least 30 days, not to exceed 90 days, from the Commission's finding.

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- D.** Nothing in these rules shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the Administrative Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe a respondent has violated a statute or rule over which the Commission has jurisdiction. Any conciliation agreement reached under this subsection is subject to the provisions of subsection (B) of this Section and shall have the same force and effect as a conciliation agreement reached after the Commission finds probable cause to believe a respondent has violated a statute or rule over which the Commission has jurisdiction.
- E.** If a conciliation agreement is reached between the Commission and the respondent, the Administrative Counsel shall send a copy of the signed agreement to both complainant and respondent.

R2-20-217. Enforcement proceedings

- A.** If no conciliation agreement is finalized within the applicable minimum period specified by A.A.C. R2-20-216, the Administrative Counsel may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B.** Upon recommendation of the Administrative Counsel, the Commission may, by an affirmative vote of at least 3 of its members, authorize the Administrative Counsel to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C.** Subsections (A) and (B) of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to A.A.C. R2-20-216 even after the Commission authorizes the Administrative Counsel to issue an order and assess civil penalties pursuant subsection (B) of this rule. Any conciliation agreement reached under this subsection is subject to the provisions of A.A.C. R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under A.A.C. R2-20-216(D).

R2-20-218. Public disclosure of Commission action

- A.** If the Commission makes a finding pursuant to A.A.C. R2-20-207, A.A.C. R2-20-208, or A.A.C. R2-10-215 or otherwise terminates its proceedings, the Commission shall make its findings public and notify the complainant and respondent.
- B.** If the Commission approves a conciliation agreement pursuant to A.A.C. R2-20-216, the Commission shall make the conciliation agreement public.
- C.** For any compliance matter in which the Commission commences an enforcement proceeding pursuant to A.A.C. R2-20-217, the Commission will make public the investigator materials in the enforcement and litigation files in accordance with public records laws, A.R.S. § 39-101, and the Commission shall send the complainant and the respondent the required notification of the final disposition of the action. The final disposition may consist of a final agency decision.

R2-20-219. Confidentiality

- A.** Except as provided in A.A.C. R2-20-218 and in accordance with public records laws found in A.R.S. § 39-101, et. seq., no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, shall be made public by the Commission. The Commission will advise the respondent in writing if any disclosure is made.
- B.** Except as provided in A.A.C. R2-20-218(B) and in accordance with public records laws, A.R.S. § 39-101, no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to A.A.C. R2-20-216, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.
- C.** Nothing in these rules shall be construed to prevent the introduction of evidence in the courts of the United States that could properly be introduced pursuant to the Rules of Evidence or Rules of Civil Procedure.

R2-20-220. Ex parte communications

- A.** In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B.** This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.

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C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

R2-20-221. Representation by counsel; notification

A. If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:

1. The name, address, and telephone number of the counsel; and
2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

B. Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

R2-20-222. Civil penalties

A civil penalty negotiated by the Commission or imposed by a court for a violation of the Act shall not exceed the greater of \$10,000 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of \$15,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation.

R2-20-223. Notice of appealable agency action

If the Commission makes a probable cause finding pursuant to A.A.C. R2-20-215 or decides to initiate an enforcement proceeding pursuant to A.A.C. R2-20-218, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

R2-20-224. Request for an administrative hearing

A. The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in A.A.C. R2-20-223.

B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.

C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless an expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

R2-10-225. Informal settlement conference

A. If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.

B. The Commission representative shall notify the appellant in writing that the statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

R2-20-226. Administrative hearing

A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.

B. If the enforcement action occurs within 6 months of the primary or general election, the Commission will request an expedited review of the matter.

R2-20-227. Review of administrative decision by commission

A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.

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- B.** If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C.** If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

R2-20-228. Judicial review

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et. seq.(Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

R2-20-229. Debates sponsored by the Commission

- A.** For purposes of this Section, each primary or general election shall be considered a separate election.
- B.** 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.
- C.** Unless exempted under A.A.C. R2-20-230 or A.A.C. R2-20-231, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall:
 - 1.** Make no further expenditures for that specific election;
 - 2.** Return all funding provided pursuant to A.R.S. § 16-951 within 30 days of the debate in which the candidate failed to participate; and
 - 3.** Be ineligible to receive any further equalizing funds for that election.

R2-20-230. Exemption from participation in debate

- A.** Notwithstanding A.A.C. R2-20-229, a participating candidate may request to be exempt from participating in a required debate if the candidate does 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.
- B.** After examining the request made pursuant to subsection (A) of this rule, the Commission will exempt a candidate from participating in a debate if at least 3 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).

