NOTICES OF PROPOSED EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Exempt Rulemaking. An agency may be exempt from rulemaking standards outlined in the Arizona Administrative Procedures Act (APA).

An agency's exemption is listed in the Preamble of the rulemaking as specified under: A.R.S. §§ 41-1005 or 41-1057; or a specific statute; or if a rule is promulgated by the Corporation Commission, it is exempt from Attorney General review under a court decision as determined by the Commission.

If an agency determines it is exempt under the law or court decision, the law may still require publication of the Proposed Exempt Rulemaking in this section to solicit and review public comments on the rulemaking.

Some agencies, even though completely exempt, may still elect to follow certain provisions of the APA, such as circulating its exempt rulemaking for comment. If an agency chooses this option, our office encourages filing the notice with our office for publication in the *Register.*

Please note, if a statute dictates that an agency is completely exempt from the rulemaking process, the agency is authorized to file a Notice of Exempt Rulemaking.

In all cases, an agency must still follow the procedures as established by our office in order to have its rulemaking package published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed exempt rule should be directed to the agency proposing them. Refer to Item #5 of the Preamble to contact the person charged with the rulemaking.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R16-108]

PREAMBLE

1. Article, Part or Section 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, et seq.

Implementing statute and statute authorizing the exemption: A.R.S. §§ 16-941-942; 16-956(C); 16-958.

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 may be adopted no earlier than August 23, 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. 1744, July 8, 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

E-mail: thomas.collins@azcleanelections.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:

R2-20-109. Reporting Requirements:

Regarding A.R.S. § 16-922 as amended by 2016 Ariz. Laws, Ch. 346, Sec. 2 (52d Legislature 2d Reg. Session). A.R.S. § 16-922 purports to restrict certain action against tax exempt entities. The section has never received a 3/4ths vote of both houses, either in its initial adoption or its subsequent amendment. Nor does this section further the purpose of the Act. Accordingly, regulated entities should be aware that the Commission cannot enforce these new

terms consistent with the Clean Elections Act and the Arizona Constitution. 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.

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 the final rulemaking package, (if applicable):
This proposal addresses a number of matters. Regarding A.R.S. § 16-922 as amended by 2016 Ariz. Laws, Ch. 346, Sec. 2 (52d Legislature 2d Reg. Session). A.R.S. § 16-922 purports to restrict certain action against tax exempt entities. The section has never received a 3/4 vote of both houses, either in its initial adoption or its subsequent amendment. Nor does this section further the purpose of the Act. Accordingly, regulated entities should be aware that the Commission cannot enforce these new terms consistent with the Clean Elections Act and the Arizona Constitution. 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.

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~~
   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.~~

~~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.~~

~~F~~**B.** 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~~2. No change

a. No change

b. No change

3. No change

a. No change

b. No change

c. No change

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.~~
~~12~~11.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).~~