

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

- 1. Article, Part or Sections Affected (as applicable)**                      **Rulemaking Action**  
R2-20-109    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, -941, -942, -956, , -957, -958.  
Implementing statute and statute authorizing the exemption: A.R.S. § 16-956(C).  
The Citizens Clean Elections Commission is exempt from Executive Order 15-01.
  
- 3. The effective date of the rule and the agency’s reason it selected the effective date:**  
The rule herein is currently in effect. On December 14, 2017, the Commission unanimously voted to reenact and republish this rule for the purpose of public notice and clarity.
  
- 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:**  
Not Applicable
  
- 5. The agency’s contact person who can answer questions about the rulemaking:**  
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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 An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**  
R2-20-109                      **Independent Expenditure Reporting Requirements**

This action is being taken because of an invalid notice from the Governor’s Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of the application of the Clean Elections Act to persons who make independent expenditures in state and legislative races. *See Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004) (explaining that the Commission is “require[d]” to enforce laws related to independent expenditures). The rule thus:

- provides that all persons are to file reports required subject to penalty pursuant to Chapter 6, Article 2 shall do so with the with the Arizona Secretary of State’s online system.
- 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 or when directed by another Commission rule;
- provides that persons who make independent expenditures in state and legislative races are subject to the terms of A.R.S. 16-941 and 16-942. The rule also provides explanation of how such penalties shall be applied pursuant to A.R.S.t 16-957 (providing procedures for application of penalties against “persons” who are found in violation of the Clean Elections Act).
- provides explanation for the application of 16-942(B) to any entity that fails to file reports pursuant to Chapter 6 pursuant to A.R.S. 16-957 (providing procedures for application of penalties against “persons” who are found in violation of the Clean Elections Act); *see also* A.R.S. 16-901(defining entity as “a corporation, limited liability company, labor organization, partnership,

trust, association, organization, joint venture, cooperative, unincorporated organization or association or other organized group that consists of more than one individual.”)

- Provides that an entity shall not be found to be a political committee unless certain criteria are met. Provides that an entity may argue that, by a preponderance of the evidence, it is not a political committee pursuant to any definition in Title 16 and that the Commission may, in such case, determine the entity is not a committee.

The Commission’s rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956. Some provisions of these rules are primarily the result of SB1516 (2016). SB 1516 contains provisions that raise serious questions under the Arizona and U.S. Constitutions. Among other things, SB 1516 includes provisions that attempt to preempt the Commission’s rulemaking authority (A.R.S. § 16-901(42)), narrow the definitions of expenditure and contribution and eliminate the definition of political committee adopted by the Clean Elections Act in 1998, raising serious constitutional questions under the Voter Protection Act of the Arizona Constitution.

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

In addition to the VPA issues, the provisions of SB 1516 raise questions of equal protection regarding the treatment of corporations registered in Arizona that also have 501 status with the IRS and questions under Article 7, §. 16 of the Arizona Constitution regarding the publication of campaign contributions and expenditures. The Commission notes these issues for the record, but again, seeks as much as possible to harmonize its rules. The Commission retains its full authority to enforce Article 2 of Chapter 6 of Title 16 consistent with the terms of the statute, as well as the court interpretations which confirm its straightforward 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 suitable process.

B. Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
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. 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.

4. For purposes of A.A.C. R2-20-109(B)(3):

- a. An entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.
  - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
  - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
  - iii. For purposes of this provision, grants to other organizations shall be treated as follows:
    - (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
    - (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
  - iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
  - v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
    - (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
    - (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.

b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.