

**NOTICE OF FINAL EXEMPT RULEMAKING**  
**TITLE 2. ADMINISTRATION**  
**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**  
**PREAMBLE**

- Article, Part or Sections Affected (as applicable)** **Rulemaking Action**  
R2-20-111 Amend
- Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific) and the statute or session law authorizing the exemption:**  
Authorizing statute: A.R.S. §§ 16-940, -941, -942, 956, -957, 958.  
Implementing statute and statute authorizing the exemption: A.R.S. § 16-956(C).  
The Citizens Clean Elections Commission is exempt from Executive Order 15-01.
- The effective date of the rule and the agency's reason it selected the effective date:**  
The rule herein is currently in effect. On December 14, 2017, the Commission unanimously voted to reenact and republish this rule for the purpose of public notice and clarity.
- A list of all notices published in the Register as specified in R9-1-409(A) that pertain to the record of the exempt rulemaking:**  
Not Applicable
- The agency's contact person who can answer questions about the rulemaking:**  
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- An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**  
**R2-20-111 Non-participating Candidate Reporting Requirements and Contribution Limits**

This action is being taken because of an invalid notice from Governor's Regulatory Review Council (GRRRC). The rule, which remains in effect, provides guidance and explanation of statutory provisions the commission is "require[d]" to enforce. *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004); *see also Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014) (dismissing case challenging the Commission's jurisdiction to resolve complaints against a non-participating candidate.).

- provides that complaints may be filed with the Commission alleging violations of Commission alleging violations of A.R.S. § 16-941(B) and that penalties authorized by A.R.S. § 16-942(B) and (C) may be assessed and removes language that is superfluous to the operation of this rule;
- provides that the twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by candidates;
- provides that contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

This rule includes provisions that are primarily the result of SB1516 (2016). SB 1516 contains provisions that raise serious questions under the Arizona and U.S. Constitutions. Among other things, SB 1516 includes provisions that attempt to preempt the Commission's rulemaking authority (A.R.S. § 16-901(42)), narrow the definitions of expenditure and contribution and eliminate the definition of political committee

adopted by the Clean Elections Act in 1998, raising serious constitutional questions under the Voter Protection Act of the Arizona Constitution. The Commission does not, by adopting these rules, waive any legal objection to the enactment of laws that violate the Voter Protection Act. Rather, it adopted these rules in the interest of harmonizing the Commission's rules with the existing statutes in order to avoid confusion within the regulated community and encourage consistency between the Commission's rules and the policies of other election-related offices.

In addition to the VPA issues, the provisions of SB 1516 raise questions of equal protection regarding the treatment of corporations registered in Arizona that also have 501 status with the IRS and questions under Article 7, §. 16 of the Arizona Constitution regarding the publication of campaign contributions and expenditures. The Commission notes these issues for the record, but again, seeks as much as possible to harmonize its rules. The Commission retains its full authority to enforce Article 2 of Chapter 6 of Title 16 consistent with the terms of the statute, as well as the court interpretations which confirm its plain terms. The Commission's rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956.

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

Not applicable

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rulemaking 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, if applicable:**

Not applicable

10. **A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and final rulemaking package, (if applicable):**

Not applicable.

11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

The Commission solicits public comment throughout the rulemaking process.

12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

- a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

- b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of the federal law:**

Not applicable

- c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

Not applicable

13. **A list of any incorporated by reference material and its location in the rules:**

Not applicable

14. **Whether this rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

The rule was not previously made, amended, repealed, or renumbered as an emergency rule.

15. **The full text of the rules follows:**

**TITLE 2. ADMINISTRATION  
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION  
ARTICLE 1. GENERAL PROVISIONS**

Section

R2-20-111 Non-participating Candidate Reporting Requirements and Contribution Limits

**ARTICLE 1. GENERAL PROVISIONS**

**R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits.**

A. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable.

B. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):

1. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.

2. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.

3. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.

4. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.

C. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

D. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

E. The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.

F. Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).