

NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemaking.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R22-317]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**

R2-20-305	<u>Rulemaking Action</u>
R2-20-306	Amend
	Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. §§ 16-956(A)(6) and (A)(7)
 Implementing statutes: A.R.S. § 16-948(C)
3. **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
 Notice of Rulemaking Docket Opening: 29 A.A.R. 249, January 20, 2023 (*in this issue*)
4. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Tom Collins, Executive Director
 Address: Citizens Clean Elections Commission
 1802 W. Jackson St.
 Phoenix, AZ 85007
 Telephone: (602) 364-3477
 Email: ccec@azcleelections.gov
 Website: www.azcleelections.gov
5. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The Commission needs to amend its rules to clarify how a person may report a suspected violation and how the Commission will process such reports.
6. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.**
 None
7. **A showing of good cause why the rulemaking 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
8. **The preliminary summary of the economic, small business, and consumer impact:**
 There is little to no economic, small business, or consumer impact, other than the cost to the Commission to prepare the rule package, because the rulemaking simply clarifies statutory requirements and processes that already exist. Thus, the economic impact is minimized.
9. **The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**
 Name: Tom Collins, Executive Director
 Address: Citizens Clean Elections Commission

1802 W. Jackson St.
Phoenix, AZ 85007
Telephone: (602) 364-3477
Email: ccec@azcleanelections.gov
Website: www.azcleanelections.gov

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: February 23, 2022
Time: 9:30 a.m.
Location: Citizens Clean Elections Commission
1802 W. Jackson St.
Phoenix, AZ 85007

Or virtually
<https://us02web.zoom.us/j/83049534974>
Meeting ID: 830 4953 4974
One tap mobile
+16699006833, 83049534974# US (San Jose)
17193594580, 83049534974# US

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

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 federal law, and if so, citation to the statutory authority to exceed the requirements of 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:
No analysis was submitted.

12. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
None

13. The full text of the rules follows:

**TITLE 2. ADMINISTRATION
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

Section
R2-20-305. Reporting Suspected Violations
R2-20-306. Disciplinary and Other Remedial Action

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-305. Reporting Suspected Violations

- A.** ~~Commissioners and employees~~ Persons who have information, ~~which that~~ causes them to believe that there has been a violation of a statute or a rule set forth in this Article ~~or that a Commissioner should not participate in a Commission decision~~, shall report promptly, in writing, such ~~incident information~~ to the Commission's Chair or Executive Director.
- B.** When information ~~made~~ available to the Commission under ~~subsection (A)~~ indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided notice of the conflict issue and an opportunity to explain the conflict or appearance of conflict in writing. ~~In the case of a Commissioner, the response shall be due five days from the issuance of the notice. The Commission's Chair or Executive Director may decline to require a response if the claim is clearly meritless and, in such event, no response is required. In such cases, the Commission's Chair or Executive Director shall state in writing why the claim is clearly meritless and provide the writing to the person who provided the information and the Commissioner.~~

R2-20-306. Disciplinary and Other Remedial Action

- A. A violation of this Article by an employee or Commissioner may be cause for remedial action or, if the matter involves a Commission employee, disciplinary action, which may be in addition to any penalty or enforcement mechanism provided by law.
- B. When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.
- C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
1. Changes in assigned duties;
 2. Divestment by the employee of his or her conflicting interest;
 3. Disqualification for particular action; or
 4. Disciplinary action.
- D. When the matter involves a Commissioner, the Commission's Chair and Executive Director may conduct an appropriate investigation or gather relevant information for consideration by the Commission. After review of relevant information and a response from the Commissioner, the Commission's Chair and Executive Director shall ensure that the matter is made part of the agenda for a Commission meeting for discussion and possible action no later than the next regular Commission meeting, unless there is less than one week before that meeting, in which case, the matter shall be scheduled at the next subsequent meeting. The Commission's Chair may call for an interim meeting regarding the matter at the discretion of the Commission's Chair.
- E. After consideration of the relevant information and a Commissioner's response at an open meeting, the Commission may vote on an action for proper remedial action. Remedial action may include, but is not limited to:
1. An expression of the majority opinion of the Commissioners about voluntary remedial action the Commissioner at issue should take to resolve the conflict issues and ensure the appropriate level of impartiality in Commission proceedings; or
 2. Disqualification of the Commissioner from participation in discussion or votes on any matter for which the Commissioner has, in the determination of a majority of the other non-disqualified Commissioners, a disqualifying conflict.