R2-20-231. Request for reconsideration

- A.** A participating candidate who fails to participate in a required debate, without exemption pursuant to A.A.C. R2-20-230, may submit a request for reconsideration to the Commission. The candidate's request for reconsideration shall:
 - 1.** State the reason the candidate failed to participate in the debate; and
 - 2.** Be submitted to the Commission no later than 5 business days after the date of the debate the candidate failed to attend.
- B.** After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed pursuant to A.A.C. R2-20-229 if at least 3 Commissioners determine that the circumstances were:
 - 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).

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections Affected

R17-4-245
R17-4-245
R17-4-246
R17-4-246

Rulemaking Action

Repeal
New Section
Repeal
New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-4303

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening, 6 A.A.R. 4319, November 17, 2000

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

Name: Ellen Damron
Rules Analyst

Address: Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

Telephone: (602) 712-6722

Fax: (602) 241-1624

E-mail: edamron@dot.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

R17-4-245 and R17-4-246 provide specific direction to motor vehicle dealers doing business in either the acquisition of motor vehicles for direct resale, or by consignment wherein a dealer serves vehicle owners as a sales agent. The rules provide simple, step-by-step directions for completing either type of dealer contract. The rules provide direction on how each contract type is to be formatted and what specific information must be contained in the instruments. The rules also assist customers of either retail group to understand their rights and responsibilities in these processes. The revised rules will reflect the language requirements of both the Secretary of State and the Governor's Regulatory Review Council.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. 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:

These proposed rules do not impact any other political subdivision.

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

The requirements of these rules are unchanged, only revised to conform with the requirements of both the Secretary of State and the Governor's Regulatory Review Council. Dealers experience costs related to form development and storage. The Division incurs costs relative to enforcement on behalf of complaints and verifying dealer compliance with contract retention requirements.

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9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ellen Damron
Rules Analyst

Address: Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

Telephone: (602) 712-6722

Fax: (602) 241-1624

E-mail: edamron@dot.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding is not scheduled for these proposed rule changes. However, one may be requested by contacting the analyst listed in Section 9 of this proposal. Written, faxed or Internet comments may also be made by contacting the rules analyst listed in #4, between the times of 8:00 a.m. and 4:30 p.m., Monday through Friday, and shall continue for 30 days from this Notice's publication date. The rulemaking's public record will close on Monday, April 23, 2001.

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

None

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

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

ARTICLE 2. TITLES AND REGISTRATION

Section

R17-4-245. ~~Dealer Acquisition Contract~~
R17-4-245. Motor Vehicle Dealer Acquisition Contract
R17-4-246. ~~Dealer Consignment Contract~~
R17-4-246. Motor Vehicle Dealer Consignment Contract

ARTICLE 2. TITLES AND REGISTRATION

R17-4-245. ~~Dealer Acquisition Contract~~ Motor Vehicle Dealer Acquisition Contract

- ~~A.~~** General Requirements. ~~The dealer acquisition contract required by A.R.S. § 28-1310.01 shall be prepared and furnished by dealer on dealer's own business form and shall comply with all requirements of this rule.~~
- ~~B.~~** Content. ~~The dealer acquisition contract shall contain, but is not limited to, the following information separately stated and in the following order at the beginning of the contract:~~
- ~~1. The heading "Dealer Acquisition Contract".~~
 - ~~2. Dealer name, trade name, and license number.~~
 - ~~3. Dealer business address and phone number.~~
 - ~~4. Vehicle owner name, address, and phone number.~~
 - ~~5. Vehicle identification number, license plate number, licensing state, model, make, and year.~~
 - ~~6. Vehicle title number and titling state.~~
 - ~~7. Lienholder name, address, phone number, and disclosed lien balance, prepayment penalties if any, and any other information relevant to the terms and conditions of repayment of the loan.~~
 - ~~8. Warranty from owner that vehicle is free and clear of all liens and encumbrances except those disclosed and that the amount of the unpaid lien balance is no greater than the disclosed lien balance.~~

