

NOTICES OF EXEMPT RULEMAKING

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

NOTICE OF EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R07-340]

PREAMBLE

- 1. Sections Affected**

| | <u>Rulemaking Action</u> |
|-----------|--------------------------|
| R2-20-207 | Amend |
| R2-20-211 | Amend |
| R2-20-213 | Amend |
| R2-20-215 | Amend |
| R2-20-222 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 16-940, *et seq.*
Implementing statute: A.R.S. § 16-956(C)
- 3. The effective date of the rules:**

January 1, 2008
- 4. A list of all previous notices appearing in the *Register* addressing the exempt rule:**

Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

| | |
|------------|--|
| Name: | Todd Lang, Executive Director |
| Address: | Citizens Clean Elections Commission 1616 W. Adams, Suite 110 Phoenix, AZ 85007 |
| Telephone: | (602) 364-3477 |
| Fax: | (602) 364-3487 |
| E-mail: | todd.lang@azcleelections.gov |
| and | |
| Name: | Eric Peterson, Administrative Counsel |
| Address: | Citizens Clean Elections Commission 1616 W. Adams, Suite 110 Phoenix, AZ 85007 |
| Telephone: | (602) 364-3477 |
| Fax: | (602) 364-3487 |
| E-mail: | eric.peterson@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:**

R2-20-207 prescribes the process by which the Commission generates internal complaints for violation of the Citizens Clean Elections Act and/or Commission rules.

Notices of Exempt Rulemaking

R2-20-211 prescribes the process by which the Commission issues subpoenas and subpoenas duces tecum and conducts depositions.

R2-20-213 prescribes the process by which persons may attempt to quash or modify a subpoena issued by the Commission.

R2-20-215 prescribes the process by which the Commission may issue or decline to issue a recommendation that there is probable cause that a violation of the Citizens Clean Elections Act or Commission rules has occurred.

R2-20-222 prescribes the civil penalties for violations of the Citizens Clean Elections Act and Commission rules.

Adoption and amendment of the above described rules is exempt from regular rulemaking procedures pursuant of A.R.S. § 16-956(C) of the Citizens Clean Elections Act.

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):

Changes between rules as initially proposed and as finally adopted by the Commission were primarily grammatical and stylistic. Additional changes were incorporated at the suggestion of members of the public and Commissioners to clarify terms and provisions of the rules.

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. Comments were generally supportive of the revised rules. Requests for clarifications and revisions and statements in support or opposition to specific provisions were duly considered by the Commission at open meetings and were acted upon as 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:

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 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

Section

| | |
|------------|---|
| R2-20-207. | Internally Generated Matters; Referrals |
| R2-20-211. | Subpoenas and Subpoenas Duces Tecum; Depositions |
| R2-20-213. | Motions to Quash or Modify a Subpoena |
| R2-20-215. | The Probable Cause to Believe Finding-Notification |
| R2-20-222. | Civil Penalties |

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-207. Internally Generated Matters; Referrals

A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the ~~Administrative Counsel~~ Executive Director may recom-

Notices of Exempt Rulemaking

ment in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.

- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the ~~Administrative Counsel~~ Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions

- A. The Commission may authorize its ~~Administrative Counsel~~ Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its ~~Administrative Counsel~~ Executive Director to take a deposition and have the power to administer oaths.
- C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

R2-20-213. Motions to Quash or Modify a Subpoena

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.
- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the ~~Administrative Counsel~~ Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

R2-20-215. ~~The Probable Cause to Believe Finding; Notification~~

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.
- ~~C. If the Commission makes a finding that the respondent has violated a statute or rule over which the Commission has jurisdiction pursuant to subsection (A) of this rule, the respondent will be notified of his or her right to appeal the decision pursuant to the Arizona Administrative Procedures Act, A.R.S. § 41-1092.~~

R2-20-222. Civil Penalties

- ~~A. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed \$500 for a participating candidate for the legislature and \$2500 for a participating candidate for statewide office.~~
- ~~B. If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed \$500.~~
- C. A civil penalty negotiated by the Commission or imposed by a court for a violation of the Act shall not exceed the greater of \$10,000 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of \$15,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation.