NOTICE OF PROPOSED RULEMAKING**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE****CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
FINANCIAL INSTITUTIONS**

[R22-318]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Article 5 | Amend |
| R20-4-503 | Amend |
| R20-4-508 | Amend |
| R20-4-518 | Amend |
| R20-4-519 | Amend |
| R20-4-524 | Amend |
| R20-4-534 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 6-123(2)
 Implementing statute: A.R.S. §§ 6-607, 6-634, 6-635, and 6-636
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 29 A.A.R. 249, January 20, 2023 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**
 Name: Mary E. Kosinski
 Address: Department of Insurance and Financial Institutions
 100 N. 15th Ave., Suite 261
 Phoenix, AZ 85007-2630
 Telephone: (602) 364-3476
 Email: mary.kosinski@difi.az.gov
 Website: <https://difi.az.gov>

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Insurance and Financial Institutions – Financial Institutions Division (“Department”) is proposing changes to A.A.C. Title 20, Chapter 4, Article 5 – Small Loans. The changes the Department is proposing will reflect the structural change to the former Department of Financial Institutions which merged with the Department of Insurance to form the Department of Insurance and Financial Institutions (the “new agency”), on July 1, 2020. The former Department of Financial Institutions became a division of the new agency.

As a result of the merger, the new agency made statutory changes to eliminate the position of Superintendent. Instead, the Director of the new agency assumed those duties. This structural change necessitated replacing references to “Superintendent” with “Director” throughout the Article.

When reviewing the rules in the Article, the Department also endeavored to modernize the current rules since the most recent rulemaking for this Article was in 2000. The Department is allowing the use of electronic recordkeeping and eliminating verbatim compliance with the exact language of the rule. In addition, the Department feels that changing the name of the Article to “Consumer Lenders” more accurately reflects the license type and restructuring subsections (B) and (C) of Section R20-4-524 will eliminate ambiguity about what is a “Consumer Lender.”

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

The Department did not review and does not propose to rely on any study relevant to this rulemaking.

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

The rulemaking does not diminish a previous grant of authority granted to the Department.

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

Pursuant to A.R.S. § 41-1055(A):

- The rulemaking is not designed to change any conduct. Instead, it is necessary to reflect the new structure of the Department and to modernize and clarify some of the Sections.
- Because this rulemaking is not made in response to a perceived problem caused by the conduct of licensees, it is not intended to reduce the frequency of any potentially violative conduct.
- The costs incurred by Consumer Lenders are not expected to impact revenues or payroll expenditures.
- The person listed in item 9 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Mary E. Kosinski
 Address: Department of Insurance and Financial Institutions
 100 N. 15th Ave., Suite 261
 Phoenix, AZ 85007-2630
 Telephone: (602) 364-3476
 Email: mary.kosinski@difi.az.gov

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

No proceeding is currently scheduled. Persons who wish to request an oral proceeding on this rulemaking should make a written request to the person listed in item 4. Requests must be received within 30 days of the publication of this Notice of Proposed Rulemaking. A.R.S. § 41-1023(C). If requested, the oral proceeding will be conducted at least 30 days after the receipt of any such request.

In lieu of an oral proceeding, interested parties may submit public comments to: public_comments@difi.az.gov. Please use “DFI Article 5 – Small Loans” in the subject line of the email. Persons submitting public comments should be aware that any comments submitted are “public” and may be published by the Department.

If no one requests an oral proceeding, the public comment period will close 30 days after the publication date of this Notice of Proposed Rulemaking. If anyone requests an oral proceeding, the public comment period will close at 11:59 p.m., on the date of the oral proceeding.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

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:

The rule does not require a permit and does not use a general permit. A.R.S. § 6-603 requires a Consumer Lender to obtain a traditional license before engaging in the business of a Consumer Lender.

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

No federal law is applicable to the subject of the rule.