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9. ~~Contract amount and recital that the amount has been paid to owner by dealer or credited against the purchase price of another vehicle sold by dealer to owner.~~
 10. ~~Statement that owner sells and transfers to dealer the described vehicle.~~
 11. ~~Authorization from owner to dealer permitting dealer to obtain from lienholder any and all information necessary to verify that stated lien amount is accurate and to assure that the debt is paid and the lien released.~~
 12. ~~Warranty from owner that the registration documentation delivered to dealer is the original and most recently issued registration for listed vehicle.~~
 13. ~~Agreement as to who shall pay off lien amount.~~
 14. ~~Authorization from owner to dealer permitting dealer to obtain the official, original certificate of title from lienholder and to endorse owner's name thereon, if necessary, to transfer title of vehicle to dealer.~~
 15. ~~Agreement by owner that, in the event the certificate of title is received by owner, owner will deliver same to dealer immediately and provide dealer with any signatures and acknowledgments necessary to transfer vehicle to dealer.~~
 16. ~~Date acquisition contract executed.~~
 17. ~~Signature of dealer.~~
 18. ~~Signature of owner.~~
- C.** ~~Any additional contract provisions shall not conflict with nor alter the meaning of the required provisions.~~
- D.** ~~Disposition. Whenever a dealer prepares an acquisition contract as required by this rule, a copy shall be given to the owner of the vehicle. The original contract shall be retained by the dealer at his established place of business for 3 years.~~
- E.** ~~Disclaimer. Compliance with the requirements of this rule is not and shall not be interpreted as nor held out to be approval by the state of Arizona, any of its departments, divisions, agencies, officers, or employees of the contract's fairness, validity, or legality. This rule merely furnishes information which is required to be on a dealer acquisition contract and is not intended to be a complete contract.~~
- A.** Definitions.
1. "Contract" is a "Dealer acquisition contract" as found in A.R.S. § 28-4410(G)(2).
 2. "Dealer" is a "Motor vehicle dealer", as prescribed in A.R.S. § 28-4301(23).
 3. "Division" is the "Motor Vehicle Division" of the Arizona Department of Transportation, its administrators, officers, and employees.
 4. "Vehicle" is a "motor vehicle" as defined in A.R.S. § 28-4301(22).
 5. "Owner" is a person who holds the legal title of a vehicle, as found in A.R.S. § 28-101(36)(a), and has the legal right to sell or otherwise dispose of a motor vehicle.
 6. "State" refers to the "State of Arizona" and all its agencies, political subdivisions, their officers and agents.
- B.** General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall submit a dealer acquisition contract prepared:
1. On the dealer's own business form, and
 2. With contents as prescribed under this Section.
- C.** Content. The dealer acquisition contract shall contain the following information in the listed order from the beginning of the contract to its end. This Section does not detail additional statutory requirements for business contracts executed in Arizona.
1. The heading "Dealer Acquisition Contract";
 2. The dealer's name and dealer license number;
 3. The dealer's business address and telephone number;
 4. The owner's name, address, and telephone number;
 5. The vehicle identification number, license plate number; licensing state; model, make, and year;
 6. The lien holder's name; address; telephone number; disclosed lien balance; prepayment penalties, if any, and any other information relevant to the terms and conditions of the lien repayment;
 7. A warranty by the owner that the vehicle is free and clear of all liens and encumbrances, except those that have been disclosed; and, the unpaid lien balance is no greater than the disclosed lien balance;
 8. The contracted purchase price and a recital that this amount has either been paid directly to the owner or credited against the purchase price of another vehicle;
 9. A statement indicating that the owner is selling and transferring the described vehicle to the dealer;
 10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the stated lien amount, assure that the debt is paid, and the lien is released;
 11. A warranty by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
 12. An agreement indicating whether the owner or dealer shall satisfy the lien balance;
 13. An authorization by the owner permitting the dealer to obtain the original certificate of title from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
 14. If an owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
 15. The date the contact is executed;

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16. The dealer's signature; and.

17. The owner's signature.

- D.** Any additional, mandated, dealer acquisition contract provisions shall not conflict with nor alter the meaning of the provisions of this Section.
- E.** Disposition. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the vehicle's owner and keep the original at the dealer's established place of business for 3 years.
- F.** Disclaimer. The dealer, in complying with this Section, shall not interpret nor hold out such compliance to be an approval by the State of the fairness, validity, or legality of a dealer acquisition contract. This Section only furnishes information required in a dealer acquisition contract and is not intended to detail any additional, contractual requirements defined under other Arizona statutes.

