

NOTICES OF EXEMPT RULEMAKING

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

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R05-428]

PREAMBLE

- 1. Sections Affected**

R2-20-103	<u>Rulemaking Action</u>
R2-20-104	Amend
R2-20-107	Amend
R2-20-206	New Section
R2-20-208	Amend
R2-20-214	Amend
R2-20-217	Amend
R2-20-231	Amend
R2-20-702.01	Repeal
R2-20-703	New Section
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 16-956(C), 16-956(D), 16-958(F)
Implementing statute: A.R.S. §§ 16-940 through 16-961
Statute Authorizing Exemption: A.R.S. § 16-956(C)
- 3. The effective date of the rules:**

Upon final approval of the Commission, on or after January 13, 2006
- 4. A list of all previous notices appearing in the *Register* addressing the exempt rule:**

Notice of Final Rulemaking: 6 A.A.R. 1567, April 28, 2000, effective June 21, 2000
Notice of Exempt Rulemaking: 8 A.A.R. 588, February 8, 2002, effective November 27, 2001
Notice of Exempt Rulemaking: 9 A.A.R. 3506, August 8, 2003, effective April 2, 2002
Notice of Exempt Rulemaking: 9 A.A.R. 3511, August 8, 2003, effective May 21, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Todd Lang, Executive Director
Genevra Richardson, Campaign Finance Manager

Address: 1616 W. Adams, #110
Phoenix, AZ 85007

Telephone: (602) 364-3477

Fax: (602) 364-3487

E-mail: todd.lang@azcleaselections.gov or g.richardson@azcleaselections.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

The Commission is complying with A.R.S. §§ 16-956(C), 16-956(D) and 16-958(F). These statutes allow the Commission to enact rules to carry out the purposes of the Citizens Clean Elections Act (A.R.S. §§ 16-940 through -961) to implement rules related to candidate communication and certification, debates, bookkeeping, matching funds, complaints, enforcement, audits, use of campaign funds and use of assets.

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7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None
8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not Applicable
9. The summary of the economic, small business, and consumer impact:
Not Applicable
10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Not Applicable
11. A summary of the comments made regarding the rule and the agency response to them:
Not Applicable
12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not Applicable
13. Incorporations by reference and their location in the rules:
None
14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:
No
15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

- R2-20-103. Communications: Time and Method
R2-20-104. Certification as a Participating Candidate
R2-20-107. ~~Repealed~~ Candidate Debates

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

Section

- R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-generated Matters
R2-20-208. Complaint Processing; Notification
R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures
R2-20-217. Enforcement Proceedings
R2-20-231. ~~Request for Reconsideration~~ Repealed

ARTICLE 7. USE OF FUNDS AND REPAYMENT

Section

- R2-20-702.01. Use of Assets
R2-20-703. Documentation for Direct Campaign Expenditures

ARTICLE 1. GENERAL PROVISIONS

R2-20-103. Communications: Time and Method

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and 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 Jr. 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. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change

R2-20-104. Certification as a Participating Candidate-

- A. No change
 - 1. No change
 - 2. Return the amount of each contribution in excess of the ~~\$100~~ individual contribution limit for participating candidates;
 - 3. No change
 - 4. Not have spent contributions exceeding ~~\$100~~ the early contribution limit, or any part of ~~contributions~~ a contribution exceeding ~~\$100~~ the early contribution limit;
 - 5. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C. No change
 - 1. No change
 - 2. Has filed ~~with the Commission~~ a campaign finance report, showing all campaign activity to date in the current election cycle;
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
 - 8. No change
 - 9. No change
 - 10. No change
 - 11. No change
- D. No change
 - 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. No change
 - 3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) ~~\$500~~ for legislative candidates and ~~no more than \$1000~~ for statewide office candidates;
 - 4. No change
 - 5. No change

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- a. No change
- b. No change
- 6. No change
- E. Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). ~~If the loan is to be repaid, these~~ the loans shall ~~promptly~~ be repaid ~~promptly with~~ upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change
 - 5. No change
 - 6. No change
 - a. No change
 - b. No change
 - c. No change
 - 7. No change
 - 8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- G. No change
- H. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the ~~act~~ Act or Commission rules, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose any other penalty the Commission deems appropriate.
- I. No change

R2-20-107. ~~Repealed~~ Candidate Debates

- A.** The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections unless there is no participating candidate in the election for a particular office.
- B.** In the primary election, the Commission shall sponsor primary election debates as follows:
 - 1. According to political party affiliation of candidates, recognized on the official ballot, where at least one of the candidates is a participating candidate, and
 - 2. Party primary candidates are opposed in the election for the political party's nomination.
- C.** The following candidates will not be invited to participate in debates as follows:
 - 1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
 - 2. In the general election, write-in candidates.
- D.** Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission.
- E.** Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be ineligible to receive any further equalizing funds for that election. For purposes of this Section, each primary or general election shall be considered a separate election.
- F.** A participating candidate may request to be exempt from participating in a required debate by doing the following:
 - 1. Submit a written request to the Commission at least one week prior to the scheduled debate; and
 - 2. State the reasons and circumstances justifying the request for exemption.
- G.** After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least 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

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3. Good cause, as defined in A.R.S. § 16-918(E).
- H. A participating candidate who fails to participate in a required debate may submit a request for reconsideration to the Commission.
 1. The candidate's request for reconsideration shall:
 - a. State the reason the candidate failed to participate in the debate; and
 - b. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
 2. After examining the request for reconsideration, the Commission will excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
 - a. Beyond the control of the candidate;
 - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
 - c. Good cause, as defined in A.R.S. § 16-918(E).
- I. When a participating candidate is unopposed in the candidate's party primary election, the candidate shall be exempt from participating in a Commission-sponsored debate for the primary election. When a participating candidate is unopposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-206. ~~Administrative Counsel's~~ Executive Director's Recommendation on Complaint-generated Matters

- A. No change
 1. No change
 2. The ~~Administrative Counsel~~ Executive Director 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 R2-20-205(A).
- B. Neither the complainant nor the respondent has the right to appeal the ~~Administrative Counsel's~~ Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not a final administrative action.

R2-20-208. Complaint Processing; Notification

- A. No change
- 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~~ Executive Director shall so notify both the complainant and respondent.
- C. No change

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the ~~Administrative Counsel~~ Executive Director 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~~ Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the ~~Administrative Counsel's~~ Executive Director'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~~ Executive Director 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.

R2-20-217. Enforcement Proceedings

- A. Upon a finding of ~~probably~~ probable cause that the alleged violator remains out of compliance, the Executive Director 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. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director 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 R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection (B). Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

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R2-20-231. Request for Reconsideration Repealed

- ~~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).~~

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-702.01 Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign acquires 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.

R2-20-703. Documentation for Direct Campaign Expenditures

- A. No change
1. No change
 2. No change
 3. No change
- B. No change
- C. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
- D. 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.**