

Attachment C



- 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):**
The amendment would serve to provide clarity during the 2016 election cycle due to legislative enactments related to independent expenditures. The legality of those enactments under the Arizona Constitution remains open to question. However, in the interest of consistency, the Commission proposes to adopt this rule change. Additionally, this change removes references to A.R.S. 16-917 which will become outdated and reorganizes the rule for benefit of simplicity by moving issues related to separate regulated entities to separate rules. The Commission's rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956.
- 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 Whether this rule previously made, amended, repealed or renumbered as an emergency rule.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The rule was not previously made, amended, repealed, or renumbered as an emergency rule.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
R2-20-109. Independent Expenditure Reporting Requirements

ARTICLE 1. GENERAL PROVISIONS

R2-20-109. Independent Expenditure Reporting Requirements

- A. No change
- ~~B. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:~~
 - ~~1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.~~
 - ~~2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.~~
 - ~~3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:~~
 - ~~a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;~~
 - ~~b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and~~



- e. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
 - 4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
 - a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
 - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
 - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
 - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
 - 5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.
- C. Timing of reporting expenditures.**
- 1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
 - 2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
 - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
 - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
 - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.
- D. Transportation expenses.**
- 1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
 - 2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
 - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate-owned automobiles in addition to any other automobile.
 - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
 - 3. Use of airplanes.
 - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.



- b. ~~If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.~~
4. ~~If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.~~
- E. Reports and Refunds of Excess Monies by Participating Candidates**
1. ~~In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:~~
- a. ~~Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.~~
- b. ~~At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies:~~
- i. ~~The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.~~
- ii. ~~If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.~~
2. ~~Each participating candidate shall file a campaign finance report consisting 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 to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund:~~
- a. ~~The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.~~
- b. ~~The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).~~
3. ~~In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.~~
- FB. Independent Expenditure Reporting Requirements.**
1. ~~No change~~
2. ~~Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.~~
3. ~~Any person who fails to file:~~
- a. ~~A timely campaign finance report pursuant to A.R.S. 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B).~~
- b. ~~A timely campaign finance report pursuant A.R.S. § 16-913, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B), except as provided in A.R.S. § 16-922(2)~~
3. ~~Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:~~
- a. ~~No change~~
- b. ~~No change~~
- c. ~~The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.~~



- d. No change
- e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
- 4. No change
- 5. No change
 - a. No change
 - b. No change
- 6. No change
- 7. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
- 8. No change
- 9. No change
- 10. No change
- 11. ~~Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.~~
- 1211.No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - (1) No change
 - (2) No change
 - iv. No change
 - v. No change
 - (1) No change
 - (2) No change
 - b. No change

G. Non-participating Candidate Reporting Requirements and Contribution Limits. 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:

- 1. 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):
 - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. 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.
 - d. 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.
- 2. 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.
- 3. 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).



NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R16-193]

PREAMBLE

1. **Article, Part or Sections Affected (as applicable)** **Rulemaking Action**
R2-20-110 Amend
2. **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, et seq.
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 because it is not an agency whose head is appointed by the Governor and is, therefore, exempt.
3. **The effective date of the rule and the agency's reason it selected the effective date:**
The amendments will be effective January 1, 2017. The rule amendments were not adopted unanimously.
4. **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:**
Notice of Proposed Exempt Rulemaking: 22 A.A.R. 1888, July 22, 2016
5. **The agency's contact person who can answer questions about the rulemaking:**
Name: Thomas M. Collins, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: thomas.collins@azcleelections.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
R2-20-110. Participating Candidate Reporting Requirements
The Commission amends the rule to reorganize the rule by providing a separate section for participating candidate reporting requirements. Existing R2-20-110 is renumbered as R2-20-114.
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):**
The Commission amends to reorganize the rule by providing a separate section for participating candidate reporting requirements. Existing R2-20-110 is renumbered to new Section R2-20-114.
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 R2-20-110. Participating Candidate Reporting Requirements

ARTICLE 1. GENERAL PROVISIONS

R2-20-110. Participating Candidate Reporting Requirements

- A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:**
 - 1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.**
 - 2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.**
 - 3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:**
 - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;**
 - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and**
 - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.**
 - 4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:**
 - a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.**
 - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.**
 - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.**
 - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.**
 - 5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.**