R17-4-246. ~~Dealer Consignment Contract~~ Motor Vehicle Dealer Consignment Contract

- A.** General Requirements. The dealer consignment contract required by A.R.S. § 28-1310.01 shall be prepared and furnished by dealer on dealer's own business form and shall comply with all requirements of this rule.
- B.** Content. The dealer consignment contract shall contain, but is not limited to, the following information separately stated and in the following order at the beginning of the contract:
1. The heading "Dealer Consignment Contract".
 2. Dealer name, trade name, and license number.
 3. Dealer business address and phone number.
 4. Vehicle owner name, address, and phone number.
 5. Vehicle identification number, license plate number, licensing state, model, make, and year.
 6. Vehicle title number and titling state.
 7. Lienholder name, address, phone number, disclosed lien balance, prepayment penalties, if any, and any other information relevant to the terms and conditions of repayment of the loan.
 8. Warranty from owner that vehicle is free and clear of all liens and encumbrances except those disclosed.
 9. Authorization from owner to dealer permitting dealer to market and sell vehicle on behalf of owner for mutually agreed upon and specified minimum price.
 10. Agreement by dealer to inform any prospective customer that vehicle is on consignment.
 11. Agreement by dealer to satisfy all disclosed liens immediately upon receipt of the proceeds from sale of vehicle.
 12. Agreement by owner to deliver and reassign certificate of title for vehicle to purchaser properly endorsed and acknowledged upon payment of minimum specified price.
 13. Expiration date of consignment contract.
 14. Agreement by dealer to deliver vehicle to owner at specified location upon expiration or termination of consignment contract.
 15. Agreement by owner to pay any money due dealer upon delivery of the vehicle after expiration or termination of the consignment contract.
 16. Date consignment contract executed.
 17. Signature of dealer.
 18. Signature of owner.
- C.** Any additional contract provisions shall not conflict with nor alter the meaning of the required provisions.
- D.** Disposition. Whenever a dealer prepares a consignment contract as required by this Section, a copy shall be given to the owner of the vehicle. The original shall be retained by the dealer at his established place of business for 3 years after the consignment contract has expired or terminated or the sale of the vehicle is completed.
- E.** Disclaimer. Compliance with the requirements of this rule is not and shall not be interpreted as nor held out to be approval by the state of Arizona, any of its departments, divisions, agencies, officers, or employees of the contract's fairness, validity, or legality. This rule merely furnishes information which is required to be on a dealer consignment contract and is not intended to be a complete contract.
- A.** Definitions.
1. "Contract" is a "Dealer consignment contract" as defined in A.R.S. § 28-4410(G)(1).
 2. "Dealer" is a "Motor vehicle dealer", as prescribed under A.R.S. § 28-4301(23).
 3. "Division" is the "Motor Vehicle Division" of the Arizona Department of Transportation, its administrators, officers, and employees.
 4. "Vehicle" is a "motor vehicle" as defined in A.R.S. § 28-4301(22).
 5. "Owner" is a person who holds the legal title of a vehicle, following A.R.S. § 28-101(36) (a), and has the legal right to sell or dispose of a motor vehicle.
 6. "State" refers to the "State of Arizona", all its agencies, political subdivisions, their officers, and agents.
- B.** General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall submit a dealer consignment contract prepared:
1. On the dealer's own business form, and
 2. With contents as prescribed under this Section.

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- C.** Content. The dealer consignment contract shall contain the following information in the listed order from the beginning of the contract to its end. This Section does not detail additional statutory requirements for business contracts executed in Arizona:
1. The heading “Dealer Consignment Contract”;
 2. The dealer’s name and dealer license number;
 3. The dealer’s business address and telephone number;
 4. The vehicle owner’s name, address, and telephone number;
 5. The vehicle’s identification number; license plate number; licensing state; model, make, and year;
 6. The lien holder’s name, address, telephone number; disclosed lien balance; prepayment penalties, if any; and any other information relevant to the terms and conditions of the lien repayment;
 7. A warranty by the owner that the vehicle is free and clear of all liens and encumbrances, except those that have been disclosed, and the unpaid lien balance is no greater than the disclosed lien balance;
 8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
 9. The agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
 10. The agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed and specified liens;
 11. The agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, to promptly deliver and endorse the certificate of title for reassignment to the purchaser;
 12. The expiration date of the consignment contract;
 13. The agreement by the dealer to deliver the vehicle to the owner at a specified location upon expiration or termination of the contract;
 14. The agreement by the owner to pay any specified fees due the dealer upon the return of the vehicle, after the expiration or termination of the consignment contract;
 15. The date the contract is executed;
 16. The dealer’s signature; and
 17. The owner’s signature.
- D.** Any additional, mandated, dealer consignment contract provisions shall not conflict with nor alter the meaning of the provisions of this Section.
- E.** Disposition. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the vehicle’s owner and keep the original at the dealer’s established place of business for 3 years after the date that the contract has expired, terminated, or the vehicle has been sold.
- F.** Disclaimer. The dealer, in complying with this Section, shall not interpret nor hold out such compliance to be an approval by the State of the fairness, validity, or legality of a dealer consignment contract. This Section only furnishes information required in a dealer consignment contract and is not intended to detail any additional, contractual requirements defined under other Arizona statutes.