NOTICE OF EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R07-341]

PREAMBLE

- 1. Sections Affected**
R2-20-303
R2-20-304

Rulemaking Action
Amend
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 16-940, *et seq.*
Implementing statute: A.R.S. § 16-956(C)
- 3. The effective date of the rules:**
January 1, 2008
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**
Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Todd Lang, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: todd.lang@azcleelections.gov
and
Name: Eric Peterson, Administrative Counsel
Address: Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: eric.peterson@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:**
R2-20-303 prescribes the duties of the Executive Director with respect to informing Commissioners and employees of applicable standards of conduct.
R2-20-304 prescribes the process for addressing conflicts of interest involving Commissioners or employees.
Adoption and amendment of the above described rules is exempt from regular rulemaking procedures pursuant of A.R.S. § 16-956(C) of the Citizens Clean Elections Act.
- 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

Notices of Exempt Rulemaking

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):

Changes between rules as initially proposed and as finally adopted by the Commission were primarily grammatical and stylistic. Additional changes were incorporated at the suggestion of members of the public and Commissioners to clarify terms and provisions of the rules.

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. Comments were generally supportive of the revised rules. Requests for clarifications and revisions and statements in support or opposition to specific provisions were duly considered by the Commission at open meetings and were acted upon as 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:

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 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

Section

R2-20-303. Notification to Commissioners and Employees

R2-20-304. Interpretation and Advisory Service

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-303. Notification to Commissioners and Employees

~~A. The provisions of this Article shall be brought to the attention of, and made available to, each Commissioner and employee by furnishing a copy at the time of final publication. The provisions of this Article shall further be brought to the attention of such Commissioners and employees at least annually thereafter.~~

~~B. The provisions of this Article shall be brought to the attention of each new Commissioner and new employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Commission may prescribe.~~

The Executive Director shall provide to each Commissioner and employee of the Commission, upon commencement of his or her term or employment and at least annually thereafter, a copy of this Article and such other information regarding standards of conduct as the Commission and/or applicable law may prescribe.

R2-20-304. Interpretation and Advisory Service

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article ~~should~~ shall consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director ~~should~~ shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

NOTICE OF EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R07-342]

PREAMBLE

1. **Sections Affected** R2-20-402.01
Rulemaking Action New Section
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 16-940, *et seq.*
Implementing statute: A.R.S. § 16-956(C)
3. **The effective date of the rules:**
January 1, 2008
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**
Not applicable
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Todd Lang, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: todd.lang@azcleelections.gov
and
Name: Eric Peterson, Administrative Counsel
Address: Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: eric.peterson@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:**
R2-20-402.01 prescribes the process for conducting random audits of candidates' campaign accounts.
Adoption and amendment of the above described rules is exempt from regular rulemaking procedures pursuant of A.R.S. § 16-956(C) of the Citizens Clean Elections Act.
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

Notices of Exempt Rulemaking

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Changes between rules as initially proposed and as finally adopted by the Commission were primarily grammatical and stylistic. Additional changes were incorporated at the suggestion of members of the public and Commissioners to clarify terms and provisions of the rules.

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. Comments were generally supportive of the revised rules. Requests for clarifications and revisions and statements in support or opposition to specific provisions were duly considered by the Commission at open meetings and were acted upon as 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:

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 4. AUDITS

Section

R2-20-402.01. Random Audits

ARTICLE 4. AUDITS

R2-20-402.01. Random Audits

To ensure compliance with the Act and Commission rules, the Commission shall conduct random audits of both participating and non-participating candidates after each primary election period and each general election period. Random audits shall include the review of campaign finance reports and related documentation in accordance with procedures established by the Commission. The Commission may hire independent accounting firms to carry out the random audits. The selection of statewide offices and legislative districts for audit shall be determined by random lot at a Commission meeting. All candidates who appeared on the ballot for the selected offices or districts will be audited. Candidates for the following offices and districts shall not be subject to selection for random audit:

1. For the primary election period and the general election period, candidates for statewide offices and for legislative offices from districts in which no participating candidates were on the ballot; and
2. For the general election period, candidates for statewide offices and for legislative offices from districts that were selected for random audit following the primary election period.