- B. Timing of reporting expenditures.**
 1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
 2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
 - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
 - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
 - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.
- C. Reports and Refunds of Excess Monies by Participating Candidates.**
 1. In addition to the campaign finance reports filed pursuant to A.R.S. § 16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
 - a. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.
 - b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
 - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
 - ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
 2. Each participating candidate shall file a campaign finance report consisting 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 to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.
 - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
 - b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).
 3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R16-194]

PREAMBLE

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <u>Article, Part or Section Affected (as applicable)</u>
R2-20-111 2. <u>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:</u>
Authorizing statute: A.R.S. § 16-940, et seq. | <p><u>Rulemaking Action</u>
Amend</p> |
|--|--|

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 because it is not an agency whose head is appointed by the Governor and is, therefore, exempt.

3. **The effective date of the rule and the agency's reason it selected the effective date:**
The amendments will be effective January 1, 2017. The rule amendments were not adopted unanimously.
4. **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:**
Notice of Proposed Exempt Rulemaking: 22 A.A.R. 1891, July 22, 2016
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Thomas M. Collins, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: thomas.collins@azcleelections.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:**
R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits
The Commission is providing a separate section for non-participating candidate reporting requirements and campaign finance limits. Existing Section R2-20-111 is renumbered to new Section R2-20-115.
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 in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Not applicable
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
Not applicable
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
The rule amendments clarify the Commission's requirement that participating candidates must retain campaign finance records for the candidate's campaign bank account. The amendment was developed by the Commission during a review of its rules and was proposed in an open meeting on May 14, 2015 and adopted unanimously in an open meeting on July 23, 2015. There were no Notices of Supplemental Proposed Rulemakings related to this Section, and changes are being made to the subsection R2-20-111(B)(1) only.
11. **A summary of the comments made regarding the rule and the agency response to them:**
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. **Incorporations by reference and their location in the rules:**
Not applicable

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

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. ~~Books and Records~~ Non-participating Candidate Reporting Requirements and Contribution Limits

ARTICLE 1. GENERAL PROVISIONS

R2-20-111. ~~Books and Records~~ Non-participating Candidate Reporting Requirements and Contribution Limits

- A.** All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B.** All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
 - a. All contributions or other monies received by or on behalf of the candidate.
 - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
 - c. Cumulative totals contributed by each individual or political committee.
 - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
 - e. All periodic bank statements or other statements for the candidate's campaign bank account.
 - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.
 2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
 3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
 4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
 5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
 6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C.** Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
 2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
 3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
 4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issu-



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6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
 R2-20-114. Candidate Campaign Bank Accounts
 This rule renumbers former R2-20-110 to new section R2-20-114.
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):**
 This rule renumbers former R2-20-110 to new section R2-20-114.
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
 R2-20-114. Candidate Campaign Bank Accounts

ARTICLE 1. GENERAL PROVISIONS

R2-20-114. Candidate Campaign Bank Accounts

- A. **Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.**
- B. **A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank 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 contributions for a campaign during a prior elec-**



plemental Proposed Rulemakings related to this Section, and changes are being made to the subsection R2-20-115(B)(1) only.

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
R2-20-115. Books and Records Requirements

ARTICLE 1. GENERAL PROVISIONS

R2-20-115. Books and Records Requirements

A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.

B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:

1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:

a. All contributions or other monies received by or on behalf of the candidate.

b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.

c. Cumulative totals contributed by each individual or political committee.

d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.

e. All periodic bank statements or other statements for the candidate's campaign bank account.

f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.

2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.

3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.

4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual con-

6. **An explanation of the rule, including the agency’s reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**
 R2-20-702. Use of Funds
 Adds a new provision (moved from R2-20-109(D)) that addresses the use of Clean Funding for transportation expenses.
7. **A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
 Not applicable
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
 Not applicable
9. **The summary of the economic, small business, and consumer impact:**
 Not applicable
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
 Not applicable
11. **A summary of the comments made regarding the rule and the agency response to them:**
 The Commissioners solicited public comment throughout the rulemaking process.
 The Commissioners considered the rule in open meetings and took actions they deemed appropriate.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. 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. **Incorporations by reference and their location in the rules:**
 Not applicable
14. **Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**
 Not applicable
15. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 7. USE OF FUNDS AND REPAYMENT

Section
 R2-20-702. Use of Campaign Funds

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-702. Use of Campaign Funds

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. Transportation expenses.



1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
 - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
 - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
3. Use of airplanes.
 - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
 - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.



- 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
R2-20-101. Definitions

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. No change
- 2. No change
- 3. "Campaign account" means an account at a financial institution designated by a political committee that is used solely for political campaign purposes ~~as required in A.R.S. § 16-902(C).~~
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. No change
- 13. No change
- 14. No change
- 15. No change
- 16. No change
- 17. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change

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

ARTICLE 1. GENERAL PROVISIONS

R2-20-104. Certification as a Participating Candidate

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § ~~16-905-16-941(B)~~, but later chooses to run as a participating candidate, shall:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. Not have ~~spent contributions~~ made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
 - 5. No change
 - 6. Return all contributions received from another candidate's candidate committee.
- B. No change
 - 1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
 - 2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(824); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
 - 3. No change
 - 4. ~~Disposing of the money in accordance with A.R.S. § 16-915.01;~~ or
 - 45. No change



Updates rule to reflect expansion of electronic qualifying system, 2016 Ariz. Sess. Law, Chapter 176 (52d Legislature). The Commission's rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956. These rule amendments 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 adopts 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.

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 R2-20-105. Certification for Funding

ARTICLE 1. GENERAL PROVISIONS

R2-20-105. Certification for Funding

- A. No change
B. No change
C. A candidate may accept electronic \$5 qualifying contributions up to a maximum of 50% of the minimum number required to qualify for funding for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic \$5 qualifying. A \$5 contribution must accompany every \$5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or

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 adopts 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.

- 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
R2-20-107. Candidate Debates

ARTICLE 1. GENERAL PROVISIONS

R2-20-107. Candidate Debates

- A. No change
- B. In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:
 - 1. There are more candidates appearing on the ballot than there are seats available ~~at least two candidates of~~ for the political party's nomination for general election candidates, and
 - 2. No change
- C. No change
 - 1. No change
 - 2. No change
- D. In the event that there is no participating candidate in a primary or general election but there is an election involving candidates who are not unopposed, subject to invitation pursuant to this rule, the following apply:

Provides for the Executive Director to take steps to implement a substitute reporting process for independent expenditures when the system provided by the Secretary of State is unavailable or a portion is unavailable. Provides that campaign finance reports pursuant to A.R.S. 16-941(D) and 16-958 shall be filed by all persons who make independent expenditures and details statutory penalties for failure to file such reports. Clarifies that entities required to file campaign finance reports pursuant to Chapter 6 of Title 16 are subject to fine pursuant to Article 2 of Chapter 6 (the Clean Elections Act) unless the report is required of political committees and the entity is not a political committee. Specifically provides that an entity will not be determined to be a political committee if it is in compliance with certain federal tax and Arizona corporate laws, according to the Internal Revenue Service and the Arizona Corporation Commission, respectively. Removes sections related to exemptions from A.R.S. 16-941 and 16-958 because the basis for those exemptions, A.R.S. 16-914.02, has been repealed. The Commission's rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956. These rule amendments are primarily the result of SB 1516 (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 adopts 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.

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
R2-20-109. Independent Expenditure Reporting Requirements



ARTICLE 1. GENERAL PROVISIONS

R2-20-109. Independent Expenditure Reporting Requirements

- A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:
- (1) expressly provided otherwise by another Commission rule; or
 - (2) That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a substitute process.
- B. No change
1. No change
 2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-941(D) and -958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
 - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
 - d. 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.
 - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
 3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
 5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
 - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
 - b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
 6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).
 7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption:
 - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
 - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director 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:
 - i. The specific facts constituting the denial;
 - ii. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
 - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
 8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02(A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.
 9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.

sistency 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

R2-20-110. Participating Candidate Reporting Requirements

ARTICLE 1. GENERAL PROVISIONS

R2-20-110. Participating Candidate Reporting Requirements

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - 4. No change
 - a. Joint expenditures must be ~~authorized in advance by all candidates sharing in the expenditure~~ and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
 - b. No change
 - c. No change
 - d. No change



- e. 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:
 - i. The activity includes express advocacy of the election or defeat of more than 2 candidates;
 - ii. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
 - iii. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
 - iv. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
 - v. The timing of the material or activity in relation to the election of a second candidate;
 - vi. The distribution of the material or the activity is targeted to a second candidate's electorate; or
 - vii. The amount of control a second candidate has over the material or activity.
- 5. No change
- B. No change
 - 1. Except as set forth in subsection (BA)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
 - 2. In the alternative to reporting in accordance with subsection (BA)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
 - a. No change
 - b. No change
 - c. No change
- C. No change
 - 1. In addition to the campaign finance reports ~~any campaign finance report~~ required by Chapter 6 of Title 16, Arizona Revised Statutes, ~~filed pursuant to A.R.S. §16-913,~~ participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - 2. No change
 - a. No change
 - b. The campaign finance report for the general election shall be ~~considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3) filed within five days after the general election day and shall reflect all activity through the general election day.~~
 - 3. No change

NOTICES OF FINAL EXEMPT RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R16-285]

PREAMBLE

1. **Article, Part or Section Affected (as applicable)** **Rulemaking Action**
 R2-20-111 Amend
2. **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, 16-941, 16-942, 16-956, 16-957, 16-958.
 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 because it is not an agency whose head is appointed by the Governor and is, therefore, exempt.
3. **The effective date of the rule and the agency's reason it selected the effective date:**
 January 1, 2017
4. **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:**
 Notice of Proposed Exempt Rulemaking: 22 A.A.R. 3098, October 28, 2016
5. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Thomas M. Collins, Executive Director
 Address: Citizens Clean Elections Commission
 1616 W. Adams St., Suite 110
 Phoenix, AZ 85007
 Telephone: (602) 364-3477
 Fax: (602) 364-3487
 E-mail: thomas.collins@azcleelections.gov

6. 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

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). These rule amendments 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 adopts 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



- 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
R2-20-112. Political Party Exception

ARTICLE 1. GENERAL PROVISIONS

R2-20-112. Political Party Exception

- A. Pursuant to A.R.S. §§ 16-901(5)(b)(v) and (8)(c), payment by a political party of the costs of preparation, printing, display, mailing or other distribution for slate cards, sample ballots, other written materials or listings of candidates that substantially promote three or more candidates for any public office for which an election is held, and other election activities not related to a specific candidate, shall not be considered a contribution or an expenditure for purposes of the Act or Commission rules. This exception is subject to the following limitations:
 - 1. "Slate card" is defined as a list that contains only:
 - a. The names, party affiliations and offices sought by the candidates;
 - b. Photographs of the candidates; and
 - c. General information regarding the date of the primary or general election; and
 - d. The location of the recipient's polling place.
 - 2. "Sample ballot" is defined as a facsimile of a ballot listing only the names, party affiliations and offices sought by the candidates, appearing substantially as they would on an actual ballot;
 - 3. "Other written materials or listings of candidates that substantially promote three or more candidates" are defined as materials that contain one or more of the elements of a slate card, in addition to statements and/or images describing the platform of the sponsoring party and the position of the party's candidates, and does not feature, mention, or depict a candidate or candidates of another party;
 - 4. "Other election activities not related to a specific candidate" includes invitations to party-sponsored events, issue canvassing, and voter registration efforts;
 - 5. "Billboards" are defined as outdoor signs that are larger than thirty-two square feet in size.
 - 6. The exception set forth in Subsection (A) shall not apply to materials defined in 1-3 above when distributed or displayed prior to the general election period unless each candidate featured is unopposed in the primary election.



Implementing statute and statute authorizing the exemption: A.R.S. § 16-956(C).
The Citizens Clean Elections Commission is exempt from Executive Order 16-01.

- 3. **The effective date of the rule and the agency's reason it selected the effective date:**
December 15, 2016
- 4. **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:**
Notice of Proposed Exempt Rulemaking: 22 A.A.R. 3106, October 28, 2016
- 5. **The agency's contact person who can answer questions about the rulemaking:**
Name: Thomas M. Collins, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: thomas.collins@azcleelections.gov
- 6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
R2-20-402.02. Audits of Participating Statewide Candidates
Provides for audits of participating statewide legislative candidates. These rule amendments 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 adopts 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



- 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 on 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 7. USE OF FUNDS AND REPAYMENT

Section R2-20-703. Documentation for Direct Campaign Expenditures

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-703. Documentation for Direct Campaign Expenditures

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
- B. No change
- ~~C.~~ 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 more than 2 candidates;
 - 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.
- ~~D.~~ No change